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INTELLECTUAL PROPERTY JABBERWOCKY

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protecting the technological and creative arts


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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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Alice in Wonderland Regarding the Jabberwock...

*"Somehow it seems to fill my
head with ideas—only I don't
know exactly what they are!"*


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Lewis Carroll Said It Best...

*'Twas brillig, and the slithy toves
Did gyre and gimble in the wabe:
All mimsy were the borogoves,
And the mome raths outgrabe.*


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Now, to Our Quest...

*'Twas vexing, and this property right
Did befog and perplex all the land:
All sorry was the people's plight,
And the public masses did demand.*

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*"Explain this IP, oh attorney!
The marks that sell, the ideas that patent!
Explain the copyright, and free
The befuddled student!"*

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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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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...

- 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...

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

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PATENTS

- **What?**
 - *Inventions* or *Discoveries*
 - Three Types
 - *Utility*
 - *Design*
 - *Plant*

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Utility Patent

Any *new, useful* and *nonobvious*

- **Process** (making an aluminum can)
- **Machine** (aluminum can making machine)
- **Manufacture** (aluminum can)
- **Composition of Matter** (alloy - steel)
- **Improvement thereof** (pop-top can)

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Design Patent

Any *new, original* and *ornamental*
design for an article of
 manufacture
 (silverware pattern; range hood)

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Plant Patents

Any *distinct* and *new* variety of plant,
 which is *asexually reproduced*
 (newly grafted rose plant)

including:

- Cultivated Spores
- Mutants
- Hybrids
- Newly Found Seedlings (other than a tuber propagated plant or a plant found in an uncultivated state)

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Patents...

- **Rights?**
 - *Exclusive* right to
 - *Make*
 - *Use* and
 - *Sell*

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Patents...

- **Where?**
 - *National Border*

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Patents...

- **How Long?**
 - **Utility:** 20 years from filing date
 - **Design:** 14 years from grant date
 - **Plant:** 20 years from filing date


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Patents...

- **Public Domain?**
 - **Expiration** of grant


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Patents...

- **Acquisition of Rights?**
 - Upon **grant**
 - **US Patent & Trademark Office**
 - **Registration required**


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Patents...Business Pointers

- **Disclosure** can be **fatal**
 - On sale bar (1 year grace period)
- **Provisional Patent**
 - Priority date placeholder
 - No rights
- **DIY** can be dangerous


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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




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Phrases



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Designs



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Combinations Thereof



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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...

- **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 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...

- **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...Business Pointers

- *Clearance* before *launch*
 - Do-overs are expensive
- *Pick a good mark*
 - Legally weak marks are hard to protect
- *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 Rights**
 - **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...

- **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

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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**
 - Required to bring **suit**
 - File within 3 months of **Publication**
 - Damages
 - Attorneys Fees

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Copyrights...Business Pointers

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

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TRADE SECRETS

- **What?**
 - **Business information** that has
 - **Commercial value**
 - Provides an actual or potential **economic advantage** over others
 - Is **maintained in confidence**

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Trade Secrets...

- **Rights?**
 - **Exclusive** right to **use**

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Trade Secrets...

- **Where?**
 - **State by State**
 - Other areas of legal recognition

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Trade Secrets...

- **How Long?**
 - As long as maintained in **confidence**



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Trade Secrets...

- **Public Domain?**
 - **Disclosure**
 - By **anyone**
 - With or without fault

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Trade Secrets...

- **Acquisition of Rights?**
 - Upon **creation**
 - Not Registered
 - **Contractual Right**

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**Trade Secrets...
Business Pointers**

- **Contracts**
 - Employees
 - Independent Contractors
 - Third Parties
- **Control Access**
- **Inventory**

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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

