Know Your Rights: A Legal Primer for Software Developers, Artists and Content Creators

August 14, 2008

SIGGRAPH 2008
Los Angeles, California

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Introduction to Intellectual Property Law

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August 14, 2008
SIGGRAPH 2008
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Intellectual Property 101

- Trade Secret
- Trademark
- Copyright
- Patent

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What do intellectual property rights protect?

- Hardware
  - Computers, Videogame Consoles, Peripherals
- Software
  - Applications, Formats, APIs
- Content
  - Movies, Television, Video, Fine Art
- Ancillary Merchandise
  - Books, Toys, Games, Clothing, Collectibles
- Services

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Trade Secret

- Trade secret protects information that gives you an advantage over your competitors (e.g., process, concepts, ideas, software, contract terms, customer lists, etc.).
- You acquire an maintain trade secrets by keeping them secret and creating contractual obligations (must make reasonable efforts).
- Lasts as long as secrecy is maintained.
- Infringed when someone with a duty not to disclose the trade secret discloses or as a result of theft.
- Injunction is available as well as monetary damages.

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Trade Secret Tips and Traps

- Too much protection can also be a bad thing; do not mark things as confidential that are not.
- Releasing trade secret information to someone who has no obligation to keep it secret can destroy the trade secret forever because that person can then pass on the information.
- Protecting your company against employees illegally importing trade secrets is as important as not divulging your own.
- Employment Agreements are a very good time to start thinking about trade secrets (and IP assignments).

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Trademark

- Trademarks protect words, names, symbols and character designs which identify a source of goods or services (service marks are treated the same).
- You acquire trademark protection through use.
- Federal Trademark Registration is available which greatly enhances the protection. (www.uspto.gov)
- Trademarks last as long as they are used and maintained.
- Trademarks are infringed when someone uses your mark or a mark that creates a likelihood of confusion as to the source of goods.
- ® versus ™
- Fanciful, Arbitrary, Suggestive, Descriptive

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Trademark Tips and Traps

- A seemingly unique name may already be in use.
  - Conduct a trademark search before you invest in developing the mark and before you package and ship the product.
- Obtain an Intent to Use application to secure a name for up to 36 months before you intend to actually start using it.
- Words v. Symbols

Some Not So Obvious Trademark Examples

Copyright

- Copyright protects the tangible expression of an idea including computer software, audiovisual elements, music, art, printed materials and more.
- In order to be protected by copyright, a work of authorship must be original to the author.
- Copyrights are acquired upon creation but superior rights are available upon registration.
- If owned by a person, a copyright lasts for the life of the author + 70 years.
- If owned by a company, a copyright lasts the lesser of 95 years from the date of publication or 120 years from the date of creation.
- Copyrights are infringed by duplication or substantial similarity of the work.

Federal Registration

- Register through the US Copyright Office (www.copyright.gov)
- Deposit requirements differ depending upon what you are registering.
- Makes proving date of creation and authorship much easier.
- Copyright registration is necessary to file a lawsuit.
- Must register no later than 3 months after publication in order to obtain attorneys' fees and statutory damages.
- Statutory damages:
  - $30,000 per instance of ordinary infringement
  - $150,000 per instance of willful infringement

What Exactly Do I Register to Protect My Code?

- Copyright registrations are public record so consider impact on patent and trade secrets and take appropriate steps.
- Deposit Requirement
    - No Trade Secrets: First 25 Pages, Last 25 Pages of Source Code
    - Trade Secrets present
        - First 25 Pages and Last 25 Pages of Source Code, Trade Secret Code Blocked Out (up to 50%)
        - First 10 Pages and Last 10 Pages of Source Code, No Blocked Out Code
        - First 25 Pages and Last 25 Pages, Object Code plus 10 or more consecutive pages of Source Code with No Blocked Out Code

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What About Screen Displays?

- One registration can protect all of the audiovisual elements of the an visual work.
- Identify material to be protected in written synopsis of the work and the assets to be protected along with a half-inch VHS tape of all of the audiovisual elements you want to protect.
- It is a good idea to do this throughout development and protect early demos, beta versions and the final version of a work of authorship.

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What Is the Deal with the ©?

- Not required by US law, but it is simple and advantageous.
- A copyright notice consists of the word "copyright" or the © symbol, the year(s) of publication, the owner's name and the phrase "All rights reserved."**© [Years of Publication] [Company]. All rights reserved.**
- Advantages of obtaining a copyright:
  - Alerts potential infringers that the owner is aware of copyright law.
  - Prevents escaping liability by arguing unknowing infringement. If the copyright is registered, there may be a claim for willful infringement with much higher statutory damages.
  - Some countries require the © symbol or the "All rights reserved." language.

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Copyright Tips and Traps

- If you did not create something odds are you need at least a copyright license to use it.
- Even if you *did* create something you may need some other IP license to use it.
- Get assignments and promises to cooperate ahead of time.
- Software is not subject to the "work made for hire" doctrine. Get specific copyright assignments from independent contractors.
- You need a copyright registration if you want to file a lawsuit.
- Obtain waiver of moral rights ("droit morale") from authors, to the extent possible.

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Patents (the WMD of the IP World)

- Utility Patents protect ideas and concepts.
- Design Patents protect the nonfunctional shape or design.
- Provide the owner with a quasi-monopoly by allowing them to exclude others from making, using or selling the invention.
- Infringed when someone makes, uses, sells without permission.
- Injunction, Treble Damages, Attorneys' Fees
- Utility Patents (20 years from application)
- Design Patents (14 Years from application)

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Examples

- Design Patent
  - Shape of a videogame system
- Utility Patent
  - Software patents on various techniques used in the game physics, graphics, AI and sound engines, media distribution systems, anti-piracy systems.
  - Hardware patents on numerous components used in the consoles.
  - Business method patents for online systems and advertising methodologies.

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Who has What (US Patents and Patent Applications as of 8/11/2008 according to www.uspto.gov)

Patent Assignee	Issued Patents	Published Applications
Electronic Arts	18	31
Sony Computer Entertainment (all Sony)	653 (27,112)	413 (8,170)
Nintendo	584	415
Sega	516	73
Microsoft	9,286	12,240

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I want one of those…

- Apply to the US Patent Trademark Office (www.uspto.gov)
- Requirements
  - Patentable Subject Matter
  - Useful
  - Novel
  - Non-obvious
  - Written Description including Best Mode
  - Pay the Fee and Wait
  - "Pat. Pend." upon filing the application

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Patent Tips and Traps

- Not all countries treat patents the same.
- Patents are time sensitive, so they should usually be filed as soon as practicable.
- If you really want to get a patent, make friends with your patent attorney.
- Get patents for inventions you are currently developing, not just the ones you are about to ship.
- Provisional Patents
- Not all patents are created equal.

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Putting It All Together

- Trade Secret, Trademark, Copyright and Patent can exist simultaneously in the product or service.
- Patent vs. Copyright is the question of Idea vs. Expression.
- Trademark is all about identifying the source of the good or service.
- Different aspects of a property are protected by different types of intellectual property.

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Protecting Tools, Technology and Code

- **Trade Secret.** Mark all qualifying code and media confidential.
- **Trademark.** Register trademark name of any technologies.
- **Copyright.** Mark with legend in code and on media. Register with the Copyright Office using trade secret registration deposit.
- **Patent**. Apply for utility patents on innovative hardware and software.

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Protecting Design and Business Documents

- **Trade Secret.** Mark all qualifying documents Proprietary & Confidential and only disclose under NDA. You also may want to consider making the terms of any agreement confidential or not depending upon the possible business impact.
- **Trademark.** Register trademark name of any technologies.
- **Copyright.** Mark with legend in code and on media. May be registered with the Copyright Office but it will destroy Trade Secret protection .
- **Patent**. Apply for patent protection for innovative game elements.

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Protecting Art and Audiovisual Elements

- **Trademark.** Register the trademark of the property title and main character name and design.
- **Copyright.** All materials should bear a copyright legend. Register the audiovisual elements using a written synopsis and VHS deposit. Pitch bibles, prototypes and demonstrations may be registered.

Protecting Names, Logos, Slogans

- **Trademark.** Register the trademark of names, logos, character designs, slogans of the company and its original IP (character names, character slogans, objects and environmental elements).

Why Did I Go Through All That?

- IP gives the owner the power to control the future of a property.
- Finance
- Development
- Publishing
- Licensing
  - Film
  - Television
  - Book
  - Products
  - Sequels

Where to Look for Terms and Conditions Affecting IP

- Non-Disclosure/Confidentiality Agreements
- Employment Agreements
- Development Agreements
- Publishing Agreements
- Distribution Agreements
- Licensing Agreements
- Advertising/Publicity Agreements
- Venture/Financing/Security Agreements

Conclusion

- Intellectual Property is "The Asset."
- All the deals done in film, television, computer graphics, and interactive entertainment impact Intellectual Property.
- Early strategic development of Intellectual Property provides its owner with flexibility for the future and the potential for a huge upside.

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Thank You

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SIGGRAPH2008

Know Your Rights: A Legal Primer for Software Developers, Artists and Content Creators

Copyright and Open Licensing

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In the United States, federal copyright law protects "*original works of authorship fixed in any tangible medium of expression*"

  ✓ i.e. phonorecording, movie, book, etc.
  ✓ the five exclusive rights of a copyright holder are:
    - reproduction,
    - public performance,
    - display,
    - distribution,
    - the right to create derivative works

What is Copyright?

Registration with the copyright office is not a prerequisite to copyright protection, but can help in certain situations.

  ✓ i.e. required to sue for certain types of damages

Copyright does not protect an idea, but the expression of an idea

  ✓ i.e. it is possible for two individuals to independently develop the same work

Policing/defending of the copyrighted work is not necessarily required to maintain the holder's interest

Some Differences from Patents and Trademarks

Copyright law does not protect
- ✓ ideas
- ✓ procedures
- ✓ processes
- ✓ systems
- ✓ method of operations
- ✓ concepts, principles, or discoveries
- ✓ pure data: "facts are free"

Some Limits of Copyright Law

Fair use
- ✓ Fair use protects some "criticism, comment, news reporting, teaching, scholarship, or research"
- ✓ Includes the expression of the 1st amendment in the copyright act
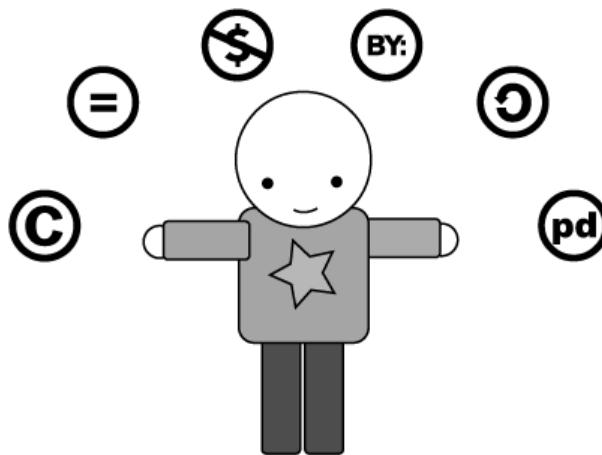- ✓ Fair use is judged on a case by case basis, by the courts

Copyright and Fair Use

Copyright law generally takes an "all rights reserved" approach, meaning that, absent an applicable defense (such as fair use), if your use infringes one (or more) of a copyright holder's five exclusive rights, you need a license.

- ✓ creativity builds off of the creative expression of your peers and your predecessors
- ✓ can significantly increase transaction costs
- ✓ can stifle collaboration and viral marketing
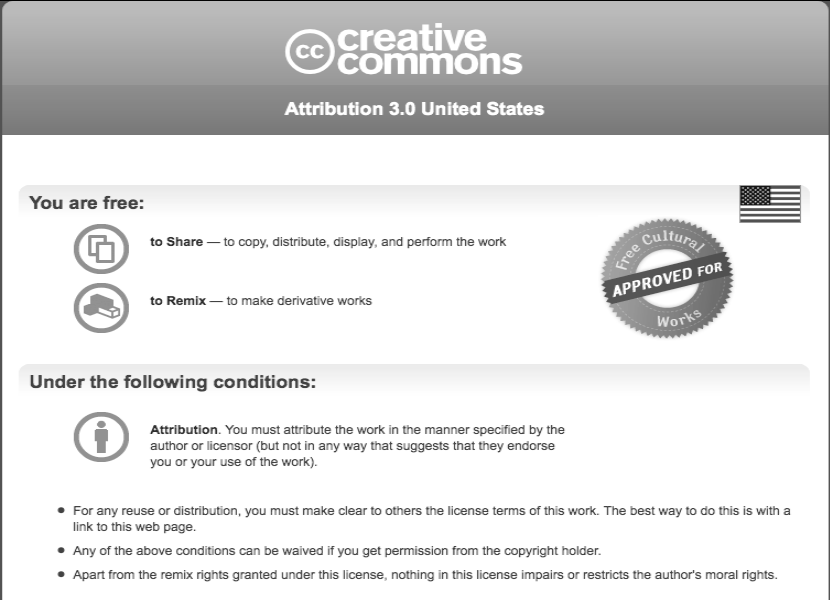- ✓ **Importantly**: it does not give the artist the choice

The Perfect Storm

- ✓ Human Readable Code
- ✓ Machine Readable Code
- ✓ Legal Code

How Creative Commons Licenses Address the "All Rights Reserved" Dilemma

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Human Readable Code

Creative Commons Attribution 3.0 United States License

Machine Readable Code

Legal Code

✓ While definitions are subject to dispute, "open source" as a philosophy is concerned with providing accessibility to a work's "source."

✓ This is particularly relevant in software. There are a plethora of licenses that are used with provided open source software, including those certified by the Open Source Initiative.

Open Source

✓ The Copyleft movement is another contract/license centered approach to the dilemma caused by the "all rights reserved" effect of copyright.

✓ Through a copyleft license, an author may give every person who receives a copy of the work permission to adapt, reproduce or distribute the work conditioned on any resulting copies, adaptations or distributions being licensed under the same copyleft license.

✓ Some copyleft licenses include the GNU General Public License and the Creative Commons Share-alike licenses.

  ✓ The GNU GPL is an integral part of the "Free Software Movement" which is aimed at providing "software that gives you the user the freedom to share, study and modify" such software. Source: http://www.fsf.org/about/what-is-free-software.

The "Copyleft" Movement

Do open licensing schemes make "economic sense" beyond the broader social utility?

- ✓ Sun Microsystems acquires MySQL for $1 billion in early 2008

- ✓ A number of high profile internet companies use open source software

- ✓ Publicly traded companies such as RedHat and Novell sell enterprise level support for open source software

Open Source and Copyleft Software

What about other content?

"A week after the album's release, the official Nine Inch Nails site reported over 750,000 purchase and download transactions, amassing over US$1.6 million in sales."

Source: http://en.wikipedia.org/wiki/Ghosts_I-IV#cite_note-tribune-12

THE PEACH OPEN MOVIE PROJECT PRESENTS

Big Buck BUNNY

WWW.BIGBUCKBUNNY.ORG

- ✓ Magnatune
- ✓ Jamendo
- ✓ Flickr
- ✓ Blip.tv
- ✓ Blogosphere

Other Uses

More Creative Commons Case Studies
http://creativecommons.org/projects/casestudies

License Generator
http://creativecommons.org/license/

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Disclaimer

Effective Use of Patents

Neer Gupta

August 14, 2008

Why Patents Are Useful

- Why patent?

- How patents can be used to protect your invention and your business

- Scope of patent protection

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What's in it for you?

- You spend years of time and millions of dollars in R&D – patents help you protect your investment

- Create business opportunities

  - Your inventions will differentiate your products and services
  - Patents create a barrier to entry for new competitors

- Can create opportunities for strategic alliances

- Can be used to generate revenue

- Useful in defensive scenarios

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Your Competitors Are Patenting

Overall US Patent Filing Trend

(Line chart: Y-axis from 0 to 450,000 in increments of 50,000; X-axis years from 1985 to 2005. Two lines: Utility Patent Applications and Utility Patents Granted.)

Utility Patent Applications — Utility Patents Granted
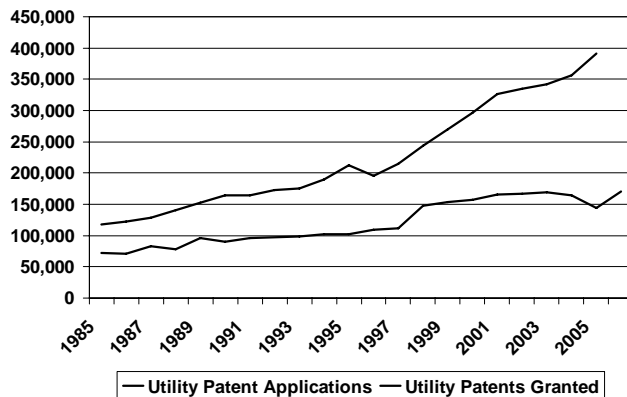
4

Strategic Use of Patents

- Patents do not give you the right to practice your invention

- Patents give you the right to <u>exclude</u> others from practicing your invention

- A thicket of patents can create a significant barrier to entry to competitors

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Strategic Use of Patents

US Patent No.
D 453,199

US Patent Nos.
5,431,216
5,421,112

US Patent No.
4,698,121

US Patent Nos.
6,543,211
6,621,121

US Patent No.
4,596,321
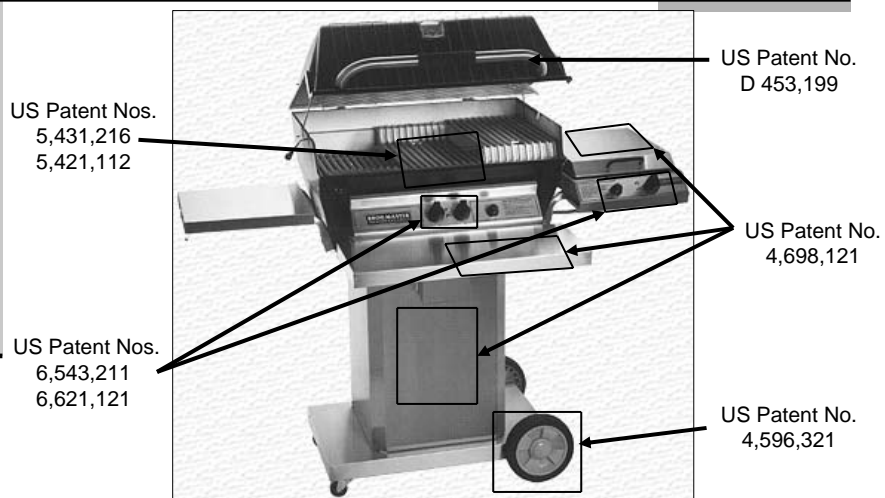
6

Defensive Use of Patents

- If attacked, patents can be used to counter-assert against the aggressor

- Substantial patent portfolio may prevent others from asserting patents against you

- Can be used to cross-license portfolio with aggressor

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Offensive Use of Patents

- Litigation or other aggressive maneuvers can be used to prevent others from using your invention without authorization

- Generate revenue through licensing
  - IBM generated over $1B/yr licensing patents between 1998-2005
  - Texas Instruments made an estimated $350M in 2007 from licensing

- Generate revenue through sale of patent

- Can be used to influence standards setting bodies

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When Should You File?

- Patent directed to key technology
  - Is this important to your business?
  - Is this important to others in your industry?
  - Does this feature differentiate your product?
- Number of alternatives to the technology / ability to design around the invention
- How hard to detect infringement?
- Applicability to existing or forming standard

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What is Patentable?

- **35 U.S.C. 101 Inventions patentable.**
  - Whoever invents or discovers any new and useful
    - process,
    - machine,
    - manufacture, or
    - composition of matter, or
    - any new and useful improvement thereof,
    - may obtain a patent therefor, subject to the conditions and requirements of this title.

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Example Patent – Ear Phone

■ USPN D469,753   Filed: Oct. 15, 2001

Assignee: Apple Computer, Inc.   Issued: Feb. 4, 2003

Figure 2

Figure 1

Example Patent – System and Method for Semantic Video Segmentation Based on Joint Audiovisual and Text Analysis

■ Publication: US 2007/0055695 A1   Filed: Aug. 24, 2005

Assignee: IBM   Published: Mar 8, 2007

(57)   **ABSTRACT**

System and method for partitioning a video into a series of semantic units where each semantic unit relates to a gener-ally complete thematic topic. A computer implemented method for partitioning a video into a series of semantic units wherein each semantic unit relates to a theme or a topic, comprises dividing a video into a plurality of homo-geneous segments, analyzing audio and visual content of the video, extracting a plurality of keywords from the speech content of each of the plurality of homogeneous segments of the video, and detecting and merging a plurality of groups of semantically related and temporally adjacent homogeneous segments into a series of semantic units in accordance with the results of both the audio and visual analysis and the keyword extraction. The present invention can be applied to generate important table-of-contents as well as index tables for videos to facilitate efficient video topic searching and browsing.

Concept: Divide video containing multiple segments into smaller clips, based upon similar themes

Example: Divide general video related to disease control into specific segments related to small pox, botulism, etc.

Example Patent – System and Method for Semantic Video Segmentation Based on Joint Audiovisual and Text Analysis

■

FIG. 5 500
502 — VIDEO SEQUENCE
504 — CLASSIFY AUDIO
AUDIO SEGMENTS WITH SEMANTIC SOUND LABELS
506 — SEGMENTED VIDEO SEQUENCE
508 — DETECT FACE
EXTRACT VIDEO OVERLAY TEXT — 510
IDENTIFY VIDEO SEGMENT CONTENT — 512
MICRO-SEGMENTS WITH SEMANTIC VISUAL LABELS
514 — INTEGRATE AUDIO/VISUAL CONTENT ANALYSIS RESULTS
516 — MICRO-SEGMENTS WITH SEMANTIC AUDIOVISUAL LABELS
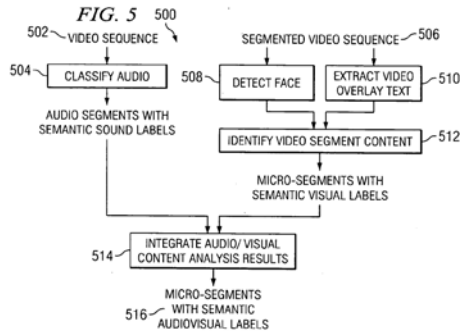
Steps include: 1) analysis and classification of audio, 2) analysis and classification of video, and 3) combining classifications to create labeled segments

Method and system claims filed

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Example Patent – Dynamic Resizing of Clickable Areas of Touch Screen Applications

■ USPN 7,103,852 B2   Filed: Mar. 10, 2003

Assignee: IBM   Issued: Sep. 5, 2006

(57)   **ABSTRACT**

A method for increasing ease-of-use of a touch screen application by dynamically resizing touch screen input areas is disclosed. The touch screen application includes a user interface that displays one or more touch screen input areas. Each of the touch screen input areas include a viewable area and a clickable area, wherein a user's touch of the clickable area activates the corresponding touch screen input area. Aspects of the present invention include collecting coordinates of touches on the display in response to user interaction, and analyzing the touch coordinates to determine how often the user has missed the input areas. In response to the number of missed touches reaching a predetermined threshold, both the size of the viewable area and the clickable area of at least one of the input areas, and possibly all areas of a similar size or type, are increased so that the input areas will be easier to touch.

Concept: Resize clickable area for user input based on actions of user

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Example Patent – Dynamic Resizing of Clickable Areas of Touch Screen Applications
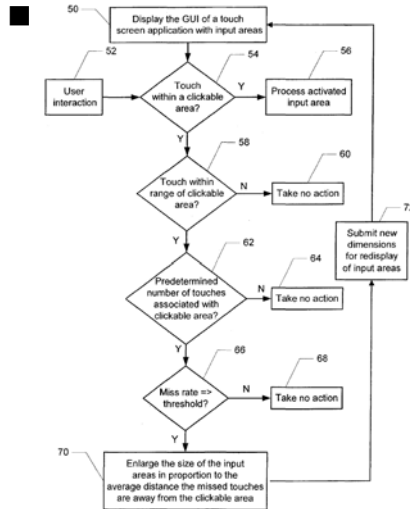
Determine how many times user missed designated clickable area, but was within acceptable range of error. When count exceeds certain limit, expand clickable area

Method and system claims issued

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Example Patent – Method and Apparatus For Creating Motion Picture Transitions According to Non-Linear Light Response

USPN 5,528,310   Filed: Apr. 19, 1994

Assignee: Avid Technologies, Inc.   Issued: Jun. 18, 1996

[57]   **ABSTRACT**

Creating a transition between a first sequence of video frames and a second sequence of video frames. The method includes storing a table of values that express a non-linear response to certain levels of light, generating a transition between the sequences, and adjusting the intensity at which material of the first sequence is displayed relative to the intensity at which material of the second sequence is displayed within the transition, based on the values stored in the step of storing.

Concept: Facilitate transitions between two scenes with different light intensities

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Example Patent – Method and Apparatus For Creating Motion Picture Transitions According to Non-Linear Light Response

Fig. 2

Fig. 6
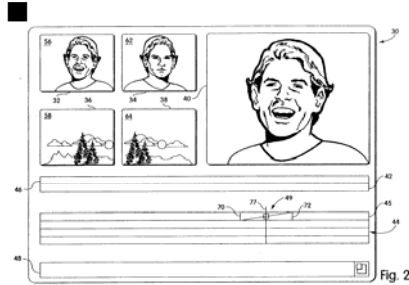
Store first and second sequence of frames, along with pre-selected values, where values represent non-linear response to certain levels of light; generate transition by varying light intensity of first and second frame sequences based on stored value
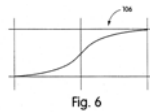
Method and system claims issued

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Example Patent – Computer Generated Watercolor

USPN 6,198,489 B1   Filed: Feb. 18, 1998

Assignee: Univ. of Washington   Issued: Mar. 6, 2001

(57)   **ABSTRACT**

A watercolor model based on an ordered set of translucent glazes, which are created independently usinig a shallow water fluid simulation. A Kubelka-Munk compositing model is used for simulating the optical effect of the superimposed glazes. The computer generated watercolor model is used as part of an interactive watercolor paint system, or as a method for automatic image "watercolorization."

Concept: Computer simulation of watercolor painting

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Example Patent – Computer Generated Watercolor

■

TOP LAYER
WATER & PIGMENT <u>ON</u> PAPER   36

PIGMENT
DEPOSITION
LAYER
38

40   34

WATER IN PAPER (BOTTOM LAYER)

32
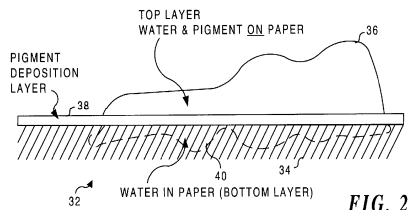
FIG. 2

Simulate each layer applied to paper, including fluid sitting on top of paper, pigment on top of paper and absorbed into paper, and diffusion of layer due to capillary action. Each layer individually simulated and then composited to form the rendered image.

Method claims issued

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Understanding Technology and Licensing Agreements

Ed Crouter
Faegre & Benson LLP
August 14, 2008

Agenda

- Introductory Thoughts
- Examination of Agreement Clauses and Concepts
  - Grant Clauses
  - Ownership
  - Warranties
  - Remedies
  - Limitations on Liability
  - Indemnification
  - Term and Termination

Introductory Thoughts - 1

- IP rights are exclusionary rights (i.e., a right to sue for an activity)
  - The specific excluded activity differs depending on the underlying IP
- Many licenses are the equivalent of a promise not to sue – nothing substantive is transferred

Introductory Thoughts – 2

- Hybrid licenses involve the transfer of something more
  - Information
  - Software
  - Prototypes or Products

License Grant Clause: Licensed Property - 1

- Statutory Rights
  - What statutory IP is being licensed?
    - Patent, trademark, copyright applications and registrations
    - "Related" applications and registrations
      - Continuations, continuations in part, etc.
      - Applications yet to be filed, common law rights
- Right to initiate suit?
- Right to sublicense?
- What precise rights are being licensed?

License Grant Clause: Licensed Property - 2

- Transfer of Products
  - Products must be clearly defined
- Transfer of Information
  - Explicit identification of information
  - Medium for transferring information
  - Treatment of information (e.g., confidentiality issues)
- Technical assistance
  - What type of assistance will be given?
  - Who will provide it? Specified individuals?
  - How much assistance will be given?
  - Where will it be given (on location? by telephone?)

License Grant Clause
Exclusive License

- Conveys an implied promise that grantor will not practice the IP rights or grant further licenses
- **May** transfer the right to sue for infringement
- In a royalty-bearing agreement, carries an implied obligation to exercise reasonable diligence to exploit the license
  - Obligation can either be expressly disclaimed or addressed by imposing specific milestones, minimum royalty provisions or other non-royalty based payment obligations
- Exclusive copyright licenses are considered a transfer of rights; must be explicit and in writing

License Grant Clause:
Nonexclusive License

- Doesn't convey a right to sue
  - A nonexclusive patent licensee does not have standing to initiate a patent suit
- May not imply any promise by licensee to avoid activities outside the scope of the license
- A nonexclusive licensee could be placed at a competitive disadvantage if licensor:
  - Grants an additional license on better terms; or
  - Tolerates third party infringement
- May not be transferable
  - Nonexclusive patent licenses are generally considered personal to the licensee and not assignable unless expressly made so in the license

License Grant Clause: Restrictions

- Used to restrict activities that could otherwise fall within the scope of the grant clause
- Example prohibitions include:
  - Field of use restrictions
  - Reverse engineering
  - Modifying, adapting, altering, creating derivative works
  - Merging software with other software (including open source)
  - Sublicensing (note that, under some circumstances, courts will allow a licensee to engage third parties to exercise license rights for the benefit of the licensee, even where the license expressly prohibits sublicensing)
  - Performing service bureau work
  - Removing, altering or obscuring notices

Ownership Provisions -1

- Important ownership concepts:
  - Payment does not mean ownership
  - Many IP rights can only be transferred by a written agreement
  - It is important to have a [narrow/broad] definition, depending on whether you're granting or receiving ownership

Ownership Provisions – 2

- It is good practice to use assignment provisions to transfer ownership of the IP
  - A mere ownership acknowledgement clause may be insufficient
- Typically used to assign ownership of:
  - Improvements made by a licensee to the licensor (a "Grantback")
    - Regardless of whether licensee has the right to make improvements
  - "Work Product" created under various agreements, including consulting, development and joint development

Allocation of Risk

- Warranties
- Remedies
- Limitations on Liability
- Indemnification

Express Warranties - 1

- A warranty is basically a promise:
  - An "assurance by one party to a contract of the existence of a fact upon which the other party may rely" (17A Am. Jur. § 410)
  - "Any affirmation of fact or promise made buy the seller to the buyer which relates to the goods and becomes part of the basis of the bargain" (UCC § 2-313(1)(a)
- Affirmation can be express or implied
- Generally not duties or rights per se, but statements of assumptions made by a party about facts underlying a deal
- Create direct cause of liability in the event the basis of the warranty is proven untrue

Express Warranties - 2

Exemplary Types of Express Warranties
- Conformance with Specification
- Operating Performance
- Hardware/Software Compatibility
- Data Conversion/Compatibility/Integrity
- Documentation
- Delivery Times/Methods
- Standards of Services
- Support and Response Times
- Lack of Viruses/Time Bombs

Implied Warranties -1

- Various countries impose warranties into contracts:
  - Title
  - Non-infringement
  - Merchantability
  - Fitness for a Particular Purpose
- Implied warranties arise even if agreement says nothing on the subject – that is the nature of an *implied* warranty
  - Sellers/Licensors will typically affirmatively disclaim implied warranties

Implied Warranties - 2

- Disclaimer may depend on local law issues
- Consider interplay of express and implied warranties (and any disclaimers of implied warranties)
  - E.g., many companies provide a limited express warranty of non-infringement and disclaim the implied warranty of non-infringement

Warranties – Remedies - 1

- Remedies can be set forth expressly in the agreement
  - E.g., repair, replace, re-perform or refund amounts paid
  - What are the time limits?
- Other remedies arise by operation of law
  - E.g., expectation damages, or "the difference between the value of the goods accepted and the value they would have had if they had been as warranted" (UCC § 2-714(2))

Warranties – Remedies - 2

- Consider whether warranties are cumulative or aggregated

- Are express remedies the sole and exclusive remedies available?

- Liability can be created and controlled with respect to establishment and disclaimer of warranties in contracts

Indemnity

- The obligation of a party to restore or secure against loss or liability another party (in whole or in part) from certain types of loss or liability

- Often used in the place of or to supplement express and implied warranties
  - e.g., a Seller disclaims the implied warranty of non-infringement but agrees to indemnify Buyer from third party actions for certain types of infringement

Indemnity – Scope of Obligation

- What is covered?
  - claims? allegations? final decisions?
  - type of damages? finally awarded damages? attorney fees?
  - covered activities
    - simply the existence of the product or software
    - claims directed at the "use" of the product or software
  - what type of intellectual property rights are covered?
    - patents, copyrights, trademarks, trade secrets?
- What is excluded?

Indemnity - Exclusions

- Product is manufactured or used in accordance with Licensor's specifications
- Licensee uses product in manner other than the normally intended manner
- Product is used in combination with products not provided by Licensor
  - exception to exclusion - unless such product is normally intended to be used with such a product
- Product is modified or not properly maintained by Licensee
- Licensee's willful, knowing or deliberate infringement of a patent, copyright, trade secret, trademark or other proprietary right
- The use of the Product to produce other materials or equipment

Indemnity - Mechanics

- Licensors will seek to impose certain conditions on obligation to indemnify Licensee:
  - adequate notice of third party claim
  - limitation of the remedy
  - control of defense and settlement
  - cooperation of Licensee

Indemnity – Licensor Remedies - 1

- Licensor may include certain options that allow the Licensor to repair, replace, modify (without degradation of functionality), obtain a license from third party, or refund on depreciated basis
    – Licensee will want to limit the refund option to situations where other remedies are not possible
- Licensee will want to limit the Triggering Event
    – event of a claim
    – reasonable belief that the product is infringing
    – held to infringe
    – use is restricted as a result of a claim

Indemnity – Licensor Remedies - 2

- Licensor may attempt to limit obligation to amounts "finally awarded"

- Obligation may extend to consequential and indirect losses, attorneys' fees

- Consider relationship with limitations on liability (are obligations of indemnification excluded from or subject to limits on liability?)

Limits on Liability -1

- An agreement may limit or alter measure of damages available
- If exclusive remedy fails of its essential purpose, remedy may be provided by default
- Consequential damages may be limited or excluded (unless unconscionable to do so)
- Consider ability of parties to limit liability to specified amounts -- reflects value of exchange, value of risk

Limits on Liability - 2

- Exclusion of consequential, incidental, indirect and special damages
- Cap on liability:
  - aggregate/per incident caps vs. cumulative caps on liability
  - relationship to amounts paid/value of contract
  - total amount paid vs. portion of amounts paid (e.g., "within 12 months immediately preceding events giving rise to liability")

Limits on Liability -3

- Exclusion of consequential and indirect damages may favor one party more than the other

- Consider confidential information -- almost all damages from disclosure of confidential information will be indirect or consequential, not arising directly as a result of disclosure

Term and Termination -1

- Watch out for the "indefinite term"
  - General Contract Law Principle: Contracts of indefinite duration are terminable at will.

  - When parties license a patent or copyright, the court will assume, in the absence of express language to the contrary, that their actual intention as to the term is measured by the definite term of the underlying grant fixed by statute. *April Productions, Inc. v. G. Schirmer*, Inc. 308 N.Y. 366, 126 N.E.2d 283

Term and Termination -2

- Termination
  - For Breach
  - For Convenience
  - For Bankruptcy Event
- Effect of Termination
- Alternative Dispute Resolution
  - Arbitration
  - Mediation

Thank You!

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SIGGRAPH 2008 Intellectual Property Primer for Software Developers, Artists and Content Creators

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Computer graphics play a vital role in the fields of science, medicine, finance, art and entertainment. The majority of all film and television programs created today contain some form of computer graphics, and the multibillion-dollar videogame industry would not exist but for the contributions made by artists, engineers and computer programmers. For the industries which depend upon computer graphics, the most important assets are the intellectual property rights embodied in the products of that industry. Consider interactive entertainment as an example. All of the elements of a videogame -- the art, story, sounds, music, visual displays, underlying computer code and even some of the gameplay elements -- are subject to one or more forms of intellectual property protection. Furthermore, the console or computer on which the game plays is also the subject of intellectual property rights, as are all of the software tools used to develop the game. The various forms of intellectual property rights -- trade secret, trademark, copyright and patent -- protect different aspects of a videogame, the hardware on which the game is played and the tools used to develop the game. The same is true for film, television, advertising and any other industry which produces some form of media as its primary product. In order to be successful in the global market for media, a basic understanding of the applicable intellectual property laws is essential to avoid costly mistakes.

Trade Secret

A trade secret (also commonly referred to as "confidential information") is information which is not generally known or reasonably ascertainable, by which a business obtains an economic advantage over competitors or customers. The legal definition of a trade secret and the specific types of information for which trade secret protection is available will vary by jurisdiction.[1] There are three common factors, though they are subject to interpretation, to all such definitions: a trade secret (i) is not generally known to the relevant portion of the public; (ii) confers some sort of economic benefit on its holder (where this benefit must derive specifically from its not being generally known, not just from the value of the information itself); and (iii) is the subject of reasonable efforts to maintain its secrecy.

The confidentiality of schematics, concept drawings, computer programs, business concepts, customer lists, marketing plans, contract terms and even employment terms may all be protected by trade secret law. A trade secret right arises automatically upon the possession and maintenance of information which qualifies as a trade secret. Unlike patents, copyrights and trademarks, there is no governmental procedure for registering the ownership of a trade secret. Trade secrets are maintained by a variety of means, including limiting disclosure of the information to employees and business partners who need access to the information; securely storing paper records in a locked office or cabinet; and maintaining electronic records on a password-protected system.

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[1] The Uniform Trade Secrets Act (UTSA) is a model law drafted by the National Conference of Commissioners on Uniform State Laws to better define rights and remedies of common law trade secrets. It has been adopted by 45 states, the District of Columbia and the U.S. Virgin Islands. Massachusetts, New Jersey, New York, North Carolina and Texas have not adopted the UTSA. Some of these states continue to apply common law to trade secrets, while others have adopted separate state statutes. In 2007, the UTSA was introduced in both the New York and New Jersey legislatures.

The most common method of trade secret protection is the confidentiality agreement (also referred to as a nondisclosure agreement or NDA), which allows a company to share trade secret information with a potential business partner while obligating the person receiving the information not to disclose the information to a third party. Thus, the information remains a trade secret, even though it is shared with a third party. A sample Confidentiality Agreement is attached as **Appendix 1**. The use of a trade secret is actionable when the information is disclosed or used in breach of a confidentiality agreement, is knowingly received by mistake or is acquired through improper means. Trade secret law does not prevent others from discovering or developing the information through their own efforts, so long as no breach of confidence, mistake or improper means is used to acquire the information. Reverse engineering is generally permissible unless there is a duty (typically created by written agreement) not to engage in such activity.

If a company's trade secret rights are infringed, the law provides that the company may obtain an injunction to prevent the infringer from continuing to use or disclose the trade secret information. A trade secret violation is also punishable by monetary damages based upon either the owner's losses or the infringer's profits, and it is even possible for a court to award additional punitive damages. Depending upon the nature of the infringement, a trade secret violation may even result in criminal charges. The law of trade secret varies country by country, and in some countries, such as the United States, each state has its own trade secret law. The most important thing to remember about trade secret law is that once the information becomes available to the public, it is no longer a trade secret. This fact should always be considered when determining the adequacy of a company's efforts to protect its trade secrets, as well as any public disclosures. In technology-based industries it is particularly important to balance the interests of marketing a

new product against the need for secrecy when determining whether or not to disclose a particular piece of information.

One of the most important steps in protecting a company's intellectual property is to make sure that all employees and independent contractors sign appropriate confidentiality and intellectual property assignment agreements. Determining whether a company has taken this necessary step in securing its intellectual property is also a vital part of a potential investor's due diligence investigation. It is also just good business to protect valuable assets of a company.

Trademark

Trademarks protect a company's goodwill. More specifically, a trademark is a word, name, symbol or device which is used in trade with goods to indicate the source of the goods and to distinguish them from the goods of others. A servicemark is essentially the same as a trademark except that it identifies and distinguishes the source of a service rather than a product. The terms "trademark" and "mark" are commonly used to refer to both trademarks and servicemarks. Trademark rights may be used to prevent others from using confusingly similar marks, but not to prevent others from making the same goods or from selling the same goods or services under a clearly different mark. Trademarks used in interstate or foreign commerce may be registered with the United States Patent and Trademark Office ("USPTO").

For example, names, logos, symbols and slogans may be used to identify a videogame and the technology used to create the game, as well as the developer and publisher of the game. WORLD OF WARCRAFT®, STARCRAFT®, BATTLE.NET® and BLIZZARD® are all registered trademarks of Blizzard Entertainment®. Trademark protection is also available for the names and designs of characters, weapons, vehicles and environmental elements that exist within

a videogame. For example, trademark protection is available for both the name SONIC THE HEDGEHOG® and a drawing of the Sonic character.

The phrase RATED PG-13® and the associated symbol shown below are both registered trademarks of the Motion Picture Association of America, Inc.

The symbol used to identify DVD media and hardware is owned by the DVD Format Logo License Corporation.

The symbol used to identify material available for license under a creative commons copyright license is registered to Creative Commons Corporation c/o Berkman Center for Internet & Society:

One area of trademark law which is somewhat unconventional, though legally recognized, is the use of a sound as a trademark. It has traditionally been difficult to protect

sounds as trademarks through registration, as sounds have not always been recognized to be appropriate for trademark protection. Despite the recognition accorded to sound trademarks in most countries, the graphical representation of such marks sometimes constitutes a problem for trademark owners seeking to protect their marks, and different countries have different methods of dealing with this issue.

In the United States, the test for whether a sound can serve as a trademark "depends upon [the] aural perception of the listener which may be as fleeting as the sound itself unless, of course, the sound is so inherently different or distinctive that it attaches to the subliminal mind of the listener to be awakened when heard and to be associated with the source or event with which it struck." This was the fairly strict test applied by the U.S. Trademark Trial and Appeal Board in the case of General Electric Broadcasting Co. in relation to the timed toll of a ship's bell clock. More famously, Harley-Davidson attempted to register as a trademark the distinctive "chug" of a Harley-Davidson motorcycle engine. After six years of litigation, with no end in sight, in early 2000 Harley-Davidson withdrew its application. Other companies have been more successful in registering their distinctive sounds: MGM and its lion's roar, Intel and the three-second chord sequence used with the Pentium processor, THX and its "Deep Note", and TIVO and the "popping sounds" used to acknowledge user input are all registered trademarks.

In the United States and other countries with legal systems based on English common law, trademark rights accrue through actual use of the trademark. In the United States, federal trademark registration is available through the United States Patent and Trademark Office (www.uspto.gov). Federal trademark registration provides the owner of the trademark with the exclusive right to use the trademark on, or in connection with, the goods or services specified in the registration, as well as the ability to prohibit the importation of any goods bearing the

trademark. A trademark registration is also evidence of ownership of the trademark and may serve as the basis for foreign trademark applications. Trademark registration is available internationally through the trademark offices of individual countries. Trademark protection lasts as long as the trademark continues to be used and maintained.

Use of the TM and SM symbols may be governed by local, state, or foreign laws and the laws of a pertinent jurisdiction to identify the marks to which a party claims rights. In the United States, TM and SM are used to indicate that a claim of rights to a trademark or servicemark is being made but does not indicate any status with relation to federal registration. The federal registration symbol, the letter R enclosed within a circle ®, may be used once the mark is actually registered in the USPTO. Even when an application is pending, the registration symbol may not be used until the mark actually becomes registered. The federal registration symbol should only be used on goods or services that are the subject of the federal trademark registration. It should be noted that several foreign countries also use the letter R enclosed within a circle to indicate that a mark is registered in that country. Use of the symbol by the holder of a foreign registration may be proper.

A trademark is infringed when a competitor uses a company's trademark, or a similar trademark, which creates a likelihood of confusion as to the source of goods or services. As with a trade secret violation, trademark infringement may result in the issuance of an injunction as well as monetary damages. Additionally, items which are found to infringe a trademark may be impounded and destroyed.

The owner of a registered trademark may commence legal proceedings for trademark infringement to prevent unauthorized use of that trademark. However, registration is not required -- the owner of a common-law trademark may also file suit -- but an unregistered mark

may be protectable only within the geographical area where it has been used or in geographical areas into which it may be reasonably expected to expand.

The extent to which a trademark owner may prevent unauthorized use of trademarks which are the same as or similar to its trademark depends on various factors, such as whether its trademark is registered, the similarity of the trademarks involved, the similarity of the products and/or services involved, and whether the owner's trademark is well known.

If a trademark has not been registered, some jurisdictions offer protection for the business reputation or goodwill which attaches to unregistered trademarks through the tort of passing off. Passing off may provide a remedy in a scenario where a business has been trading under an unregistered trademark for many years, and a rival business starts using the same or a similar mark.

If a trademark has been registered, it is much easier for the trademark owner to demonstrate its trademark rights and to enforce these rights through an infringement action. Unauthorized use of a registered trademark need not be intentional in order for infringement to occur, although damages in an infringement lawsuit will generally be greater if there was an intention to deceive.

For trademarks which are considered to be well known, infringing use may occur where the use occurs in relation to products or services which are not the same as or similar to the products or services in relation to which the owner's mark is registered. For example, though Coca-Cola does not produce an automobile, it would likely be impermissive to sell a car under the Coca-Cola brand name as the mark has become so famous that any usage would be harmful to the company's trademark rights.

Copyright

Copyright is a set of exclusive rights that regulate the use of a particular expression of an idea or information. At its most general, it is literally "the rights to copy" provided to the creators and owners of "original works of authorship," including a wide range of literary, dramatic, musical, artistic, and certain other intellectual works, both published and unpublished. Specifics vary by jurisdiction, but these can include poems, plays, other literary works, movies, dances, musical compositions, audio recordings, paintings, drawings, sculptures, photographs, software, radio and television broadcasts, and industrial designs. Graphic designs and industrial designs may have separate or overlapping laws applied to them in some jurisdictions. In the United States, the 1976 Copyright Act generally gives the owner of a copyright the exclusive right to reproduce the copyrighted work, to prepare derivative works, to distribute copies or phonorecords of the copyrighted work, to perform the copyrighted work publicly, or to display the copyrighted work publicly.

Copyright law covers the "form of material expression" of ideas or information but does not cover the actual ideas, concepts, facts, styles, or techniques which may be embodied in or represented by the copyright work. For example, the copyright to a Mickey Mouse cartoon restricts others from making copies of the cartoon or creating derivative works based on Disney's particular anthropomorphic mouse, but doesn't prohibit the creation of other works about anthropomorphic mice in general (e.g., MGM's Jerry of Tom & Jerry and Pixar's Rémy of Ratatouille), so long as they are different enough to not be judged copies of Disney's. By way of further example, the copyright which subsists in relation to a videogame, prohibits unauthorized parties from distributing copies of the software, screen displays, sounds or other content, or creating derivative works which copy or mimic the software or content of the game, but does not prohibit the creation of a videogame that is of a similar theme, so long as the new game is

sufficiently different to not be deemed imitative of the original. In many jurisdictions, copyright law makes exceptions to these restrictions when the work is copied for the purpose of commentary or other related uses. Meanwhile, other laws may impose additional restrictions — such as trademarks and patents — that copyright does not.

Most jurisdictions recognize copyright limitations, allowing "fair" exceptions to the creator's exclusivity of copyright, and giving users certain rights. The development of the Internet, digital media, and computer network technologies such as peer-to-peer filesharing, have prompted reinterpretation of these exceptions, introduced new difficulties in enforcing copyright, and inspired additional challenges to the philosophical basis underlying copyright law. Simultaneously, businesses with great economic dependence upon copyright have advocated the extension and expansion of their copyrights, and have sought additional legal and technological enforcement. However, for every business that wishes to expand copyright protection there is likely another looking to limit it in response to a newly developed technology or form of media.

Copyright laws are standardized somewhat through international conventions such as the Berne Convention and the Universal Copyright Convention. These multilateral treaties have been ratified by nearly all countries, and international organizations such as the European Union or World Trade Organization require their member states to comply with them.

Works of authorship include sound recordings, movies, designs, business plans, computer programs, screen displays and other materials recorded in a tangible form. Under current U.S. law, the terms of copyright protection for works of authorship are as follows:

- **For works created after January 1, 1978**, copyright protection will endure for the life of the author plus an additional 70 years. In the case of a joint work, the term lasts for 70 years after the last surviving author's death. For anonymous and pseudonymous works and

works made for hire, the term is 95 years from the year of first publication or 120 years from the year of creation, whichever expires first;

- **For works created but not published or registered before January 1, 1978**, the term endures for the life of the author plus 70 years, but in no case expires earlier than December 31, 2002. If the work was published before December 31, 2002, the term does not expire before December 31, 2047;

- **For pre-1978 works still in their original or renewal term of copyright**, the total term is extended to 95 years from the date that copyright was originally secured.

Copyright gives the owner the exclusive right to reproduce, distribute, sell, license, or publicly use, perform, or display the work or to develop derivative works. For videogames this means that the copyright owner's permission is necessary if a person wants to duplicate the software or use any part of a game, whether it is the source code, sounds or artwork, to create another videogame or other derivative work. United States copyright law provides that the owner of a copyright possesses certain exclusive rights, including the rights to reproduce the copyrighted work, to prepare derivatives of the work, to distribute copies of the work to the public and to display the work publicly. Exclusive means that only the copyright owner may exercise the copyright owner's exclusive rights. It also means that anyone who exercises any of the exclusive rights reserved for the copyright owner may be liable for copyright infringement unless the person has a license from the copyright owner authorizing the use of the copyrighted work or the infringer's use is defensible as a "fair use" of the work.

While copyrights arise automatically upon creation of a work of authorship, it is strongly recommended that the copyrights in important elements of a videogame be registered prior to its publication. At a minimum, a company should register the source code and the audiovisual

displays for every videogame it owns. Special provisions are available under U.S. copyright law to allow the registration of software copyrights with trade secret portions of the source code blacked out to maintain confidentiality. In the United States, copyrights may be registered with the Copyright Office (www.copyright.gov). Copyright is a prerequisite for the enforcement of copyrights against an infringer and early registration may provide significant advantages to the owner. Prior to 1989, use of a copyright notice — consisting of the copyright symbol © (the letter C inside a circle), the abbreviation "Copr.," or the word "Copyright," followed by the year of the first publication of the work and the name of the copyright holder — was part of United States statutory requirements. Several years may be noted if the work has gone through substantial revisions.

Typically, a work must meet minimal standards of originality in order to qualify for copyright, and the copyright expires after a set period of time (some jurisdictions may allow this to be extended). Different countries impose different tests, although generally the requirements are low. Although a single word is insufficient to comprise a copyrighted work, a single word or a short string of words may be registered as a trademark if it meets the requirements for such.

Copyright law recognizes the right of an author based on whether the work is an original creation, rather than based on whether it is unique. Two authors may own separate copyrights on two substantially identical works, if it is determined that the duplication was coincidental, and neither was copied from the other.

In all countries where the Berne Convention standards apply, copyright is automatic, and need not be obtained through official registration with any government office. Once an idea has been reduced to tangible form — for example, by securing it in a fixed medium (such as a drawing, sheet music, photograph, a videotape, or a computer file — the copyright holder is

entitled to enforce his or her exclusive rights. However, while registration isn't needed to exercise a copyright, in jurisdictions where the laws provide for registration, it serves as *prima facie* evidence of a valid copyright and enables the copyright holder to seek statutory damages and attorney's fees. In the United States, registering after an infringement only enables one to receive actual damages and lost profits.

The original holder of the copyright may be the employer of the author rather than the author himself, if the work is a "work for hire." In the United States, a work of authorship is considered a work made for hire as determined by the language of the United States Copyright Act of 1976:

> Works Made for Hire. -- (1) a work prepared by an employee within the scope of his or her employment; or (2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. (17 U.S.C. sec 101)

While it is fairly clear that work made by an employee shall be deemed a work made for hire and therefore the copyrights in such work of authorship will belong to the employer, the transfer of rights pursuant to a work made for hire agreement entered into with an independent contractor requires closer examination of the statute. If a work is created by an independent contractor, the work will be a work made for hire only if all of the following conditions are satisfied: i) the work must be specially ordered or commissioned; ii) the work must come within one of the nine

categories of works listed in the definition above; and iii) there must be a written agreement in advance between the parties specifying that the work is a work made for hire.

The requirements for a work to constitute a work made for hire presents a number of opportunities for an employer to inadvertently believe they are acquiring copyrights when in fact they are not. The easiest mistake is not to have a written agreement. While a court may determine that a company has a broad license to a work they have commissioned and paid for, the absence of a written agreement will result in the independent contractor retaining ownership. Another common mistake is to have an independent contractor enter into a formal agreement which claims that their work product is a work made for hire when it in fact is not one of the nine statutory categories of work which may be a work made for hire. It is particularly important to note that computer programs are not one of the nine statutory categories that may be a work made for hire. This means that if a company pays an independent contractor to write a computer program for the company but there is no written agreement, the agreement is silent as to ownership of copyrights or the agreement relies upon the concept of a work made for hire, the copyright remains with the programmer not the company that hired him. Fortunately, this is simply remedied by getting a written agreement with the independent contractor before they begin work which specifically assigns all intellectual property, including copyrights, in the computer program they are going to write.

Copyright infringement is based upon strict liability. Neither knowledge nor intent is a prerequisite to a finding of infringement. An innocent infringer may have less monetary liability than a willful infringer, but the innocent infringer may still be liable for damages for copyright infringement and subject to other judicial remedies. Copyrights are generally enforced by the holder in a civil law court, but there are also criminal infringement statutes in some jurisdictions.

While central registries are kept in some countries which aid in proving claims of ownership, registering does not necessarily prove ownership, nor does the fact of copying (even without permission) necessarily prove that copyright was infringed. Criminal sanctions are generally aimed at serious counterfeiting activity, but are now becoming more commonplace as copyright collectives such as the RIAA are increasingly targeting the file-sharing home Internet user. Copyright infringement occurs when a party makes unauthorized use of a work, and the owner may sue the infringer for monetary damages and an injunction to stop the infringing activity. If the copyright for the infringed work was registered within three months of initial publication, the owner may also be entitled to recover attorney's fees and statutory damages. In the United States, statutory damages are currently specified in the Copyright Act as $30,000 per act of ordinary infringement and $150,000 for every separate instance of willful infringement.

Copyright does not prohibit all copying or replication. In the United States, the "fair use doctrine," codified by the Copyright Act of 1976 as 17 U.S.C. § 107, permits some copying and distribution without permission of the copyright holder or payment to same. The statute does not clearly define fair use, but instead gives four non-exclusive factors to consider in a fair use analysis. Those factors are:

1. the purpose and character of the use;

2. the nature of the copyrighted work;

3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

4. the effect of the use upon the potential market for or value of the copyrighted work.

The actual interpretation of whether or not an activity falls within the fair use doctrine is the subject of numerous judicial rulings. The concept of "fair use" as a right is incorrect. Fair use is a defense to a claim of copyright infringement not an entitlement to a right. Other technical exemptions from infringement may also apply, such as the temporary reproduction of a work in machine readable form for a computer.

In the United States the Audio Home Recording Act prohibits action against consumers making noncommercial recordings of music, in return for royalties on both media and devices plus mandatory copy-control mechanisms on recorders. However, as technology advances the laws have been pushed to their limits.

Later acts have amended U.S. copyright law so that for certain purposes, making 10 copies or more is construed to be commercial, but there is no general rule permitting such copying. Indeed making one complete copy of a work, or in many cases using a portion of it, for commercial purposes will not be considered fair use.

The Digital Millennium Copyright Act (DMCA) is a United States copyright law which implements two 1996 international treaties. It criminalizes production and dissemination of technology, devices, or services that are used to circumvent measures that control access to copyrighted works (commonly known as DRM) and criminalizes the act of circumventing an access control, even when there is no infringement of copyright itself. It also heightens the penalties for copyright infringement on the Internet. The DMCA has amended title 17 of the U.S. Code to extend the reach of copyright, while limiting the liability of online service providers ("OSPs," including ISPs) for copyright infringement by their users.

The DMCA creates a safe harbor for OSPs against copyright liability if they adhere to and qualify for certain prescribed safe harbor guidelines and promptly block access to allegedly

infringing material (or remove such material from their systems) if they receive a notification claiming infringement from a copyright holder or the copyright holder's agent. The DMCA also includes a counter-notification provision that offers OSPs a safe harbor from liability to their users, if the material upon notice from such users claiming that the material in question is not, in fact, infringing. The DMCA also provides for subpoenas to OSPs to provide their users' identity. The Digital Millennium Copyright Act prohibits the manufacture, importation, or distribution of devices whose intended use, or only significant commercial use, is to bypass an access or copy control put in place by a copyright owner.

It is always important to take copyright law into consideration when developing or distributing software or content. Whether a company or an individual, an author needs to consider how they wish to protect their works of authorship. Unless the term of the copyright has expired or the work was dedicated to the public domain, there is always a copyright owner for a work of authorship. Just because there is no apparent claim of copyright does not mean that the work is available for use. Also, open licensing regimes (e.g., GNU Public License and Creative Commons Licenses) all have requirements that must be observed.

Additional Information regarding copyright basics is provided in **Appendix 2** and specific information about registering copyrights for computer programs is provided in **Appendix 3**.

Patent

Patents protect inventions. More specifically, utility patents protect the practical application of ideas or concepts and design patents protect the nonfunctional shape or design of an item. In the United States, patents are issued by the United States Patent and Trademark Office and grant the owner of the patent "the right to exclude others from making, using, offering

for sale, or selling" the invention in the United States or "importing" the invention into the United States. To qualify for a patent an invention must be "useful" (functional and having some practical application), "novel" (unique in comparison to previous technology) and "non-obvious" (unexpected to a person of ordinary skill in the relevant technology). The term of a patent is generally up to 14 years for design patents or 20 years for utility patents, measured from the filing date of the application and utility patent applications are published eighteen months after they are filed.

One of the most powerful aspects of patent protection is that it applies to all competitors within the jurisdiction of the patent whether or not they are aware of the patent. As opposed to trade secret or copyright, which require the infringer to have knowledge of a company's intellectual property, a patent is infringed when a third party makes, uses, sells, offers to sell or imports an invention which is the subject of the owner's patent, whether or not the infringer is aware of the patent. Patents can provide tremendous leverage for a company entering a new market and may provide a company with the ability to exclude competitors from the market. Unlike copyrights, a patent protects more than just the specific expression of an idea. Where copyright would protect the source code used to implement a function in a computer program, a patent can protect the idea for the function itself -- provided the idea was novel and nonobvious. Just as with the other forms of intellectual property, a patent owner may obtain an injunction to prevent infringing activity. Patent infringement may also result in a monetary award equivalent to the infringer's profits or the owner's losses, and in cases where the patent infringement was willful it is possible for the court to award treble damages and attorney's fees.

Patents are valuable assets in a wide variety of technology fields and cover a diverse range of inventions. According to USPTO records, as of August 11, 2008 (since 1976)

International Business Machines Corporation has obtained over 50,000 U.S. Patents, Sony

Corporation and its affiliates have over 27,000 U.S. Patents, Microsoft Corporation has over

9,000 U.S. Patents, and Adobe Systems Incorporated has over 500 issued U.S. Patents.

Furthermore, there has been a significant increase in the number of applications for new

patents and claims of patent infringement in the area of software and related technologies over

the last ten years and it is unlikely that this situation is going to change. Whether or not a

company undertakes the expense of securing a patent, an understanding of their potential

application is necessary in today's business environment.

Example: Protecting an Interactive Title

Tools, technology and the underlying computer programs used to create a videogame can

be protected by all forms of intellectual property law. Trade secrets are maintained by marking

all qualifying codes and media confidential and by restricting access of the code to the personnel

that need to work with it. Trademarks should be registered for any significant new technologies

which the company may wish to promote, such as the name of the software graphics engine used

to generate a game's visual display. The software itself and the media upon which it is recorded

should include a copyright legend, and the copyrights should be registered with the Copyright

Office prior to publication of the software. It is important to remember that the Copyright Office

provides for the confidential registration of computer programs so as to protect any underlying

trade secrets. Finally, patent applications may be filed for any innovative software methods. It

is important to remember that the requirements for filing a patent application will destroy the

possibility of trade secret protection for the claimed invention once the application is published.

Design and business documents and methods may also be protected by the various forms

of intellectual property, and trademark protection is appropriate for the names of any business

services or gameplay elements. Though it is still somewhat controversial, the United States recognizes the validity of business methods and gameplay patents.

The art and audiovisual elements of a game are protectable separately from the underlying software that generates them. A trademark may be used to protect the title of a game, the name and appearance of the main character and any slogans or phrases associated with the game or franchise. All materials should be appropriately marked with a copyright legend, and the Copyright Office provides for the registration of audiovisual elements through the submission of a written synopsis of what is being protected and the deposit of a recording of the audiovisual elements being registered. By the very nature of the subject matter, trade secret and patent protection are not available for the art and audiovisual elements of a game. However, trade secrets and patents can be used to protect the methods, hardware and software used to produce the art and audiovisual elements.

Conclusion

Movies, television, interactive entertainment and the software and tools used to create, distribute and access such content collectively represent a significant portion of the national economy and it is intellectual property law which protects the most valuable assets of these industries. Identifying and understanding the importance of intellectual property assets is key to avoiding costly mistakes and promoting the continued success of a developer, publisher or investor.

CONFIDENTIAL DISCLOSURE AGREEMENT

This Confidential Disclosure Agreement (the "Agreement") is made between Company XYZ., a company having a place of business at ADDRESS ("XYZ"), and PDQ Incorporated, a company having a place of business at ADDRESS 2 ("PDQ"), and is entered into as of DATE (the Effective Date")

WHEREAS, each Party is the owner and/or licensee of certain proprietary and confidential information, including, in the case of XYZ , information relating to computer generated animation technologies, including, without limitation, all trade secrets, computer codes, works of authorship, documentation, business methods, inventions (whether patentable or not), contracts, and business plans related thereto, whether in written, electronic, oral, or other form, and all improvements, derivative works, or modifications thereto, regardless of how conceived (collectively, "Confidential Information"); and

WHEREAS, for purposes of this Agreement, the party disclosing Confidential Information is hereinafter referred to as the "Disclosing Party" and the party receiving Confidential Information is hereinafter referred to as the "Receiving Party"; and

WHEREAS, each Party desires to provide and/or to obtain from the other Party certain Confidential Information under the confidentiality terms hereof and for the limited purpose of the Parties evaluating an interest in potentially jointly marketing their respective products and services ("Transaction").

NOW THEREFORE, in consideration of and as a condition to the release of Confidential Information by Disclosing Party, Receiving Party agrees to the following with respect to the Confidential Information received:

1. The obligations provided for in this Agreement shall apply to each item of Confidential Information until Receiving Party can demonstrate that such item of Confidential Information:

   (a) was a part of the public domain as of the date of this Agreement;

   (b) has entered the public domain without a breach of confidentiality owed to Disclosing Party by Receiving Party;

   (c) has been known by Receiving Party prior to entering into this Agreement, as evidenced by an existing document currently in possession of Receiving Party; or

   (d) is required by law or regulation to be disclosed (in which case Receiving Party shall provide Disclosing Party prompt prior notice of such disclosure and a reasonable opportunity to seek a protective order or to take other action maintaining confidentiality, with which Receiving Party shall reasonably cooperate at Disclosing Party's expense); to the extent limited disclosure is required by law, Receiving Party shall not disclose any more Confidential Information than is reasonably necessary under the circumstances and Receiving Party's obligations shall continue, but for such required disclosure.

2.	At anytime during the term of this Agreement, Receiving Party shall, within seven (7) days following receipt of a written request from Disclosing Party, return to Disclosing Party, or at Disclosing Party's option, destroy all documents and other materials in its possession, custody, or control which contain any of Disclosing Party's Confidential Information, and certify to Disclosing Party that it has destroyed the Confidential Information. In any event, Receiving Party shall, within seven (7) days of the expiration or termination of this Agreement, return to Disclosing Party, or at Disclosing Party's option, destroy all documents and other materials in its possession, custody, or control which contain any of Disclosing Party's Confidential Information, and certify to Disclosing Party that it has destroyed the Confidential Information.

3.	Disclosing Party provides the Confidential Information on an "as is" basis and makes no representation or warranty, express or implied, with respect to the Confidential Information. Disclosing Party shall not be liable to Receiving Party or another person with respect to the Confidential Information or its use.

4.	Receiving Party agrees that without Disclosing Party's prior written consent, it will not:

	(a)	disclose Confidential Information to any third party or to any employee, other than those employees of Receiving Party: (i) that are directly involved in advising Receiving Party in determining whether to enter into the Transaction; (ii) have a need to know; and (iii) who agree to be bound by a confidentiality agreement commensurate in scope to this Agreement;

	(b)	use the Confidential Information for any reason other than for evaluating Receiving Party's interest in entering into the Transaction; and

	(c)	reproduce, copy, or otherwise record, or decompile, disassemble or reverse engineer, or modify any Confidential Information.

5.	Receiving Party further agrees to take the same degree of care to maintain the confidentiality of the Confidential Information as Receiving Party takes with its own confidential information, but no less than commercially reasonable efforts to maintain the continued confidentiality of the Confidential Information and, upon receiving a request therefore from Disclosing Party, to promptly return to Disclosing Party all Confidential Information.

6.	Receiving Party acknowledges that, unless otherwise agreed in writing, any commercial exploitation, use, or dissemination of the Confidential Information is strictly prohibited. No license rights, or any other rights to the Confidential Information, either express or implied, are granted by this Agreement. Notwithstanding anything to the contrary, Disclosing Party shall own all rights, titles, and interests, including all intellectual property rights, to all improvements and modifications to its Confidential Information and shall be free to exploit the same, regardless of how conceived.

7.	Receiving Party acknowledges that any breach of the covenants or obligations contained in this Agreement will result in irreparable injury to Disclosing Party, for which money damages could not adequately compensate Disclosing Party. In the event of any such breach or any threatened breach, Disclosing Party shall be entitled to have an injunction or restraining order

issued by any competent court of equity, without the need for the posting of a bond, enjoining and restricting Receiving Party and any recipient of the Confidential Information from breaching or continuing any such breach, or otherwise disclosing Confidential Information. Such remedy shall not be deemed to be the exclusive remedy, but shall be in addition to all other remedies available at law or equity to Disclosing Party.

8.   This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York, without giving effect to conflicts of laws principles. Each party hereby submits to the jurisdiction of the state and federal courts located in New York City, Borough of Manhattan, for any action or proceeding relating to this Agreement, and expressly waives any objection it may have to such jurisdiction or the convenience of such forum.

9.   If any of the covenants contained in this Agreement, or any part thereof, is held by a court of competent jurisdiction to be unenforceable because of the duration or scope of such provision, the activity limited by or the subject of such provision, and/or the area covered thereby, Receiving Party shall stipulate and consent to the court's construing such restriction so as to thereafter be limited or reduced to be enforceable to the greatest extent permissible by applicable law. The invalidity or unenforceability of any part, covenant, or provision of this Agreement shall not affect the validity or enforceability of any other part, covenant, or provision herein contained, and this Agreement shall be construed as if such invalid or unenforceable part, covenant, or provision was omitted.

10. Receiving Party shall be responsible for any breach of this Agreement by its employees and representatives (including its employees and representatives who become former employees or representatives) and, in the instances where breach of this Agreement results in public disclosure by a third party who has received Confidential Information that has been disclosed by Disclosing Party to Receiving Party, Receiving Party agrees to indemnify and hold harmless Disclosing Party from and against any and all liabilities, damages, and losses (including reasonable costs, expenses, and attorney's fees) arising from any claim by such third party concerning public disclosure of the Confidential Information.

11. No single or partial exercise, failure, or delay in exercising any right, power, or remedy by any party shall constitute a waiver by that party nor shall it impair or preclude any further exercise of that or any right, power, or remedy arising under this Agreement or otherwise.

12. Neither party shall assign, delegate, or otherwise transfer this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, XYZ may assign, delegate, or otherwise transfer this Agreement, without the prior written consent of PDQ in connection with the sale, merger, or consolidation of XYZ or the portion of its business to which this Agreement relates. This Agreement and each party's obligations hereunder shall be binding on the assignees, delegatees, and/or transferrees of Disclosing Party, and/or Receiving Party, as the case may be, and shall inure to the benefit of the assignees, delegatees, and/or transferrees of Disclosing Party or Receiving Party, as the case may be.

13. Nothing contained in this Agreement shall be construed as creating any partnership or joint venture between the parties nor obligating the parties to enter into any business transaction(s).

14.   This Agreement represents the complete agreement between the parties with respect to the subject matter hereof, and supersedes all prior and/or contemporaneous agreements, proposals, understandings, and/or representations, whether written, oral, electronic, or otherwise, between the parties relating thereto. This Agreement may not be altered or amended, except by a document in writing signed by authorized representatives of both parties. This Agreement may be executed in counterparts, each of which will be deemed to be an original and all of which together will be deemed to be one and the same instrument.

15.   The obligations of this Agreement shall continue to apply to Confidential Information for as long as the conditions of Section 1 (a)-(c) are not met, or until this Agreement is superceded by a subsequent written agreement between the parties relating to the confidential treatment of the Confidential Information.

IN WITNESS WHEREOF, each of the Parties has executed this Agreement as of the date and year first above written.

XYZ & COMPANY   **PDQ INCORPORATED**

By: _____   By: _____
     Name: Name:
     Title: Title:

***DISCLAIMER:** This document is a model and is provided for educational purposes only. Seek expert legal advice before using this document. The provision of this document as part of course materials is not intended as legal advice.*

Copyright

United States Copyright Office

Copyright Registration for Computer Programs

Definition

A "computer program" is a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result.

Extent of Copyright Protection

Copyright protection extends to all the copyrightable expression embodied in the computer program. Copyright protection is not available for ideas, program logic, algorithms, systems, methods, concepts, or layouts.

What to Send

- A completed application form (typically Form TX)
- A nonrefundable filing fee* payable to *Register of Copyrights*
- One copy of identifying material (see "Deposit Requirements" below)

Mail *all* the above material in the same envelope or package addressed to:

Library of Congress
Copyright Office
101 Independence Avenue SE
Washington, DC 20559-6000

*NOTE: Copyright Office fees are subject to change. For current fees, please check the Copyright Office website at *www.copyright.gov*, write the Copyright Office, or call (202) 707-3000.

Completing Form TX

These points do not cover all the required information on the application. Be sure to refer to the instructions on Form TX before completing the application.

Space 2. Nature of Authorship · In the "Nature of Authorship" space describe the copyrightable authorship in the computer program for which registration is sought. Acceptable statements include "computer program," "entire text of computer program," "entire program code," "text of user's manual and computer program," etc. Do *not* refer to design, physical form, hardware, or algorithm. Do *not* describe the program's features or functions.

Space 3. Year of Creation · Give the year of creation and the exact date of first publication, if any, for the particular version of the computer program for which registration is sought.

Space 6. Derivative Work or Compilation · Complete this space if the computer program contains a substantial amount of previously published, registered, or public domain material such as subroutines, modules, textual images, or if the work was developed using an underlying computer program or authoring tool. Space 6a may state "previous version." Typical examples of descriptions of new material for space 6b include "revised computer program," "editorial revisions," "revisions and additional text of computer program," "new programming text," etc. Do *not* refer to debugging, error corrections, new functions of the revised program, or other unregistrable elements.

Deposit Requirements

Computer Programs Without Trade Secrets

For published or unpublished computer programs, send one copy of identifying portions of the program (first 25 and last 25 pages of source code) reproduced in a form visually perceptible without the aid of a machine or device, either on paper or in microform, together with the page or equivalent unit containing the copyright notice, if any.

For a program less than 50 pages in length, send a visually perceptible copy of the entire source code. For a revised version of a program that has been previously published or previously registered or that is in the public domain, if the revisions occur throughout the entire program, send the page containing the copyright notice, if any, and the first 25 and last 25 pages of source code. If the revisions are not contained in the first 25 and last 25 pages, send any 50 pages representative of the revised material in the new program, together with the page or equivalent unit containing the copyright notice, if any, for the revised version.

In any case where the program is so structured that it has no identifiable beginning or end, the applicant should make a determination as to which pages may reasonably represent the first 25 and last 25 pages.

Where an applicant is unable or unwilling to deposit source code, he/she must state in writing that the work as deposited in object code contains copyrightable authorship. The Office will send a letter stating that registration has been made under its rule of doubt and warning that it has not determined the existence of copyrightable authorship.

If a published user's manual or other printed documentation accompanies the computer program, deposit one copy of the user's manual along with one copy of the identifying material for the program.

For programs written in HyperCard® and other scripted languages, the script is considered the equivalent of source code. Thus, the same number of pages of script would be required as is required for source code. Reproductions of on-screen text, buttons, and commands are not an appropriate substitute for this source code deposit. Where a scripted program contains trade secrets, the deposit of script pages must meet the requirements below.

NOTE: When a computer program is embodied in a CD-ROM, ordinarily the entire CD-ROM package must be deposited, including a complete copy of any accompanying operating software and instructional manual. If registration is sought for the computer program, the deposit should also include a printout of the first 25 and last 25 pages of source code for the program.

Computer Programs Containing Trade Secrets

Where a computer program contains trade secret material, include a cover letter stating that the claim contains trade secrets, along with the page containing the copyright notice, if any, plus one of the following:

Entirely new computer programs · First 25 and last 25 pages of source code with portions containing trade secrets blocked out; or

First 10 and last 10 pages of source code alone, with no blocked out portions; or

First 25 and last 25 pages of object code plus any 10 or more consecutive pages of source code, with no blocked-out portions; or

For programs 50 pages or less in length, entire source code with trade secret portions blocked out.

Revised computer programs · If the revisions are present in the first 25 and last 25 pages, any one of the 4 options above, as appropriate; or

If the revisions are *not* present in the first 25 and the last 25 pages:

- 20 pages of source code containing the revisions with no blocked out portions; or
- any 50 pages of source code containing the revisions with some portions blocked out.

NOTE: *Whenever portions of code are blocked out, the following requirements must be met:*

1   *the blocked out portions must be proportionately less than the material remaining; and*

2   *the visible portion must represent an appreciable amount of original computer code.*

Points to Remember · Each separately published version of a computer program that contains new, copyrightable authorship *must be registered separately*, with a new application and fee. Registration of the first version may extend to the entire work if it contains no previously published or registered portions. Registration of any subsequent version covers only the new or revised material added to that version. The version of the work that is deposited should be the same version described on the application; thus, the title and dates on the application should correspond with those on the deposit copy.

NOTE: If the version to be registered is no longer available, it may be possible to register it using a later version under a grant of special relief. In this case, submit a written request for special relief to the Copyright Office, Attention: Examining Division Office. Explain why the required version is not available and indicate what percentage of the authorship from the version to be registered remains in the version you are depositing. Your request will be evaluated upon receipt.

If the deposit material for the computer program has a copyright notice containing multiple year dates, the Copyright Office will question whether the particular program is a revised or derivative version if space 6 of the application has not been completed. If the program is not a derivative work and if the multiple year dates in the notice refer to *internal* revisions or *the history of development* of the program, please put that information in a cover letter to help speed processing.

If the deposit material for the computer program does not give a printed title and/or version indicator, please add the title and any indicia that can be used in identifying the particular program.

Screen Displays

Copyright protection for computer screen displays, including videogames, has been an issue in the courts for some time. Courts have differed in their opinions regarding whether screen displays may be registered separately.

The Copyright Office has consistently believed that a single registration is sufficient to protect the copyright in a computer program and related screen displays, including videogames, without a separate registration for the screen displays or a specific reference to them on the application for the computer program. An application may give a general description in the "nature of authorship" space, such as "entire work" or "computer program." This description will cover any copyrightable authorship contained in the computer program and screen displays, regardless of whether identifying material for the screen is deposited.

A specific claim in the screen displays may be asserted on the application. In such a case, identifying materials for the screens must be deposited.

How to Register Computer Programs Containing Copyrightable Screen Displays

A single registration should be made in the class appropriate to the predominant authorship. Because the computer program is a literary work, literary authorship will predominate in most works, including many in which there are screen graphics. Therefore, registration will usually be appropriate on Form TX. If pictorial or graphic authorship predominates, registration may be made on Form PA as an audiovisual work.

The registration will extend to any related copyrightable screens, regardless of whether identifying material for the screens is deposited. If identifying material for screen displays is deposited and if there is a specific claim in screens, the identifying material will be examined for copyrightability. Where the application refers specifically to screen displays, identifying material for the screens *must* be deposited. Where the screens are essentially not copyrightable (e.g., *de minimis* menu screens, blank forms, or the like), the application should *not* refer to screens.

If screen display authorship has already been registered without a claim in the computer program, a separate registration may be made for the program. In such a case, the normal requirements for registration of a computer program apply.

If a computer program has already been registered without a specific claim asserted in the related screen displays, a separate registration for the screens is not required, but will be permitted. In such a case, the application should describe the nature of authorship appropriately, for example, "text of screen displays" or "audiovisual material." Identifying material for the screens containing copyrightable authorship must be deposited.

Note regarding websites: Registration of a computer program used in an online work does *not* automatically cover any visible or audible copyrightable elements that are generated by the code. To register those portions of an online work, the entire copyrightable content must be deposited. It is possible to register the computer program together with the online work, but the deposit requirements for both the program and the online work must be fulfilled. See Circular 66, *Copyright Registration for Online Works*, for important information on the required deposit and how to complete the application when registering online works.

Notice of Copyright

Before March 1, 1989, the use of copyright notice was mandatory on all published works, and any work first published before that date should have carried a notice. For works first published on and after March 1, 1989, use of the copyright notice is optional. For more information about copyright notice, see Circular 3, *Copyright Notice*.

How to Register a Computer Program and Its Related Screen Displays

- Select the application form appropriate for the predominant authorship.
- Refer to the options below to complete space 2 of the application and to determine whether to file identifying material for the screen displays.

Option 1 · If the nature of authorship is "entire work" *or* "entire computer program", then depositing identifying material for screens (in addition to required source code) is optional.

Option 2 · If the nature of authorship is "entire computer program, including text of screen displays" *or* "entire computer program, including audiovisual material" *or* "entire computer program, including artwork on screen displays," then depositing identifying material for screens (in addition to required source code) is required.

NOTE: The description of authorship on the application should not refer to elements such as "menu screens," "structure, sequence and organization," "layout," "format," or the like.

NOTE: Identifying material for screen displays should consist of printouts, photographs, or drawings clearly revealing the screens. For works that are predominantly audiovisual, such as videogames, ½″ VHS videotape is acceptable. All screen identifying material will be examined for copyrightability. If screens are reproduced in a manual, the manual will suffice as identifying material.

Effective Date of Registration

A copyright registration is effective on the date the Copyright Office receives all the required elements in acceptable form, regardless of how long it then takes to process the application and mail the certificate of registration. The time the Copyright Office requires to process an application varies, depending on the amount of material the Office is receiving. It may take several days for mailed material to reach the Copyright Office and for the certificate of registration to reach the recipient.

If you apply for copyright registration, you will not receive an acknowledgment that your application has been received (the Office receives more than 600,000 applications annually), but you can expect:

- a letter or a telephone call from a Copyright Office staff member if further information is needed, or
- a certificate of registration indicating that the work has been registered, or if the application cannot be accepted, a letter explaining why it has been rejected.

If you want to know the date that the Copyright Office receives your material, send it by registered or certified mail and request a return receipt.

For Further Information

Information via the Internet

Circulars, announcements, regulations, other related materials, and all copyright application forms are available from the Copyright Office website at *www.copyright.gov*.

Information by telephone

For general information about copyright, call the Copyright Public Information Office at (202) 707-3000. The TTY number is (202) 707-6737. Staff members are on duty from 8:30 AM to 5:00 PM, eastern time, Monday through Friday, except federal holidays. Recorded information is available 24 hours a day. Or, if you know which application forms and circulars you want, request them 24 hours a day from the Forms and Publications Hotline at (202) 707-9100. Leave a recorded message.

Information by regular mail

Write to:

Library of Congress
Copyright Office
Publications Section
101 Independence Avenue SE
Washington, DC 20559-6000

U.S. Copyright Office · **Library of Congress** · **101 Independence Avenue SE** · **Washington, DC 20559-6000** · **www.copyright.gov**

CIRCULAR 61   REV: 07/2006   PRINT: 07/2006—••,000   Printed on recycled paper   U.S. GOVERNMENT PRINTING OFFICE: 2006-XXX-XXX/XXXXX

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Siggraph 2008
Know Your Rights: A Legal Primer for Software Developers, Artists and Content Creators
Speaker List

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Gregory P. Silberman is a patent attorney and partner in the Technology, Intellectual Property & Outsourcing Group in Kaye Scholer's New York Office. His practice emphasizes representation of domestic and foreign clients in legal and business matters related to development and deployment of entertainment, software, technology, and services. He studied electrical engineering and computer science at the University of California, Berkeley and was formerly patent counsel at Lawrence Berkeley National Laboratory. He is also a Certified Information Systems Security Professional and a member of the Board of Editors for the Privacy & Data Security Law Journal.

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Neer Gupta is Executive Counsel for The Walt Disney Company in Burbank, California. His practice spans the breadth of the company's operations, and he is involved in patent protection, management, licensing, and dispute resolution for all of Disney's major businesses, including theme parks and resorts, studios, media networks, and consumer products. Prior to joining Disney, he was Senior Patent Counsel at ThinkFire Services, USA, an intellectual property consulting company based in New Jersey. He is a graduate of the New York University School of Law and Vanderbilt University School of Engineering, he has spoken at numerous conferences, and he is member of AIPLA and ACCA.

Edward Crouter
Faegre & Benson LLP

Ed Crouter's practice is focused on advising start-up, emerging and large companies on a wide range of intellectual property and technology related commercial transaction matters, including the commercialization and protection of intellectual property. By working with in-house counsel as well as key business and technical people and helping them define and prioritize their underlying business goals, Ed has been successful in maximizing clients' benefits while minimizing their costs and risks. Ed has extensive experience drafting, negotiating and reviewing technology and intellectual property agreements (both for licensors and licensees, as well as in joint development agreements, technology transfer, outsourcing, strategic alliances and joint ventures). He regularly works hand-in-hand with business people in devising negotiation strategies, and has served as the lead negotiator in complex technology and outsourcing agreements.

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Jishnu Menon is an attorney in the Technology Transactions Group in the Palo Alto office of Wilson Sonsini Goodrich & Rosati. His practice focuses on intellectual property, licensing, and commercial transactions, with specialized expertise in media and technology law, including open licensing. Wilson Sonsini Goodrich & Rosati works closely with Creative Commons, the Stanford Fair Use Project and several leading organizations on open content issues.

Gil Irizarry
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Gil Irizarry is the founder of Conoa, Inc., a graphics software development firm for film and video post-production. He is also a trained project manager with PMP and CSM certification and 20 years of experience. He is a graduate of Cornell University and has attended every SIGGRAPH conference since 1991.