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LEGAL ISSUES

re: IP & Entities

- An Overview -

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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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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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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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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)


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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


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Patents...

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


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Patents...

- **Marking?**
 - U.S. Patent No. 6,565,059 (**utility**)
 - U.S. Patent No. D253,194 (**design**)
 - U.S. Pat. Pend. (**pending application**)


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Patents...

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


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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...

- **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 vs. TRADE NAMES

From a Legal Perspective:

Trademark
≠
Trade Name
≠
Entity Name

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Entity Name

Formal name by which your *entity* (corporation, LLC, etc.) is registered with the state

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Trade Name

Name, *other than entity name*, under which entity *does business*; whose purpose is to trace back to the *true entity* (also registered with state)

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From a Marketing Perspective:

- Not the Same
The Procter & Gamble Company dba *P&G* sells *Bounty*® brand paper towels

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From a Marketing Perspective...

- Are the Same
IBM Corporation dba *IBM* sells *IBM*® brand computers

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


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Copyrights...

- **Works?**
 - **Pantomimes and Choreographic** 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...

- **Marking?**
 - *Copyright*
 - Symbol (©)
 - Word (Copyright)
 - Abbreviation (Copr.)
 - *Year* of Creation or Publication
 - *Author* Name
 - © 2008 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*
 - Required to bring *suit*
 - File within 3 months of *Publication*
 - Damages
 - Attorneys Fees


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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...

- Marking?
 - CONFIDENTIAL**


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Trade Secrets...

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


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LEGAL ENTITIES

- What is an Entity?
 - In law, an *entity* is something capable of bearing legal *rights* and *obligations*


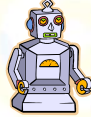

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Entities...

- Are all businesses entities?
 - Yes
- Are all entities created equal?
 - No


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Entities...

- **Natural person**
 - A human being
- **Artificial person**
 - A legal being


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Entities...

- **Artificial Person:**
 - Recognized by the law as **separate and distinct** from the **natural person(s)** who own the business


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Entities...

- Entities considered **natural persons:**
 - Sole Proprietorship
 - General Partnership


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Entities...

- **Sole Proprietorship:**
 - **One** natural person engaging in enterprise


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Entities...

- **General Partnership**
 - **Two or more** natural persons engaged in enterprise


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Entities...

- Entities considered *artificial persons*:
 - Limited Liability Partnership
 - Limited Liability Company
 - Corporation


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Entities...

- **Limited Partnership**
 - Two or more *persons* engaged in enterprise
 - A *general* partner
 - At least a *limited* partner


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Entities...

- **Limited Liability Company**
 - At least a *person* engaged in enterprise
 - Each person is an owner
 - An owner is called a *Member*


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Entities...

- **Corporation**
 - At least a *person* engaged in enterprise
 - Each person is an owner
 - An owner is called a *Shareholder* or *Stockholder*


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Entities..

- **No liability protection for *natural persons***
 - Sole Proprietorship
 - General Partnership


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Entities..

- **Liability protection for *artificial persons***
 - Limited Partnership (limited partner only)
 - Limited Liability Company
 - Corporation


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Sole Proprietorship


- **Advantages**
 - Easy to organize
 - Less reporting
 - No double tax
 - Freedom of action


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Sole Proprietorship...


- **Disadvantages**
 - Unlimited liability
 - Fewer tax benefits
 - Termination on death of owner
 - Limited ability to raise capital


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General Partnership

- **Advantages**
 - Few formalities
 - Combination of resources & talents
 - No double tax


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General Partnership...


- **Disadvantages**
 - Unlimited liability
 - Power of each partner
 - Dissolution upon death of a partner
 - Partnership profits taxed as income to partners
 - Managing relationships between partners


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Limited Partnership

- **Advantages**
 - General partners have additional capital
 - Limited partners have limited liability
 - Allocation of income and losses
 - Avoids double tax
 - Finite existence



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Limited Partnership...

- **Disadvantages**
 - Limited partners have no control
 - Initial organization cost
 - Partnership profits taxed as income to partners
 - Compliance with state and federal securities laws


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Limited Liability Company

- **Advantages**
 - Limited liability with or without limits on management participation
 - Flexible ownership and capital structure
 - No double tax
 - Allocation of tax benefits among members


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Limited Liability Company...

- **Disadvantages**
 - Initial organization cost
 - Transferability must be governed by buy/sell provisions


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Corporation (C corp)

- **Advantages**
 - Limited liability of shareholders
 - Perpetual existence
 - Flexibility of financing through outside investors
 - Transfer of ownership by sale/gift of stock
 - Well-accepted form of doing business


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Corporation (C corp) ...

- **Disadvantages**
 - Initial organization cost
 - Annual reporting requirement
 - Double taxation


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Corporation (S corp)

- **Advantages**
 - Same as for C-Corporation
 - Taxed at the individual shareholder level


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Corporation (S corp) ...

- **Disadvantages**
 - Except for the tax consequences, same as for C-Corporation
 - With minor exceptions, only individuals can be shareholders
 - Limited number of shareholders (≤75)
 - Limited to one class of stock
 - Must use calendar year

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