

## IP PRIMER

	WHAT IS PROTECTED?	WHAT RIGHTS DO YOU GET?	HOW DOES PROTECTION START?	HOW LONG DOES PROTECTION LAST?	DAMAGES/REMEDIES FOR INFRINGEMENT?	REGISTER & ENFORCE?
PATENT	<p>Invention (process, machine, article of manufacture, composition of matter or improvement thereof) that is:</p> <ul style="list-style-type: none"> <li>✓ Novel</li> <li>✓ Non-obvious</li> <li>✓ Useful</li> </ul>	<p>Right to exclude others:</p> <ul style="list-style-type: none"> <li>✓ From making</li> <li>✓ From using</li> <li>✓ From selling</li> <li>✓ From importing the claims in the patent</li> </ul>	<ul style="list-style-type: none"> <li>✓ Registration required; takes 1.5 - 4 years</li> <li>✓ Protected on patent issuance, but as of earliest filing date</li> <li>✓ Pre-Reg. notice: Patent Pending</li> <li>✓ Post-Reg. notice: Patent [+Patent No.]</li> </ul>	<ul style="list-style-type: none"> <li>✓ 20 years from earliest filing date</li> <li>✓ 14 years for design patent</li> </ul>	<p>After a lawsuit filing, damages incurred during the prior 6 years, including:</p> <ul style="list-style-type: none"> <li>✓ Lost profits</li> <li>✓ Reasonable royalty</li> <li>✓ Costs and interest</li> <li>✓ 3x damages for willful infringement</li> <li>✓ Injunctive relief</li> </ul>	<ul style="list-style-type: none"> <li>✓ Patent and Trademark Office (“PTO”) handles registration</li> <li>✓ All enforcement by private litigants</li> <li>✓ Federal court</li> </ul>
COPYRIGHT	<p>Original works of authorship fixed in a tangible medium:</p> <ul style="list-style-type: none"> <li>✓ Literary</li> <li>✓ Musical</li> <li>✓ Dramatic</li> <li>✓ Choreographic</li> <li>✓ Pictorial, graphic, sculptural</li> <li>✓ Motion pictures</li> <li>✓ Sound recordings</li> <li>✓ Architectural</li> <li>✓ Computer programs</li> </ul>	<p>Exclusive right to:</p> <ul style="list-style-type: none"> <li>✓ Reproduce</li> <li>✓ Prepare derivative works</li> <li>✓ Distribute copies</li> <li>✓ Perform publicly</li> <li>✓ Display</li> <li>✓ Perform publicly by a digital audio transmission</li> </ul>	<ul style="list-style-type: none"> <li>✓ Protection begins when work is fixed in a tangible medium</li> <li>✓ Apply for registration w/in 3 months of 1st publication; takes up to 1 year; effective as of filing date</li> <li>✓ Notice: © + year of 1st publication + owner Eg: © 2007 Coco Soodek</li> </ul>	<p>Currently, life of the author plus 70 years, except:</p> <ul style="list-style-type: none"> <li>✓ For works made for hire, the shorter of 95 years from publication or 120 years from creation</li> <li>✓ Varies depending on when work was fixed or published</li> </ul>	<p>Registered copyright:</p> <ul style="list-style-type: none"> <li>✓ Actual damages plus profits of the infringer, or</li> <li>✓ Statutory damages (\$750-\$30,000 per work)</li> <li>✓ Innocent infringer: \$200</li> <li>✓ Willful infringer: \$150,000</li> </ul> <p>Unregistered copyright:</p> <ul style="list-style-type: none"> <li>✓ Proven damages/profits</li> </ul> <p>Equitable Relief:</p> <ul style="list-style-type: none"> <li>✓ Injunction/Impoundment</li> </ul>	<ul style="list-style-type: none"> <li>✓ Copyright Office handles registration</li> <li>✓ All enforcement by private litigants</li> <li>✓ Federal court</li> </ul>
TRADEMARK	<p>A word, name, symbol or device (or even smell or sound) used in trade to indicate the source of goods and distinguish them from others</p>	<ul style="list-style-type: none"> <li>✓ Exclusive right to use the mark with products or services in the territory of use or registration</li> <li>✓ Right to exclude use of the mark that is likely to cause confusion in the market or that dilutes a famous mark</li> </ul>	<ul style="list-style-type: none"> <li>✓ Protection starts on use in commerce</li> <li>✓ Federal registration takes 9 months to 2 years, effective as of filing date</li> <li>✓ Pre-Reg. notice: [MARK]™</li> <li>✓ Post-Reg. notice: [MARK]®</li> </ul>	<p>As long as it remains in use and renewal fees are paid:</p> <ul style="list-style-type: none"> <li>✓ Between the 5th and 6th year after registration</li> <li>✓ Between every 9th and 10th year after registration</li> </ul>	<p>Infringement:</p> <ul style="list-style-type: none"> <li>✓ Defendant’s profits</li> <li>✓ Plaintiff’s damages</li> <li>✓ Costs and attorneys fees for willful infringement</li> <li>✓ 3x damages for bad faith</li> <li>✓ Injunctive relief</li> </ul> <p>Dilution:</p> <ul style="list-style-type: none"> <li>✓ All above damages if dilution was willful</li> </ul>	<ul style="list-style-type: none"> <li>✓ PTO handles registration</li> <li>✓ All enforcement by private litigants</li> <li>✓ FTC enforces false advertising of another’s trademark</li> <li>✓ Federal or state court</li> </ul>
TRADE SECRET	<p>A formula, pattern, process or device which is:</p> <ul style="list-style-type: none"> <li>✓ Kept secret by reasonable measures</li> <li>✓ A competitive advantage</li> </ul>	<ul style="list-style-type: none"> <li>✓ Right to prevent misappropriation through breach or wrongful act</li> <li>✓ Does not prevent independent creation</li> </ul>	<p>As soon as it satisfies the legal elements.</p> <ul style="list-style-type: none"> <li>✓ Notice: Confidential &amp; proprietary material of [your name here]</li> </ul>	<p>As long as it satisfies the legal elements</p>	<ul style="list-style-type: none"> <li>✓ Varies by state</li> <li>✓ Profits &amp; royalty</li> <li>✓ 2x damages if willful malicious</li> <li>✓ Injunctive relief</li> </ul>	<ul style="list-style-type: none"> <li>✓ All enforcement by private litigants</li> <li>✓ Usually state court</li> </ul>