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**FACTS
 IN
 FICTION...
 or NON-FICTION**

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protecting the technological and creative arts


DISCLAIMER!

- This may be boring
- You may not learn anything
- If you learn something, it'll probably be enough to make you dangerous
- This is **NOT** legal advice

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LEGAL ISSUES


- PEOPLE
- PLACES
- THINGS



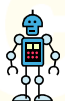
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PEOPLE

- DEFAMATION
- RIGHT/INVASION OF PRIVACY
- RIGHT OF PUBLICITY


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People...

- **NATURAL PERSONS**
 - Living 
 - Dead
- **ARTIFICIAL PERSONS**
 - Entities 
 - Characters 

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Defamation

- **What?**
 - Explicit or implicit *injury to a person's reputation* caused by the publication of spoken or written words
- **In other words...**
 - Dishin' dirt about others 

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Defamation...

- **Who?**
 - *Living* natural person
 - *Existing* entity
- **What?**
 - *Libel* (written or Literal)
 - *Slander* (oral or Spoken)









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Defamation...

- **Level of protection (ascending)**
 - Public official
 - Public figure
 - Private figure

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Right/Invasion of Privacy

- **What?**
 - The right to be let alone
- **Who?**
 - *Living natural* person

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Right/Invasion of Privacy...

- **How?**
 - *Public disclosure of private facts*
 - *False light*
 - *Intrusion*
 - *Misappropriation of name or likeness*

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Right of Publicity

- **What?**
 - Right to prohibit others from using your persona for commercial purposes
- **Who?**
 - *Living natural* person
 - *Dead natural* person

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Right of Publicity...

- **What is okay?**
 - *Reporting*
 - *Scholarship*
 - *Commentary*


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THINGS

- TRADE LABEL
- TRADEMARKS & TRADE DRESS
- COPYRIGHTS
- MISCELLANEOUS


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Trade Label

- **What?**
 - A *false statement that injures* the business reputation of a company or the sale of a company's products
 - Also known as **Product Disparagement**
 - Akin to Defamation


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Trademarks & Trade Dress

- **What?**
 - **Trademark:** Indicator of source or origin of a good or service
 - **Trade Dress:** Total image and overall appearance of a good or service


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Trademarks & Trade Dress...

- **Examples?**
 - Goods
 - Services
 - Titles
 - Characters
 - Book Covers


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Trademarks & Trade Dress...

- **How?**
 - Body of text reference to actual good or service
 - Proper format
 - Attribution


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Trademarks & Trade Dress...

- **Proper Format**
 - **Always** use as an **ADJECTIVE**
 - Trademark brand noun
 - *Big Chief*[®] brand writing tablet
 - **Not** as a **noun**
 - Please make a Xerox of this document.
 - **Not** as a **verb**
 - Let's go rollerblading in the park.

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COPYRIGHTS

- **What?**
 - *Original works of authorship* fixed in any *tangible* medium of expression

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Copyrights...

- **Works?**
 - **Literary** works 
 - **Musical** works  (including any accompanying words)
 - **Dramatic** works  (including any accompanying music)

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Copyrights...

- **Works?**
 - **Pantomimes** and **Choreographic** works 

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Copyrights...

- **Works...**
 - **Pictorial, Graphic**  and **Sculptural** works  
 - **Motion Pictures**  and other **Audiovisual** works 

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Copyrights...

- **Works...**
 - **Sound Recordings**  
 - **Architectural Works**  

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Copyrights...

- **Rights?**
 - **Exclusive Rights**
 - *Reproduce* the work
 - *Prepare* derivative works
 - *Distribute* copies
 - *Perform* publicly
 - *Display* publicly

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Copyrights...

- **Why not?**
 - Infringement
 - **Access** to original work and
 - **Substantial similarity** to original work

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Copyrights...

- **How Long?**
 - **Individual Work:** Life of author plus 70 years
 - **Joint Work:** Life of last-surviving author plus 70 years
 - **Anonymous Work, Pseudonymous Work, Work for Hire:** Earlier of
 - 95 years from publication
 - 120 years from creation

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Copyrights...

- **What is okay?**
 - **Express permission**
 - **Fair use**
 - Purpose and character of use
 - Nature of the copyrighted work
 - Amount and substantiality
 - Effect on the potential market

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Copyrights Myths

- **Attribution** is sufficient
- Use of **X number of words** or **Y%** of a work is permissible
- **Transformation** by **Z%** is not infringement

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MISCELLANEOUS

- **PARODY & SATIRE**
- **NEGLIGENT PUBLICATION**
- **RIGHTS & PERMISSIONS**
- **SON OF SAM LAWS**
- **OBSCENITY**

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Parody

- **What?**
 - **Parody:** A work or performance that imitates another work or performance with ridicule or irony

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Satire

- **What?**
 - **Satire:** A literary technique of writing or art which principally ridicules its subject, often as an intended means of provoking or preventing change

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Negligent Publication

- **What?**
 - Instruction, advice or other information that a reader uses to his or her detriment

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Rights & Permissions

- **What?**
 - Third party elements
- **Examples?**
 - Photos
 - Illustrations
 - Maps
 - Excerpts
 - Lyrics

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Son of Sam Laws

- **What?**
 - Criminals cannot profit from their crimes



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Obscenity

- **What?**
 - Matter that appeals to the prurient interest, depicts or describes in a patently offensive way sexual conduct, and lacks serious literary, artistic, political or scientific value

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Obscenity...

- **In other words...**
 - "I shall not today attempt further to define the kinds of material but I know it when I see it."
 - Supreme Court Justice Potter Stewart



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PLACES

- TRADE LABEL
- TRADEMARKS & TRADE DRESS

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OTHER STUFF

- PUBLIC DOMAIN
- LIABILITY
- MANUSCRIPT VETTING

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Public Domain

- **What?**
 - Available for all to use
 - **Caveat:**
Public Availability \neq Public Domain

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Public Domain...

- **When?**
 - **Copyright**
 - *Individual Work*: Life of author plus 70 years
 - *Joint Work*: Life of last-surviving author plus 70 years
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Public Domain...

- **When?**
 - **Trademark**
 - As long as continually used
 - **Trade Dress**
 - As long as continually used

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Public Domain...

- **When?**
 - **Natural persons**
 - Death
 - Defamation
 - Right of Privacy
 - (*Right of Publicity*)
 - **Artificial persons**
 - Cease existence
 - Copyright expiration

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Liability

- **Who?**
 - Publisher
 - Author
- **How?**
 - Publication

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Liability...

- **Protection?**
 - Indemnification
 - Insurance
 - Disclaimer
 - Manuscript Vetting


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Manuscript Vetting

Checklist adapted from

Kirsch's Handbook of Publishing Law

Jonathan Kirsch



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Manuscript Vetting...

1. Does the work contain any *material that was contributed* by someone other than the author?
2. Does the work contain potentially *damaging statements* about or depictions of a living individual or an existing company?

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Manuscript Vetting...

3. Does the work contain potentially *embarrassing statements* about or depictions of a living individual?
4. Does the work make use of the *business name, trademark or trade dress* of an existing business?

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Manuscript Vetting...

5. Does the work make use of the *name, image or likeness* of an individual, whether living or dead, for purposes of advertising, promotion, merchandising or implied endorsement?
6. Does the work offer *instruction or advice* that might affect the reader's mental, physical, legal or financial well-being?


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Manuscript Vetting...

7. Is the work written by (or does it draw upon the experiences of) **a criminal?**
8. Does the work contain **explicit sexual content?**

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QUESTIONS



- **Answers**
 - The Answer to Life, the Universe and Everything is **"42"**
 - Douglas Adams, *Life, the Universe and Everything* (*Hitchhiker's Guide to the Galaxy* Trilogy)
 - **"It Depends"**
 - Universal legal answer