

IP and the INTERNET



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**Do not forget
trade secrets**




TRADEMARKS



What's Trademarkable?

Any identification of goods or services to indicate source and distinguish from goods or services of others.



What's Trademarkable?

Word

Name

Symbol

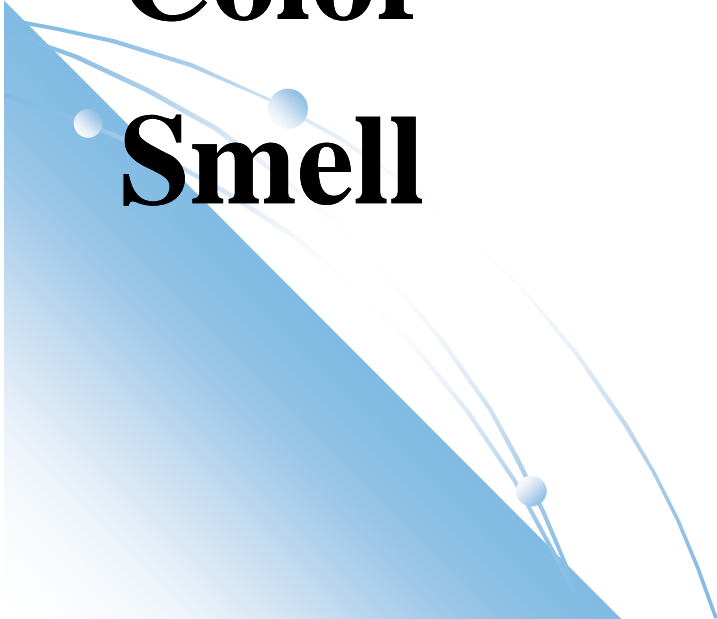
Design

Color

Sound

Smell

Combinations



What's Trademarkable?

- **Trade Dress - combination of many elements that function together as a source identifier to create an overall “look”**

Generic


Descriptive

Suggestive

Arbitrary/fanciful



TM Exclusion Rights

- **Using the same or similar marks on similar goods or services**
 - **Geographic**
 - **Field of Use**
 - **Expansion into area or fields of use**
- 

TM

®



● **Registration**

● **Common law rights**

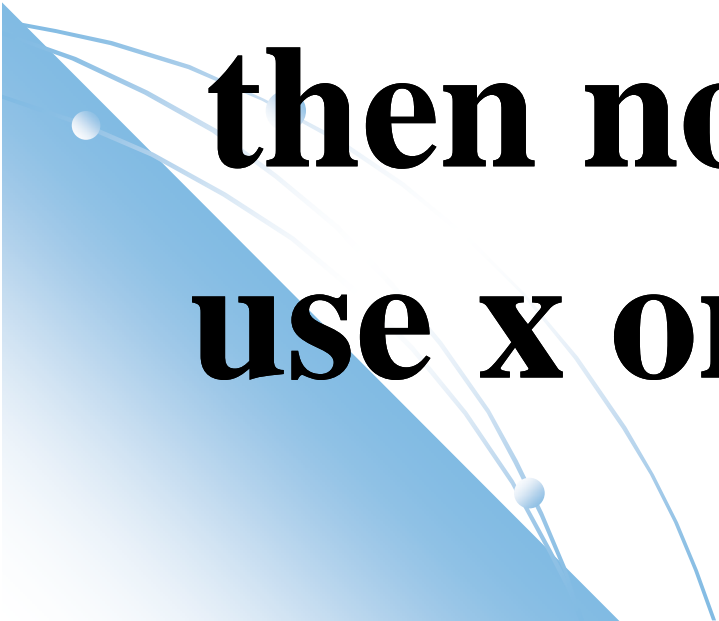


● **First use**


**The following are
false.**



If I get a trademark registration for “x” on the Internet, then no one else can use x on the Internet.



**If I have a U.S.
registration,
then I beat anybody
who doesn't have a
registration.**



**If I have a long
established mark,**

**I don't have to worry
about registrations.**

A decorative graphic in the bottom-left corner consisting of a blue triangular shape with three curved lines extending from its top-right corner towards the right edge of the slide. Each line ends in a small white dot.

**If I get a U.S.
trademark,**



**then I don't have to
worry about foreign
registrations.**

If I get a U.S. trademark,

**then I have worldwide
protection.**

A decorative graphic in the bottom-left corner consisting of a solid blue triangle pointing downwards and to the right. Overlaid on this triangle are several thin, light blue curved lines that sweep upwards and to the right. Three small, semi-transparent blue circles are placed at various points along these curved lines.

**I've got trademark
protection,**



**no one can copy my
product.**

**I registered my corporate
name with the Texas
Secretary of State,**




**so I can use my company
name anywhere.**

I got a domain name,



**so I have trademark
protection.**

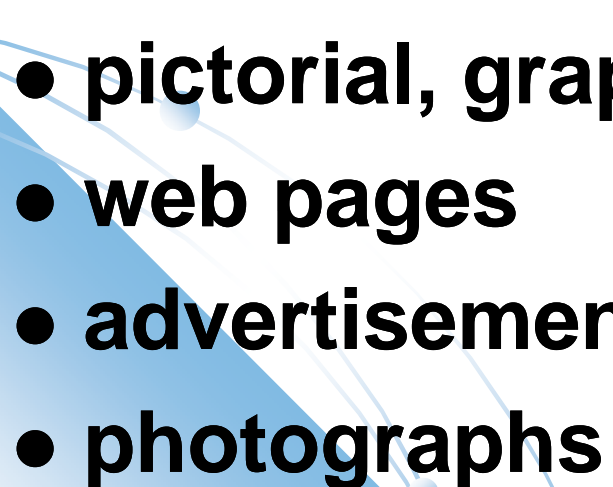
**The best marks are
the ones that
describe my goods
and services.**

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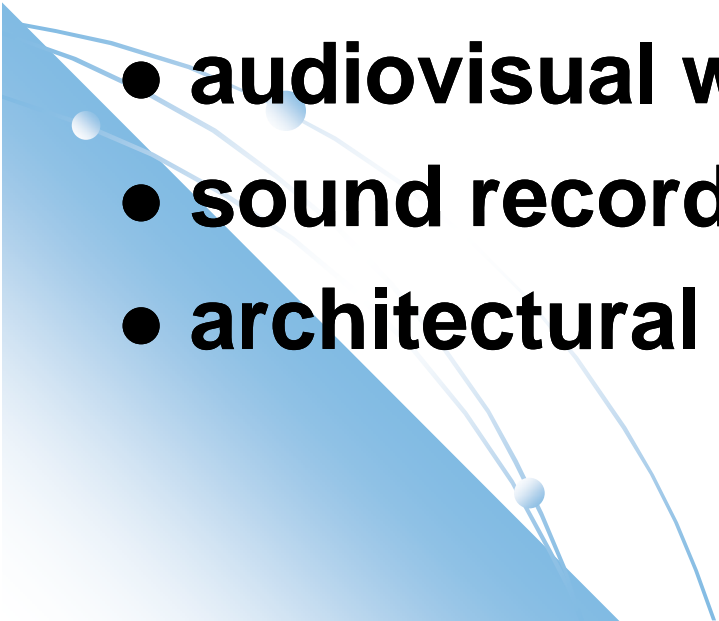
COPYRIGHTS




What's Copyrightable?

- **books, articles, poems, etc.**
 - **musical works**
 - **dramatic works**
 - **pictorial, graphic and sculptural works**
 - **web pages**
 - **advertisements**
 - **photographs**
- 

What's Copyrightable?

- **paintings**
 - **technical drawings**
 - **motion pictures**
 - **audiovisual works**
 - **sound recordings**
 - **architectural works**
- 

Copyright Exclusion Rights

- **Reproduce**
 - **Prepare new works**
 - **Distribute**
 - **Publicly perform**
 - **Publicly display**
- 

**Life of authors (latest)
+ 70 years**

**Works for Hire,
Anonymous**

**95 years from publication
or
120 years from creation**

©



Registration



• **Creation of the work**

**The following are
false.**



**If I don't know that a
work is copyrighted,**



then I have no risk.

If I buy a video,



**I can charge money
for showing it.**

**I can copy magazine
or newspaper articles
for use in the office.**



**I can copy
magazine or
newspaper articles
for use in research.**



**You must be a citizen
of the United States to
claim the benefits of
U.S. copyright laws.**



**If I modify a
copyrighted work,**

**I own the copyright in
the new work.**



**If I write my own stories
using characters from
another work,**



I own the copyright.

**To obtain a copyright on
a work,**

**you must register with the
Copyright Office.**

A decorative graphic in the bottom-left corner consisting of a blue triangular shape with a gradient, overlaid with several thin, curved blue lines and small white circular dots.

I did not register a
copyright



so I lost my rights.

I can legally copy a
work



if I give full credit to the
copyright owner.

I'm giving them free
advertising



so it's not a violation.

**If it doesn't say “©” or
“copyright,”**



then I can copy it.

**I can legally copy a
work**



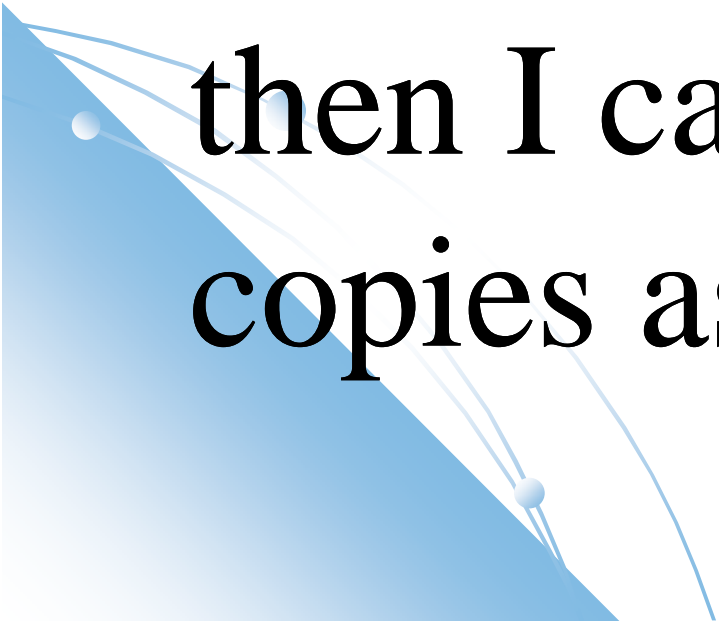
**if I don't copy all of
it.**

**They can't sue me for
copying**



**if they did not register
the copyright.**

If a song is on Napster
or a similar website,



then I can make as many
copies as I want.

If it's on the Internet,

I can copy it all I want.

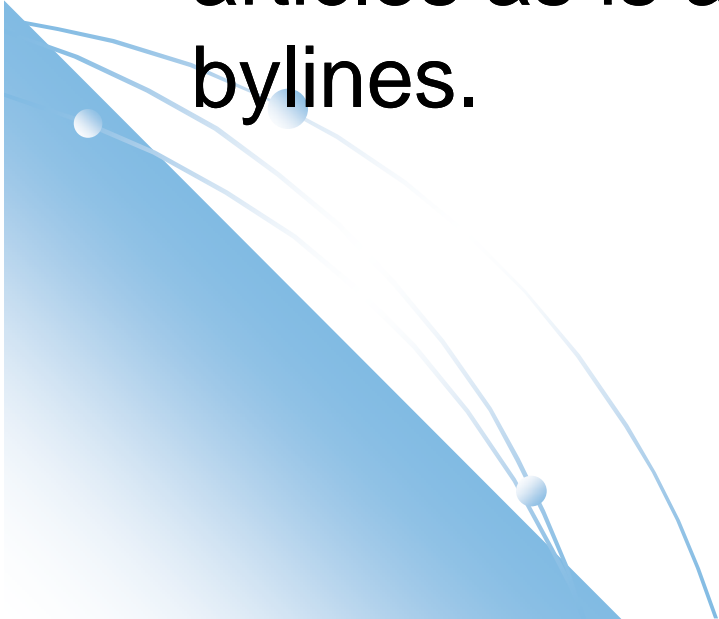


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I got it by email,

**so I can do what I
want with it.**

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If I don't charge for it,

**I don't violate
copyright.**


A decorative graphic in the bottom-left corner consisting of a blue gradient triangle pointing downwards and to the right, overlaid with several thin, curved blue lines and three small blue circular dots.

**If they do not defend
their copyright,**

they lose it.




**You can't use that
name,**

A decorative graphic in the bottom-left corner consisting of several overlapping blue lines and three small blue dots. The lines are curved and appear to be part of a larger, partially visible shape.

it's copyrighted.

**Mailing your work to
yourself is just as good
as copyright
protection.**

A decorative graphic in the bottom-left corner consisting of a solid blue triangle pointing downwards, overlaid with several thin, light blue curved lines and small circular dots.

I'm a DJ at a dance club.

I can play *any* song I want



**because the club has an
ASCAP license.**

**My copyright
registration will
prevent others from
copying my idea.**



**We paid John Smith to
write this software for
us.**



We own it.

We were smart. We paid John Smith to write this software for us, and he agreed that it is a “work for hire.” ...



We own it.

I can reverse engineer or
disassemble software
with no risk of liability.




**I can modify
software**



**with no risk of
liability.**

I can give my software
to my sister.



Software can be loaned
just like a book.

If everybody else is
using these materials,

then I can too.



FAIR USE



Trademark fair use

Other meaning –

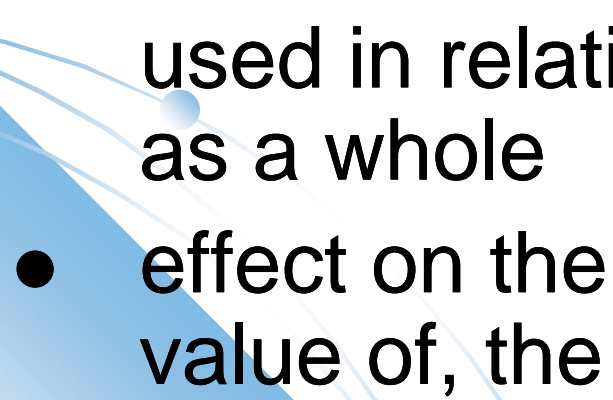
Apple Computer –

apple

Actual reference



Copyright fair use

- purpose and character of the use (commercial or nonprofit educational purposes)
 - nature of the copyrighted work
 - amount and substantiality of the portion used in relation to the copyrighted work as a whole
 - effect on the potential market for, or value of, the copyrighted work
- 

TRADE SECRETS




SECRET

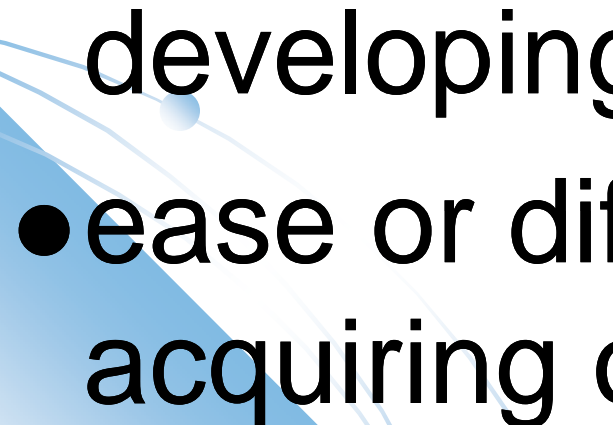
COMPETITIVE VALUE



Secrecy Factors

- extent known outside the business
 - extent known by employees
 - extent of measures taken to maintain secrecy
- 

Competitive Value Factors

- value to owner and competitors
 - effort or money expended in developing
 - ease or difficulty of properly acquiring or duplicating
- 

**The following are
false.**



If I don't know that
someone else has rights
in a information,

then I have no risk.



**If I don't know that
information has been stolen
from someone else,**



then I have no risk.

If it is not covered by a
patent,

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then it is not secret.

If you cannot get a
patent on the
invention it is not
worth anything.



Their secrets did not
help us because we do
things differently than
they do.



PATENTS



What's Patentable?

- **Any new and useful**
 - **Process**
 - **Machine**
 - **Method of manufacture**
 - **Composition of matter**
 - ***Improvements* on existing things**



- **Significant recent case law in patent law now also allows:**
 - **Software**
 - **Methods of doing business**

Patent Exclusion Rights

- Make

- Use

- Sell

- Import

A decorative graphic in the bottom-left corner consisting of a blue gradient shape with several thin, curved lines extending from its top edge towards the right.

20 years

from date of filing



No application

Provisional application

Standard application

Patent

A blue triangular graphic with a white dot at its apex, containing the text 'Patent'. The triangle is oriented with its apex pointing downwards and its base at the top. The text 'Patent' is written in a bold, black, serif font within the triangle.

Patent pending

Patent notice



**The following are
false.**



If I get a patent,

**I then have the legal right
to make, use and sell my
invention.**

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**If I add on to or
improve a patented
invention,**



then I don't infringe.

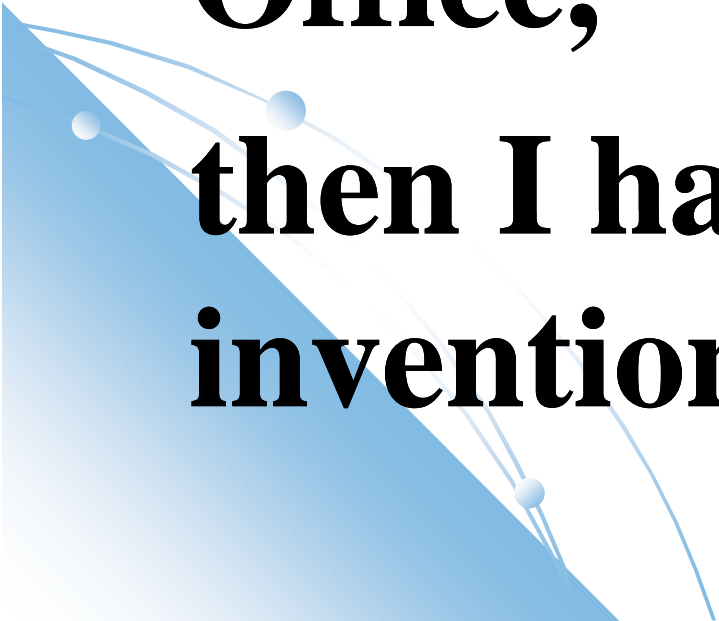
**If I don't intentionally
infringe a patent,**



then I have no risk.

**If I send a written
description of my
invention to the Patent
Office,**

**then I have protected my
invention.**



**I've never seen
anything like my
invention on the
market.**



It must be patentable!

**A patent only covers
the actual invention
that the owner makes
or describes.**

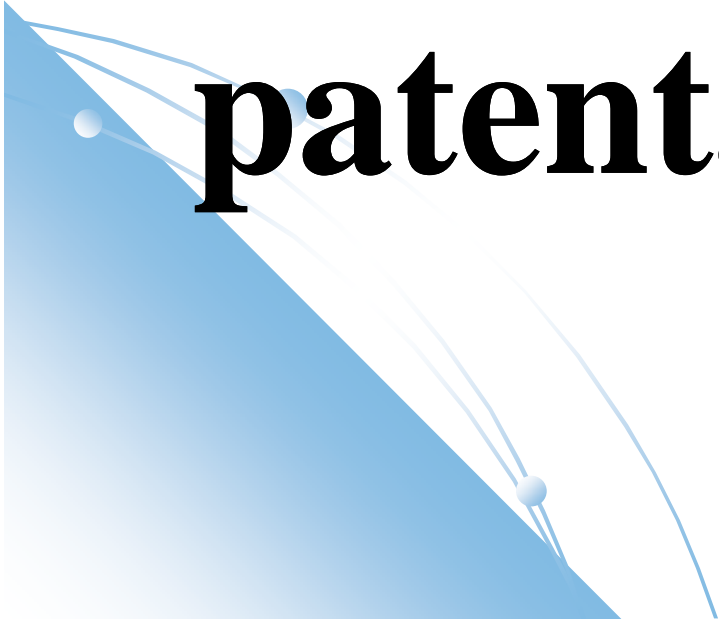


**If I read the abstract of
a patent,**



**I now have a safe
understanding of the
patent.**

**That idea is so
simple it can't be
patentable.**



If I have a patent,

**then I can't infringe
someone else's patent.**



**If they don't have a
patent,**

**then they must infringe
my patent.**



**They don't make anything
and
the invention described
doesn't work –**



**I'm not worried about
their patent.**

**The devices have been
around for years --**



their patent is no good.

My patent gives me

**worldwide
protection.**

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I have a U.S. patent,



**so the U.S. will police
it for me.**

I have a U.S. patent,

so everyone must

know about it and

will not infringe it.



**If I publish a paper
about my invention**



**I won't lose any
patent rights**

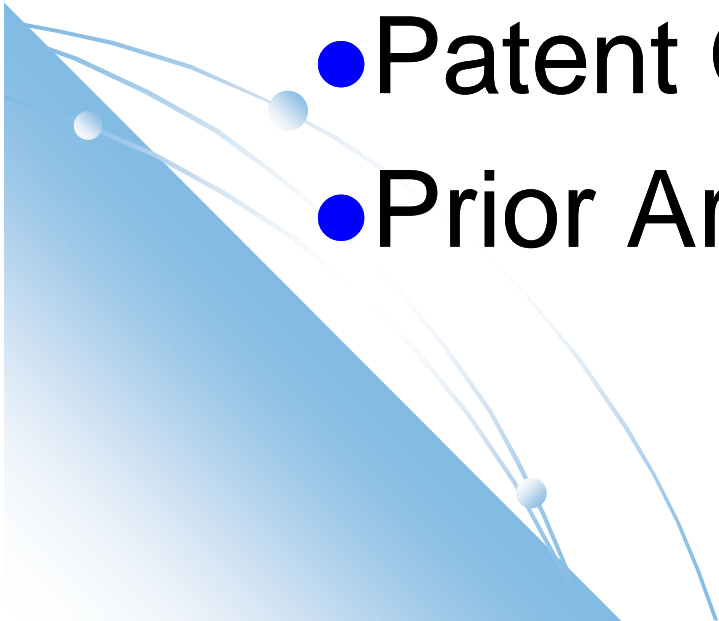
**I filed a patent
application**




so I am protected.

Specific Patent Cyberspace Law Issues

- Methods of Doing Business
- Validity/Enforcement
 - Patent Office Problems
 - Prior Art

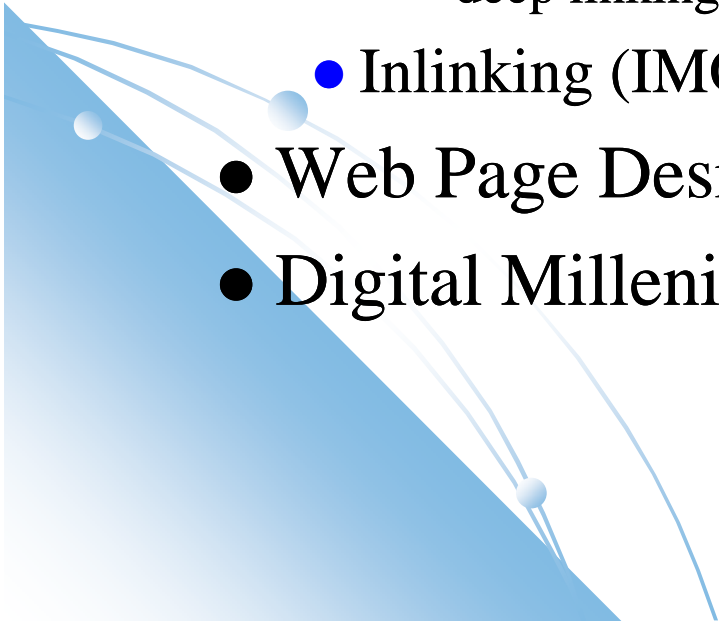


Specific Patent Cyberspace Law Issues

- Value as Business Tool
 - Defensive strategy
 - Reverse Bidding
 - Priceline.com
 - One Click Shopping
 - Amazon vs. Barnes & Noble
- 

Specific Copyright Cyberspace Law Issues

- Copying Web Pages
- Linking and Framing
 - Outlinking (HREF)
 - deep linking
 - Inlinking (IMG)
- Web Page Design
- Digital Millenium Copyright Act




Specific Copyright Cyberspace Law Issues

- European Union Database Protection
- Music
 - MP3
 - NapsterMusic
- DVD
 - posting security code



Specific Trademark Cyberspace Law Issues

- Domain Name vs. Trademarks
 - differences
 - registration
 - disputes
 - Cybersquatting and Reverse
Cybersquatting
- 

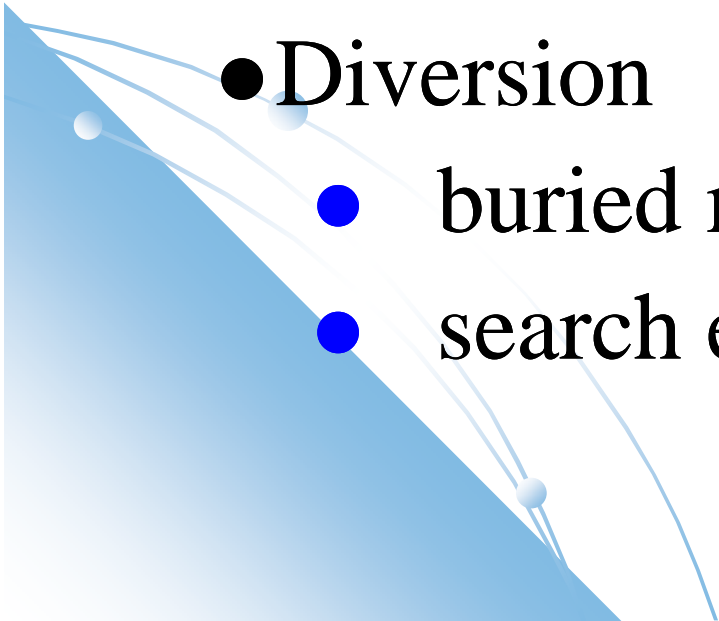
Specific Trademark Cyberspace Law Issues

- Linking

- sponsorship
- affiliation

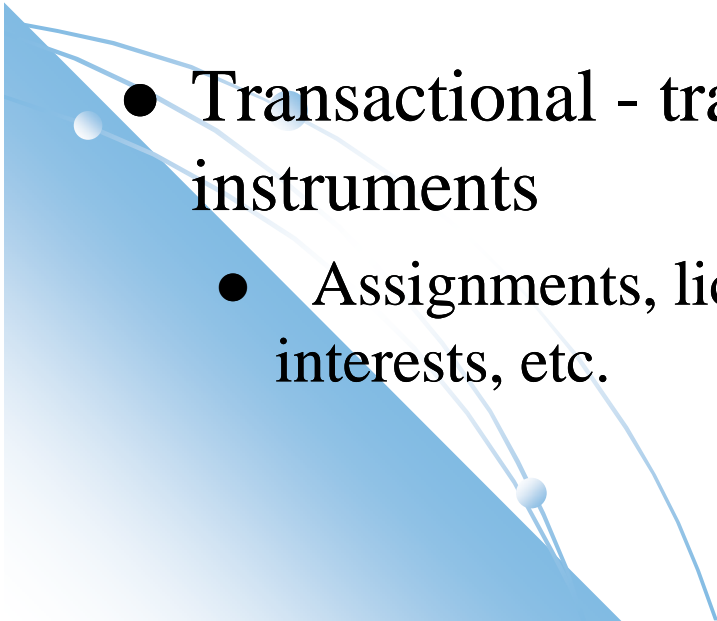
- Diversion

- buried meta-tags
- search engines



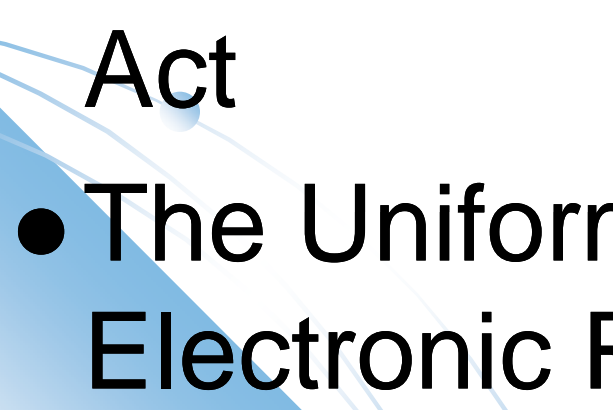
Three Areas of IP Management for Your Dot Com Business

- Prosecution - Seeking patent, trademark and copyright registration protection
- Litigation - enforcement and defense of IP rights
- Transactional - transfer of IP rights through various instruments
 - Assignments, licenses, service agreements, security interests, etc.



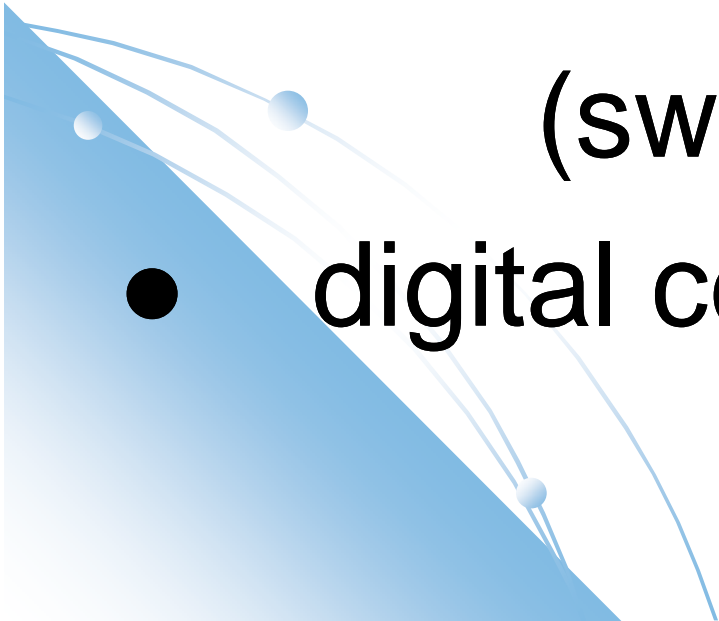
ELECTRONIC SIGNATURES



- The Uniform Electronic Transactions Act (UETA)
 - The Electronic Signatures in Global and National Commerce Act
 - The Uniform Real Property Electronic Recording Act
- 

Types of Digital Signatures

- autograph
- fobs and credit cards
(swiping)
- digital certificate



Some Website Liability Issues

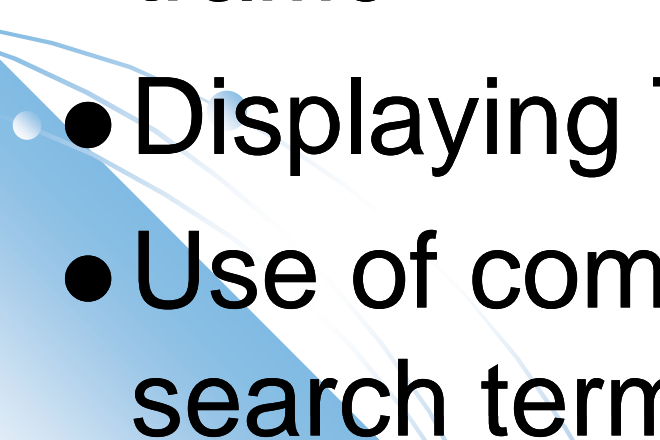


Copyright Infringement

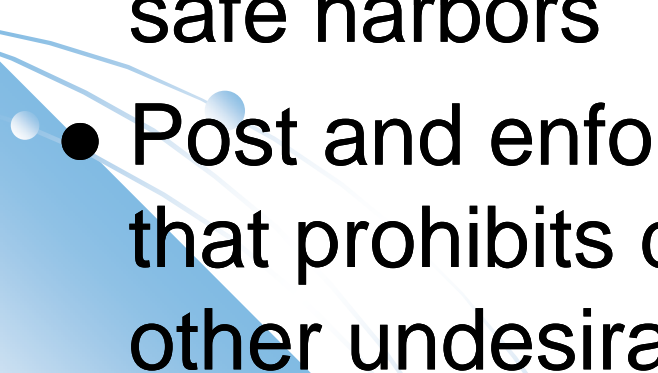
Framing another site's
content



Trademark Infringement

- Using TMs as meta-tags to attract traffic
 - Displaying TMs in sponsored ad
 - Use of competitor's mark as a search term ???
- 

Defamation

- Statements or postings in your discussion forum
 - Comply with the Digital Millennium Copyright Act (DMCA) -- procedures and safe harbors
 - Post and enforce a strong online policy that prohibits defamatory statements and other undesirable content.
- 

Far away jurisdiction

- *Zippo*
 - Bad -- interactivity (e.g. an e-commerce shopping cart)
 - Good -- informational advertising
- 