

# IP Checklist for New Media

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# What is Intellectual Property

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- Copyrights
- Trademarks
- Patents
- Trade Secrets

# Copyrights

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- Protects expressions, not ideas
- For qualifying categories of works, protection extends to any work that possesses even a slight modicum of creativity
- Protection extends only to the original expressions
- Does not extend to useful / functional articles
- Examples: software, images, audio compilations, video compilations

# Copyright Basics Cont'd

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- Protects against “copying” . . . not mere use or possession of a copy
- Arises upon fixation of the work in any tangible medium of expression
- Registration is not required for protection, but is required to file suit for infringement and obtain certain remedies
- Copyright notice (e.g., © Aly Z. Dossa 2009) is no longer required, but can be helpful
- Copyright term is life of author + 70 years (95 years from publication for works for hire)

# Copyright: Exclusive Rights

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- Copyright owner has the exclusive right to do or authorize others to do certain things.
- Right to reproduce
- Right to create derivative works
- Right to distribute copies by sale or otherwise (a/k/a right to vend)
- Rights to perform and publicly display
- “Copying” (in copyright legal speak) means exercise of any exclusive right, not just reproduction
- Violation of exclusive right = infringement

# Trademarks

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- Indication of source or origin of goods or services
- Rights flow from ***use***
  - Registration is confirmation of rights
  - Gives various advantages
- Rights are tied to specific type or types of products in a specific market
- No rights in the absence of actual use of mark in the relevant market

# Examples of Trademarks

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# Patents

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- Protects inventions
- Motivation for Innovation:
  - Provide a monopoly of limited duration as a reward for development of new technology
  - Facilitate sharing of new ideas and technologies
- Patent Bargain:
  - Inventor gets the exclusive right for a limited time
  - Public gets full disclosure of the technology and the right to use when the patent expires
- Examples: iPhone<sup>®</sup> Patent, Google<sup>™</sup> Search Patent



# Trade secrets

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- **General Definition:**
  - a secret which gives its owner an actual or potential advantage in business, and
  - which the owner exercises reasonable measures to maintain as a secret.
- No standardized definition or uniform enforcement
- Seen as vital in today's high - tech society
- Protects against industrial espionage
- Protects investments in critical technologies

# New Media IP Checklist

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- IP secured
  - Copyright registration
  - Trademark registration
  - Patent application(s)
- Company Name/Product Name Cleared (*e.g., Android Data Corp. et al. v. Google et al*)
- Terms of Service (primarily directed to services)
- License(s) (primarily directed to products)

# Terms of Service

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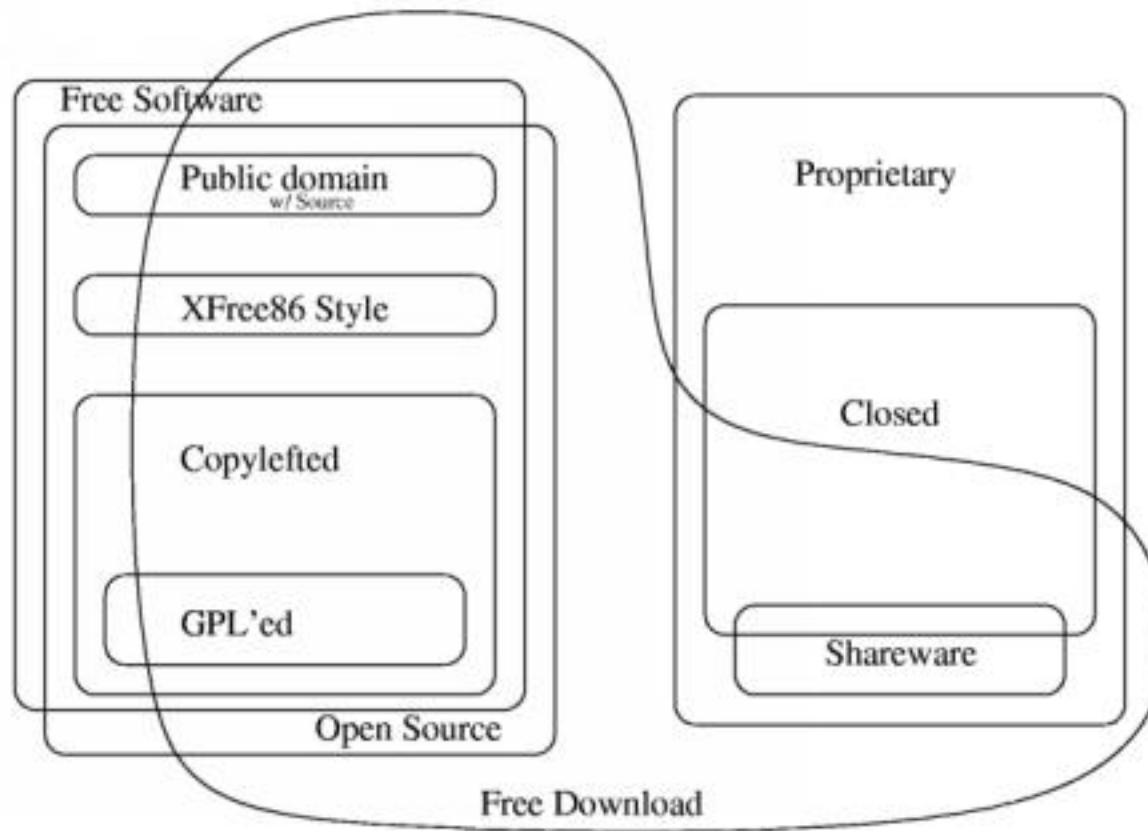
- What are users allowed to do with the service
  - Trademark restrictions
  - Copyright restrictions
  - Commercial/Non-commercial use restrictions
- Disclaimers
  - Warranties
  - Liability

# Licenses

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- Types of licenses
  - Proprietary License
    - “Proprietary software is software that is not free or semi-free. Its use, redistribution or modification is prohibited, or requires you to ask for permission, or is restricted so much that you effectively can't do it freely.”  
<http://www.gnu.org/philosophy/categories.html>
  - Open Source License
    - For software in which source code is freely and publicly available
    - Places limits on what you can do with the source code
      - Limits on how to distribute
      - Limits on whether source code can be used for commercial purposes
  - Free Software
    - “Free software is software that comes with permission for anyone to use, copy, and distribute, either verbatim or with modifications, either gratis or for a fee” <http://www.gnu.org/philosophy/categories.html>

# Licenses Cont'd



By Chao-Kuei and may be found at <http://www.gnu.org/philosophy/categories.html>

# IP Remedies for New Media

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- IP Enforcement
- Uniform Domain-Name Dispute-Resolution Policy (UDRP)
- Digital Millennium Copyright Act (DMCA)

# Protecting Your Trademark Online Under the UDRP

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- Proving Your Claim
  - UDRP complaint must establish three (really four) things:
    - The domain name at issue is identical or substantially similar to a mark you have rights in.
    - (i) the domain name is **identical or confusingly similar** to a trademark or service **mark in which you have rights**; and
      - Same or similar mark, and
      - You have rights in the mark (federal registration or established mark)
    - (ii) the **owner has no rights** or legitimate interests in respect of the domain name; and
    - (iii) the owner registered and is using the domain name **in bad faith**.
      - To sell it to the complainant
      - To prevent the complainant from buying it
      - To disrupt the complainant's business
      - To redirect traffic intended for complainant
  - A showing of ALL THREE elements is required

# UDRP Example 1

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- Example:
  - My mark: “Dossa’s Day-old Donuts”
    - Mr. X registers the domain name “DossaDayoldDoughnuts.com”
    - Page has click through ads for Shipley’s
  - I’ve got a strong UDRP case:
    - I’ve got rights, & the domain is sub. similar
    - No evidence of Mr. X’s rights in the name
    - Domain being used to capture my audience



# UDRP Example 2

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- Example:
  - My mark: “Dossa’s Day-old Donuts”
    - Dotti registers “DsDayoldDonuts.com”
    - Page is for Dotti’s Dayold Donuts, a popular Alaskan chain.
  - My UDRP case is pretty weak:
    - No rights in DsDayoldDonuts
    - Dotti has rights
    - No bad faith

# DMCA

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- Criminalizes creation and distribution of technology, devices, or services intended to circumvent measures that control access to copyrighted works.
- Criminalizes the act of circumventing an access control, whether or not there is actual infringement of copyright itself.
- Increases penalties for copyright infringement on the Internet.
- Provides certain safe harbors for online service providers against copyright liability (Safe Harbor Provisions being challenged in *Viacom Inc. vs. YouTube, Google Inc.*)

[http://en.wikipedia.org/wiki/Digital\\_Millennium\\_Copyright\\_Act](http://en.wikipedia.org/wiki/Digital_Millennium_Copyright_Act)

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# Questions?