

Intellectual Property

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Presenter Introduction



Thomas W. Brooke **Partner at Holland & Knight**

Mr. Brooke litigates and counsels clients on intellectual property and related issues. He handles matters involving trademark, copyright, trade secret and patent litigation, U.S. and foreign trademark and copyright protection and drafts license and technology transfer agreements.

For most, IP is:

- Domain name and website
- New software
- Names, logos, symbols to identify goods or services
- Customer lists
- Inventions or improvements

Intellectual Property

- Copyright—authorship: books, images, songs, videos, software.
- Patent-inventions: new/useful processes, machines/manufacture, compositions of matter.
- Trademark –Brands: names, symbols, devices to identify goods/services; distinguish from others.
- Trade Secrets- business information generally not known, kept confidential.

Registered vs. Not Registered

- Patents- Must be registered
- Copyrights- exist upon creation;
Registration required for legal action
- Trademarks- no registration required; but
federal registration provide benefits
- Trade Secrets- not registered.

OWNERSHIP

- TRAPS FOR THE UNWARY
- Get & Record assignments
- COPYRIGHT LAW
 - Employee vs independent contractor
 - Scope of Employment vs Outside scope
- TRADE SECRETS
 - Steps to keep ideas “secret” required
- PATENT
 - Failure to get assignment from inventors

OPEN SOURCE

- freeware, shareware, Open Source Software (e.g., Linux) or similar licensing models.
 - (i) GNU's General Public License (GPL) or Lesser/Library GPL (LGPL)
 - (ii) the Artistic License (e.g., PERL)
 - (iii) the Mozilla Public License
 - (iv) the Netscape Public License
 - (v) the Sun Community Source License (SCSL)
 - (vi) the Sun Industry Standards License (SISL)
 - (vii) the BSD License
 - (viii) Red Hat Linux
 - (ix) the Apache License.

Its free, but ...

1) Ambiguous License— “you can use this code if you give me credit”

“This is free software.

Absolutely no warranties.”

What is “USE?”

2) If required attribution is not included—?

3) Some open source licenses require that all source code made available to anyone.

4) Warranties re: ownership, copyright registration—has there been fraud?

What else?

- Open source code should not be used without management knowledge or approval.
- Is the code used in other products?
- Risk of possible requirement that proprietary source code must be made available to others for free

DATA RIGHTS

- US Government gets unlimited/unrestricted rights to data it pays others to develop.
- Data delivered to a Federal agency without appropriate markings gives rise to the Government having unlimited/unrestricted rights.

The Government owns your Software

- Have you improperly charged the government for additional licenses to the software?
- Have you given unlimited rights? Can competitors receive source code from government customer??

Best practices:

- Mark all data with proper legends; keep a clear record of doing so.
- Provide source code to government only if it is a deliverable
- Retain engineering/financing logs showing what was developed and who paid for it

PRIVACY RIGHTS

- **Health Care**
 - Patient Records; special legislation dealing with substance abuse records
- **Banking**
 - Gramm-Leach Bliley and Dodd-Frank
- **Web-facing customer interactions**
 - Children's Online Privacy Protection Act
 - State laws regarding privacy policies and data breaches

Steps to take:

- Employee confidentiality and assignment of invention agreements
- Have agreement to use with outside contractors who are developing any IP
- Internal policy to mark all IP that is confidential with restrictive markings
- Non-disclosure agreements with third parties who will receive confidential information
- Internal policies/approvals re use of open source
- Search, marking and registration of trademarks

Any Questions?





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For questions, please contact Ivana Aschmannova at laschmannova@wipp.org