

INTELLECTUAL PROPERTY PROTECTION

I. COPYRIGHT PROTECTION

(c) 2008 TransMedia Productions, Inc.

- A. Basis:** [See 17 USC §101]
- i. Original works of authorship
 - ii. Fixed in a tangible medium of expression
 - iii. Photographs, paintings, sculptures, musical compositions, dramatic plays, sound recordings, computer programs, nonfunctional design elements, user interfaces and object code (Keep Source Code Secret).
 - iv. Registration **necessary** for infringement suit and statutory damages
- B: Exclusivity:** Protects against copying by anyone. Does not include ideas, methods, processes, concepts, principles, i.e. only non-utilitarian aspects are copyrightable.
- C. Duration: (CAUTION! - Varies according to time of publication)**
1. Person: Life of author + (50)(70) years [Work-For-Hire 75 Years]
 2. Corporations: 95 years from date of first publication.

II. PATENT PROTECTION

- A. Basis:** [See 35 USC §1; Software, Yes: *State Street Bank*, 149 F.3d 1368 (Fed Cir.)]
1. Utility Patent
 - i. Invention, process, machine, manufacture, composition of matter or anything new or useful or any improvement thereof, not purely mental or law of nature.
 - ii. It must be [a] Novel and [b] Useful and [c] Non-obvious
 2. Design Patent:
 - i. Any new, original and ornamental design for an article of manufacture.
 - ii. It must be [a] Novel and [b] Ornamental and [c] Non-obvious
- B: Exclusivity:** Monopoly granted - Completely exclusive
- C: Duration:** *Utility:* 20 years from date of filing. *Design:* 14 years from issuance.

III. TRADE MARK [Trade Name, Service Mark, Trade Dress]

- A. Basis:** Protects words, symbols, names, slogans, configurations & other indicia of identification (The Lanham Act 15 USC §1051). Federal but permits state actions.
- i. Registration helps
 - ii. Use it or lose it.
- B: Exclusivity:** The Lanham Act provides for federal registration and allows lawsuits under state law - Protects against *Confusion*, *Dilution* and *Tarnishment*.
- C: Duration:** Must be used and re-registered - Basically - Continue til abandoned.

IV. TRADE SECRET PROTECTION [Tort & Contract]

- A Basis:** [Uniform Trade Secrets Act - UTSA]: Restatement: "Used in one's business." See Cal. Civil Code §3426
- i. Formula, pattern, compilation, program, device, method, technique or process.
 - ii. Independent economic value from not being generally known to others who can obtain economic value.
 - iii. Not readily ascertainable by proper means.
 - iv. Subject to efforts, reasonable under the circumstances, to maintain its secrecy.
- B: Exclusivity:** Protection from Insiders and from improper disclosure. Protection generally from [1] Theft or [2] Violation of Confidential Relationship. No protection for independent discovery or reverse engineering.
- C: Duration:** Potentially Unlimited

V. CONTRACTUAL PROTECTION

- A. Basis:** [See Uniform Computer Information Transactions Act]
1. Work for hire agreements
 2. Trade Secret provisions
 3. License agreements
- B: Exclusivity:** limited to contracting parties.
- C: Duration:** Indefinite, subject only to Rule Against Perpetuities.

VI. SUI GENERIS/STATUTES/UNFAIR COMP/ETC.

- A. Federal:**
1. Semiconductor chip protection [Nothing for software yet].
 2. Digital Millennium Act of 1998 (>Copy protection).
- B. State:**
1. Unfair Competition
 2. Fraud