

INTELLENET NEWS

September 2006

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Carino's Corner

During September, I attended both the mid-year NCISS Board and the ASIS Investigations Council meetings. The key items at each were the latest HP pretext scandal and the possible implications on the future of the PI business in the US.

As discussions unfolded, it became patently clear that cell phone pretexting would be supported by members of both these groups but that efforts had to be made to ensure that all pretexting not be made illegal. As of this writing it appears that legislation will only outlaw telephone pretexting, further widening the prohibition of pretext as a tool from the GLB legislated Act making it illegal to pretext banks and financial institutions. A total ban would eliminate such as undercover operations, product diversion and counterfeiting and virtually all other "sting" type operations.

Estimates range as high as 60,000 PIs in the US with perhaps about 30,000 actively pursuing PI work as a career. Probably only about 20 percent of these belong to Associations. That leaves over 20,000 PIs who have no idea what the laws of the land are and, therefore are susceptible to either inadvertently or intentionally breaking laws. Such

actions put us all in jeopardy. Further adversely impacting on PIs are all those "in-house" investigations and security personnel many of whom also do not belong to Associations which routinely keep their members abreast of pending legislation.

There is strength in numbers and I encourage all to get involved in their state associations and if not a member of NCISS to consider joining. As one of the leading Associations, Intellenet members need not only to be productive in deeds demonstrating professionalism and in exhibiting strong ethics in the conduct of investigations but to participate in the training and education of all PIs nationwide and worldwide so the professional can enhance its professional reputation and image.

It also would help that anytime you interface with corporate security and investigative personnel to include these with law firms and insurance companies you discuss legislative bills pending and passed.

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Know Your Fellow Members



Kitty Hailey

Kitty Hailey Investigations
Philadelphia, Pennsylvania

Katherine "Kitty" Hailey, an internationally renowned professional investigator, author, speaker and educator, has been named the 2004 recipient of the "William O'Neill Investigator of the Year Award" by the New Jersey Licensed Private Investigators Association. (NJLPPIA) In addition to editing the only monthly investigative association newsletter, Kitty served as the NJLPPIA's Legislative Chair in a year where the very foundation of the profession was, and continues to be, challenged in the state legislature.

In 2001, Kitty's thirty-plus years of dedication and contribution to the investigative profession was honored by the presentation of the prestigious

"Julius 'Buddy' Bombet Lifetime Achievement Award".

Her early career involved the roles of chief investigator, manager, and educator in a large New Jersey-based agency specializing in family law and personal injury cases. Since then she has expanded her areas of concentration to include multi-plaintiff litigation, malpractice, criminal defense investigations, and wrongful conviction re-investigations.

Kitty's client base is primarily in the greater Philadelphia area, but attorneys and investigators worldwide have benefited from her expertise, guidance and instruction. She was among the first female investigators to be awarded the Certified Legal Investigator (CLI) and Certified Fraud Examiner (CFE) designations.

She is a frequent contributor to state, national and international investigative journals, magazines and newsletters. She has been the recipient of numerous writing awards, including the National Association of Legal Investigators, Inc.'s (NALI) 2002 Editor/Publisher Award. In prior years she has received awards from NALI, the Texas Association of Licensed Investigators (TALI) and the Indiana Society of Professional Investigators (INSPI).

With the 2002 publication of the profession's first book on ethics, *Code of Professional Conduct: Standards and Ethics for the Investigative Profession*, Kitty quickly became recognized as the nation's leading investigative ethicist. Her column, "*A Question of Ethics*" premiered as an exclusive feature of Cluesonline-the original online newsletter for professional investigators, in February 2003. She has been a featured speaker at state, national and international investigative conferences encouraging ethical practices.

Also, in 2002, she published, *The Professional Investigator*, a compilation of her articles, essays and forms.

Additionally, she is a contributing author to three of the profession's most respected investigative textbooks, all published by Lawyers and Judges

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Publishing Company: *Advanced Forensic Civil Investigations, Advanced Forensic Criminal Defense Investigations, and Corporate Investigations.*

Trademark

From Wikipedia, the free encyclopedia

A **trademark** or **trade mark**^[1] is a distinctive sign of some kind which is used by a business to uniquely identify itself and its products and services to consumers, and to distinguish the business and its products or services from those of other businesses. A trademark is a type of industrial property which is distinct from other forms of intellectual property.

Conventionally, a trademark comprises a name, word, phrase, logo, symbol, design, image, or a combination of these elements. There is also a range of non-conventional trademarks comprising marks which do not fall into these standard categories.

The term *trademark* is also used informally to refer to any distinguishing attribute by which an individual is readily identified, particularly the well known characteristics of celebrities. Such trademarks can be a style of haircut (Elvis Presley's distinctive ducktail), articles of clothing or accessories (Liberace's flamboyant costumes and jewelry or Elton John's oversized sunglasses), facial hair (Groucho Marx's mustache), or even breast size (Dolly Parton and Pamela Anderson).

Fundamental concepts

The essential function of a trademark is to exclusively identify the commercial source or origin of products or services, such that a trademark, properly called, *indicates source* or serves as a *badge of origin*. The use of a trademark in this way is known as *trademark use*, and a trademark owner seeks to *enforce* its rights or interests in a trademark by preventing unauthorized trademark use.

It is important to note that trademark rights generally arise out of the use and/or registration

(see below) of a mark in connection only with a specific type or range of products or services. Although it may sometimes be possible to take legal action to prevent the use of a mark in relation to products or services outside this range, this does not mean that trademark law prevents the use of that mark by the general public. A common word, phrase, or other sign can only be removed from the public domain to the extent that a trademark owner is able to maintain exclusive rights over that sign in relation to certain products or services, assuming there are no other trademark objections.

Terminology and symbols

Terms such as "mark", "brand" and "logo" are sometimes used interchangeably with "trademark". However, the terms "brands" and "branding" raise distinct conceptual issues and are generally more appropriate for use in a marketing or advertising context.

When a trademark is used in relation to services rather than products, it may sometimes be called a service mark, particularly in the United States. Other specialized types of trademark include certification marks, collective trade marks and defensive trade marks. A trademark which is popularly used to describe a product or service (rather than to distinguish the product or services from those of third parties) is sometimes known as a genericized trademark. If such a mark becomes synonymous with that product or service to the extent that the trademark owner can no longer enforce its proprietary rights, the mark has become generic.

As any sign which is capable of performing the essential trademark function may qualify as a trademark, the trademark concept extends to include a range of non-conventional signs such as shapes (i.e. three-dimensional trademarks), sounds, smells, moving images (e.g. signs denoting movement, motion or animation), taste, and perhaps even texture. Although the extent to which non-conventional trademarks can be protected or even recognized varies considerably from jurisdiction to jurisdiction,^[2] shape marks and sound marks are examples of non-conventional

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marks which are in the process of migrating out of this category.

The ™ symbol may be used when trademark rights are claimed in relation to a mark, but the mark has not been registered with the government trade marks office of a particular country or jurisdiction, while the ® is used to indicate that the mark has been so registered. It is not mandatory to use either symbol, although the force of convention is such that the symbols are widely used around the world. However, in various jurisdictions it is unlawful to use the ® symbol in association with a mark when that mark is not registered.

The HTML entity for the ™ symbol is ™, while the HTML entity for ® is ®. On a Microsoft Windows computer with American keyboard layout, alt+0153 types ™, while alt+0174 makes ®. On Macintosh computers, opt+2 for ™ and opt+r for ®, and their Unicode encodings are 2122 in hexadecimal/8482 in decimal for ™ and 00AE in hexadecimal/174 in decimal for ®.

Either symbol is typically placed in the top left- or right-hand corner of a mark. Unregistered trademark rights may be enforced by way of a lawsuit for passing off, while the exclusive rights which attach to a registered mark can be enforced by way of an action for trademark infringement.

The ™ symbol is sometimes used in hacker slang to signify the importance of a concept, such as Real OS(TM) or Real Programmer(TM).

Establishing trademark rights — use and registration

The law considers a trademark to be a form of property. Proprietary rights in relation to a trademark may be established through actual **use** in the marketplace, or through **registration** of the mark with the **trade marks office** (or "trademarks registry") of a particular jurisdiction. In many jurisdictions, trademark rights can be established through either or both means. Certain jurisdictions generally do not recognize trademark rights arising through use (e.g. China). If trademark owners do not hold registrations for their marks in such jurisdictions, the extent to which they will be

able to enforce their rights through trademark infringement proceedings will therefore be limited.

A registered trademark confers a bundle of exclusive rights upon the registered owner, including the right to exclusive use of the mark in relation to the products or services for which it is registered. The law in most jurisdictions also allows the owner of a registered trademark to prevent unauthorized use of the mark in relation to products or services which are similar to the "registered" products or services, and in certain cases, prevent use in relation to entirely dissimilar products or services.

Once trademark rights are established in a particular jurisdiction, these rights are generally only enforceable in that jurisdiction, a quality which is sometimes known as **territoriality**. However, there is a range of international trademark laws and systems which facilitate the protection of trademarks in more than one jurisdiction (see *International trade mark laws* below).

Registrability and distinctive character

A trademark may be eligible for registration, or **registrable**, if amongst other things it performs the essential trademark function, and has **distinctive character**. Registrability can be understood as a continuum, with "inherently distinctive" marks at one end, "generic" and "descriptive" marks with no distinctive character at the other end, and "suggestive" and "arbitrary" marks lying between these two points.

- A **fanciful / inherently distinctive** trademark is prima facie registrable, and comprises an entirely invented or "fanciful" sign. For example, "Kodak" had no meaning before it was adopted and used as a trademark in relation to goods, whether photographic goods or otherwise. Invented marks are neologisms which will not previously have been found in any dictionary.

- An **arbitrary** trademark is usually a common word which is used in a meaningless context (e.g. "Apple" for computers). Such marks consist of words or images which have some dictionary meaning before being adopted as trademarks, but

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which are used in connection with products or services unrelated to that dictionary meaning. For example, *Salty* would be an arbitrary mark if it used in connection with refrigerators, e.g. *Salty Refrigerators*, as the term "salt" has no particular connection with such products.

- A **suggestive** trademark tends to indicate the nature, quality, or a characteristic of the products or services in relation to which it is used, but does not describe this characteristic, and requires imagination on the part of the consumer to identify the characteristic. Suggestive marks invoke the consumer's perceptive imagination. An example of a suggestive mark might be *Salty* used in connection with sailing gear.

- A **descriptive** mark is a term with a dictionary meaning which is used in connection with products or services directly related to that meaning. An example might be *Salty* used in connection with saltine crackers or anchovies. Such terms are not registrable unless it can be shown that distinctive character has been established in the term through extensive use in the marketplace (see further below).

- A **generic** term is the common name for the products or services in connection with which it is used, such as "salt" when used in connection with sodium chloride. A generic term is not capable of serving the essential trademark function of distinguishing the products or services of a business from the products or services of other businesses, and therefore cannot be afforded any legal protection. This is because there has to be some term which may generally be used by anyone—including other manufacturers—to refer to a product without using some organization's proprietary trademark. Marks which become generic after losing distinctive character are known as genericized trademarks.

It can be seen from the examples above that the distinctive character of a term is closely related to the products or services in relation to which the term is used.

A general method for assessing the distinctive character of a mark is to consider a consumer's

reaction to a mark. The mark may only be inherently registrable if the consumer has never encountered the mark before. On the other hand, the mark is unlikely to be inherently registrable if it informs her about any characteristic of the relevant products or services (e.g. whether they are delicious, large, spicy, black or sweet, in the case of fruit). In any other case the mark may not be registerable.

Another example of a descriptive mark would be a geographical word or phrase that merely indicates the origin of the product or service. For example, Houston based ice cream might find that the name "Houston ice cream" is denied trademark protection on the grounds that the word Houston is merely descriptive. However, they might have better luck with the name "North Pole ice cream". In the latter case, although North Pole is a geographical location, the ice cream is not actually made at the North Pole, and no reasonable person would assume that the phrase North Pole is literally descriptive. Findlaw

Therefore marks which identify or describe a product or service, or which are in common use, or which are used as geographical indications, generally cannot be registered as trademarks, and remain in the public domain for use by anyone. For example, a generic term such as "apple", or descriptive terms such as "red" or "juicy" could not be registered in relation to apples.

Primary consideration in the selection and use of trademarks should be given to marks which are inherently distinctive, as they possess the strongest distinctive character and do not require evidence of use to establish acquired distinctiveness. A fanciful, arbitrary, or suggestive term can be inherently distinctive and registrable without proof of acquired distinctiveness. Although these categories are most easily applied in relation to trademarks comprising words, the same general principles are applied in relation to all kinds of trademarks. For example, a pine tree shape is descriptive when used on pine-scented products.

Acquired distinctiveness

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Although a trademark which lacks distinctive character is not prima facie registrable, most jurisdictions will permit registration if the trademark owner can demonstrate (whether through a licensee or otherwise) that the public exclusively associates the mark with a particular commercial origin or source (i.e. the trademark owner or its business). In such cases the mark will be registrable on the basis that this association evidences the distinctive character of the mark as a matter of fact.

If the association is proven the mark is said to exhibit or possess **acquired distinctiveness** in the European Union and Commonwealth jurisdictions such as Australia, Hong Kong and the United Kingdom, and **secondary meaning** in the United States. Whether a mark is registrable on the basis of acquired distinctiveness is a question of degree determined by the extent to which the mark has been used in the jurisdiction where registration is sought. In practice, trademark owners rely on evidence of use (e.g. sales figures and promotional expenditure) and tools such as consumer surveys to show that consumers chiefly associate an otherwise non-distinctive mark with the trademark owner and its products or services.

In the United States, if a trademark has been used for a continuous period of at least five years after the date of registration, the right to use the mark and the registration may become "incontestable" (e.g. invulnerable to cancellation for non-use, but not for becoming generic). In such cases the USPTO checks and confirm whether the request for incontestability meets formality requirements, but whether a registration is incontestable at law can only be determined during proceedings involving the registration.

Signs excluded from registration

Most jurisdictions totally exclude certain types of terms and symbols from registration as trademarks, including the emblems, insignia and flags of nations, certain organizations and the modern Olympic Games, marks which are deceptive as to the origin of their associated products or services (e.g. as to their geographic origin), and marks comprising signs which are

contrary to accepted principles of morality (e.g. marks which are obscene).

Maintaining trademark rights — abandonment and genericide

Trademarks rights must be maintained through actual use of the trademark. These rights will diminish over time if a mark is not actively used. In the case of a trademark registration, failure to actively use the mark, or to enforce the registration in the event of infringement, may also expose the registration itself to removal from the register after a certain period of time.

All jurisdictions with a mature trademark registration system provide a mechanism for removal in the event of such *non use*, which is usually a period of either three or five years. The intention to use a trade mark can be proven by a wide range of acts as shown in the *Woolly Bull* and *Ashton v Harlee* cases.

In the U.S., failure to use a trademark for this period of time, aside from the corresponding impact on product quality, will result in *abandonment* of the mark, whereby any party may use the mark. An abandoned mark is not irrevocably, or can be in the public domain, but may instead be re-registered by any party which has re-established exclusive and active use, and must be associated or linked with the original mark owner. Further, if a court rules that a trademark has become "generic" through common use (such that the mark no longer performs the essential trademark function and the average consumer no longer considers that exclusive rights attach to it), the corresponding registration may also be ruled invalid.

For example, the Bayer company's trademark "Aspirin" has been ruled generic in the United States, so other companies may use that name for acetylsalicylic acid as well (although it is still a trademark in Canada). Xerox for copiers and Band-Aid for adhesive bandages are both trademarks which are at risk of succumbing to genericide, which the respective trademark owners actively seek to prevent. In order to prevent marks becoming generic, trademark owners often contact

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those who appear to be using the trademark incorrectly, from web page authors to dictionary editors, and request that they cease the improper usage. The proper use of a trademark means using the mark as an adjective, not as a noun or a verb [1] [2] [3], though for certain trademarks, use as nouns and, less commonly, verbs is common. For example, Adobe sent e-mails to many web authors using the term "photoshopped" telling them that they should only use the term "modified by Adobe® Photoshop® software." VeriPic likewise sends e-mails to reviewers using the term "VeriPic your digital photos" telling them that the proper usage of the term is "protected by the VeriPic® Digital Photo Lab® secured photo database software." Xerox has also purchased print advertisements declaring that "you cannot 'xerox' a document, but you can copy it on a Xerox Brand copying machine." Such efforts may or may not be successful in preventing genericism in the long run, which depends less on the mark owner's efforts and more on how the public actually perceives and uses the mark. In fact, legally it is more important that the trademark holder visibly and actively seems to attempt to prevent its trademark from becoming generic, regardless of real success.

Enforcing trademark rights

The extent to which a trademark owner may prevent unauthorized use of trademarks which are the same as or similar to its trademark depends on various factors such as whether its trademark is registered, the similarity of the trademarks involved, the similarity of the products and/or services involved, and whether the owner's trademark is *well known*.

If a trademark has not been registered, some jurisdictions (especially Common Law countries) offer protection for the business reputation or goodwill which attaches to unregistered trademarks through the tort of passing off. Passing off may provide a remedy in a scenario where a business has been trading under an unregistered trademark for many years, and a rival business starts using the same or a similar mark.

If a trademark has been registered, then it is much easier for the trademark owner to demonstrate its

trademark rights and to enforce these rights through an infringement action. Unauthorized use of a registered trademark need not be intentional in order for infringement to occur, although damages in an infringement lawsuit will generally be greater if there was an intention to deceive.

For trademarks which are considered to be well known, infringing use may occur where the use occurs in relation to products or services which are not the same as or similar to the products or services in relation to which the owner's mark is registered.

Wrongful or groundless threats of infringement

Various jurisdictions have laws which are designed to prevent trademarks' owners from making wrongful threats of trademark infringement action against other parties. These laws are intended to prevent large or powerful companies from intimidating or harassing smaller companies.

Where one party makes a threat to sue another for trademark infringement, but does not have a genuine basis or intention to carry out that threat, or does not carry out the threat at all within a certain period, the threat may itself become a basis for legal action.

Other aspects

Public policy

Trademark law is designed to fulfill the public policy objective of consumer protection, by preventing the public from being misled as to the origin or quality of a product or service. By identifying the commercial source of products and services, trademarks facilitate identification of products and services which meet the expectations of consumers as to quality and other characteristics.

Trademarks may also serve as an incentive for manufacturers, providers or suppliers to consistently provide quality products or services in order to maintain their business reputation. Furthermore, if a trademark owner does not

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maintain quality control and adequate supervision in relation to the manufacture and provision of products or services supplied by a licensee, such "naked licensing" will eventually adversely impact on the owner's rights in the trademark.

Comparison with patents, designs and copyright

While trademark law seeks to protect indications of the commercial source of products or services, patent law generally seeks to protect new and useful inventions, and registered designs law generally seeks to protect the look or appearance of a manufactured article. Trademarks, patents and designs collectively form a subset of intellectual property known as industrial property because they are often created and used in an industrial or commercial context.

By comparison, copyright law generally seeks to protect original literary, artistic and other creative works.

Although intellectual property laws such as these are theoretically distinct, more than one type may afford protection to the same article. For example, the particular design of a bottle may qualify for copyright protection as a nonutilitarian [sculpture], or for trademark protection based on its shape, or the 'trade dress' appearance of the bottle as a whole may be protectable. Titles and character names from books or movies may also be protectable as trademarks while the works from which they are drawn may qualify for copyright protection as a whole.

Drawing these distinctions is necessary but often challenging for the courts and lawyers, especially in jurisdictions such as the United States, where patents and copyrights will eventually expire into the public domain but trademarks do not. Unlike patents and copyrights, which in theory are granted for one-off fixed terms, trademarks remain valid as long as the owner actively uses and defends them and maintains their registrations with the applicable jurisdiction's trade marks office. This often involves payment of a periodic renewal fee.

As a trademark must be used in order to maintain rights in relation to that mark, a trademark can be 'abandoned' or its registration can be cancelled or revoked if the mark is not continuously used. By comparison, patents and copyrights cannot be 'abandoned' and a patent holder or copyright owner can generally enforce their rights without taking any particular action to maintain the patent or copyright. Additionally, patent holders and copyright owners may not necessarily need to actively police their rights. However, a failure to bring a timely infringement suit or action against a known infringer may give the defendant a defense of implied consent or estoppel when suit is finally brought.

Dilution

A trademark is *diluted* when the use of similar or identical trademarks in other non-competing markets means that the trademark in and of itself will lose its capacity to signify a single source. In other words, unlike ordinary trademark law, dilution protection extends to trademark uses that do not confuse consumers regarding who has made a product. Instead, dilution protection law aims to protect sufficiently strong trademarks from losing their singular association in the public mind with a particular product, perhaps imagined if the trademark were to be encountered independently of any product (e.g., just the word Pepsi spoken, or on a billboard).

Sale, transfer and licensing of trademarks

In various jurisdictions a trademark may be sold with or without the underlying goodwill which subsists in the business associated with the mark. However, this is not the case in the United States, where the courts have held that this would "be a fraud upon the public". In the U.S., trademark registration can therefore only be sold and assigned if accompanied by the sale of an underlying asset. Examples of assets whose sale would ordinarily support the assignment of a mark include the sale of the machinery used to produce the goods that bear the mark, or the sale of the corporation (or subsidiary) that produces the trademarked goods.

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Most jurisdictions provide for the use of trademarks to be licensed to third parties. The licensor (usually the trademark owner) must monitor the quality of the goods being produced by the licensee to avoid the risk of trademark being deemed abandoned by the courts. A trademark license should therefore include appropriate provisions dealing with quality control, whereby the licensee provides warranties as to quality and the licensor has rights to inspection and monitoring.

Trademarks and Domain Names

The advent of the Domain Name System has led to attempts by trademark holders to enforce their rights over domain names that are similar or identical to their existing trademarks, particularly by seeking control over the domain names at issue. As with dilution protection, enforcing trademark rights over domain name owners involves protecting a trademark outside the obvious context of its consumer market, because domain names are global and not limited by goods or service.

This conflict was more easily resolved when the domain name user actually used his website to compete with the trademark owner. Cybersquatting, however, involves no such competition, but instead an unlicensed user registering the trademark as a domain name in order to pressure a payoff (or other benefit) from the lawful mark owner. Typosquatters—those registering common misspellings of trademarks as domain names—have also been targeted successfully in trademark infringement suits.

This clash of the new technology with preexisting trademark rights resulted in several high profile decisions as the courts of many countries tried to coherently address the issue (and not always successfully) within the framework of existing trademark law. As the website itself was not the product being purchased, there was no actual consumer confusion, and so **initial interest confusion** was a concept applied instead. Infringing domain names were analogized to a sign identifying one store but falsely placed in front of another, in the hopes that customers will in the

end not care that they were duped or will at least give up on trying to reach the right store.

Most courts particularly frowned on cybersquatting, and found that it was itself a sufficiently commercial use (i.e., "trafficking" in trademarks) to reach into the area of trademark infringement. Most jurisdictions have since amended their trademark laws to address domain names specifically, and to provide explicit remedies against cybersquatters.

This international legal change has also led to the creation of ICANN Uniform Domain-Name Dispute-Resolution Policy (UDRP) and other dispute policies for specific countries (such as Nominet UK's DRS) which attempt to streamline the process of resolving who should own a domain name (without dealing with other infringement issues such as damages). This is particularly desirable to trademark owners when the domain name registrant may be in another country or even anonymous.

Registrants of domain names also sometimes wish to register the domain names themselves (e.g., "XYZ.COM") as trademarks for perceived advantages, such as an extra bulwark against their domain being hijacked, and to avail themselves of such remedies as *confusion* or passing off against other domain holders with confusingly similar or intentionally misspelled domain names.

As with other trademarks, the domain name will not be subject to registration unless the proposed mark is actually used to identify the registrant's goods or services to the public, rather than simply being the location on the Internet where the applicant's web site appears. Amazon.com is a prime example of a protected trademark for a domain name central to the public's identification of the company and its products.

Terms which are not protectable by themselves, such as a generic term or a merely descriptive term that has not acquired secondary meaning, do not become registrable when a Top-Level Domain Name (e.g. dot-COM) is appended to it. Examples of such domain names ineligible for trademark protection would be "SOFT.COM" (merely

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descriptive when applied to a product such as facial tissue), or "BANK.COM" (generic for banking services).

International trade mark laws

It is important to note that although there are systems which facilitate the filing, registration or enforcement of trade mark rights in more than one jurisdiction on a regional or global basis (e.g. the Madrid and CTM systems, see further below), it is currently not possible to file and obtain a single trade mark registration which will automatically apply around the world. Trade mark laws are territorial in nature and generally apply only in the applicable country or jurisdiction, a quality which is sometimes referred to as 'territoriality'.

Agreement on Trade-Related Aspects of Intellectual Property Rights

The inherent limitations of the territorial application of trade mark laws have been mitigated by various intellectual property treaties. One such treaty is the WTO (formerly GATT) Agreement on Trade-Related Aspects of Intellectual Property Rights ('TRIPs'). Amongst other things, TRIPs generally requires that the trade mark laws of member jurisdictions are compatible with each other, a quality which is known as 'harmonisation'. For example, Article 15(1) of TRIPs provides a definition for 'sign' which is used as or forms part of the definition of a 'trade mark' contained in the trade mark legislation of many jurisdictions around the world.

The Madrid system for the international registration of marks

Foremost amongst the systems which facilitate registration of trade marks in multiple jurisdictions is the 'Madrid system', which provides a centrally administered system of obtaining a bundle of single jurisdiction trade mark registrations based on an 'international registration'.

In basic terms, the primary advantage of the Madrid system is that it allows a trademark owner to obtain trademark protection in any or all member states by filing one application in one

jurisdiction with one set of fees, and make any changes (e.g. changes of name or address) and renew registration across all applicable jurisdictions through a single administrative process.

Community Trade Mark system

The Community Trade Mark system is the supranational trade mark system which applies in the European Union, whereby registration of a trade mark with the Office for Harmonization in the Internal Market (Trade Marks and Designs) (i.e.. OHIM, the trade marks office of the European Union), leads to a registration which is effective throughout the EU as a whole. The CTM system is therefore said to be unitary in character, in that a CTM registration applies indivisibly across all European Union member states. However, the CTM system did not replace the national trade mark registration systems; the CTM system and the national systems continue to operate in parallel to each other. See also European Union trade mark law.

Other systems

Other supranational trade mark systems include the system in operation in Belgium, the Netherlands and Luxembourg, i.e.. Benelux.

Notes

1 The styling of "trademark" as a single word is predominantly used in the United States, while the two word styling "trade mark" is used in many other countries around the world, including the European Union and Commonwealth and ex-Commonwealth jurisdictions (although Canada officially uses "trade-mark" pursuant to the *Trade-mark Act*, trade mark" is also commonly used).

Copyright

[Wikipedia, the free encyclopedia](#)

Copyright is a set of exclusive rights regulating the use of a particular expression of an idea or information. At its most general, it is literally "the right to copy" an original creation. In most cases,

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these rights are of limited duration. The symbol for copyright is ©, and in some jurisdictions may alternately be written (c).

Copyright may subsist in a wide range of creative, intellectual, or artistic forms or "works". These include poems, theses, plays, and other literary works, movies, choreographic works (dances, ballets, etc.), musical compositions, audio recordings, paintings, drawings, sculptures, photographs, software, radio and television broadcasts of live and other performances, and, in some jurisdictions, industrial designs. Copyright is a type of intellectual property; designs or industrial designs may be a separate or overlapping form of intellectual property in some jurisdictions.

Copyright law covers only the particular form or manner in which ideas or information have been manifested, the "form of material expression". It is not designed or intended to cover the actual idea, concepts, facts, styles, or techniques which may be embodied in or represented by the copyright work. Copyright law provides scope for satirical or interpretive works which themselves may be copyrighted. See idea-expression divide.

For example, the copyright which subsists in relation to a Mickey Mouse cartoon prohibits unauthorized parties from distributing copies of the cartoon or creating derivative works which copy or mimic Disney's particular anthropomorphic mouse, but does not prohibit the creation of artistic works about anthropomorphic mice in general, so long as they are sufficiently different to not be imitative of the original. Other laws may impose legal restrictions on reproduction or use where copyright does not - such as trademarks and patents.

History of copyright

Authors, patrons, and owners of works throughout the ages have tried to direct and control how copies of such works could be used once disseminated to others. Mozart's patron, Baroness von Waldstätten, allowed his compositions created for her to be freely performed, while Handel's patron (George I, the first of the Hanoverian kings) jealously guarded "Water Music."

Two major developments in the fourteenth and fifteenth centuries seem to have provoked the development of modern copyright. First, the expansion of mercantile trade in major European cities and the appearance of the secular university helped produce an educated bourgeois class interested in the information of the day. This helped spur the emergence of a public sphere, which was increasingly served by entrepreneurial stationers who produced copies of books on demand. Second, Gutenberg's development of movable type and the development and spread of the printing press made mass reproduction of printed works quick and much cheaper than ever before. The process of copying a work could be nearly as labor intensive and expensive as creating the original, and was largely relegated to monastic scribes before printing. It appears that publishers, rather than authors, were the first to seek restrictions on the copying of printed works. Given that publishers commonly now obtain the copyright from the authors as a condition of mass reproduction of a work, one of the criticisms of the current system is that it benefits publishers more than it does authors. This is one of the chief arguments in favor of peer-to-peer file sharing systems, making an analogy with the changes wrought by printing.

An interesting attempt at copyright in the early modern period was the notice attached to the *ha-Shirim asher li-Shelomo*, a setting of the Psalms by the composer Salomone Rossi, which happened to be the first music to be printed with a Hebrew type-face text (1623). It included a rabbinical curse on anyone who copied the contents.

While governments had previously granted monopoly rights to publishers to sell printed works, the modern concept of limited duration copyright originated in 1710 with the British Statute of Anne. This statute first accorded exclusive rights to authors (i.e., creators) rather than publishers, and it included protections for consumers of printed work ensuring that publishers could not control their use after sale. It also limited the duration of such exclusive rights to 28 years, after which all works would pass into the public domain.

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There were territorial loopholes in the 1710 Act. It did not extend to all British territories, but only covered England, Scotland, and Wales. Many reprints of British copyright works were consequently issued both in Ireland and in North American colonies, without any license from the copyright holder required. These works were frequently issued without payment to British copyright holders, so they were cheaper than London editions. They were popular with book-buyers, but were not piracies in the formal sense of the word, being within the law. The term was used, however.

In Ireland and North America there were reprint publishers who sought out formal arrangements with and made payments to British copyright holders. This illicit reprint trade was also engaged in by some Scottish publishers. These publishers were sometimes prosecuted.

Irish reprints became a matter of great concern to London publishers. Their reprints undermined direct sales to Ireland. They also crossed the border into England, and were especially sold in English provincial markets which were becoming increasingly important to London publishers. Booksellers who sold these reprints in England, Scotland, and Wales were subject to prosecution.

Between 1710-1774 there was legal debate about what length of time was meant in the 1710 act.

Publishers in Scotland, in the 1730's, began to reprint titles that they no longer considered to be covered by copyright. Scottish publishers printed what they perceived to be public domain English works whose copyright had expired. They sold these titles in Scotland, and in the English provinces. English publishers objected to this, on the basis of what they saw as common-law rights and property (under the concept of common-law rights in the English system), which predated the Copyright Act. Under common-law rights, rights in published works were held to continue into perpetuity.

The case of Donaldson vs Beckett, in 1774, brought disagreements on the length of copyright to an end. The outcome of the case resulted in the

decision that Parliament could, and had, put a limit on copyright length. This decision reflected a shift in English ideas of copyright. The English lords who made the decision in 1774 decided that it was not in the public's best interest to have London publishers control books in perpetuity, particularly as English publishers commonly kept prices high. There were some notions that this was a cultural or class issue. Works in perpetual copyright were seen to have limited access by some citizens to the cultural history of their own land.

Concepts of the roles of the author and publisher, of copyright law, and of general Enlightenment notions, interacted in this period. Authors had been previously seen to be divinely inspired. Patronage was a legitimate way to support authors, in part because of this. Authors who were paid, rather than entering into patron-relationships, were often regarded as hacks, and looked down upon. However, the notion of individual genius was becoming more common during the 1770's (the generation after Donaldson v Beckett), and being a paid author therefore became more accepted.

In Great Britain's North American colonies, reprinting British copyright works without permission had long happened episodically, but only became a major feature of colonial life after 1760. It became more commonplace to reprint British works in the colonies (mostly in the 13 North American colonies). The impetus for this shift came from Irish and Scottish master printers and booksellers who had moved to the North American colonies in the mid 1700's. They were already familiar with the practice of reprinting and selling British copyright works, and continued the practice in North America, and it became a major part of the North American printing and publishing trade. Robert Bell was an example. He was originally Scottish, and had spent almost a decade in Dublin before he moved to British North America in 1768. His operations, and those of many other colonial printers and booksellers, ensured that the practice of reprinting was well-established by the time of the American Declaration of Independence in 1776. Weakened American ties to Britain coincided with the increase of reprinting outside British copyright controls.

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The Irish also made a flourishing business of shipping reprints to the North America in the 18th century. Ireland's ability to reprint freely ended in 1801 when Ireland's Parliament merged with Great Britain, and the Irish became subject to British copyright laws.

The printing of uncopyrighted English works for the English-language market also occurred in other European countries. The British government responded to this problem in two ways: 1) it amended its own copyright statutes in 1842, explicitly forbidding import of any foreign reprint of British copyrighted work into the UK or its colonies, and 2) it began the process of reciprocal agreements with other countries. The first reciprocal agreement was with Prussia in 1846. The US remained outside this arrangement for some decades. This was objected to by such authors as Dickens and Mark Twain.

The 1886 Berne Convention first established recognition of copyrights among sovereign nations, rather than merely bilaterally. Under the Berne Convention, copyrights for creative works do not have to be asserted or declared, as they are automatically in force at creation: an author need not "register" or "apply for" a copyright in countries adhering to the Berne Convention. As soon as a work is "fixed", that is, written or recorded on some physical medium, its author is automatically entitled to all copyrights in the work, and to any derivative works unless and until the author explicitly disclaims them, or until the copyright expires. The Berne Convention also resulted in foreign authors being treated equivalently to domestic authors, in any country signed onto the Convention.

The UK signed the Bern Convention in 1887 but did not implement large parts of it until 100 years later with the passage of the *Copyright, Designs and Patents Act of 1988*. The USA did not sign the Berne Convention until 1989.

United States copyright law

An author's exclusive right to his creation is mandated in the US Constitution in Article I, Section 8, Clause 8, also known as the Intellectual

Property Clause, which also gives Congress the power to enact statutes: *To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.*

Congress first exercised this power with the enactment of the Copyright Act of 1790, and has changed and updated copyright statutes several times since. The Copyright Act of 1976, though it has been modified since its enactment, is currently the basis of copyright law in the United States.

The length of the copyright term within the United States was extended by the Sonny Bono Copyright Term Extension Act which made the copyright term the life of the author plus 70 years for works created after January 1st, 1978. In the case of a work of corporate authorship (also known as "Work for Hire") the term will be 95 years from the date of first publication or 120 years from the date of creation, whichever expires first. This legislation was challenged in court and affirmed by the US Supreme Court in the landmark copyright decision, *Eldred v. Ashcroft* (2003), in which the Supreme Court agreed that the length of the copyright term (i.e., during which the copyright holder has a monopoly on its exploitation) could be extended by Congress after the original act of creation and beginning of the copyright term, as long as the extension itself was limited instead of perpetual. The duration of U.S. copyright for works created before 1978 is a complex matter; however, works **published** before 1923 are all in the public domain.

Copyrights and the United States Government

17 U.S.C. § 105, withholds copyright from all publications produced by the United States Government, and its agents or employees while in their employment. All such work is therefore in the public domain in some sense. The specific language is as follows:

Copyright protection under this title is not available for any work of the United States Government, but the United States Government is not precluded from receiving and holding copyrights transferred to it by assignment, bequest, or otherwise.

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However, nothing in the law prohibits the United States Government from limiting commercial access to any work produced under 17 U.S.C. § 105, and there are specific prohibitions against automatic access to work otherwise covered under 17 U.S.C. § 105 for commercial purposes.

USA Federal Statutes are in the public domain and no copyright attaches to them. The same is true of court decisions. It is not difficult to see the motivations behind this:

The citizens are the authors of the law, and therefore its owners, regardless of who actually drafts the provisions, because the law derives its authority from the consent of the public, expressed through the democratic process. (State of Georgia v Harrison Co, 548 F Supp 110, 114 (ND Ga 1982))

Edicts of government, such as judicial opinions, administrative rulings, legislative enactments, public ordinances, and similar official legal documents are not copyrightable for reasons of public policy. This applies to such works whether they are Federal, State, or local as well as to those of foreign governments. (The Compendium of Copyright Office Practices (Compendium II) section 206.01[7] Paragraph 3.6 at 14 February 2006)

The decisions of the courts, and legislation, would ensure that laws would be subject to copyright law, in some respects. The American threshold for copyright coverage does contain requirements of both originality and creativity. According to the United States Supreme Court in *Harper & Row Publishers Inc v Nation Enterprises*, a work "must be original to the author". The United States Supreme Court has also interpreted Article I, § 8, cl 8 of the United States Constitution as requiring "independent creation plus a modicum of creativity".

In the United States of America the exclusion of legislation from the scope of copyright laws dates to 1834, when the Supreme Court interpreted the first federal copyright laws and held that "no reporter has or can have any copyright in the written opinions delivered by this Court". In the same case it was argued – and accepted by the Court – that "it would be absurd, for a legislature

to claim the copyright; and no one else can do it, for they are the authors, and cause them to be published without copyright ... Statutes were never copyrighted." Further, "it is the bounden duty of government to promulgate its statutes in print". Counsel emphasized the governing policy that "all countries ... subject to the sovereignty of the laws" hold the promulgation of the laws, from whatever source, "as essential as their existence." "If either statutes or decisions could be made private property, it would be in the power of an individual to shut out the light by which we guide our actions." (*Wheaton v Peters*, 33 US (8 Pet) 591, 668 (1834))

That the public interest is the primary determinant is clear from *Banks v Manchester* (128 US 244, 9 S Ct 36 (1888)). In this the United States Supreme Court denied a copyright to a court reporter in opinions of the Ohio Supreme Court, on the grounds that "There has always been a judicial consensus, from the time of the decision in the case of *Wheaton v Peters*, that no copyright could, under the statutes passed by Congress, be secured in the products of the labor done by judicial officers in the discharge of their judicial duties. The whole work done by the judges constitutes the authentic exposition and interpretation of the law, which, binding every citizen, is free for publication to all, whether it is a declaration of unwritten law, or an interpretation of a constitution or statute."

The law, as thus (widely) defined, is in the public domain, and therefore not amenable to copyright. In *Howell v Miller*, (91 F 129 (1898)) Justice Harlan denied an injunction sought for the compiler of Michigan statutes, holding that "no one can obtain the exclusive right to publish the laws of the state in a book prepared by him." The question of formal ownership of the text of laws and decisions is perhaps secondary to the question of the dissemination of the law.

Copyright Law and Limitations

Copyright law provides protection to expressions of ideas but not to the idea itself. For instance, if an individual came up with a unique idea drawing from his own personal experience, then he would not be able to protect it under copyright law at that

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moment. However, if they were to incorporate that idea into a treatment, then it would be an expression of that idea which would be deserving of copyright protection.

Copyright law does have limited protection. One subject matter that copyright protection does not extend to scenes a faire, which is defined as "common scenes in a particular type of story." An example of this would be a gangster movie that involves the struggle for power between two of New Jersey's most powerful Italian mobs. If two movies were similar in this respect, there would be no copyright infringement. This story line is so commonly used that no protection can exist.

Also, copyright protection does not extend to characters. Although, characters can be copyrighted if part of a literary or visual work. The 9th Circuit Test states that in order to be protected as part of a literary work, the character must constitute the story being told. It is very difficult to reach this standard. An example of a protected character would be Mickey Mouse. This character is easier to protect due to its visual nature. Not only is this character widely known, the story of Mickey Mouse is attached to the recognition of his name. Another character that deserves protection is James Bond. In this case, Honda used a character similar to James Bond in an advertisement to market its products. MGM then sued for copyright infringement. The court in this case concluded that the Bond character was important enough and that this character constitutes the story being told in a Bond movie. MGM had a successful claim against Honda.

Facts are not protected by copyright law either. For example, if a researcher came across certain facts during his research and tried to incorporate these facts into a movie or novel, the discovered facts are not protected and the researcher would not have a valid claim for copyright infringement. If this researcher did actually write a novel, then it would be considered an expression. The expression of these facts, as mentioned above, is protected and cannot be infringed. Another situation is when the discovered facts are the basis for an individual's theory. If this theory was used by another, then there would be no viable claim for

copyright infringement. Since the theory is derived from facts which are not copyrightable, then the theory itself is not copyrightable.

The exclusive rights of the copyright holder

Several exclusive rights typically attach to the holder of a copyright:

- to produce copies or reproductions of the work and to sell those copies (including, typically, electronic copies)
- to import or export the work
- to create derivative works (works that adapt the original work)
- to perform or display the work publicly
- to sell or assign these rights to others

The phrase "exclusive right" means that only the copyright holder is free to exercise the attendant rights, and others are prohibited using the work without the consent of the copyright holder. Copyright is often called a "negative right", as it serves to prohibit people (e.g. readers, viewers, or listeners, and primarily publishers and would be publishers) from doing something, rather than permitting people (e.g. authors) to do something. In this way it is similar to the unregistered design right in English law and European law. The rights of the copyright holder also permit him/her to *not* use or exploit their copyright for its duration. This means an author can choose to exploit their copyright for some of the duration and then not for the rest, vice versa, or entirely one or the other.

There is however a critique which rejects this assertion as being based on a philosophical interpretation of copyright law as an entity, and is not universally shared. There is also debate on whether copyright should be considered a property right or a moral right. Many argue that copyright does not exist merely to restrict third parties from publishing ideas and information, and that defining copyright purely as a negative right is incompatible with the public policy objective of encouraging

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authors to create new works and enrich the public domain.

The right to adapt a work means to transform the way in which the work is expressed. Examples include developing a stage play or film script from a novel; translating a short story; and making a new arrangement of a musical work.

Limits and exceptions to copyright

Idea-expression dichotomy and the merger doctrine

A copyright covers the expression of an idea, not the idea itself — this is called the idea/expression or fact/expression dichotomy. For example, if a book is written describing a new way to organize books in a library, a copyright does not prohibit a reader from freely using and describing that concept to others; it is only the particular expression of that process as originally described that is covered by copyright. One might be able to obtain a patent for the method, but that is a different area of law. Compilations of facts or data may also be copyrighted, but such a copyright is thin; it only applies to the particular selection and arrangement of the included items, not to the particular items themselves. In some jurisdictions the contents of databases are expressly covered by statute.

In some cases, ideas may be capable of intelligible expression in only one or a limited number of ways. Therefore even the expression in these circumstances is not covered. In the United States this is known as the merger doctrine, because the expression is considered to be inextricably merged with the idea. Merger is often pleaded as an affirmative defense to charges of infringement. That doctrine is not necessarily accepted in other jurisdictions.

The first-sale doctrine and exhaustion of rights

Copyright law does *not* restrict the owner of a copy from reselling legitimately obtained copies of copyrighted works, provided that those copies were originally produced by or with the permission of the

copyright holder. It is therefore legal, for example, to resell a copyrighted book or CD. In the United States this is known as the first-sale doctrine, and was established by the courts to clarify the legality of reselling books in second-hand bookstores. Some countries may have parallel importation restrictions that allow the copyright holder of their licensee to control the aftermarket. This may mean for example that a copy of a book that does not infringe copyright in the country where it was printed does infringe copyright in a country into which it is imported for retailing. The first-sale doctrine is known as exhaustion of rights in other countries and is a principle which also applies, though somewhat differently, to patent and trademark rights. It is important to note that the first-sale doctrine permits the transfer of the particular legitimate copy involved. It does not permit making or distributing additional copies.

In addition, copyright, in most cases, does not prohibit one from acts such as modifying, defacing, or destroying his or her own legitimately obtained copy of a copyrighted work, so long as duplication is not involved. However, in countries that implement moral rights, a copyright holder can in some cases successfully prevent the mutilation or destruction of a work that is publicly visible.

Fair use and fair dealing

Copyright does not prohibit all copying or replication. In the United States, the fair use doctrine, codified by the Copyright Act of 1976 as 17 U.S.C. Section 107, permits some copying and distribution without permission of the copyright holder or payment to same. The statute does not clearly define fair use, but instead gives four non-exclusive factors to consider in a fair use analysis. In the United Kingdom and many other Commonwealth countries, a similar notion of fair dealing was established by the courts or through legislation. The concept is sometimes not well defined; however in Canada, private copying for personal use has been expressly permitted by statute since 1999. In Australia, the fair dealing exceptions under the *Copyright Act 1968* (Cth) are a limited set of circumstances under which copyright material can be legally copied or adapted without the copyright holder's consent. Fair dealing

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uses are research and study; review and criticism; news reportage and the giving of professional advice (i.e. legal advice). Under current Australian law it is still a breach of copyright to copy, reproduce or adapt copyright material for personal or private use without permission from the copyright owner. Other technical exemptions from infringement may also apply, such as the temporary reproduction of a work in machine readable form (e.g., in an information technology storage system).

In the United States the AHRA (Audio Home Recording Act Codified in Section 10, 1992) prohibits action against consumers making noncommercial recordings of music, in return for royalties on both media and devices plus mandatory copy-control mechanisms on recorders.

Section 1008. Prohibition on certain infringement actions No action may be brought under this title alleging infringement of copyright based on the manufacture, importation, or distribution of a digital audio recording device, a digital audio recording medium, an analog recording device, or an analog recording medium, or based on the noncommercial use by a consumer of such a device or medium for making digital musical recordings or analog musical recordings.

Later acts amended US Copyright law so that for certain purposes making 10 copies or more is construed to be commercial, but there is no general rule permitting such copying. Indeed making one complete copy of a work, or in many cases using a portion of it, for commercial purposes will not be considered fair use. The Digital Millennium Copyright Act prohibits the manufacture, importation, or distribution of devices whose intended use, or only significant commercial use, is to bypass an access or copy control put in place by a copyright owner. An appellate court has held that fair use is not a defense to engaging in such distribution.

It is absolutely vital to remember that copyright regimes can and do differ between countries, even countries which both adhere to the same copyright Convention. It would be dangerous to assume that

an activity permitted by the laws of one country is necessarily permitted elsewhere.

How long copyright lasts

Copyright subsists for a variety of lengths in different jurisdictions, with different categories of works and the length it subsists for also depends on whether a work is published or unpublished. In most of the world the default length of copyright for many works is either life of the author plus 50 years, or plus 70 years. Copyright in general always expires at the end of the year concerned, rather than on the exact date of the death of the author. (The right to reclaim a copyright--or "terminate the transfer" of a copyright--commences and ends on the anniversaries of exact dates in the United States.)

So when can one conclude that a book is in the public domain? In the United States, all books and other items published before 1923 have expired copyrights and are in the public domain, and all works created by the U.S. Government, regardless of date, enter the public domain upon their creation. But if the intended exploitation of the book includes publication (or distribution of a film based on the book) outside the U.S., the terms of copyright around the world must be considered. If the author has been dead more than 70 years, the work is in the public domain in most, but not all, countries. In Italy and France, there are wartime extensions that could increase the term by approximately 6 years in Italy and up to about 14 in France. Some works are covered by copyright in Spain for 80 years after the author's death.

Typefaces

In the United States, typeface designs are not covered by copyright, but may be covered by design patents if sufficiently novel. Germany (in 1981) passed a special law for typeface protection (Schriftzeichengesetz). It adds some specific extensions to the design patent law (Geschmacksmustergesetz) such that typefaces can be registered as designs.

The United Kingdom (in 1989) have passed a law making typeface designs copyrightable. The British

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law is retroactive, so designs produced before 1989 are also copyrighted if the copyrights would not have already expired.

Unusual copyright grants

On rare occasions, rights can be granted outside of usual legislation. When the current UK copyright legislation was debated in Parliament, former Prime Minister Lord Callaghan of Cardiff successfully proposed an amendment entitling the Great Ormond Street Hospital for Sick Children to indefinitely retain the rights to payments of royalties for performances of Peter Pan. This privilege can be seen explicitly written into Schedule 6 of the Act.

The King James Version of the Bible also has an unusual status: While it is in the public domain throughout most of the world, production in the UK must be authorized by the Crown. Lily's Latin Grammar was also under perpetual crown copyright as of 1911.[10]

Registering copyright

Registering copyright in the United States

While copyright in the United States automatically attaches upon the creation of an original work of authorship, registration with the Copyright Office puts a copyright holder in a better position if litigation arises over the copyright. A copyright holder desiring to register his or her copyright should do the following:

- Obtain and complete appropriate form.
- Prepare clear rendition of material being submitted for copyright
- Send both documents to U.S. Copyright Office in Washington, D.C.

Beware of the Unseen!

While a military recon platoon was on patrol, a Lieutenant noticed a lone military policeman standing on a hilltop in their area. The Lieutenant

told two of his men to go take out the MP. They promptly ran as fast as they could toward the MP. Just before they got to the top, the MP ran over the other side of the hill. The two servicemen followed. For the next few minutes there were bloody screams and dust flying in the air. Then, as quick as it had started, it stopped and the MP came up on the hilltop. He brushed off his BDUs, straightened his hat, crossed his arms and stood there looking at the patrol. The Lieutenant, pissed now, called for a squad to go get the MP.

They promptly ran as fast as they could toward the MP. Just before they got to the top, the MP ran over the other side of the hill. The military squad followed. For the next few minutes there were bloody screams and dust flying in the air. Then as quick as it had started, it stopped and the MP came up on the hilltop. He brushed off his BDUs, straightened his hat, crossed his arms and stood there looking at the serviceman. The Lieutenant was really hot now. He ordered the rest of his platoon to attack the MP. Determined that Recon was far superior to one lone MP, they had blood in their eyes as they ran up the hill.

Just before they got to the top, the MP ran over the other side of the hill. The servicemen followed. For many minutes there were bloody screams and dust flying in the air. It continued and continued. Finally there was one lone serviceman crawling back to the Lieutenant, all bloody and beaten about the head and shoulders. His BDUs were torn, cuts were all over his body. The Lieutenant asked for a report. The lone serviceman, bloody and beaten replied in a forceful and fearful voice; "Sir, run, it's a trick. There are TWO of them!!!."

OSI: The eyes of the Air Force

By Jeff Mullin, Senior Writer
Enid News and Eagle
Enid, Oklahoma
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They look like guys you might see in any office, dressed casually in slacks and polo shirts.

But these are no ordinary young men.

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They serve in the Air Force but wear no uniforms and are referred to by no rank. Their rank, in fact, is kept secret.

Describing their job is not easy. Take a big dose of the FBI, mix in a bit of CSI and the Secret Service, with a touch of Special Forces and even the CIA mixed in, and that begins to outline the duties of the men and women of the Air Force Office of Special Investigation.

The OSI office at Vance Air Force Base is led by Special Agent in Charge Chris Levendosky. He is assisted by Special Agent Dominick Tripodi.

"Each detachment you go to, the mission's unique," said Levendosky, who recently came to Vance after an assignment on Guam.

Vance's OSI office primarily focuses on criminal investigations, one of the service's four priorities. The others are detecting threats to the Air Force, combating computer crime and deterring fraud in Air Force operations or programs.

OSI agents investigate mostly felonies within the Air Force, crimes like murder, robbery, rape, drug use and drug trafficking.

"That's what differentiates us from the mission that Security Forces have," said Levendosky. "We investigate anything that is to the level of a felony crime."

OSI's jurisdiction includes anyone who falls under the Uniform Code of Military Justice, and everyone on federal exclusive property, which includes many areas of Vance. OSI agents have apprehension power within the Air Force. If a civilian suspect is involved, local, state or federal law enforcement agencies are called in.

An OSI special agent's job is obtaining, to quote the old "Dragnet" TV show, "just the facts."

"We're not out to find guilty or innocent, we're just out to find the facts and do what it takes to get to the facts," said Tripodi.

Once the investigation is complete, the facts are given to the Staff Judge Advocate's office for possible prosecution.

Vance's OSI office works closely with the 71st Security Forces Squadron, as well as local and state law enforcement agencies. An Enid Police Department seal hangs on the wall of the OSI conference room, in fact, a testament to the close relationship between OSI and local police.

"On a scale of one to 10, it's a 10," said Tripodi. "They are just a phone call away whenever we need something and vice versa. As soon as they get something that affects us, they'll call us, no matter what time of day it is. If we have something we need their help with, we call them, and they come right out."

Like the FBI, OSI is a crime-fighting organization. And as the FBI has its own list of the 10 most wanted criminals in the nation, the OSI has its own most wanted list of Air Force deserters and fugitives. Fugitives are deserters who also are charged with a felony.

The CSI, or crime scene investigation, piece of the OSI comes through its eight field investigation regions. The field investigation region affiliated with Vance's OSI office, region four, is aligned with Air Education and Training Command located at Randolph Air Force Base in San Antonio.

"We have forensic support at our various regions," said Levendosky.

Each region has technical agents who possess skills such as covert audio and video surveillance, lock picking and vehicle tracking, as well as polygraph examiners and behavioral scientists.

"Any crimes we investigate where we need those services, it's a phone call away," said Levendosky.

As the Secret Service helps keep the president safe, OSI provides protective services for senior Air Force leaders, like the Secretary of the Air Force and Air Force Chief of Staff, when they travel. During President Bush's brief visit to Vance in May, Tripodi partnered with a Secret Service agent and

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shadowed the president during his meet-and-greet session on base.

OSI's more than 2,500 personnel include active-duty troops, as well as members of the Air Force Reserve and civilians. Of those, nearly 2,000 are agents, while the rest are support personnel. Active-duty OSI troops come from the ranks of both officers and enlisted.

"We have a wide variety coming from all different career fields," said Levendosky.

OSI welcomes more than 230 new special agents each year. Recruits go through 11 weeks of training in the Criminal Investigator Training Program. This includes basic law enforcement training and is followed by eight weeks of course work specific to OSI. Training takes place at the U.S. Air Force Special Investigations Academy on the grounds of the Federal Law Enforcement Training Center in Glynco, Ga.

Agents never wear uniforms, sticking instead to more casual attire.

"We don't wear uniforms because of the mission we're completing and the work we do with the local and state agencies," said Levendosky.

OSI was formed in 1948 by then-Air Force Secretary Stuart Symington and patterned after the FBI. An OSI agent alerted Gen. Douglas MacArthur about the attack from North Korea that sparked the Korean war in 1950. Among Air Force officers, according to OSI's Public Affairs office, OSI is the second-most requested career field, only behind becoming a pilot.

Levendosky joined OSI because of a longtime interest in law enforcement.

"It's a career field where I feel we're making a difference, every day," he said. "It's a great opportunity for agents within the career field to get involved in a lot of different areas."

It also, said Tripodi, is a job with no ordinary days.

"Every day is something different," said Tripodi. "You can't really keep a calendar because you don't know what's going to happen. The phone could ring right now and we'd have to go out somewhere." OSI special agents are deployed throughout the world, including hot spots like Iraq and Afghanistan.

"Typically the mission over there is more of a force protection role," said Levendosky, "to get advanced warning of attacks."

OSI is not without its dangers. In the service's 58-year history, there have been four agents killed. The most recent was Special Agent Rick Ulbright, who died from wounds suffered in a rocket attack in August 2004 in Iraq.

The Old Wild West—The Modern Western Australia

David Forbes

*Director, Jagwa Forbes Group Pty. Ltd.
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The unique nature of Australia's *demographic and environmental characteristics* contributes to the potential for an unusual form of assignment, i.e. the boom in the minerals and energy resources sectors has led to an extensive, widely spread pattern of resource extraction communities. **Western Australia is the leading growth state in this regard.**

Mining camps for example may open up just as others close down in locations across Australia almost every month. Offshore petro-chemical and onshore liquefied natural gas facilities change less frequently but present other challenges.

The high levels of compensation offered by major conglomerates to both specialist and unskilled employees have drawn many individuals from overseas. They can be found working in very inhospitable conditions, and in places that can only be reached at considerable cost in terms of transport and accommodation incurred by the investigator/consultant, when that is necessary. **Western Australia is three times the size of Texas but has a population of little more than 2 million people.** The current Texas population is 22,859,968 with a land area of 261,797 square miles.

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**ASIS/Intellenet Mixer
San Diego, September 24, 2006**



"Tom Reilly—You toucha my food and you swim with the fishes!"



Brad Penny working the crowd like a politician.



Jimmie Mesis (PI Magazine); Werner Preining, Vienna, Austria; Juan Munoz, Madrid, Spain; Jack Chu, Hong Kong; Jeff Williams, Manila, Philippines; David Chu, Hong Kong; Tom Kane, Manila, Philippines; Jim Carino. Missing from photo but in attendance were Rashid Ali Malik, Karachi, Pakistan and Kevin Ripa, Calgary, Alberta, Canada.

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