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INTELLECTUAL PROPERTY for CREATIVES

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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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IDEAS AND CONCEPTS

- Are **not protectable** in and of themselves
- Legal protection extends to the **tangible expression** of ideas and concepts
- This tangible expression is known as **Intellectual Property** ("IP")


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INTELLECTUAL PROPERTY

- **What?**
 - **Tangible Expression** of creative human endeavor
 - **Protected by**
 - **Patents**
 - **Trademarks**
 - **Copyrights**
 - **Trade Secrets**



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Can I Patent a Trademark For a Copyright?





NO, because:

Terms **patent**, **trademark** and **copyright** are not synonyms,
 but distinct intellectual property rights


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Intellectual Property...

- **Transportation Analogy**
 - Cars drive on land 
 - Ships sail on water 
 - Planes fly in air 
 - Hydroplanes travel on water and in air 

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Intellectual Property...

- **Patents** → Inventions or Discoveries
- **Trademarks** → Indicators of Source
- **Copyrights** → Original Works
- **Trade Secrets** → Confidential Information

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Intellectual Property...

- **Rights?**
 - **Limited term monopoly** in exchange for promotion of the useful arts and sciences

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Intellectual Property...

- **How Long?**
 - Until becomes **Public Domain**
 - Available for all to use
 - **Caveat:**
 - Public Availability ≠ Public Domain

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TRADEMARKS

- **What?**
 - **Trademark:** Indicator of source or origin of a good or service
 - Trademarks may consist of:


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Words

Coca-Cola

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Phrases



It's the real thing. Coke.

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Designs



The slide shows a glass bottle of Coca-Cola and a black square logo for PowerAde with a blue stylized 'P' shape.

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Combinations Thereof



The slide features the classic red and white Coca-Cola logo with the word 'Enjoy' above it.

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Scents, Sounds & Colors

- **Scent**
 - Smead
 - Vanilla and others for office supplies
- **Sound**
 - NBC
 - Chimes for broadcasting services
- **Color**
 - Owens Corning
 - Pink for insulation

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Trademarks...

- **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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Trademarks...

**Types of Trademarks
in order of
Ascending Legal Strength...**

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Generic Trademarks

- **Common name of good or service**
 - Car (good)
 - Accounting (service)




The slide includes an illustration of a pink classic car and a notepad with a pencil.

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Descriptive Trademarks

- Describes nature or quality
 - Half Price Books® (new & used bookstore)



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Suggestive Trademarks



- Suggests nature or quality
 - Coppertone® (nice tan)
 - Edge® (close shave)




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Arbitrary Trademarks



- Intrinsic meaning, unrelated context
 - Apple® (computers for educational market)
 - BlackBerry® (multi-purpose electronic device)

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Coined/Fanciful Trademarks

- Invented
 - Kodak® (film, imaging)
 - Xerox® (reproduction machines)

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Trademarks...

- **What?**
 - **Exclusive right** to use trademark with **particular** goods and services.

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Trademarks...

- **Where?**
 - **Common Law Usage:** Demonstrated territory
 - **State Registration:** State border
 - **Federal Registration:** National border

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Trademarks...

- **How Long?**
 - **Common Law Usage:** As long as continuously used
 - **State Registration:** Usually 5-10 years (subject to renewal and continuous use)
 - **Federal Registration:** 10 years (subject to renewal and continuous use)

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Trademarks...

- **Public Domain?**
 - **No longer in continual use**
 - At least 3 years of non-use

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Trademarks...

- **Marking?**
 - **MARK®** (*Federal Registration*)
 - **MARK™** (*State Registration and/or Common Law Usage*)

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Trademarks...

- **Acquisition of Rights?**
 - Upon **use** of the mark in **commerce**
 - US Patent & **Trademark Office**
 - Secretary of State

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Trademarks...

- **Acquisition of Rights...**
 - **Registration not required, but**
 - Proof of **rights**
 - Proof of **ownership**
 - Public **record**

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Trademarks for Creatives?

- **Company**
 - Studio
 - Publishing Imprint
- **Titles**
 - Series of books
- **Product Line**

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Trademarks...Practice Pointers

- **Clearance** before **launch**
 - Do-overs are expensive
- **Pick a good mark**
 - Legally weak marks are hard to protect
- **Genericide**
- **DIY** can be detrimental




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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 **Right S**
 - **Reproduce** the work
 - **Prepare** derivative works
 - **Distribute** copies
 - **Perform** publicly
 - **Display** publicly


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Copyrights...

- **Where?**
 - **National** Border
 - **International** Reciprocity


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Copyrights...

- **Marking?**
 - **Copyright**
 - Symbol (©)
 - Word (Copyright)
 - Abbreviation (Copr.)
 - **Year** of Creation or Publication
 - **Author** Name


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Copyrights...

- **Marking...**
 - **Visually Perceptible Copies**
 - © 2011 Author Name
 - Copyright 2011 Author Name
 - Copr. 2011 Author Name


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Copyrights...

- **Marking...**
 - **Sound Recordings**
 - © 2011 Author Name


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Copyrights...

- **Acquisition of Rights?**
 - Upon **creation**
 - **US Copyright Office**

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Copyrights...

- **Acquisition of Rights...**
 - **Registration** *not* required, *but* provides
 - Proof of **ownership**
 - Public **record**

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Copyrights...

- **Enforcement of Rights**
 - Registration required to bring **suit**
 - File within 3 months of *Publication*
 - **Damages**
 - Actual
 - Statutory (\$750-\$30,000/\$150,000)
 - **Attorneys Fees**
 - **Injunction**
 - **Impound** and **destruction**

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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...

- **Public Domain?**
 - **Expiration** of term
 - All works **published** in the US **before** January 1, 1923

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Infringement

- **What?**
 - **Access** to original work and
 - **Substantial similarity** to original work

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Copyrights Myths

- **Attribution** is sufficient
- Without **remuneration**
- Author **promotion**

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Copyrights Myths...

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

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Infringement...

- **What is okay?**
 - **Express permission**

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Rights & Permissions

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

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Licensing

- **What?**
 - **Permission** to use per terms
 - Any or all copyrights
 - Time
 - Territory
 - Payment
 - Number of Copies
 - Etc.

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Without Licensing

- **What is okay?**
 - **Fair Use Defense**
 - **Criticism**
 - **Comment**
 - **News Reporting**
 - **Teaching**
 - **Scholarship** or **Research**

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Fair Use...

- **Fair Use Defense Factors**
 - *Purpose and character of use*
 - *Nature of the copyrighted work*
 - *Amount and substantiality*
 - *Effect on the potential market*

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Ownership: Work for Hire

1. **Employee/Employer**
2. **Order or Commission for contribution to**
 - Collective work
 - Motion picture or audiovisual work
 - Translation

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Work for Hire...

- Supplementary work
- Compilation
- Instructional text
- Test
- Answer material
- Atlas

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Work for Hire...

- **AND**
 - Parties agree in a signed, written instrument
- Anything else needs...
 - Assignment of ownership

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Copyrights...Practice Pointers

- **Creator = Owner**
- **Contracts**
 - Independent Contractors
 - Third Parties
- **Commercially Viable? Register!**

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Miscellaneous

- **PARODY**
- **SATIRE**
- **DIGITAL RIGHTS MANAGEMENT**
- **DIGITAL MILLENNIUM COPYRIGHT ACT**
- **CREATIVE COMMONS**

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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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Digital Rights Management (DRM)

- **What?**
 - Means to prevent copying of digital materials
 - Civil and Criminal penalties

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Digital Millennium Copyright Act (DMCA)

- **What?**
 - Online copying
 - Insulation of ISPs
 - Take down notice to Designated Agent

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Creative Commons

- **What?**
 - a nonprofit organization that develops, supports, and stewards legal and technical infrastructure that maximizes digital creativity, sharing, and innovation
 - Copyright Licenses and Tools
 - <http://creativecommons.org>

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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