

Intellectual Property:
What it is, why you should care,
and what to do about it

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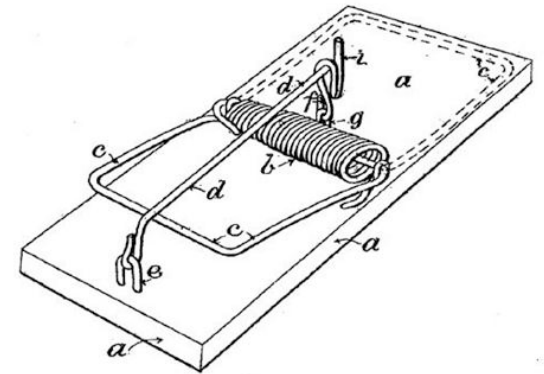
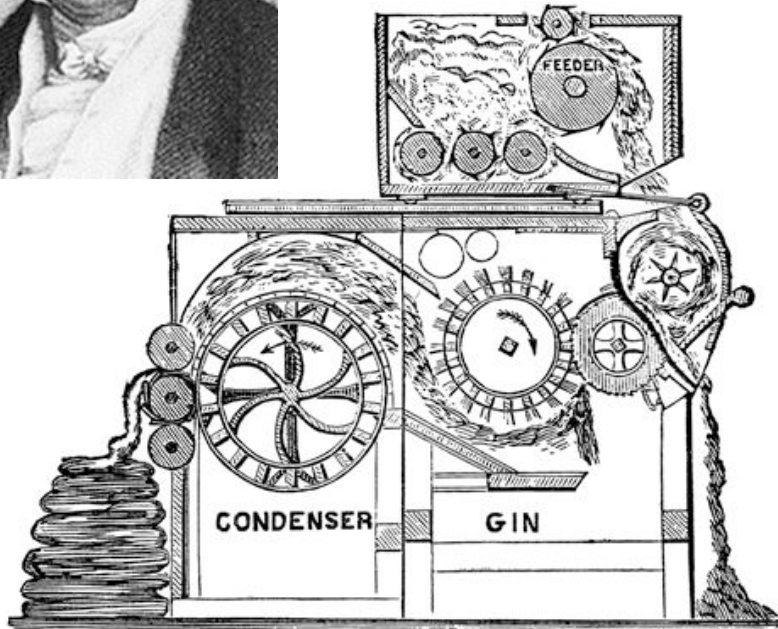
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What to Protect?

- **Intellectual Property:**
 - Patents – inventions
 - Copyrights – fixed original works
 - Trademarks – marks used in commerce
 - Trade Secrets – good idea + secret (the secret sauce)

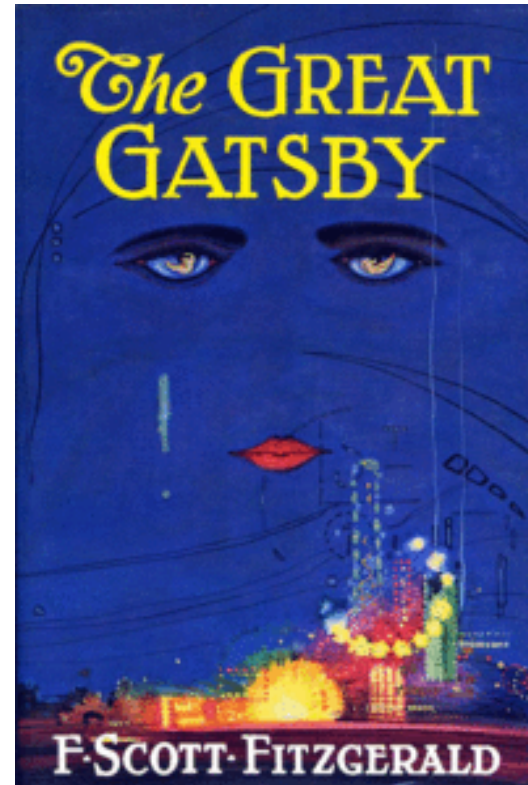
Patents



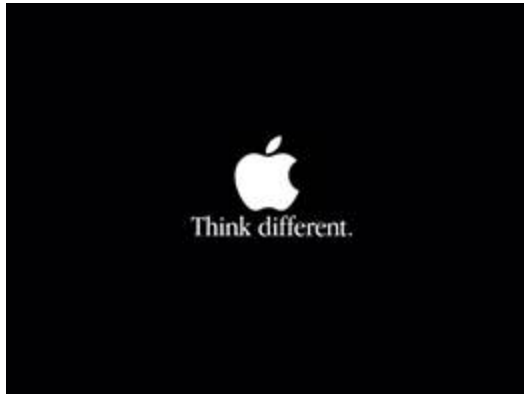
Copyrights



By Alfred Eisenstaedt



Trademarks



Trade Secret



Time for a quiz

- What is the one item that exists in almost every office that contains all of the kinds of intellectual property?

When do rights in intellectual property accrue?

- Patents – first to file
- Copyrights – upon affixation, but need to register to sue
- Trademarks – upon use in commerce, but need to register to sue (but not to oppose)
- Trade secrets – upon establishing a trade secret

Do I have intellectual property?

- Website contents
- Original works
- Logos
- Software code

What can I do to protect my intellectual property?

- **General rule:** The employer owns the intellectual property that the employee creates in the scope of his or her employment
- **But be aware of:**
 - Independent contractors
 - The tinkering employee
 - Joint authorship

What can I do to protect my intellectual property?

- **Invention assignment agreements (patents):**
 - Can be done prior to invention
 - Characteristics of good agreements
 - Power of attorney provisions

What can I do to protect my intellectual property?

- **Work for hire agreements (copyrights, sometimes trademarks):**
 - Characteristics of good work for hire agreements
 - Things to look out for:
 - Employee-designed trademarks
 - Website design & hosting

What can I do to protect my intellectual property?

- **Protecting your trademarks:**
 - Choose a distinctive mark – think Apple
 - Use your trademark
 - Register your trademark
 - Police your trademark

What can I do to protect my intellectual property?

- **Protecting trade secrets:**
 - Restrictive covenants, handbooks, confidentiality policies
 - Security – password protection, secure facility
 - Be careful with technology – cell phones, thumb drives, laptops, etc.
 - Be careful with independent contractors

My employee just gave her notice, what do I do?

- **The exit interview:**
 - Remind the employee of ongoing obligations
 - Collect all equipment
 - Outgoing confidentiality agreements
 - Document cutting off access

Post-employment and Beyond

- **Considerations post-employment:**
 - Preserve equipment
 - Handling the employee who leaves abruptly
 - Post-employment letter and request for attested statements

What do I need to do?

- What do you have that you could protect?
- Is it worth protecting?
- Are you appropriately protecting it?
- What do you need to do to fix it?