



Overview of Intellectual Property Rights

Eric E. Johnson

ericejohnson.com



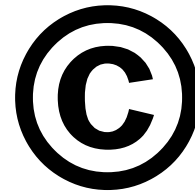
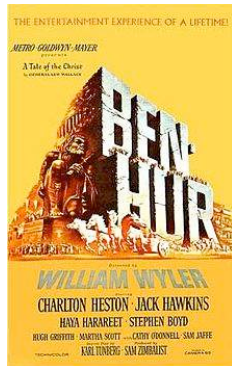
Konomark
Most rights sharable

the kinds
of IP

Copyrights
Trademarks
Patents
Trade Secrets
Rights of Publicity

You
own intellectual
property

Doctrine



Copyright



Copyright

- Books
- Poems
- Movies
- Computer software
- Photographs
- Paintings
- Sculptures

Copyright

- original works of authorship fixed in any tangible medium of expression from which they can be perceived, either directly or with the aid of a machine

Copyright ©

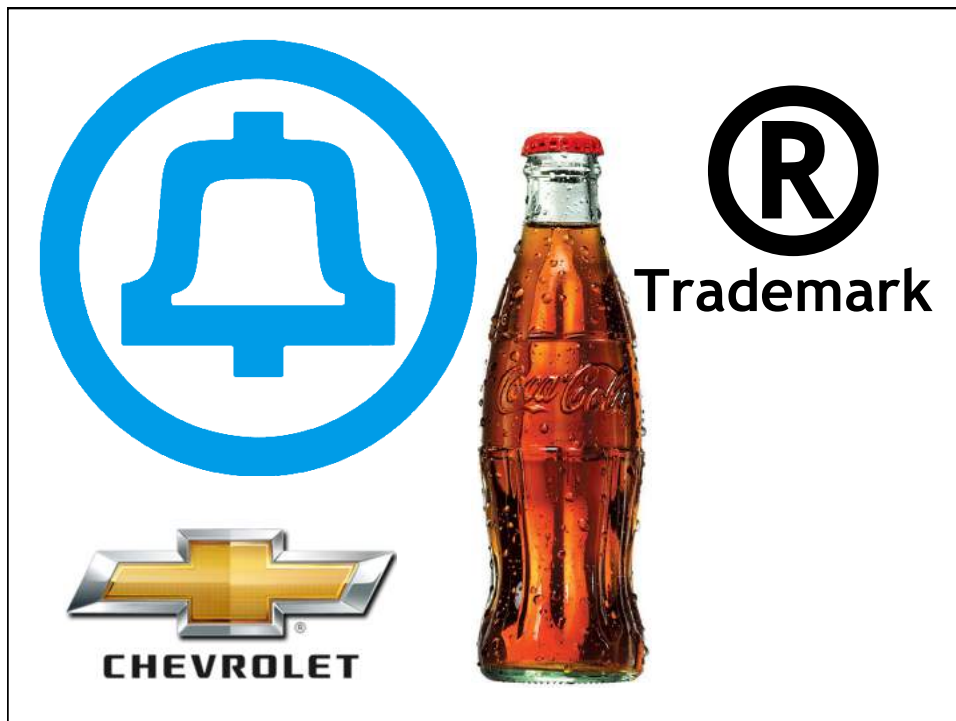
Protects	expression (text, images, recordings)
Requires	a mere modicum of creativity
Vests	automatically upon creation
Sustained by	<i>[nothing]</i>
Lasts	lifetime + 70 years; or 95 years
Theory	incentive to create; public goods problem

Patent



Patent ^{PAT.}

Protects	machines, inventions
Requires	some level of cleverness (nonobviousness, inventive step)
Vests	after application, upon issuance by government
Sustained by	escalating maintenance fees
Lasts	up to 20 years
Theory	incentive to invent and disclose; public goods problem



source

Trademark ® ™

Protects	names, logos, slogans, other indications of commercial source
Requires	distinctiveness (can identify a commercial source)
Vests	common law: upon use federal: after use, upon registration
Sustained by	continued use
Lasts	as long as used, potentially forever
Theory	provide information to consumers



Right of Publicity

Right of Publicity

Protects	name, voice, image, other indicia of identity
Requires	nothing; fame in a few jurisdictions
Vests	automatically
Sustained by	<i>[nothing]</i>
Lasts	lifetime; post-mortem in some states
Theory	???

Trade Secret



Trade Secret

Protects	formulas, recipes, manufacturing techniques, and other intangibles with independent economic value
Requires	secrecy and reasonable efforts to keep secret
Vests	automatically
Sustained by	continuing secrecy and efforts to keep secret
Lasts	potentially forever
Theory	????



Comparisons

What is protected?

©	Expression (text, images, recordings)
Pat.	Inventions (manmade)
TM	Indications of commercial source
Trade Secret	Transferrable commercial secrets
Right of Publicity	Indications of personal identity

How is it lost?

©	<i>Very difficult</i>
Pat.	Unpaid fees; successful challenge
TM	Failure to keep exclusive control
Trade Secret	The secret gets out, or reasonable means aren't taken to preserve secrecy
Right of Publicity	<i>Very difficult</i>

Defenses include ...

©	Fair use, first-sale
Pat.	Invalidity, first-sale
TM	Non-trademark uses, fair uses, first-sale
Trade Secret	Reverse engineering
Right of Publicity	News, free speech, non-commercial

Remedies include ...

©	Injunctions; restitution (of D's wrongful gains); statutory damages up to \$150K per infringement
Pat.	Injunctions; royalties; treble damages
TM	Injunctions; punitive damages; treble damages
Trade Secret	Injunctions; restitution (of D's wrongful gains); punitive damages; royalties
Right of Publicity	Injunctions; punitive damages

Key general points:

- There's no such thing as "intellectual property infringement"
- Copying is okay, unless it is specifically prohibited by a specific legal regime
- Patents, copyrights, trademarks, trade secrets, and rights of publicity are all very different legal regimes with different rights and different defenses covering different subject matter

Key points about infringement:

- For patents, mere use infringes
- For copyright, infringement generally requires copying; this could take place as part of the operation of a machine
- For trademark and right of publicity, generally there needs to be something like commercial usage for infringement

Key points about loss of IP rights:

- Trademarks can be lost by failure to control what is made/sold/marketed under mark (single commercial source requirement)
- Trade secrets can be lost by no longer being secret or by not maintaining reasonable efforts to maintain secrecy
- Copyrights, patents, and publicity rights are much harder to lose

Key points about remedies:

- IP remedies are often much stronger than contractual remedies, including:
 - injunctions
 - extra-compensatory damages (e.g., statutory, treble, punitive)