



IPR Notes - 2

Trademark & Trademark Rights

1. What Is a Trademark?

- A trademark gives you the exclusive right to use your mark and helps prevent competitors from using a mark that's the same as or very similar to yours. Simply using a name, logo, or slogan in your business gives it some level of trademark protection, though these "common law" trademarks are hard to enforce and apply only in your immediate locality.
- However, the real cosmic power comes when you officially register your trademark with the U.S. Patent and Trademark Office (USPTO). This registration elevates your protection to a national level, like claiming a star in the IP galaxy. 🚀✨

2. Trademark Rights: How Do You Acquire Them?

- **First to Use:** If you're the first to use a mark in commerce—whether it's slapping your logo on warp drives or serving mooncakes—you gain common-law rights. These rights are like staking a claim on a specific asteroid within your local orbit.
- **First to Register:** Alternatively, you can be the first to register your mark with the USPTO. This formal process solidifies your rights and extends

them nationwide. It's like upgrading from a backyard telescope to the Hubble Space Telescope.

3. What Do Trademark Rights Cover?

- Your rights aren't cosmic ownership of a word or phrase in general. Instead, they're specific to how that word or phrase is used in connection with your goods or services. Imagine having exclusive rights to "Stellar Sprockets" for rocket engine parts but not for intergalactic coffee shops.
- Trademark rights protect against confusion. If someone else launches "Stellar Sprockets" coffee mugs, you can invoke your cosmic trademark powers.

4. Benefits of Registering Your Trademark:

- **Galactic Exclusivity:** Registering your trademark entitles you to exclusive use within your designated class of goods or services. It's like putting up a "No Trespassing" sign on your celestial turf.
- **Legal Force Field:** Formal registration strengthens your legal defenses. It's like upgrading your shields from cardboard to vibranium.
- **National Recognition:** Your trademark becomes a recognized constellation across the entire U.S. business universe.

5. The Trademark Dance:

- **Application:** File your trademark application. It's like launching a probe into the trademark cosmos.
- **Examination:** The USPTO reviews your application. Think of it as a cosmic customs check.
- **Registration:** Once approved, your trademark gets its own star on the galactic map.

Purpose & Function of trademark

1. Identifying the Source:

- Imagine you're strolling through a bustling intergalactic bazaar. Suddenly, you spot a familiar logo—a swoosh, an apple with a bite taken out, or maybe a golden arch. That's a trademark in action!

- A trademark identifies the source of goods or services. It's how customers recognize you amidst the cosmic clutter and distinguish you from competitors. When you see that iconic bitten apple, you know it's an iPhone, not a space fruit.

2. Legal Protection for Your Brand:

- Think of a trademark as your force field against copycats and interstellar impostors. When you've got a registered trademark, it's like having photon torpedoes to defend your brand.
- Owning a trademark means you can legally wield it—protecting your warp drives, moon boots, or artisanal mooncakes from unauthorized use.

3. Guarding Against Counterfeiting and Fraud:

- Picture this: You've perfected your zero-gravity dance shoes. They're the talk of the galaxy. But wait! Someone else starts selling knockoff versions—shoddy replicas that make dancers trip over their own nebulae.
- Fear not! Your trademark allows you to summon the cosmic authorities (or maybe just your friendly neighborhood IP attorney) to thwart counterfeiters. No one messes with your moonwalk.

Cosmic Misconceptions:

- **Myth #1:** Having a trademark means you own a specific word or phrase universally. Not quite! You only own it as it relates to your specific goods or services. So, "Stellar Sprockets" for rocket parts? Yours. For cosmic coffee mugs? Not so much.
- **Myth #2:** Descriptive trademarks are effective. Nope! Creative and unique trademarks—like "Quantum Quills" for futuristic pens—are easier to protect. Avoid the black hole of blandness.

Trademark Symbols: Claiming Your Celestial Territory

- **TM** (for goods) or **SM** (for services): Even before formal registration, you can slap these on your warp drives or mooncake recipes. It's like saying, "Hey, this is mine!"
- **®**: Once you've registered your trademark with the authorities (think of them as the Galactic Trademark Office), you get to use this majestic symbol. Stick it next to your logo, like a cosmic crown.

Remember, your trademark isn't just a name—it's your cosmic signature

Trademark registration Process

The process of registering a **trademark** involves several steps, from conducting a preliminary search to filing the application and receiving approval. The process can vary slightly by country, but the core steps are generally the same.

Summary of the Steps:

Step	Action
1. Preliminary Search	Conduct a search to ensure the trademark is unique and available.
2. Filing the Application	Submit a formal application with the relevant IP office, including applicant info, trademark details, and classes of goods/services.
3. Examination by Trademark Office	The office reviews the application for compliance and conflicts with existing trademarks.
4. Publication for Opposition	The trademark is published for a period to allow third parties to file opposition.
5. Registration and Issuance	If approved, the trademark is registered, and a certificate is issued.
6. Maintenance and Renewal	Renew the trademark regularly (typically every 10 years) to maintain protection.

Key Considerations:

- **Distinctiveness:** Trademarks must be distinctive. Generic or descriptive marks are generally not eligible for registration.
- **International Protection:** If you seek international trademark protection, consider filing through the **Madrid Protocol**, which simplifies the process of filing in multiple countries.
- **Opposition:** Be prepared for potential opposition from third parties during the opposition period.

Trademark Protection

1. Trademark Scope of Protection: Connecting the Dots

- A trademark is always tied to specific goods or services associated with it. You can't register a word, phrase, symbol, or design as a trademark without clearly identifying the goods or services it represents.
- Imagine you own a bookstore named "A Good Yarn." If you register this trademark, it prevents another company from using the same name for a different bookstore. By being specific about what your trademark covers, you define its scope of use.
- So, whether you're selling warp drives, moon boots, or artisanal mooncakes, your trademark shields your brand within its designated orbit.



2. Trademark Protection: Safeguarding Your Cosmic Identity

- Trademark protection is like a force field against counterfeiting and infringement. When you own a distinctive mark, you can apply for trademark protection.
- What does it protect? Your unique goods and services! If someone else tries to use your likeness to boost their own business, you have legal recourse. It applies to both registered and unregistered trademarks.
- Picture it as defending your starship against space pirates—except the battlefield is the marketplace.

3. Cosmic Recourse: The Power of Trademark Ownership

- With trademark protection, you gain the exclusive right to use your mark. Competitors can't hijack it for similar goods or services without your permission.
- Whether it's a logo, a slogan, or a cosmic dance move, your trademark becomes your cosmic signature. It's your warp drive of creativity, propelling your brand across galaxies.

Copyrights and Laws related

Copyright is like a celestial cloak that envelops original works of authorship, granting their creators exclusive rights. Here's the cosmic breakdown:

1. Originality and Fixation:

- Copyright protects works as soon as they're fixed in a tangible form. Whether it's a painting, a musical composition, a blog post, or a computer program, once it's captured—written down, recorded, or painted—it's under copyright's cosmic umbrella.
- But wait! Not everything qualifies. To be eligible, a work must be independently created (no copy-pasting!) and possess a "spark" of creativity. Mere facts, ideas, and procedures don't make the cut.

2. Fixed Works:

- A work is "fixed" when it's captured in a permanent medium. Imagine writing your magnum opus with a quill dipped in stardust or recording your intergalactic anthem on a cosmic vinyl. That's fixation!
- As the United States Constitution boldly declares, Congress has the power to secure authors' exclusive rights. And they've been doing it since the nation's inception—first federal copyright law in 1790, folks!



3. Who's the Cosmic Copyright Owner?

- Everyone can be a copyright owner! You snap a photo, write a poem, or compose a symphony—you're the author and owner.
- Companies, organizations, and even your friendly neighborhood AI (like me!) can also hold copyrights. Plus, there's the intriguing concept of "works made for hire," where employers own what their employees create during work hours. It's like cosmic teamwork.

4. Exclusive Rights of Copyright Owners:

- Buckle up, because copyright owners get to wield some serious cosmic powers:
 - **Reproduction:** Make copies or phonorecords of your work. Photocopy that star map or duplicate your mooncake recipe!
 - **Derivative Works:** Remix, adapt, or transform your creation. Turn your epic poem into a space opera libretto.
 - **Distribution:** Share your work with the public—sell it, lend it, or rent it out. Imagine a celestial book club passing around your novel across galaxies.

Infringement of Copyright

Copyright infringement occurs when someone uses, reproduces, distributes, or displays a copyrighted work without the permission of the copyright holder, in ways that violate the copyright holder's exclusive rights. Copyright law provides creators with protection over their original works, and infringement can lead to legal consequences. Below are key points explaining copyright infringement under copyright law:

1. What Constitutes Copyright Infringement?

Copyright infringement happens when any of the exclusive rights granted to the copyright holder are violated. These exclusive rights include the right to:

- Reproduce the work.
- Distribute copies of the work.
- Prepare derivative works based on the original.
- Publicly display or perform the work.
- Broadcast or transmit the work (especially in cases of digital content).

2. Types of Copyright Infringement

Type	Description	Example
Direct Infringement	Occurs when someone directly violates one or more exclusive rights of the copyright owner.	Copying a novel and distributing it without permission.
Contributory Infringement	When a party contributes to someone else's infringement, knowing that the activity is illegal.	Hosting a website where users share pirated movies.
Vicarious Infringement	Involves a person or entity benefitting from copyright infringement while having the ability to stop it.	A business allowing employees to use illegal software.
Willful Infringement	Deliberate violation of copyright law, often involving financial gain from the infringing activity.	Selling bootleg DVDs of copyrighted movies.

3. Fair Use Doctrine

Not all uses of copyrighted material are considered infringement. Under the **fair use** doctrine, certain limited uses of copyrighted material may be allowed

without the copyright holder's permission. Factors that courts consider when determining fair use include:

- **Purpose and character of use:** Non-commercial, educational, or transformative uses (e.g., criticism, parody) are more likely to be considered fair use.
- **Nature of the copyrighted work:** Factual works may be more likely to qualify for fair use than highly creative works (like novels or films).

4. Penalties for Copyright Infringement

- **Injunctions:** A court may order the infringer to stop using the copyrighted material immediately.
- **Monetary Damages:** The copyright owner can seek damages, which may include actual damages (e.g., lost profits) or statutory damages, ranging from \$750 to \$30,000 per infringed work, depending on the severity of the infringement. In cases of willful infringement, damages can go up to \$150,000 per work.
- **Criminal Penalties:** In severe cases, particularly those involving willful infringement for commercial purposes (e.g., large-scale piracy), criminal penalties may include fines and imprisonment.

5. Digital Copyright Infringement

With the rise of the internet and digital media, copyright infringement in the digital realm has become prevalent. Key issues include:

- **File Sharing:** Peer-to-peer file sharing of copyrighted music, movies, or software is a common form of infringement.
- **Streaming:** Unauthorized streaming of copyrighted content, such as movies or sporting events, violates copyright laws.
- **Software Piracy:** Downloading or distributing cracked versions of software.

In response to digital infringement, laws like the **Digital Millennium Copyright Act (DMCA)** in the U.S. provide additional protections, especially for content shared online. The DMCA makes it easier for copyright holders to request that infringing content be taken down from websites and social media platforms.

6. Defenses Against Copyright Infringement Claims

- **Fair Use:** As mentioned earlier, fair use is a common defense.

- **Public Domain:** If a work is in the public domain (e.g., its copyright has expired or the creator has relinquished copyright), it can be used freely without permission.
- **Lack of Substantial Similarity:** In some cases, a defense may argue that the alleged infringing work is not substantially similar to the original copyrighted work.
- **License or Permission:** The defendant may show that they had proper authorization (through a license or written agreement) to use the copyrighted material.

Conclusion:

Copyright infringement involves the unauthorized use of copyrighted material in ways that violate the copyright holder's exclusive rights. It can take various forms, including direct, contributory, and vicarious infringement. Penalties can range from civil damages to criminal prosecution, with certain defenses like fair use providing some exceptions. Copyright laws aim to balance the rights of creators with the public's access to creative works.

Copyright v/s Related rights

Here's a table outlining the key distinctions between **Copyright** and **Related Rights** (also known as **Neighboring Rights**):

Aspect	Copyright	Related Rights (Neighboring Rights)
Definition	Protects the original works of authorship such as literary, artistic, musical, and other creative works.	Protects the legal interests of those who help communicate works to the public but may not be the original creators (e.g., performers, broadcasters).
Who is Protected?	Authors, composers, writers, artists, filmmakers, photographers, and other creators of original works.	Performers (actors, musicians), producers of sound recordings, broadcasters, and distributors.
Scope of Protection	Protects the creative expression of ideas (e.g., a book, painting, music, software).	Protects the performance or dissemination of a work (e.g., recording of a song, broadcast of a film).

Examples of Protected Works	Novels, movies, music compositions, paintings, architectural designs, software code.	Live performances, sound recordings, broadcasts, music producers' contributions.
Duration of Protection	Usually lasts for the lifetime of the author + 50 to 70 years , depending on jurisdiction.	Generally lasts for 50 years from the date of creation or publication (varies by country).
Objective	To reward and protect the original creativity and expression of the creator.	To protect the efforts and investments of performers, producers, and broadcasters in distributing and making works available.
Exclusive Rights	Rights include reproduction, distribution, performance, display, and adaptation of the work.	Rights include performing, broadcasting, reproducing recordings, and preventing unauthorized exploitation of performances.
Examples of Rights Holders	An author writing a book, a composer writing music.	A singer performing a song, a record label producing and distributing an album, a radio station broadcasting a live performance.
Primary Focus	Protects original creators and the intellectual property they produce.	Protects those who help bring the original works to the public, ensuring their contributions are not exploited unfairly.
International Protection	Governed by treaties such as the Berne Convention and WIPO Copyright Treaty .	Governed by treaties like the Rome Convention and WIPO Performances and Phonograms Treaty (WPPT) .

Key Points:

- **Copyright** focuses on the **creators** of original works and protects their **expression**.
- **Related Rights** focus on **performers, producers, and broadcasters** who aid in the performance or dissemination of those works.

For example, while copyright would protect the composer of a song, related rights would protect the singer's performance of that song and the record label's recording of it.

Celebrity rights

Celebrity rights refer to the legal protections that public figures, such as actors, athletes, musicians, and other well-known individuals, have over the commercial use of their image, likeness, name, voice, and other aspects of their identity. These rights are primarily categorized under **Right of Publicity** and **Privacy Rights**, and they serve to prevent unauthorized commercial exploitation of a celebrity's persona. Here's a breakdown of the key aspects of **celebrity rights**:

1. Right of Publicity

- **Definition:** The right of publicity is the legal right of individuals, especially celebrities, to control and profit from the commercial use of their identity, such as their name, image, likeness, voice, or other recognizable characteristics.
- **Purpose:** To prevent unauthorized parties from using a celebrity's persona for commercial gain without their consent.
- **Scope of Protection:**
 - **Name:** Unauthorized use of a celebrity's name for advertising or endorsements.
 - **Image/Likeness:** Using a photograph, painting, or digital likeness of a celebrity for commercial purposes.
 - **Voice:** Imitation or use of a celebrity's voice for commercial gain (even impersonations can fall under this).
- **Commercial Use:** Includes endorsements, advertisements, merchandising, and promotions without the celebrity's permission.

2. Privacy Rights

- **Definition:** While the right of publicity focuses on the commercial use of a celebrity's identity, privacy rights protect celebrities from unwanted intrusions into their personal lives.
- **Types of Violations:**
 - **Intrusion into Seclusion:** Unwanted interference with a celebrity's private life (e.g., paparazzi capturing photos in a private setting).

- **Public Disclosure of Private Facts:** Revealing private or personal details about a celebrity that are not of public concern.

3. Commercial Exploitation

- **Endorsements and Licensing:** Celebrities often license their image, name, or likeness for endorsements, product deals, or promotional campaigns. Unauthorized use can result in financial and reputational harm to the celebrity.
- **Merchandising:** Celebrities may engage in merchandising deals (e.g., clothing, fragrances, or toys). Unauthorized merchandise using their likeness can be actionable under their publicity rights.

4. Posthumous Rights

- **Continuing Protection After Death:** In many jurisdictions, celebrity rights (especially the right of publicity) continue to exist after death. The heirs or estates of deceased celebrities can control the commercial use of their likeness, name, and image.
- **Examples:** The estates of Marilyn Monroe, Elvis Presley, and Michael Jackson have continued to generate significant revenue from licensing and endorsements long after the celebrities' deaths.
- **Duration:** The length of posthumous protection varies by jurisdiction. In some places, it may last for decades after the celebrity's death.

5. Infringement of Celebrity Rights

- **Unauthorized Use:** Any unauthorized use of a celebrity's identity for commercial purposes can be considered a violation of their publicity rights. This includes using their name or likeness in advertising without permission.
- **Digital Manipulation:** The use of a celebrity's digital likeness or voice (deepfakes, CGI recreations, or voice imitations) can also infringe on their rights.
- **Examples of Infringement:**
 - Using a celebrity's photo on product packaging without permission.
 - Creating a character that closely resembles a celebrity for use in a video game or commercial.

6. Legal Protections for Celebrity Rights

- **Jurisdictional Variations:** Celebrity rights are governed by state and national laws, and the scope of protection can vary widely between jurisdictions. In the U.S., for example, some states have stronger right of publicity laws than others (e.g., California and New York offer significant protections for celebrities).
- **Statutory vs. Common Law:** Some regions have statutory protections for celebrity rights (codified laws), while others rely on common law (case law developed by courts).
- **Trademark Law:** In some cases, celebrities may register their names or likeness as trademarks, which provides additional protection against unauthorized use in commerce.

7. Famous Celebrity Rights Cases

- **Vanna White v. Samsung Electronics:** Samsung used a robot resembling Vanna White in a commercial, and the court ruled in her favor, recognizing her right of publicity.
- **Bette Midler v. Ford Motor Co.:** Ford used a sound-alike singer to mimic Bette Midler's voice in a commercial, and she won the case, as the court deemed this a violation of her publicity rights.
- **Kim Kardashian v. Old Navy:** Kim Kardashian sued Old Navy for using a look-alike model in their advertisements, claiming it was a violation of her right of publicity.

8. Defenses Against Claims of Infringement

- **Transformative Use:** If the use of the celebrity's likeness is sufficiently transformative (i.e., it adds significant new expression or meaning), it may be protected under the First Amendment (in the U.S.) or similar free speech protections in other jurisdictions.
- **Parody or Satire:** Parody or satire involving a celebrity may be a defense, as courts often protect free speech, especially in creative works like TV shows, films, or art.
- **Newsworthiness:** The use of a celebrity's image or name in news reporting or commentary is generally protected, as the public has a legitimate interest in such stories.

Summary of Celebrity Rights:

Aspect	Right of Publicity	Privacy Rights
Focus	Control over the commercial use of a celebrity's identity (name, image, likeness, etc.).	Protection from unwanted invasion into a celebrity's private life.
Protection	Commercial endorsements, advertisements, merchandising, and licensing.	Intrusion, false light, or public disclosure of private facts.
Scope	Name, image, likeness, voice, and distinctive attributes (e.g., catchphrases).	Personal life, private settings, non-commercial exploitation.
Examples of Infringement	Unauthorized use in ads, merchandise, or digital creations.	Paparazzi invasion, publication of private facts.
Duration	Can last posthumously (varies by jurisdiction).	Generally limited to the lifetime of the individual.

Conclusion:

Celebrity rights protect public figures from unauthorized use of their persona for commercial gain and invasion of their privacy. These rights are valuable intellectual property for celebrities and can continue to generate revenue and protect their image even after death. Legal mechanisms like the right of publicity, privacy rights, and sometimes trademark law help protect these interests.

Academic integrity and Plagiarism

1. Academic Integrity: Guiding Stars for Scholars

- **What Is Academic Integrity?** Imagine a starship crew committed to six fundamental values: honesty, trust, fairness, respect, responsibility, and courage—even in the face of asteroid storms. That's academic integrity!
- **The Five Pillars of Academic Integrity:**
 - **Honesty:** It's like navigating by the North Star—being truthful and giving credit where it's due. In writing, this means proper attribution.
 - **Trust:** Trusting in the reliability of student work is critical. Clear expectations and consistent assessments maintain this cosmic trust.

- **Fairness:** No favoritism! Apply rules consistently, and uphold educational fairness. It's like ensuring everyone has a fair shot at moonwalking.
- **Respect:** Show respect for knowledge, assignments, and feedback. Empathy for students and constructive feedback are part of the cosmic equation.
- **Responsibility and Courage:** Be reliable, trustworthy, and brave. These qualities propel academic integrity across the universe.

2. Plagiarism: The Rogue Asteroid

- Plagiarism is an aspect of academic integrity. It's like a rogue asteroid—using another's ideas, words, or graphics without proper credit. Dishonest, indeed!
- Whether accidentally or intentionally, plagiarism undermines the cosmic order. From serious offenses (buying pre-written essays) to accidental citation errors, it's easy to detect with a plagiarism checker.

TATA!

Summary of Notes-1 and Notes-2

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