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# **Intellectual Property & Export Controls**

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# An Intellectual Property Primer

**Just enough to make you  
dangerous**



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Sandia is a multiprogram laboratory operated by Sandia Corporation, a Lockheed Martin Company,  
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# **Constitutional Basis (Patents & Copyrights)**

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**U.S. Constitution, Art. 1, § 8, cl. 8**

**The Congress shall have the power...**

**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.**



## Types of IP\*

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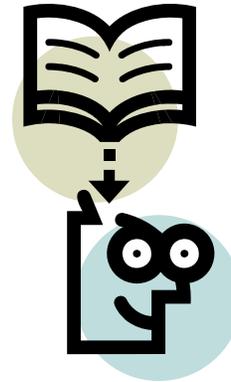
- **Most usage at the “Labs”**
  - **Patents**
    - Patent Act (35 USC)
  - **Copyrights**
    - Copyright Act (17 USC)
  - **Trademarks/Service Marks**
    - Lanham Act (15 USC 1051, et seq.)
- **Others**
  - **Trade Secrets (like the Coke formula!)**
  - **Trade Dress (like the Campbell’s soup label!)**
  - **Maskworks (like semiconductor layers!)**



# Patents

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- **Protects “applied ideas”**
- **Rights**
  - **Make (have made)**
  - **Use**
  - **Sell**





# Getting a Patent

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- **Requirements to Patent**
  - Novel
  - Useful
  - Non-obvious
- **What's patentable?:**
  - Products (machines, **THINGS!**)
  - Processes (ways to make or do something, including chemical processes)
  - **MADE BY HUMANS** – not naturally occurring (such as algorithms & plants)
- **Inventors**
  - Whomever had a share in the ideas forming an invention
  - Only implementing is not inventing



## Getting a Patent (cont.)

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- **Statutory Bars**
  - Occurs > 1 year before filing
    - Prior patent by anyone, printed publication, public use, sale
  - Anticipation events occur at any time before invention\*\*\*
    - prior patent by anyone, printed publication, knowledge or unabandoned, unsuppressed, unconcealed invention by others, use by others, or description in another's previously filed and eventually granted application
    - DISCLOSURE has been broadened!



# Patent Infringement

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- **Anyone who, without permission, makes, uses, or sells a patented invention is a *direct* infringer.**
- **If a person actively encourages another to make, use, or sell the patented invention without permission, the person doing the encouraging is an *indirect* infringer.**
- ***Contributory* infringement can be committed by knowingly selling or supplying an item for which the only (or predominant) use is in connection with a patent invention.**



# Copyrights

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- **Protects “expressions of ideas”**
- **Rights**
  - **Reproduce**
  - **Make derivative works**
  - **Distribute**
  - **Perform publicly**
  - **Display publicly**





# Getting a Copyright

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- “Born” with copyright (once in fixed media)
  - Marking (aka, “asserting”) provides notice
- Authors
  - Whomever actually wrote/drew/painted/coded/**CREATED** the work
- Assertion
  - GOCO Labs/DOE
    - US Government employees @ work – no copyright allowed
    - GOCO lab employees @ work – copyright allowed
  - Copyright © YEAR *copyright holder*
- Registration
  - Library of Congress
  - Must be registered before a claim of infringement



# Copyright Infringement

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- **Anyone who exercises copyright rights without permission of the copyright holder has committed copyright infringement.**
- **Innocent infringement is still infringement**
- **Unconscious\*\*\* infringement is still infringement**
- **Just because it isn't marked (©), doesn't mean it isn't protected**
- **FAIR USE IS A DEFENSE, NOT AN EXCUSE TO INFRINGE!!!**



# Trademarks

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- **Provides an association between a product/good and a provider (service mark is between a service and a provider)**
- **Prevent mistake, deception and confusion with regard to the origin of the product/good**
- **Protects both sellers and purchasers**





# Getting a Trademark

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- **Common Law (based on unfair competition)**
  - Notification with <sup>TM</sup>
  - Have ownership rights and protection against infringement
  - “Good faith” defense frequently prevails
- **Registered w/USPTO (process similar to patenting)**
  - Notification with ®
  - Have ownership rights and protection against infringement **PLUS** overcome “good faith” claims, easier access to federal courts, incontestability, attorneys fees, and treble damages



# Trademark Infringement

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- **Decisive factors**
  - **Similarity of marks**
  - **Similarity of goods (services for service marks)**
  - **Character & similarity of market conditions\***
- **Persuasive factors**
  - **Relative strength of the mark\***
  - **Intent of alleged infringer**
  - **Nature of the mark\***
  - **Existence of actual confusion**
- **Again, FAIR USE IS A DEFENSE, NOT AN EXCUSE TO INFRINGE!!!**



# Questions?

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