



SEPTEMBER 19-23, 2022

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#DENStartupWeek

Business Foundations: Session 3/3 – Putting the IP into “HIP”!

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Putting the IP into “HIP”! (Business Foundations: Session 3/3)

Milgrom & Daskam

Jon Milgrom

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Startup Considerations 3/3

- Session 1: Entity formation/structure & Finance
- Session 2: Third Party Contracts
- **Session 3: IP**



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WHY IS IP IMPORTANT TO YOU?

- Approx. 1/3rd of the value of manufactured products sold is in “intangible capital,” (WIPO 2017)
- Morals->Feels bad when people steal your stuff
- Protecting IP is smart business
- Qualcomm, TiVo, Mod Market, Spotify



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AGENDA

- Internal Protections
- Patent
- Trade Secret
- External Protections
- Trademark
- Copyright



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- **AWBAT: Describe the four types of IP and analyze their own intellectual property and uses of others' IP**



Inward Facing IP: Patent and Tradeseecret

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PATENT: WHAT IT IS

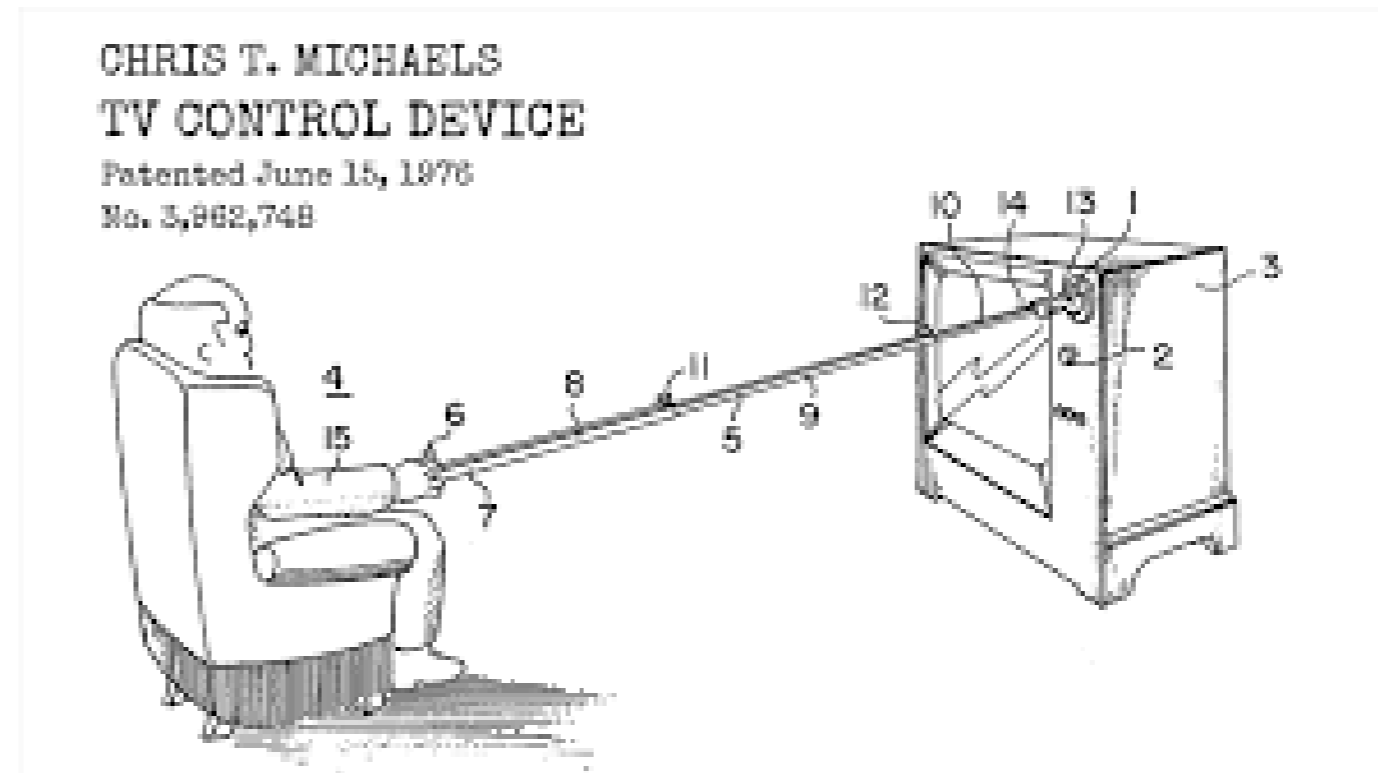
- Protects novel inventions reduced to practice (processes? Software?)
- Requires registration
- Negative right to limited monopoly (20yr)
- Do not need to use but need to disclose
- May not reverse engineer
- Qualcomm, pharmaceuticals, hardware



Photos from Unsplash

Patent

- Multi-year registration process
- Can be fairly expensive to get issuance
- Applicable for tech that will evolve or will become obsolete
- Disclosure can be fatal (tech transfer)



Photos courtesy of Unsplash



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TRADE SECRET

- "information, including a formula, pattern, compilation, program, device, method, technique, or process that:
- Derives independent value, from not being generally known; and
- Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.
- May reverse engineer
- Protection is proportional to efforts provided to keep secret (NDA, recipes under lock etc.)
- lasts for as long as it is secret



Photos courtesy of Unsplash

Patent vs. Trade Secret

- Length of protection
- Cost
- Ability to reverse engineer
- Both require discretion: patent pre-filing, trade secret forever
- Consider which is right for you





Outward Facing IP: Copyright and Trademark

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COPYRIGHT: WHAT IT IS

- Creative works fixed in a tangible medium
- Made to incentivize creation-provides limited monopoly (like patent)
- Protects “heart and soul of creation”
- Infringement- access+ similarity
- Big sexy → more often small and pain in the ass
- Seeing a trend towards © for comp code



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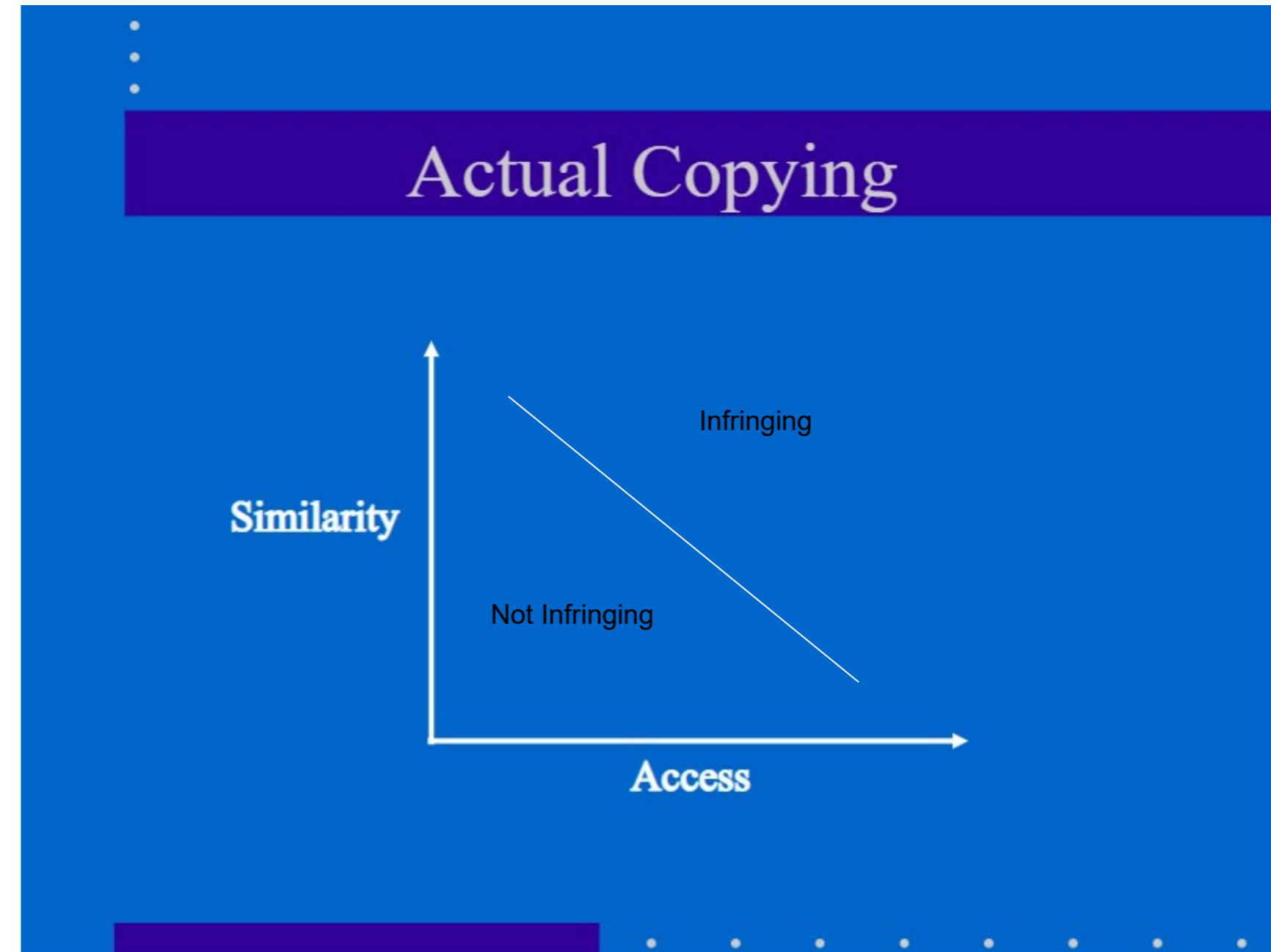
COPYRIGHT: WHAT YOU SHOULD DO-OWN CREATIONS

- Consider registering works— cannot enforce rights in court without registration (17 U.S. Code § 412)
- \$65 fee + lawyer time
- takes a while but can expedite for \$800; entitles to statutory damages
- Copyright notice on all published works and insist others do the same (contract)
- If incorporating others works, give appropriate credit
- Be deliberate about what works and what rights you are giving to others (contract)

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Infringement

- Balancing scale of access + similarity
- Greater access requires less similarity
- With registration can get statutory damages



Slide courtesy of Boston College Law School



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COPYRIGHT: WHAT YOU SHOULD DO OTHERS CREATIONS

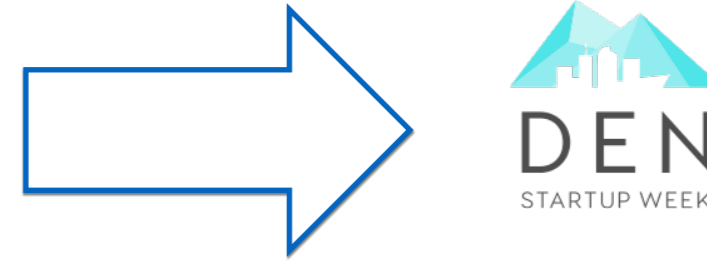
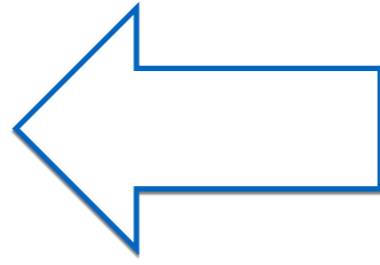
- Be careful!!! Do not make assumptions!! (CC By)
- CASE Act (small claims)
- Copyright Trolls and Reverse Photo Search
- Statutory damages
- Check for licenses, use attribution appropriately
- Get written assignments! (logos and clients)
- READ YOUR CONTRACTS and Website Terms of Service (my photographer example/graphic designer example)



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TRADEMARK: WHAT IT IS

- Word, design, trade dress, or sound that indicates the origin of the goods and services to provide consumer QA
- Purpose to assure quality to customers (outward facing)
- Gravamen for infringement= likelihood of consumer confusion → goods specific (and natural zone of expansion)
- Common law right (accrues immediately but subordinate to senior users)
- Federal registration → much greater rights
- Not all marks are created equal



NBC Tones





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SPECTRUM OF PROTECTION & RESOURCES

- Knockout Search
- Google
- USPTO TESS Database
- Consider adding distinctive elements (logo, tagline)



Generic

Descriptive

Suggestive

Arbitrary/Fanciful



Least Protection

Most Protection



Disclaimers

- Generic or descriptive portions of marks will be required to be disclaimed
- PTO will put significantly less weight on these portions of mark- occasionally disregard altogether
- Need to be wary of strength of mark and composite w/ disclaimed portions





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IP WRAP UP

- **Internal:**
- Patent-limited 20 yr monopoly to ideas (no RE)
- Trade Secret- unlimited use as long as secret (can RE)

- **External:**
- Copyright- Be careful of traps, protect yourself, contract appropriately
- Trademark- origin of goods and service (search and register)

- Assignment: Think about what IP you have in your quiver and how you can best protect it



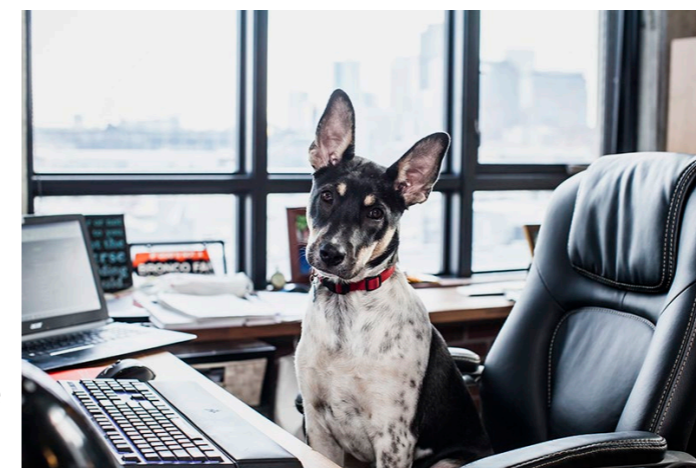
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QUESTIONS

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Slides will be posted on milgromlaw.com



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For more resources, please reach out to:

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