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An Introduction to Intellectual Property Rights

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Intellectual property litigation is quickly replacing defamation and invasion of privacy as the most serious – and expensive – threat to media companies. For this reason, we have created a series of articles which will help educate our brokers about the new exposures faced by their clients as media-related companies are scrambling to meet the public's appetite for information, news and entertainment. This issue provides an introductory overview of Intellectual Property Rights. The next issue will focus on important intellectual property coverages available under our media liability policy and why the typical CGL policy is inadequate to respond to these exposures.

Intellectual property litigation is quickly replacing defamation and invasion of privacy as the most serious — and expensive — threat to media companies, especially to advertisers, advertising agencies, film and music producers, media distributors and multimedia companies. Media-related companies are scrambling to meet the public's appetite for information, news and entertainment on a 24/7 basis. The more content that is created and distributed, the greater the exposure to an intellectual property claim. Similarities in media content or the inadvertent failure to execute a license can give rise to expensive and time-consuming litigation.

Copyrights, trademarks and patents are types of intellectual property, but each refers to a different intangible property right. Similarities exist and there often is overlap between them, but each form of intellectual property is, in its purest form, very different.

Copyrights pertain to original expressions, typically of a creative or artistic nature, such as paintings, sculptures, musical and dramatic works, books and photographs. While the duration of various copyright protections involves complicated rules (often depending on the time of the original creation), copyrights generally exist for at least fifty years after the creator's death and can be renewed.

Trademarks refer to *commercial* words, phrases, marks, logos or package designs and colors — or various combinations of all of the above — used by a manufacturer to identify its goods in commerce. For example, Coca-Cola at various times has had trademarks in red and white labels, various print and cursive writing forms, the use of the word "Coke" and formerly the ridged green glass bottle design. Trademarks (also called service marks, when referring to a service rather than a tangible item) are protected by notice in conjunction with the mark on the goods, packaging or advertising for same. The notice will be in the form of a small "tm" near the brand name or mark, unless the trademark has been registered with the federal Patent and Trademark Office, in which case it will be indicated by a small "r" in a circle.

Patents pertain to inventions, typically of a scientific, engineering or mechanical nature. Patents are grants from the Federal government that allow the patent holder to exclusively manufacture or use the invention in question or to license its use by others. It may refer to a medicine, machine, manufactured article or manufacturing process. In recent years, even bioengineered genes and other biological creations have been subject to patent protection.

Recent developments in computer technology might actually involve all three forms of intellectual property. A copyright might pertain to the design of software programming. The manufacturer of the copyrighted software might be protected by a patent as to the manufacturing process, and the sale, packaging and related advertising of the software might be protected by trademark. Retrieval of information from the Internet potentially raises both copyright and trademark issues, depending on the nature of the work at issue. Suits for trademark infringement have been brought relative to the use of certain domain names protected by the property owner. Developments in computer technology and software almost always contain overlap between copyright protection as to the creative design of the software and protection by patents as to various technological aspects. Because of the ease of transfer of digital information via the Internet, intellectual property law will be challenged to keep up with developments in technology.

Infringement claims often give rise to significant damages, and regardless of the merits, most such claims will entail substantial legal fees. If the federal copyright statute applies, for example, damages can be assessed on a per-infringement basis with damages up to $150,000 for each willful infringement. The prevailing party is also entitled to recover legal fees. Other remedies may include a "disgorgement" by the infringing party of all profits relating to the infringement, and injunctive relief against future infringement.

Because damages can be so significant,

the implementation and practice of sound clearance procedures, important aspects of loss prevention for any business, are crucial for any media-related company involved in the creative process or in distributing content. Media liability insurance is also an important consideration for companies looking to better insulate themselves from the many perils associated with copyright and trademark litigation. The next issue of ***Intellectual Property 101*** reviews the Media Insurance Policy and its applicability to copyright and trademark claims.

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