



INDEPENDENT GAMES
SUMMIT

Practical IP Law 301 For Indie Developers: Plain Scary Edition

Chris Reid - @NYGameLawyer
Founding Partner, Chris Reid Law

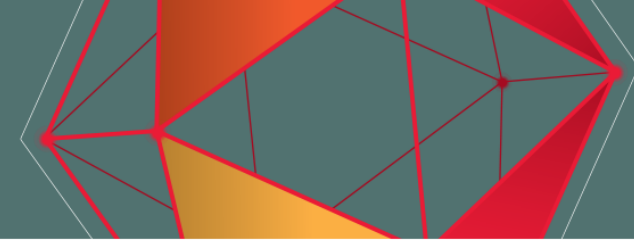
GDC

GAME DEVELOPERS CONFERENCE® | MARCH 19-23, 2018 | EXPO: MARCH 21-23, 2018 #GDC18

UBM



INDEPENDENT GAMES
SUMMIT



CHRIS REID / LAW

Chris Reid
Founding Partner

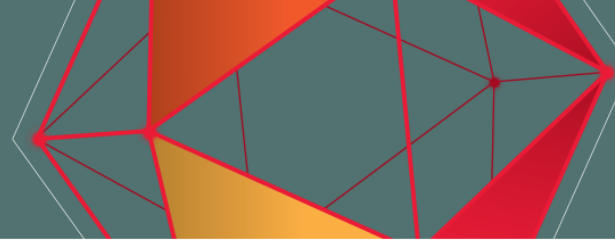
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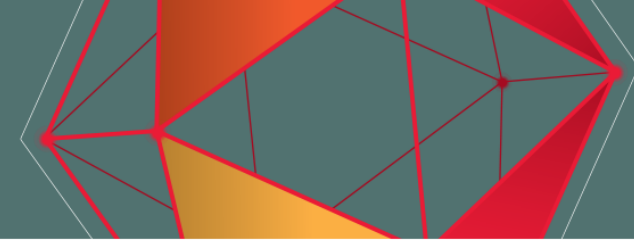


UBM



DISCLAIMER!
I am not your lawyer,
and this presentation
is legal education, not
legal advice!

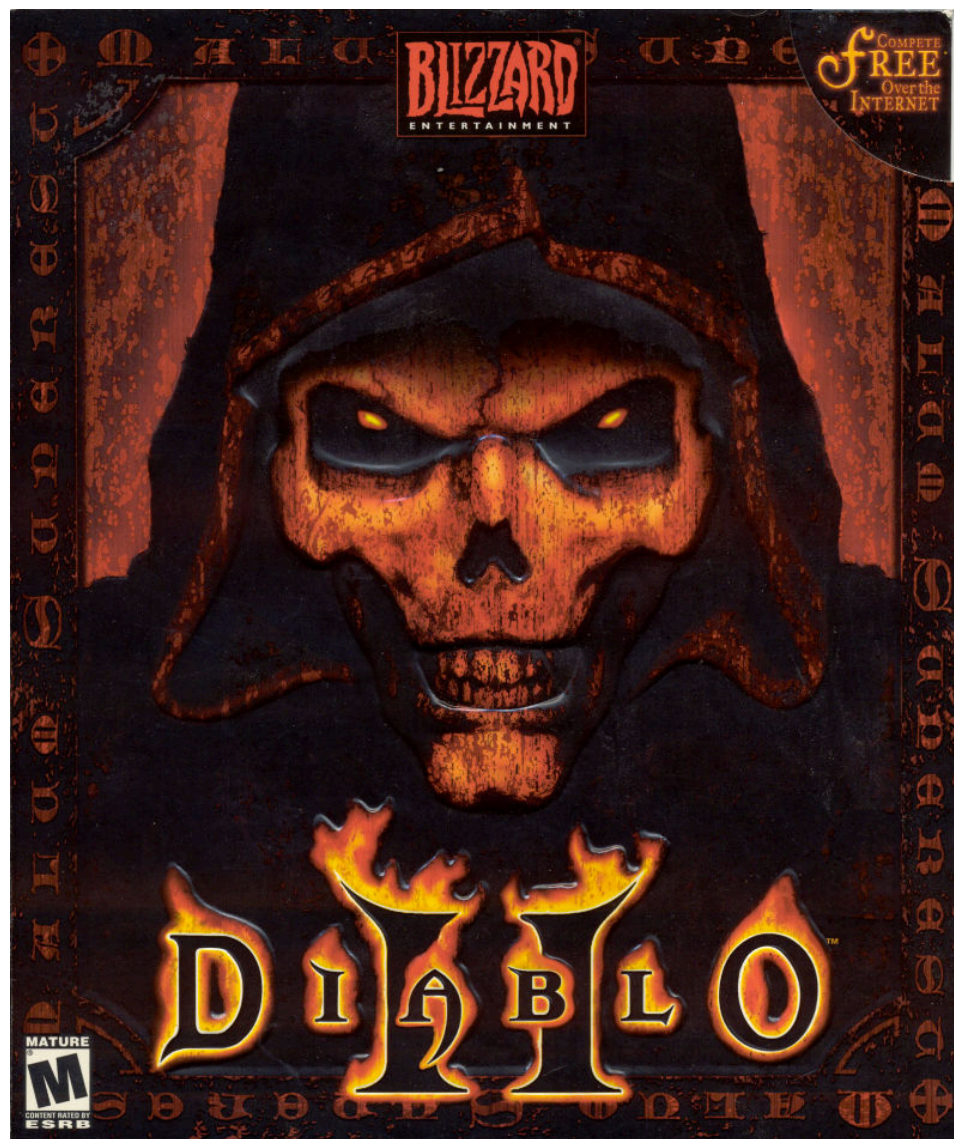




Time We Need

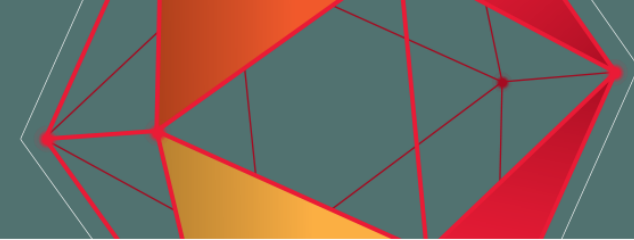


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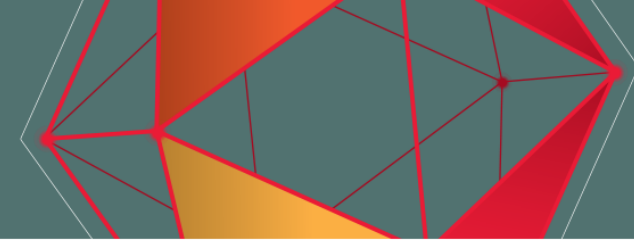
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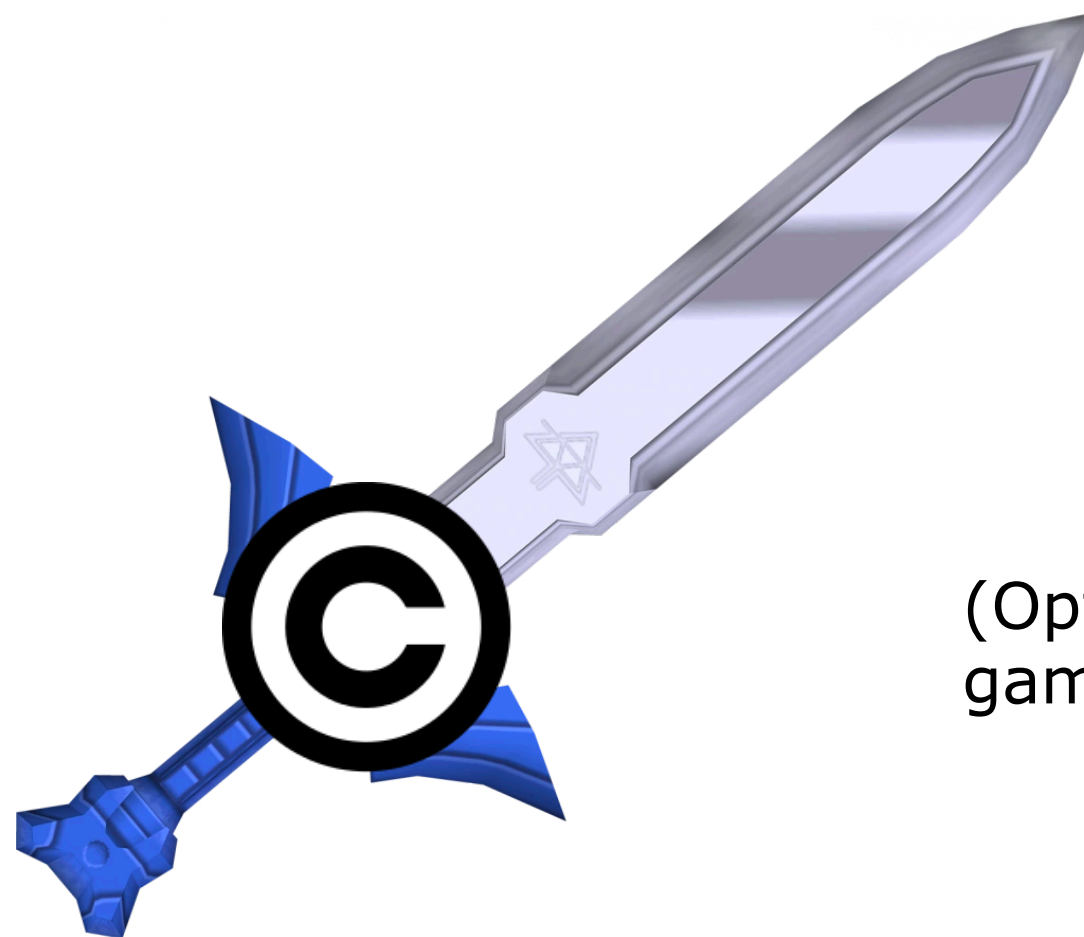
Time We Have





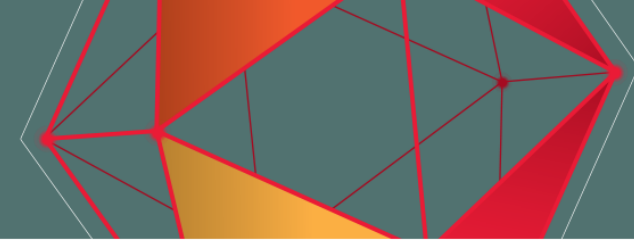
Main Quest

Teach Indie Devs how to protect and use their IP

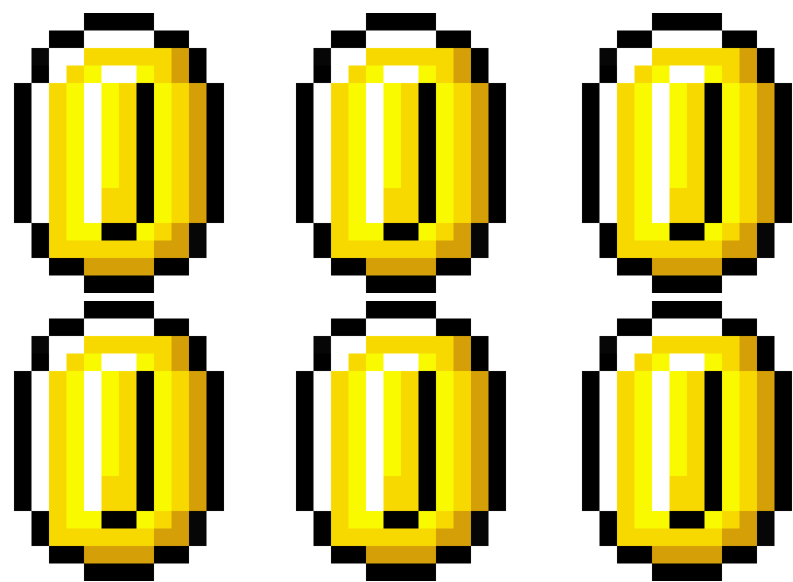


(Optional): Make corny
game references





What Is IP?



Real Rights

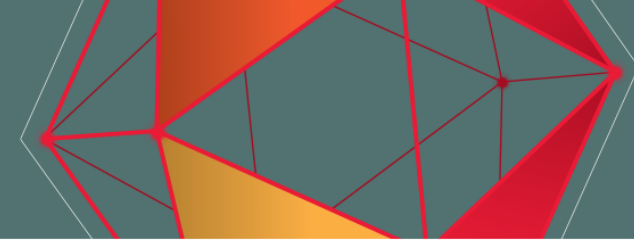


Intangible Things





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IP Basics: Why Should You Care?

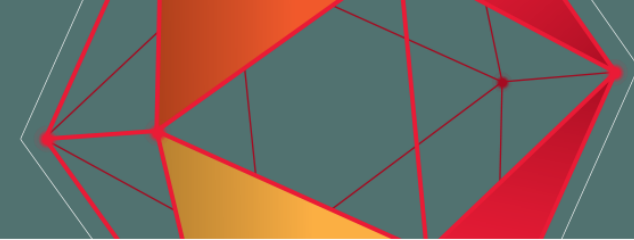
YOUR GAME IS IP

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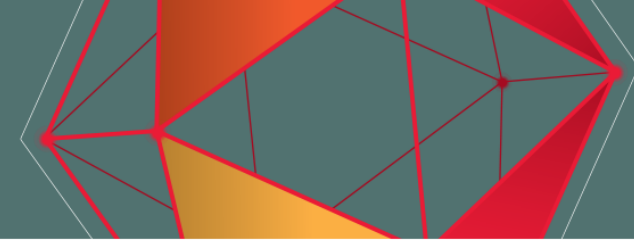


Some Examples of IP in Games

- Adaptations to Other Media (copyright)
- Animations (copyright)
- Art Assets (copyright)
- Celebrity Names/Likenesses (right of publicity)
- Characters (copyright)
- Code (copyright/trade secrets, maybe patents)
- Customer Lists (trade secrets)
- Game Names (trademark)
- IAP Pricing Strategies (trade secrets)
- Logos (copyright/trademark)
- Marketing Materials (copyright/trademark)
- Mechanics/Design (trade secrets, maybe patents)
- Merchandise (copyright/trademark)
- Music (copyright)
- Product/Brand Use (trademark)
- Settings/"Universes"(copyright)
- Story/dialogue (copyright)
- UI Design (copyright)
- Voice Acting (copyright)

So basically, everything!

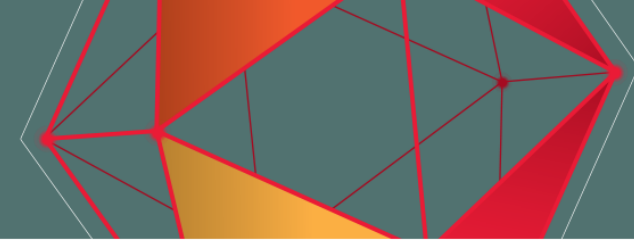




Topics Covered

- 1. Copyright**
- 2. Trademark**
3. Patents
4. Trade Secrets
5. Right of Publicity

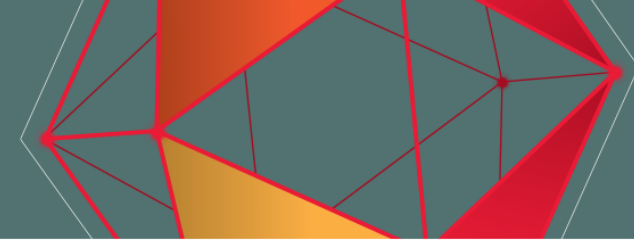




Approach For Each Type of IP

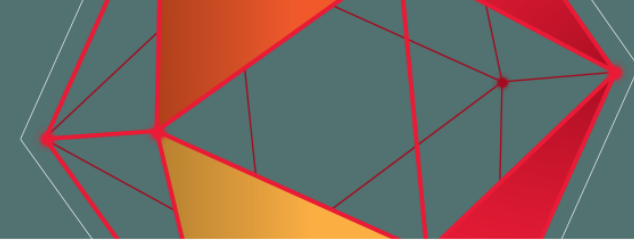
- What it is (and what it isn't)
- How you can protect it
- When and how you should enforce it
- How you can avoid infringing it





1. COPYRIGHT





Copyright: Totally OP!



- Instant ownership
- Lasts almost forever
- Covers (almost) everything
- Absolute/broad rights
- Powerful/easy enforcement (huge \$ damages if registered)

Copyright

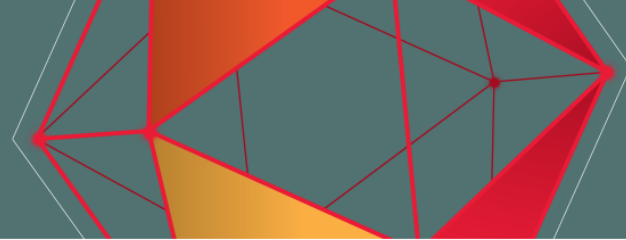
Trademark

Patents

Trade Secrets

Right of Publicity





Copyright: What is it?



Characters

```
// Dealing with collisions: let's define a generic function
// to check if two shapes are intersecting (colliding)
template<class T1, class T2> bool isIntersecting(T1& mA, T2& mB)
{
    return mA.right() >= mB.left() && mA.left() <= mB.right()
    && mA.bottom() >= mB.top() && mA.top() <= mB.bottom()
}

// Let's define a function that deals with paddle/ball collision
void testCollision(Paddle& mPaddle, Ball& mBall)
{
    // If there's no intersection, get out of the function
    if(!isIntersecting(mPaddle, mBall)) return;

    // Otherwise let's "push" the ball upwards
    mBall.velocity.y = -ballVelocity;

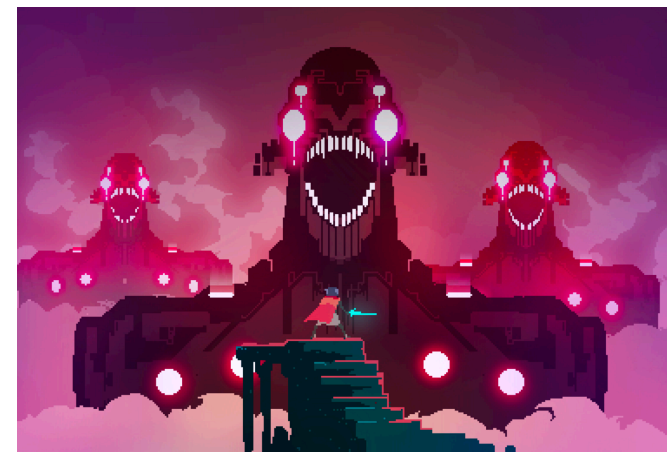
    // And let's direct it dependently on the position where the
    // paddle was hit
    if(mBall.x() < mPaddle.x()) mBall.velocity.x = -ballVelocity;
    else mBall.velocity.x = ballVelocity;
}

int main()
{
    Ball ball(windowWidth / 2, windowHeight / 2);
    Paddle paddle(windowWidth / 2, windowHeight - 50);

    RenderWindow window({windowWidth, windowHeight}, "Arkanoid -
    window.setFramerateLimit(60);

    while(true)
    {
        window.clear(Color::Black);
```

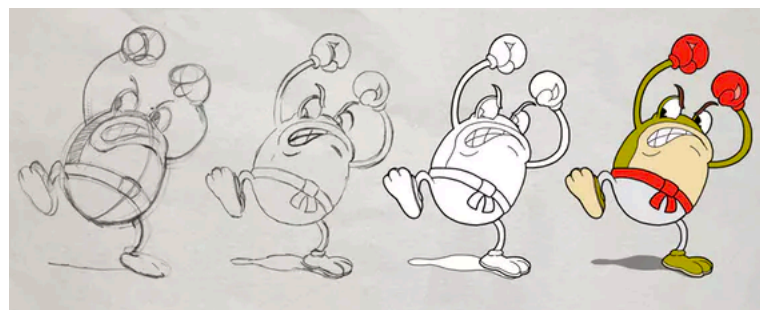
Code



Art



Music/Sounds



Animation



UI Design

Nameless One - "Perhaps. Have you another question for me?"

Ravel - "Ahhhhh, yessss. The third and last question... is *this*..." As Ravel opens her mouth to speak her final question, you are suddenly gripped with the terrible realization that this final question has murdered many others to whom it has been asked. You know what it is, and you feel it welling up within you, and you feel compelled to ask it.

1. Echo: "What can change the nature of a man?"

Writing

Copyright

Trademark

Patents

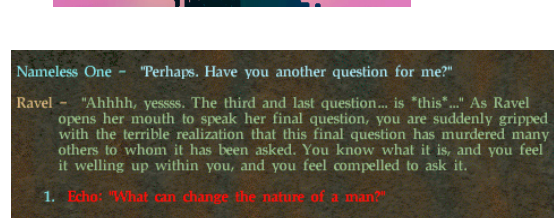
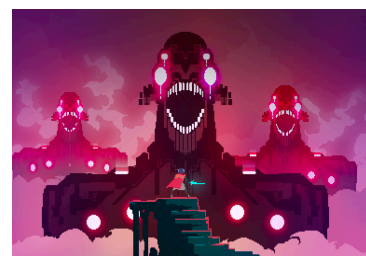
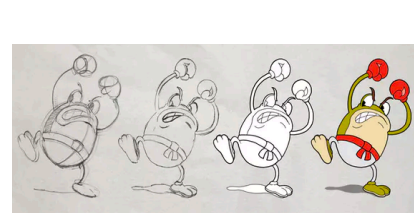
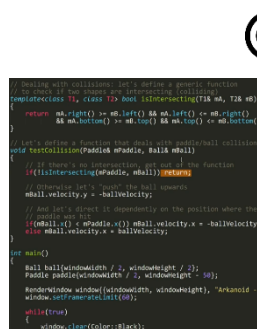
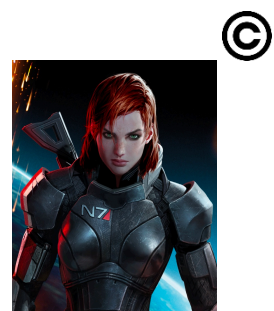
Trade Secrets

Right of Publicity





Copyright: What is it?



Complete Game

Individual Game Components

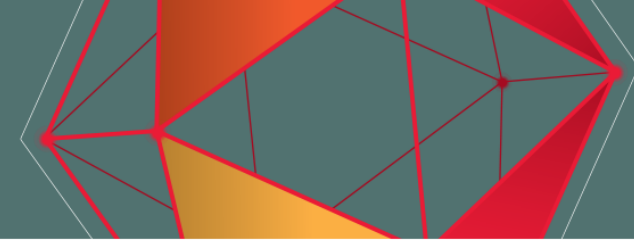
Copyright

Trademark

Patents

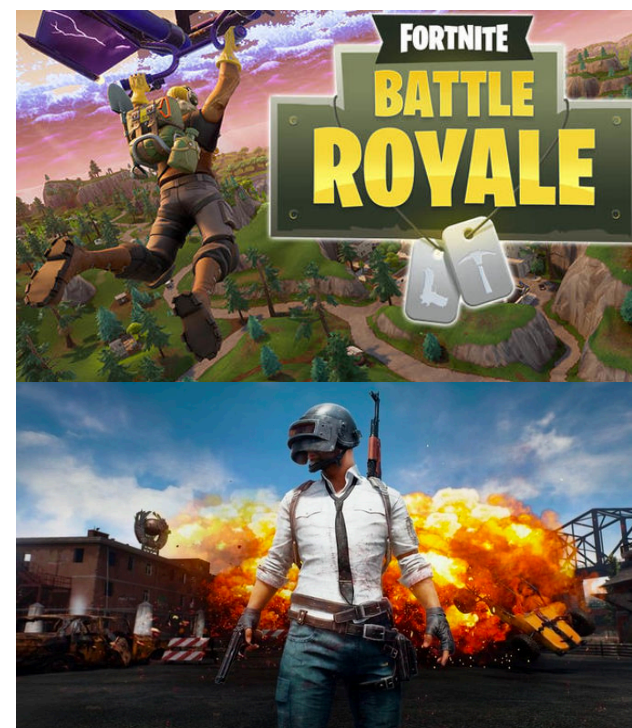
Trade Secrets

Right of Publicity



Copyright: What *Isn't* It?

Copyright does NOT protect “ideas”/game mechanics



NDAs are a good way to protect idea/mechanics not covered by copyright

Copyright

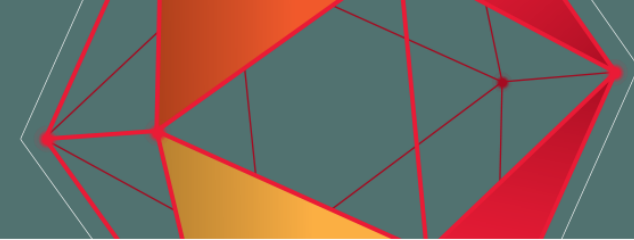
Trademark

Patents

Trade Secrets

Right of Publicity





Copyright: What Rights Do You Get?

EXCLUSIVE right to:

- Reproduce (make copies)
- Prepare **Derivative Works** (sequels, spinoffs, DLC, merchandise, adaptations)
- Distribute Copies (sell)
- Publically Perform (streaming)
- Publically Display (screenshots)

Copyright

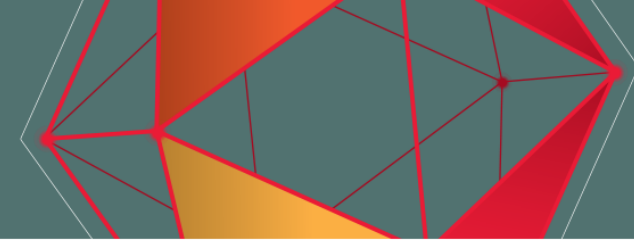
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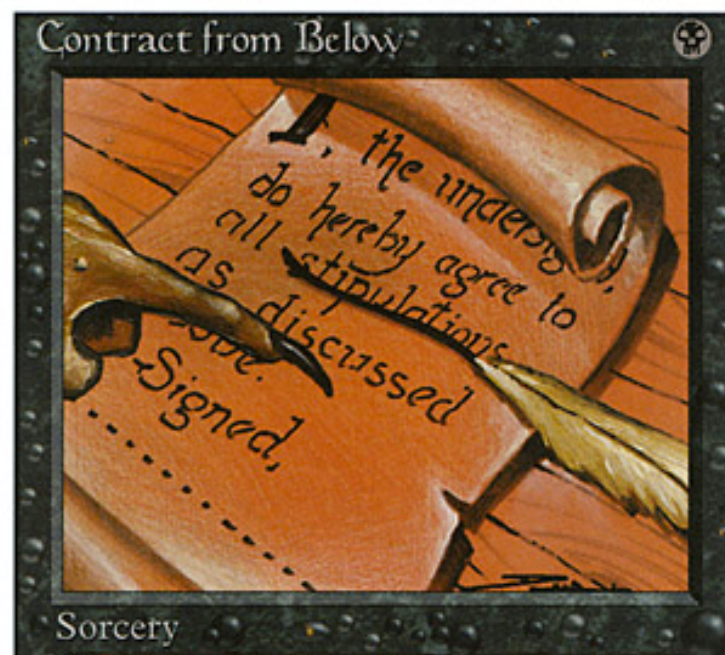
Right of Publicity





Copyright: Securing Your Rights

Basic Rule (US Copyright): You make it, you own it



CONTRACTS!

Copyright

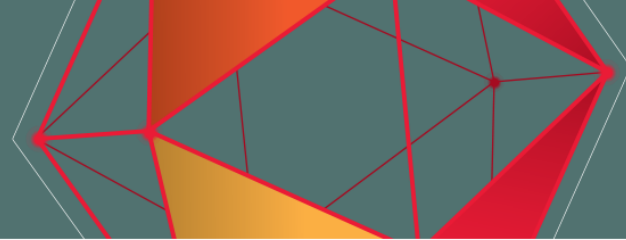
Trademark

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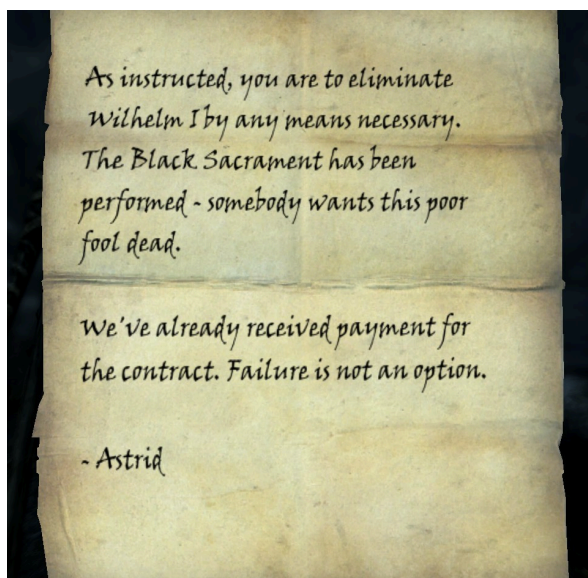
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Right of Publicity

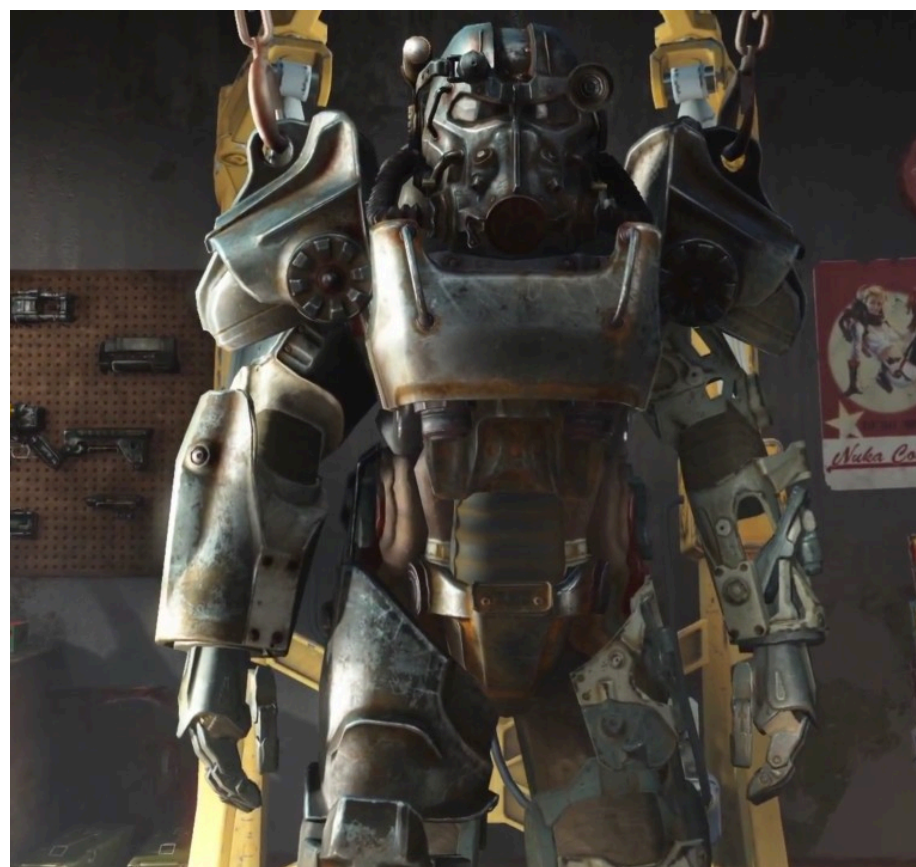
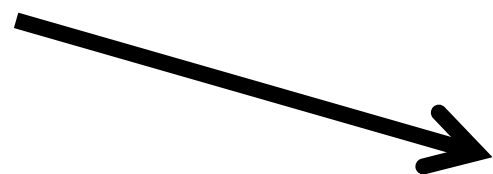




Copyright: Getting Others' Rights



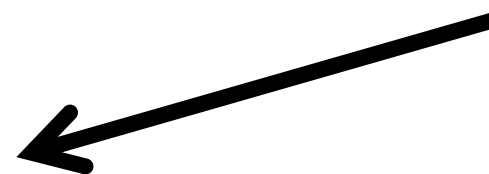
Operating Agreement/
Invention Assignment



Studio



Work for Hire/
Contractor Agreement
(Invention Assignment
for W2 Employees)



Copyright

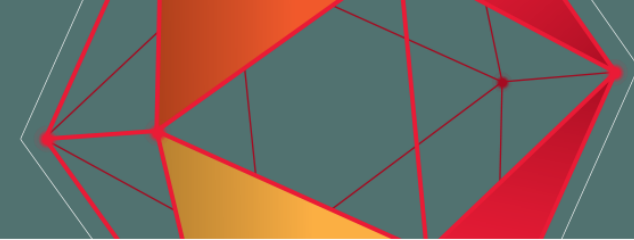
Trademark

Patents

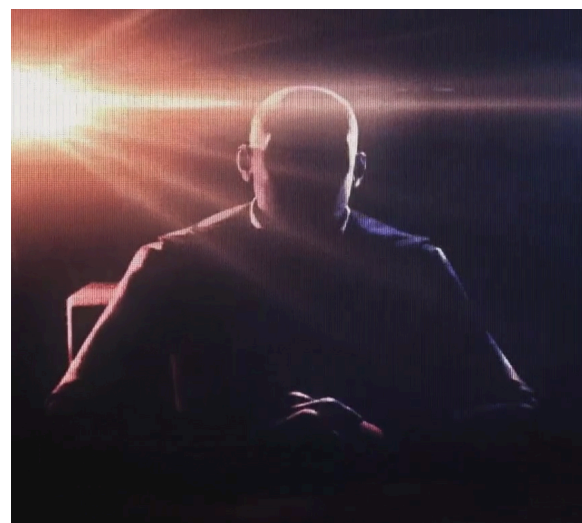
Trade Secrets

Right of Publicity

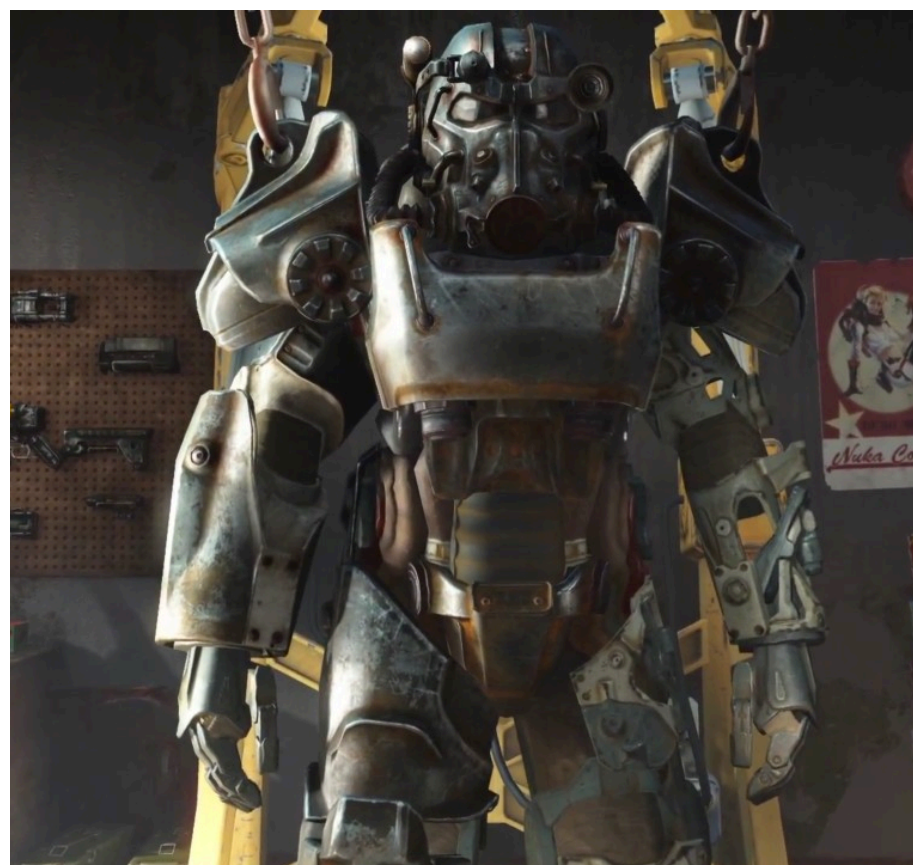
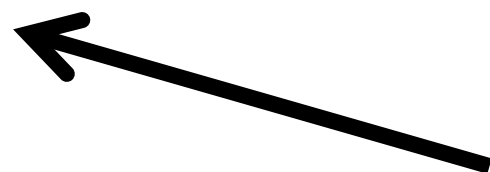




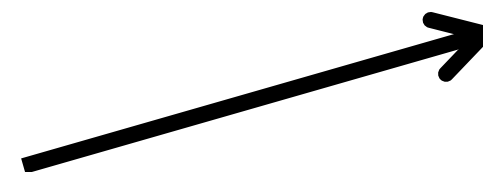
Copyright: Licensing Your Rights



Developer
Tools



Studio



Publishing Agreement



Control the settings/
terms of the license

Copyright

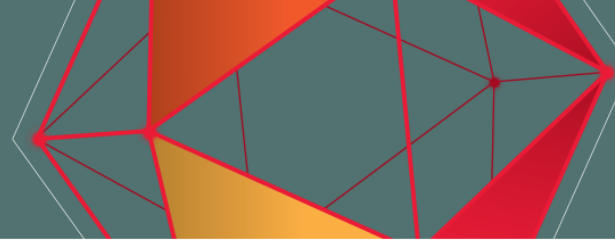
Trademark

Patents

Trade Secrets

Right of Publicity





Copyright: Enforcement – Infringement



Copied Assets



Cloning (sometimes)



Machinima



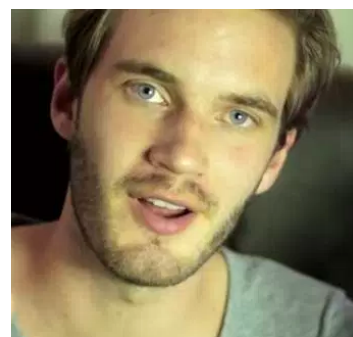
Streaming



Fan Art/Fiction



Piracy/Cracking



Let's Play

Copyright

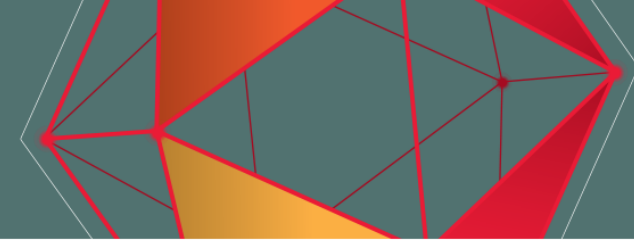
Trademark

Patents

Trade Secrets

Right of Publicity





Copyright: Enforcement – Methods

- Prevention: Register your copyright
- Work it out/offer a license
- Cease & desist letter (to infringer)
- DMCA takedown notice (to content host)
- Sue (expensive!)

Copyright

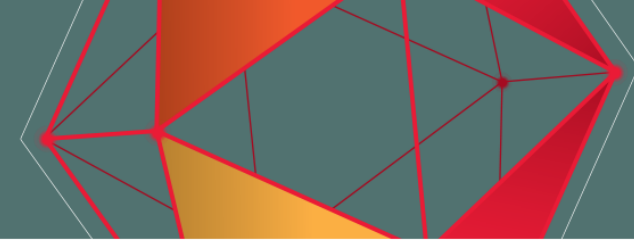
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Copyright: Avoiding Infringement

- “Exceptions” to copyright:
 - Same “idea”, mechanic, genre
 - Generic tropes (magic swords, giant shoulder pads)
 - Public domain (~Pre 1923, mythology)
 - Fair use...

Copyright

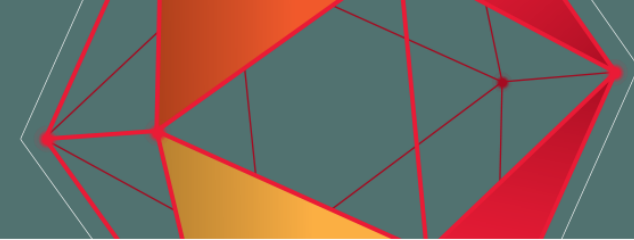
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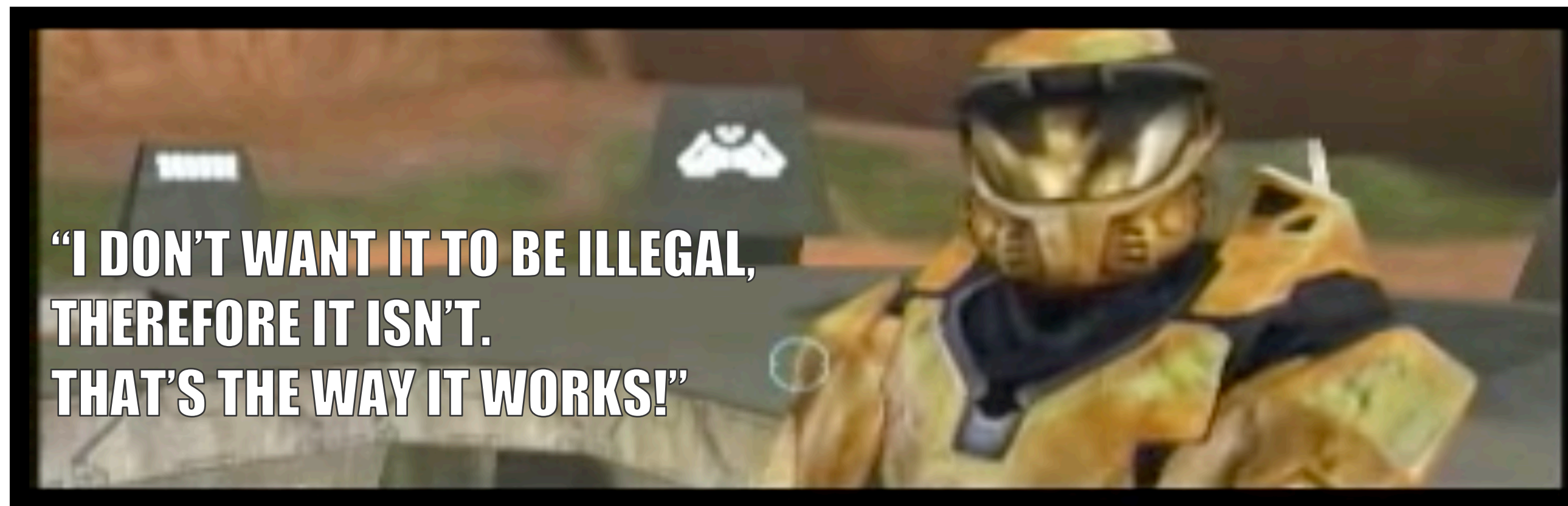
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Copyright: Fair Use

Cool \neq Fair Use



Copyright

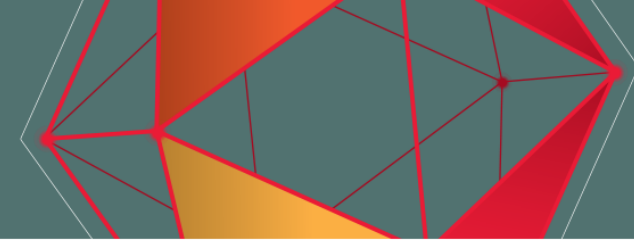
Trademark

Patents

Trade Secrets

Right of Publicity





Copyright: Fair Use Myths

- “You can use up to X seconds of...” (NO!)
- “It’s parody!” (not always fair use)
- “I bought it, I can stream it” (do you have a license?)
- “I’m not making any money” (can still be infringing)
- “XYZ didn’t get in trouble!” (owner can enforce selectively)
- “I’m a game lawyer doing a GDC talk!” ￣\ (ツ) _/￣



Copyright

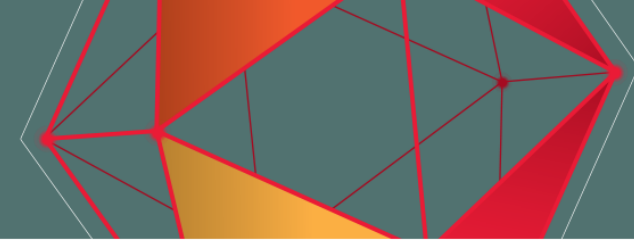
Trademark

Patents

Trade Secrets

Right of Publicity





Copyright: Takeaways

- Protects almost ALL your content
- USE CONTRACTS!
- Powerful, selective enforcement rights
- Don't use other people's stuff (damages can be huge)

Copyright

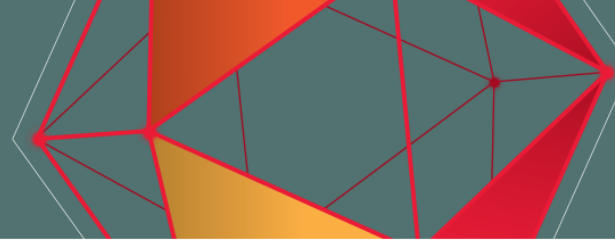
Trademark

Patents

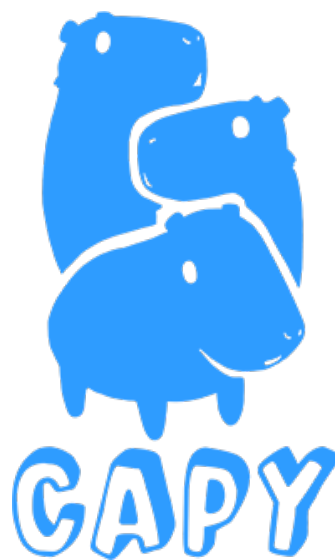
Trade Secrets

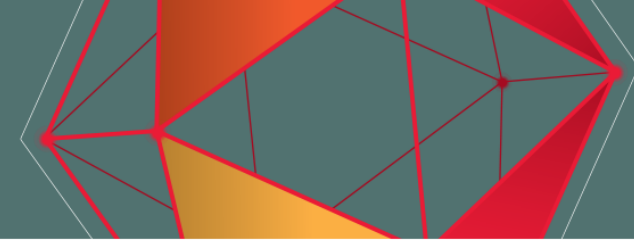
Right of Publicity





2. TRADEMARK





Trademark: What Is It?

Electronic Arts®



Names



Logos

IT'S IN THE
GAME

Slogans

Copyright

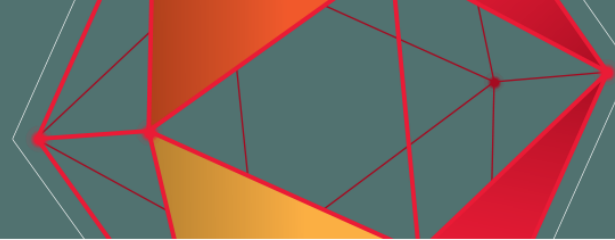
Trademark

Patents

Trade Secrets

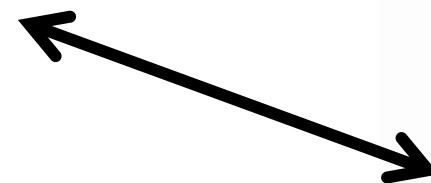
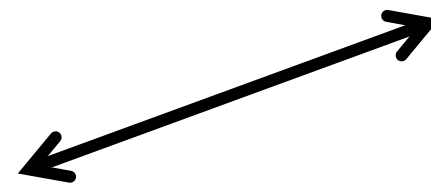
Right of Publicity





Trademark: What Is It?

BUNGIE®



Copyright

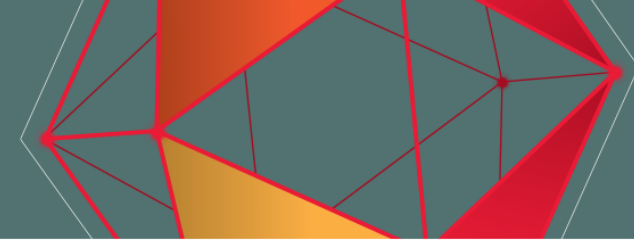
Trademark

Patents

Trade Secrets

Right of Publicity





Trademark: What Rights Do You Get?

The right to stop others using your mark or something similar for THE SAME GOODS (video games)

Copyright

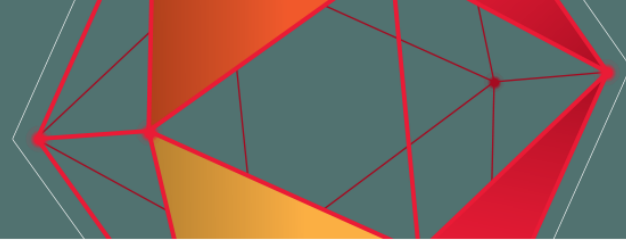
Trademark

Patents

Trade Secrets

Right of Publicity





Trademark: Why Care?



Oops...

Copyright

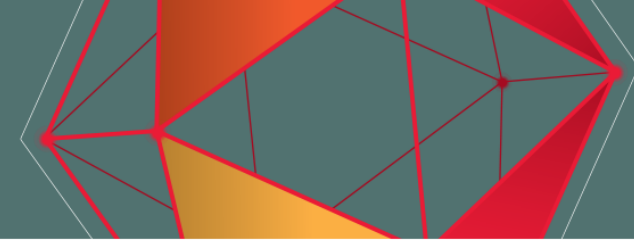
Trademark

Patents

Trade Secrets

Right of Publicity





Trademark: Priority

First come, first serve



Copyright

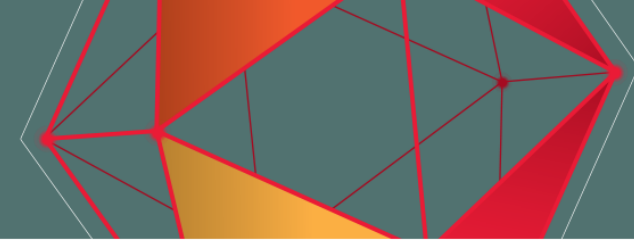
Trademark

Patents

Trade Secrets

Right of Publicity





Trademark: What Gives You Rights?

NO TRADEMARK RIGHTS
UNTIL YOU SELL YOUR FINISHED GAME

Copyright

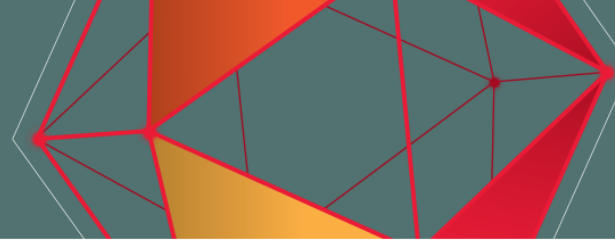
Trademark

Patents

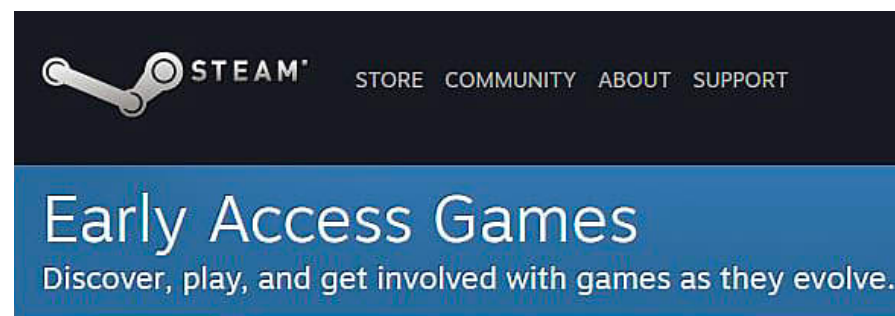
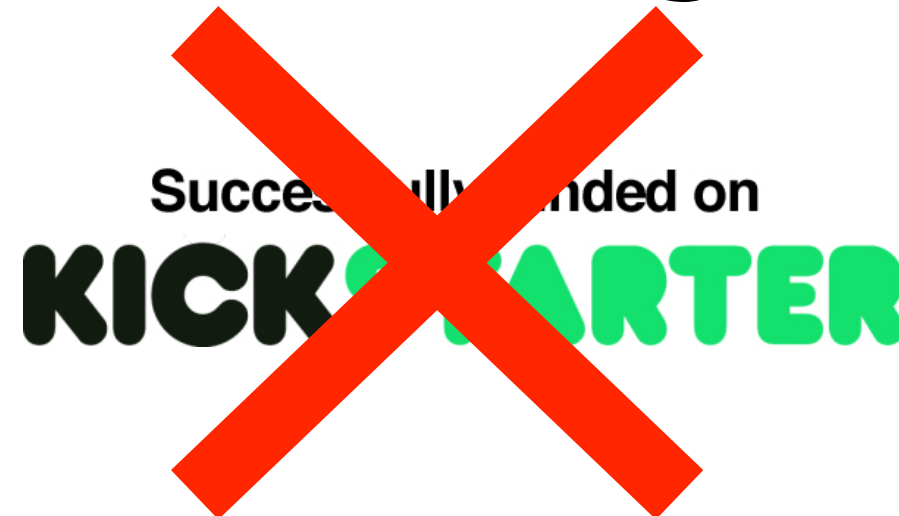
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Trademark: What *Doesn't* Give You Rights?



MAYBE
(don't rely on it)

Copyright

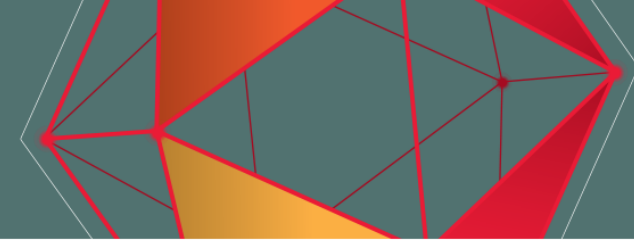
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Patents

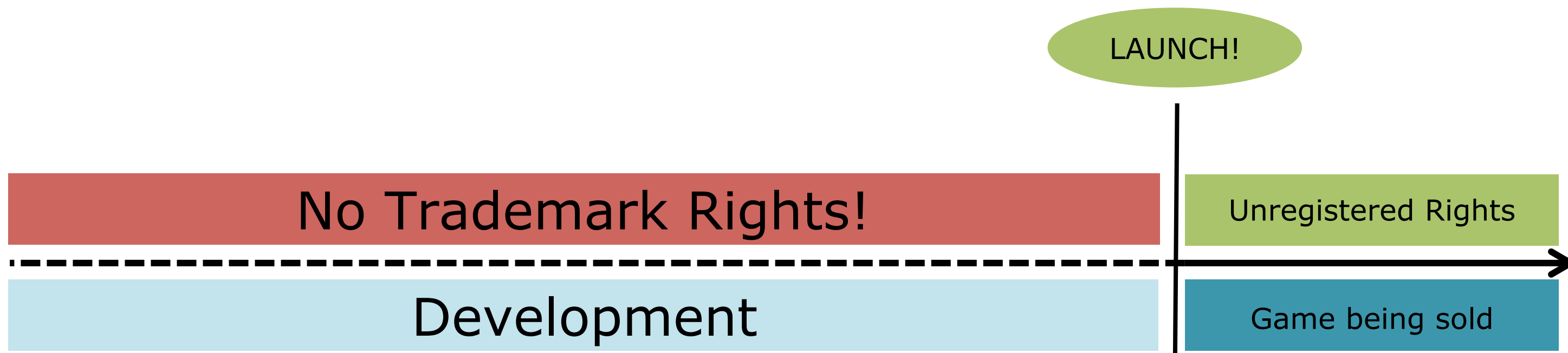
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Trademark: Why Register?



Copyright

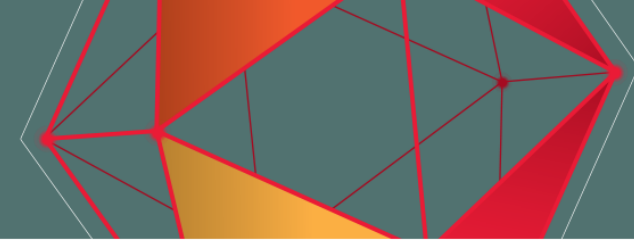
Trademark

Patents

Trade Secrets

Right of Publicity





Trademark: Why Register?

UNITED STATES
PATENT AND TRADEMARK OFFICE



File Registration

No TM Rights

Trademark Rights Are Reserved

LAUNCH!



Registered Rights!

Development

Game being sold

Copyright

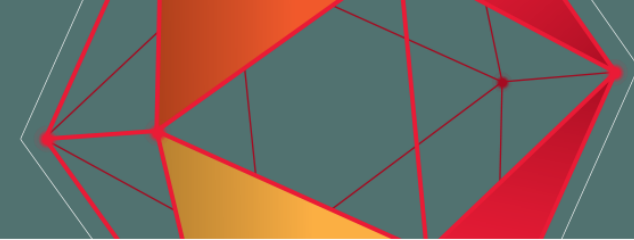
Trademark

Patents

Trade Secrets

Right of Publicity





Trademark: Filing a Registration



- Call “dibs” up to 3 years
- Still not final until you sell
- ~\$1,500
- Attorney recommended
- Reserves your mark BEFORE selling your game
- Upgrades existing rights
- Use the cool ® symbol

Copyright

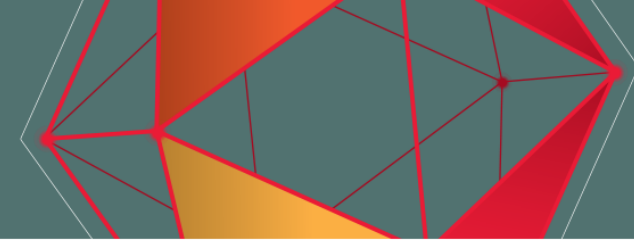
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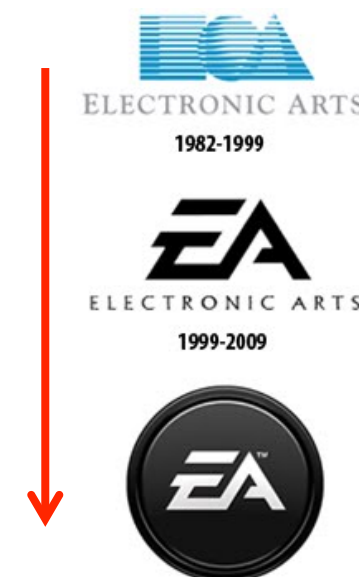
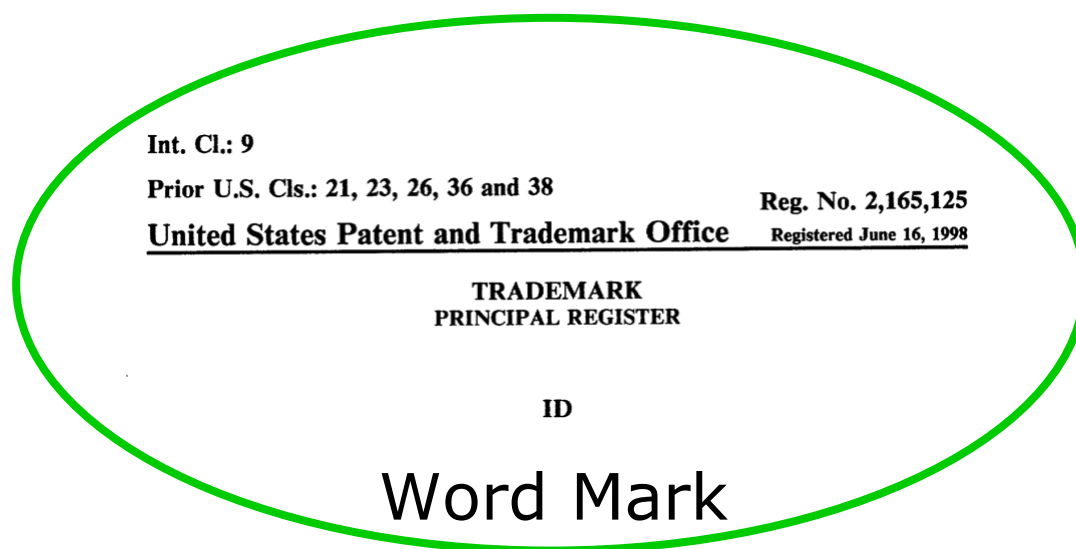
Trade Secrets

Right of Publicity





Trademark: Choices During Registration



Copyright

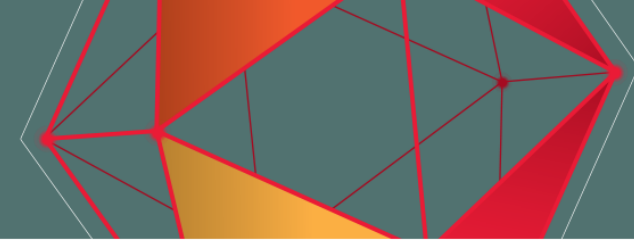
Trademark

Patents

Trade Secrets

Right of Publicity





Trademark: Protection – Bare Minimum

Let me

That for you



TM



Ideally, register before you invest time/money

Copyright

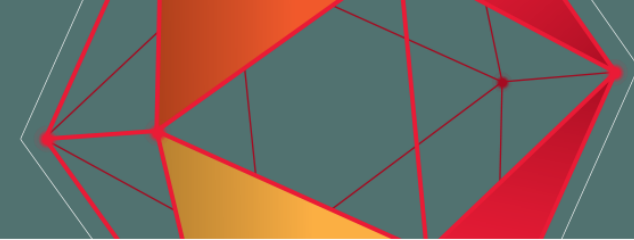
Trademark

Patents

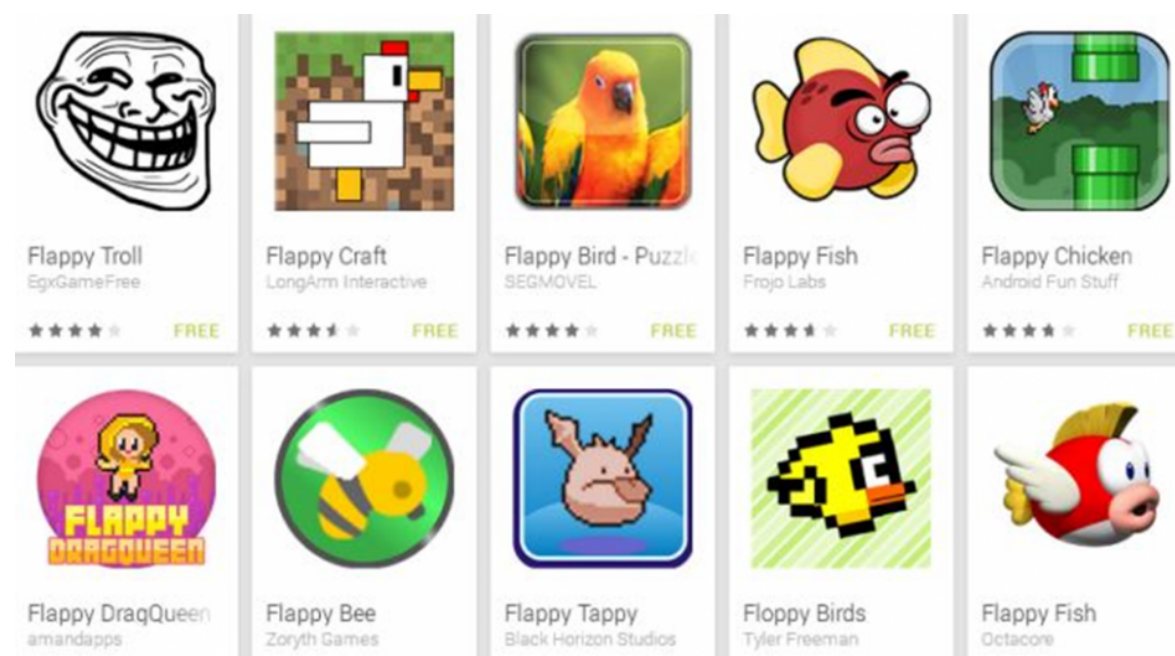
Trade Secrets

Right of Publicity

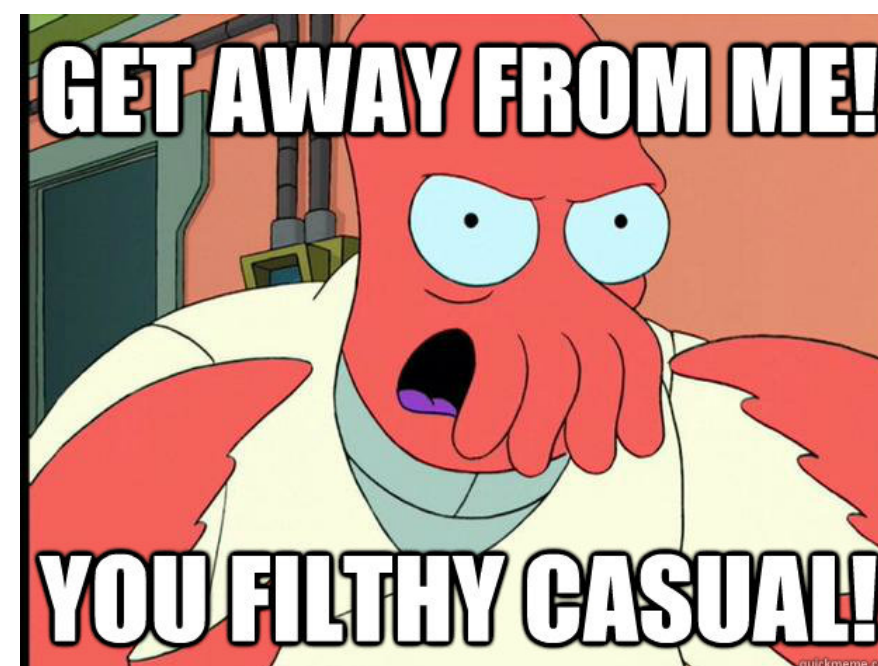




Trademark: Enforcement – Infringement



Confusingly similar MARKS
for similar GOODS



Trademark Law thinks
all genres are the same

Copyright

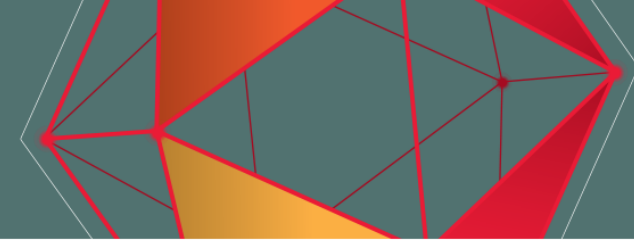
Trademark

Patents

Trade Secrets

Right of Publicity





Trademark: Enforcement – Methods

- Prevention:
 - Register (puts people on notice)
- Enforcement:
 - Control use w/ license
 - Cease & desist letter (to infringer)
 - Takedown requests (to content host)
 - Sue (expensive)



You can enforce registered
OR unregistered TM rights

Copyright

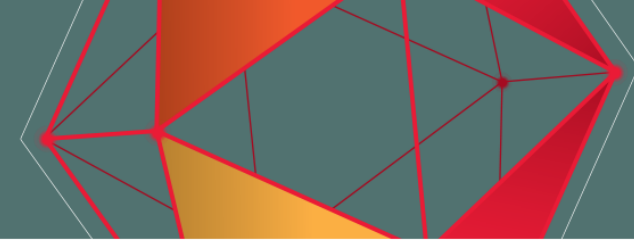
Trademark

Patents

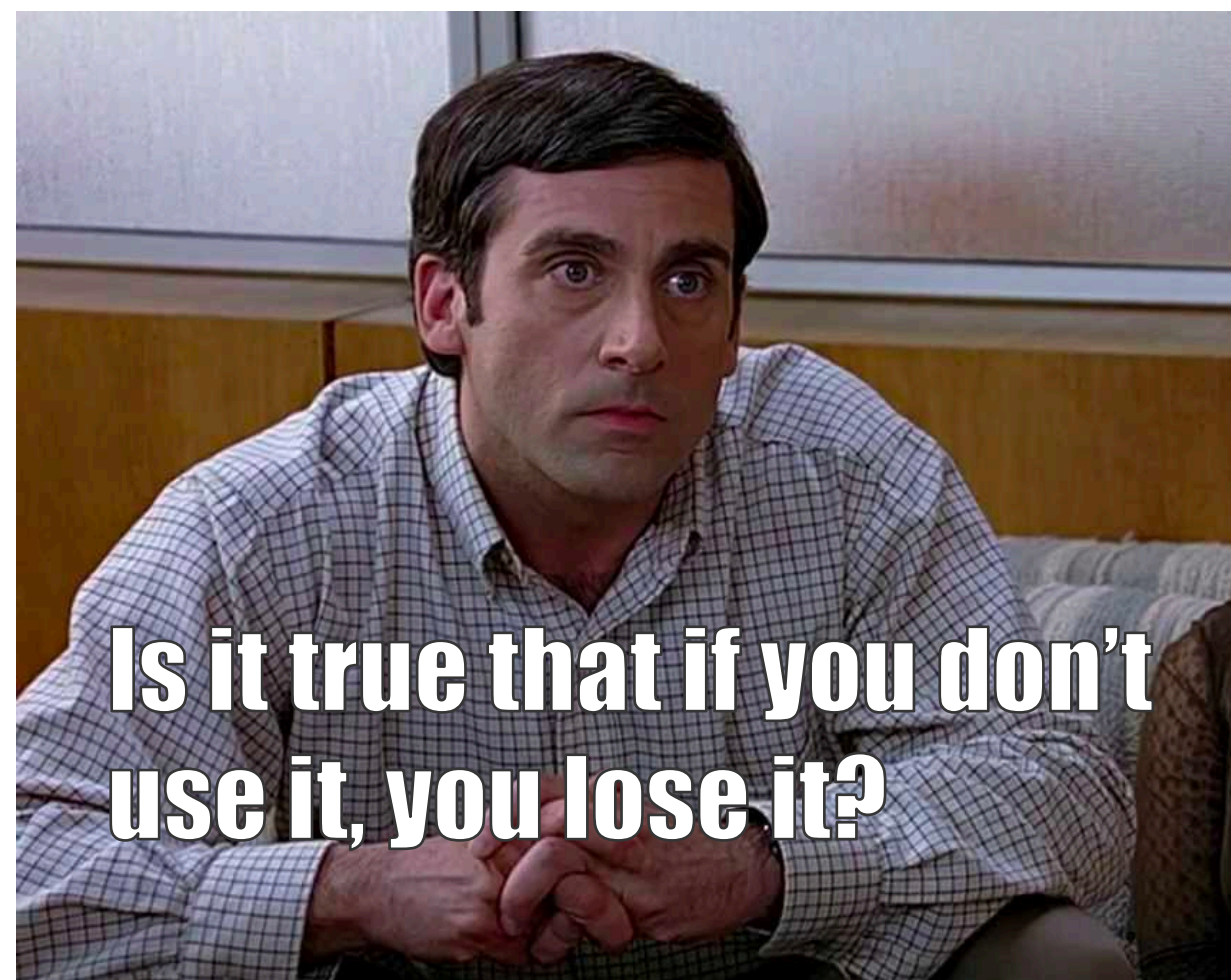
Trade Secrets

Right of Publicity





Trademark: Enforcement – Diligence



Copyright

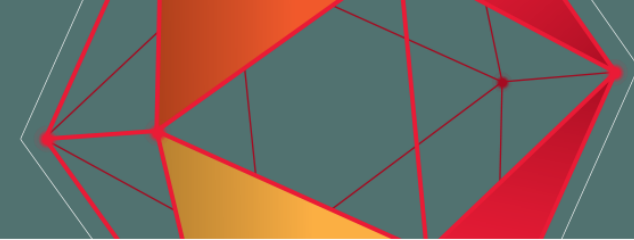
Trademark

Patents

Trade Secrets

Right of Publicity





Trademark: Avoiding Infringement

- Google / USPTO search (gut check)
- Get permission!
- Nominative fair use (comparative advertising)
- Clearly disclaim endorsement

Copyright

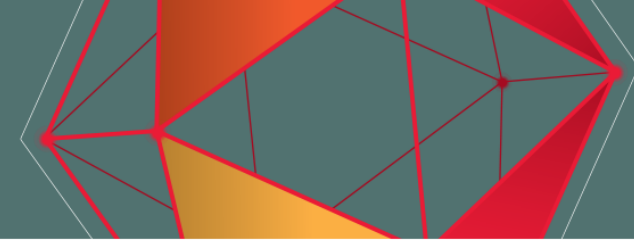
Trademark

Patents

Trade Secrets

Right of Publicity





Trademark: Takeaways

- Plan/search ahead
- NO rights until you sell your game
- Register ASAP
- Enforce!

Copyright

Trademark

Patents

Trade Secrets

Right of Publicity





3. PATENTS



US005662332A

United States Patent [19]
Garfield

[11] **Patent Number:** **5,662,332**

[45] **Date of Patent:** Sep. 2, 1997

[54] **TRADING CARD GAME METHOD OF PLAY**

[75] Inventor: **Richard Channing Garfield**, Portland,
Oreg.

[73] Assignee: **Wizards of the Coast, Inc.**, Renton, Wash.

[21] Appl. No.: 544,306

[22] Filed: Oct. 17, 1995

Related U.S. Application Data

[62] Division of Ser. No. 263,447, Jun. 22, 1994.

[51] **Int. Cl.⁶** **A63F 1/00**

[51]	Int. Cl.	A63F 1/00
[52]	U.S. Cl.	273/308

[58] **Field of Search** 273/244, 245,
273/246, 247, 259, 277, 298, 292, 308

References Cited

U.S. PATENT DOCUMENTS

4,486,022	12/1984	Dixon	273/244	X
5,071,136	12/1991	Lott	273/298	X
5,145,173	9/1992	Crowder	273/298	
5,201,525	4/1993	Castro	273/298	X

FOREIGN PATENT DOCUMENTS

497223 8/1992 European Pat. Off. 273/298

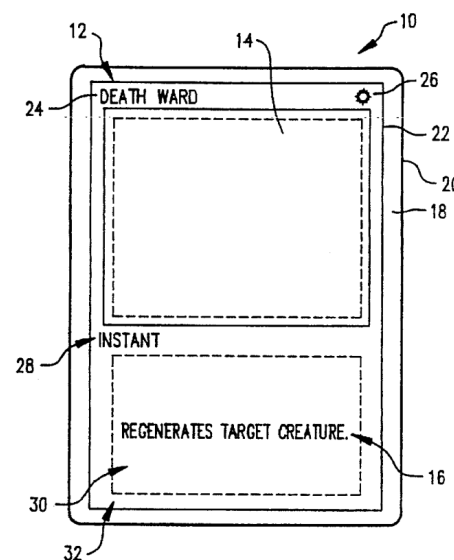
Primary Examiner—William E. Stoll

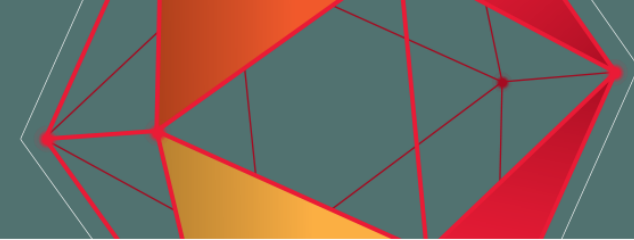
Attorney, Agent, or Firm—Graham & James LLP/Riddell Williams P.S.

[57] **ABSTRACT**

Provided herein is a novel method of game play and game components that in one embodiment are in the form of trading cards (10, 12, 40, 42, 44, 48, 54, 60, 64). However, the game components may take other forms, such as a board game, or the game may be played in different media, such as electronic games, video games, computer games, and interactive network. In one version, the game components comprise energy or mana cards 40 and command or spell cards (10, 12, 42, 44, 48, 54, 60, 64) having commands or spells associated therewith that utilize the energy to enable a player to attack, defend and modify the effect of other mana cards, spell cards, and the fundamental rules of play. The goal of the game is to reduce the life points of other players to a level below one. In this game of strategy and chance, players construct their own library of cards, preferably from trading cards, and play their library or deck of cards against the deck of cards of an opposing player. Cards may be obtained from retail outlets, trading with other players or collectors, and winning cards at games and tournaments.

6 Claims, 6 Drawing Sheets





Patents: What are they?

- Novel, useful, non-obvious
- ~\$15,000-\$25,000 fees + legal
- 2-3 years application process
- 20 years protection, hard to enforce

Copyright

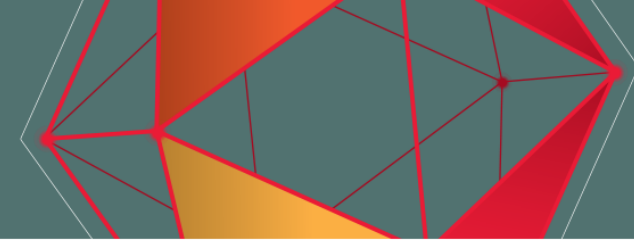
Trademark

Patents

Trade Secrets

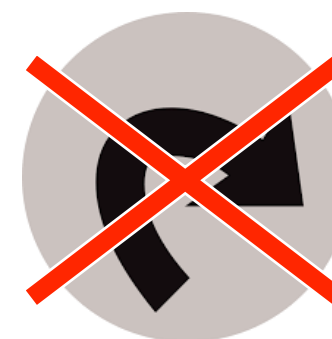
Right of Publicity





Patents: In the Game Industry

- Business Methods
- Software
- Game rules/mechanics
- Novel hardware/interfaces



Revised 4 Life!



Copyright

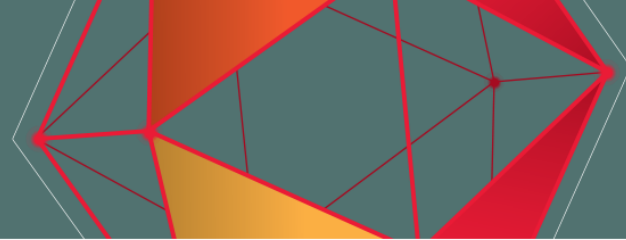
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Patents

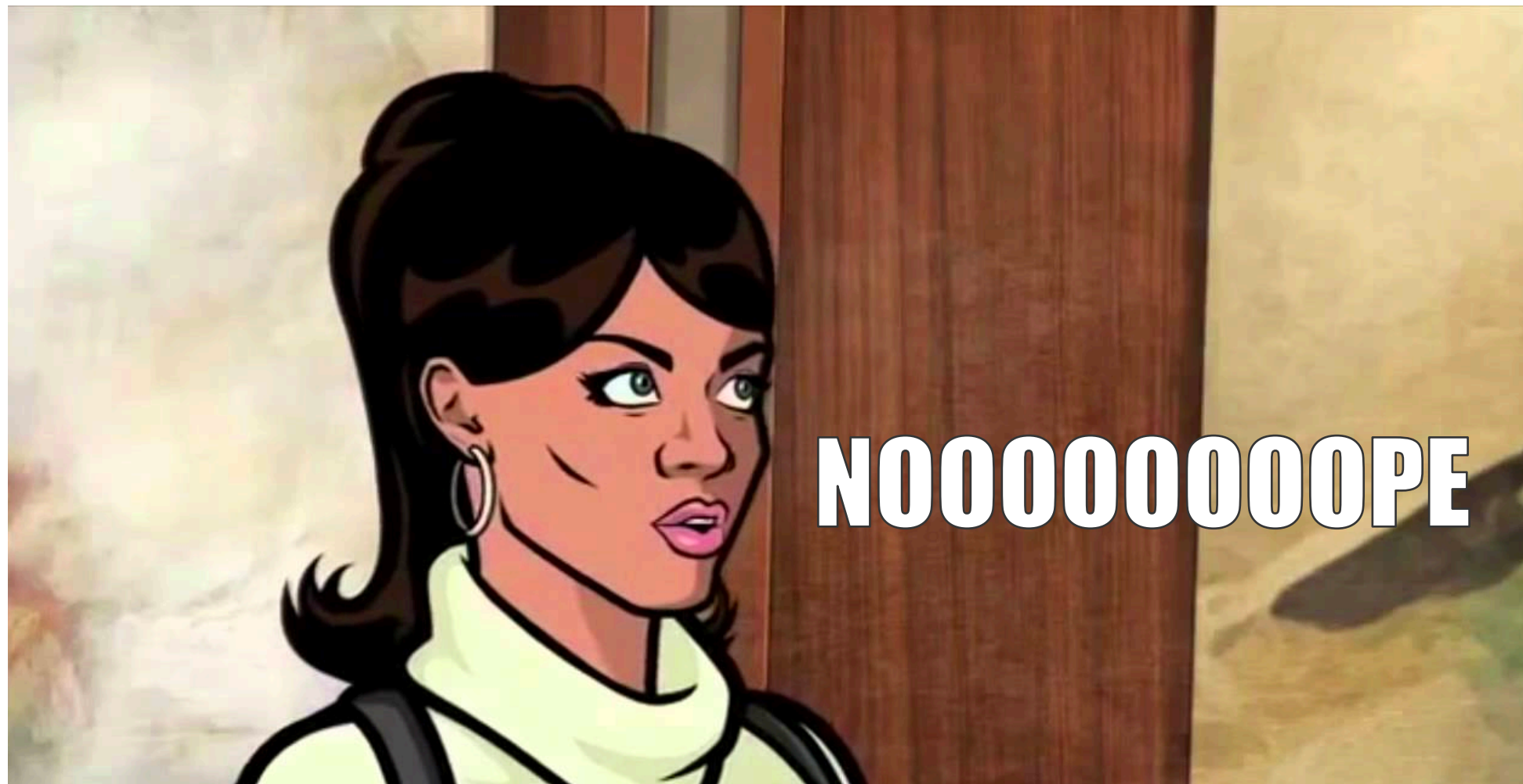
Trade Secrets

Right of Publicity





Patents: Worth it for Indies?



Copyright

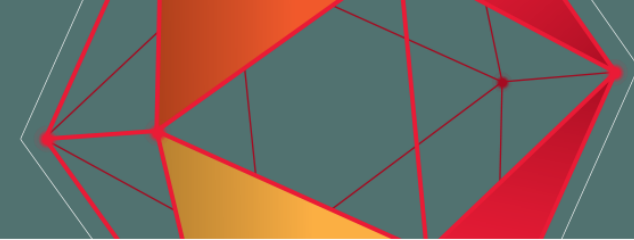
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Patents

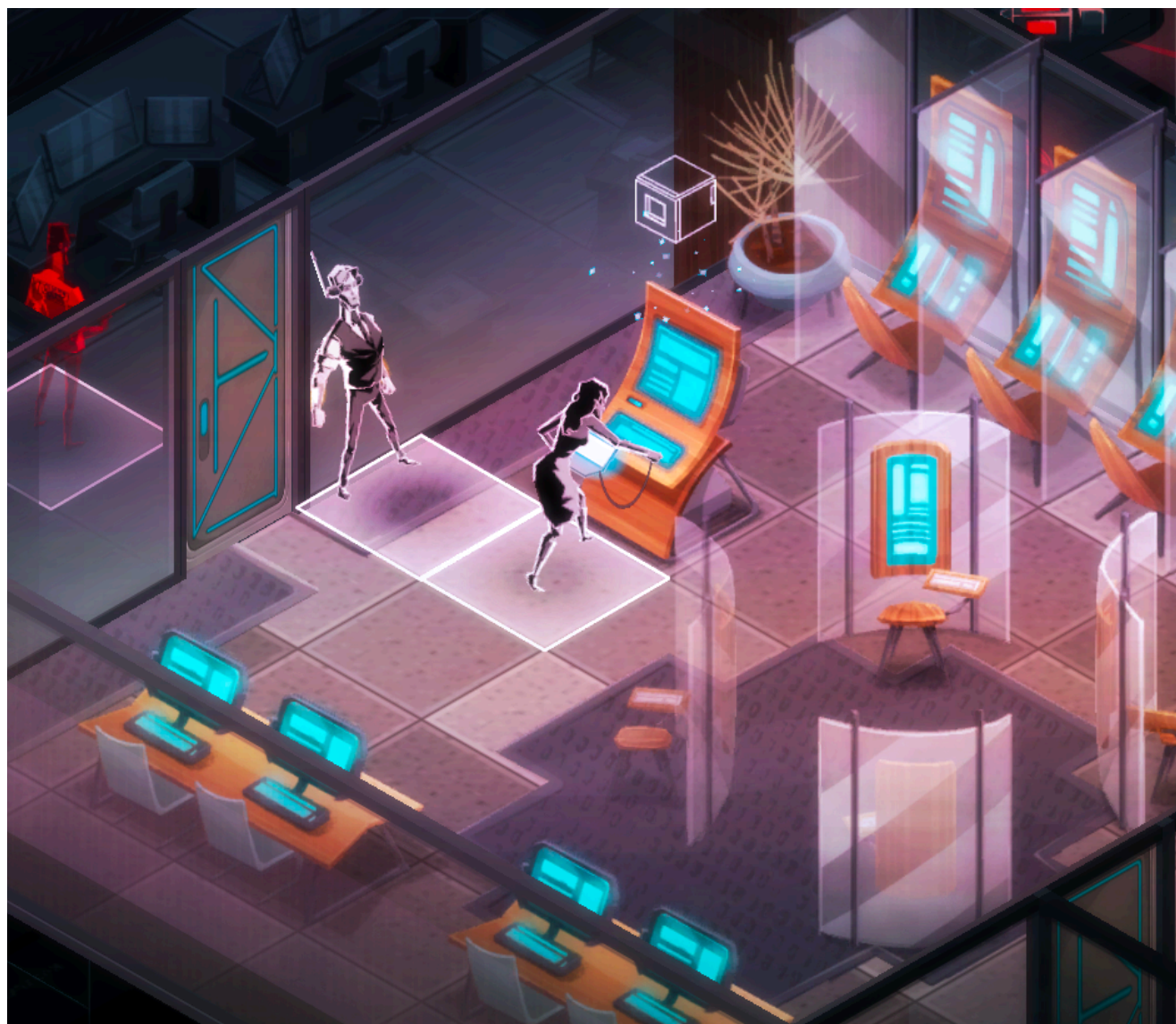
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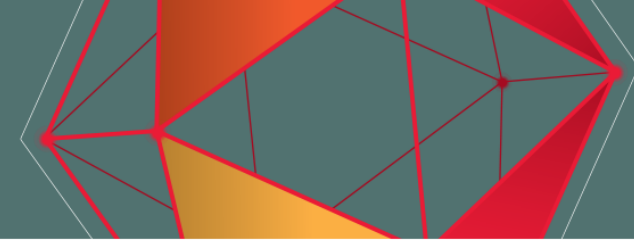
Right of Publicity





4. TRADE SECRETS





Trade Secrets: What Are They?

Any information that:

- You keep secret, AND
- Gives you business advantage BECAUSE it is secret

Examples:

- Customer/mailing lists
- Game design docs
- Marketing strategy
- IAP pricing models



Copyright

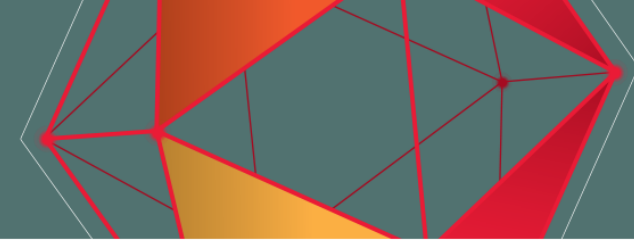
Trademark

Patents

Trade Secrets

Right of Publicity





Trade Secrets: Protection



Use “reasonable efforts” to keep info secret

- Limit access to “need to know”
- Technical security (security/encryption)
- Contracts: NDAs/Confidentiality Agreements

Copyright

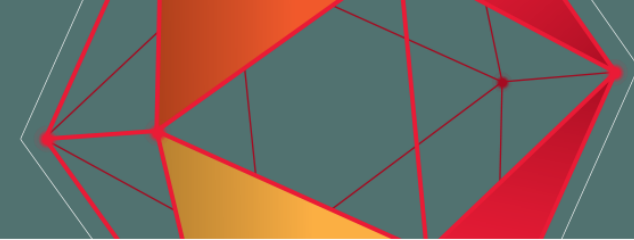
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Patents

Trade Secrets

Right of Publicity

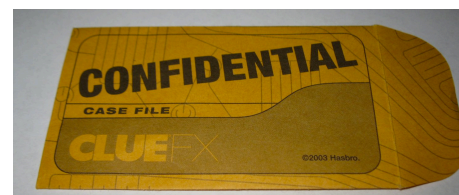




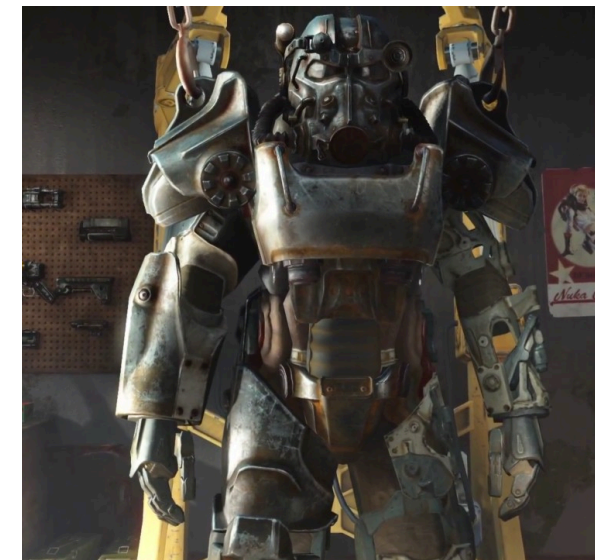
Trade Secrets: Don't get infected!



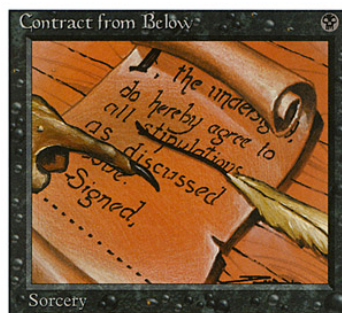
New Contractor/Employee



Confidential info
from previous job



Your Studio



Clause requiring
nondisclosure of 3rd
party trade secrets

Copyright

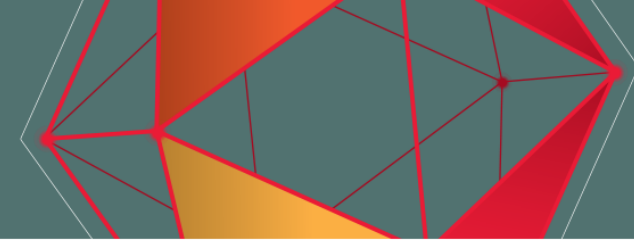
Trademark

Patents

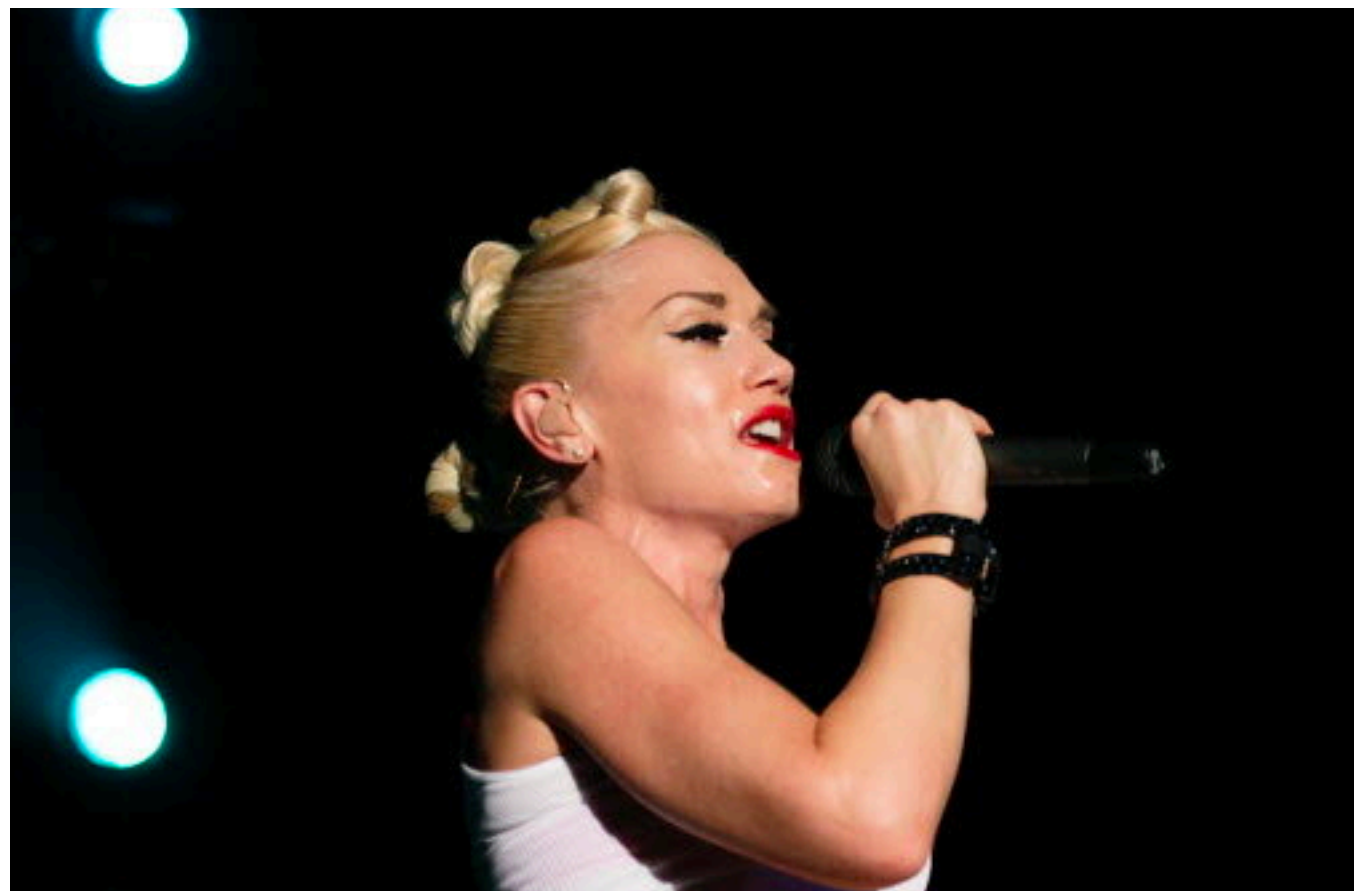
Trade Secrets

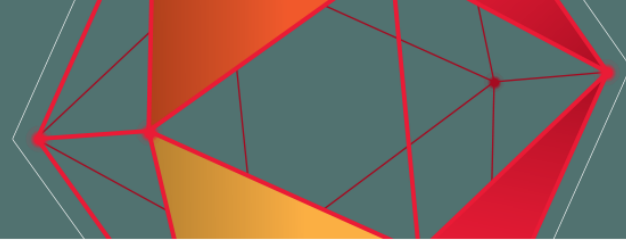
Right of Publicity





5. RIGHT OF PUBLICITY





Right of Publicity: What is it?



Copyright

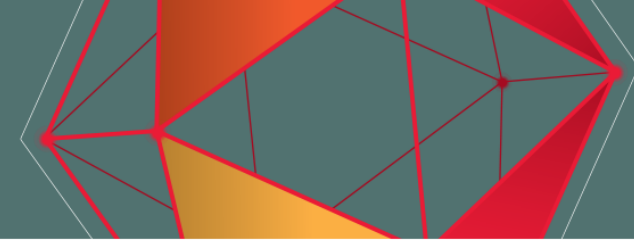
Trademark

Patents

Trade Secrets

Right of Publicity





Right of Publicity: Avoiding Infringement

- Get permission!
- Real current events/historical purpose
- Make the “parody” different enough
 - Never admit that it is a reference to the person!
- Maybe just stick to original characters

Copyright

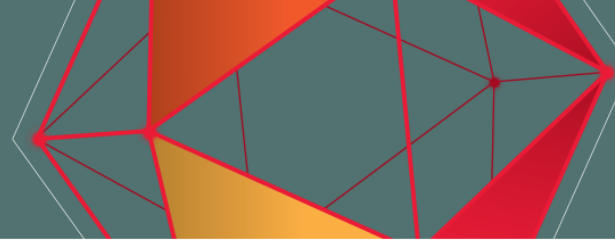
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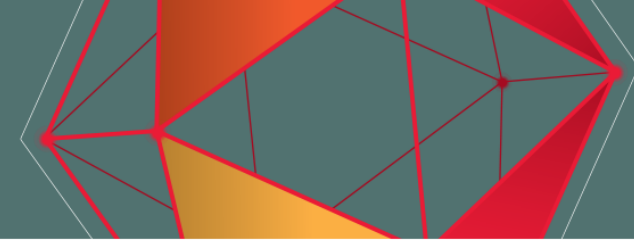
Right of Publicity





Scared?

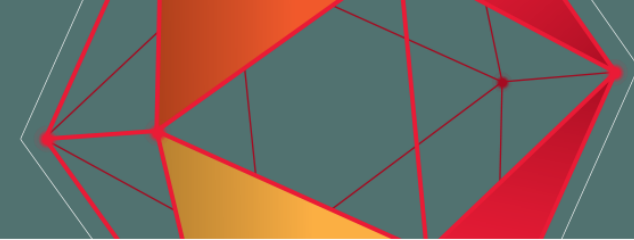




Final Takeaways

- Your product is IP – powerful and complex
- Protect with contracts and registration
- Rights don't enforce themselves – be vigilant and diligent

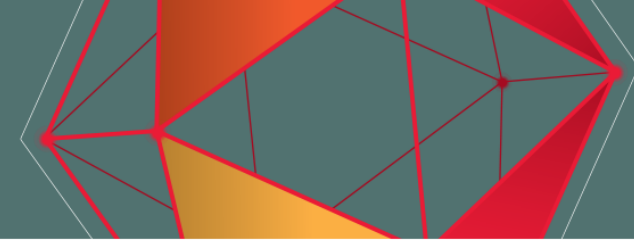




Finn Reid

Paralegal, Chris Reid Law





Super Oversimplified Summary

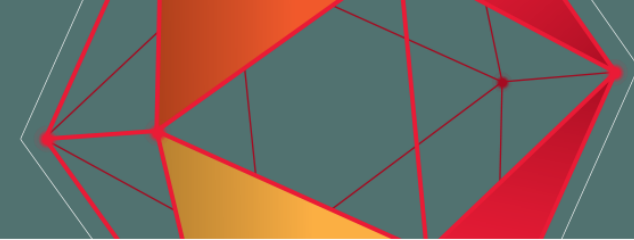
IP as used in Game Development

	Copyright	Trademark	Patents	Trade Secrets	Right of Publicity*
Length	95/120 Yrs	Immortal	20 Yrs	Immortal	Varies by state
Cost	Low	Medium	High	Medium	Free (for person)
Ease of obtaining	Easy	Medium	Tough	Medium	Easy
Use in Games	Often	Often	Rare	Medium	Rare (for indies)
Registration?	Should	Should	Must	No	No
Coverage	Large	Narrow	Medium/Narrow	Large	Narrow

*Right is owned by the public figure, NOT the Developer

Thanks to Greg Boyd for the chart!





Questions?



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Please fill out your Session Evaluation after the talk!

