

- ## Michael Eisner:

- “We don’t make motion pictures for which we do not have the full stream of rights. It’s all tied to one purpose, creating a stream of rights that may start off in motion picture theatres, then move to cable, network, off-network, and foreign. The point is that we will own the software to every one of those media needs.

## Copyright

- It is a term that can be applied to all sorts of rights – for example it covers book rights, film rights, music rights, adaptation rights, sequel rights, merchandising rights and a whole lot more.



## Star Wars

- Fox’s market research had come up with conclusive proof that anything with “star” or “wars” in its title was death at the box-office.

• Source: Blockbuster by Tom Shone.

- Fox suggested they pay Lucas only \$100,000 to direct, plus 40% of the profits. They expected the figure to go up in negotiations. Instead Lucas agreed, if they would cede him the merchandising and sequel rights.
- Fox’s head of business thought he’d died and gone to heaven. Merchandising? What was that worth?

- By August 25<sup>th</sup> the novelisation sold over 2 million, the 2-disk soundtrack had sold out, and toy-maker Kenner were swamped by demand for Star Wars figures (they had to issue redemption certificates with boxes with picture of the toys).
- By 1981, the assorted merchandising would have generated \$1 billion, over 5 times more than the actual movie.

- And then, in the 90s, when the original Star Wars was “long, long ago....”

.....well around 20 years before....

- In 1991 Bantam Books published “Heir to the Empire” by Timothy Zahn. It went straight to number one in the New York Times best-seller list, remaining on the list for 29 weeks, eventually spawning it’s own sequels and games.
- In 1995 Hasbro released a new line in action figures, and by 1998 was making \$400 million.

## Income

- \$15 billion in non-film income by mid-2008, dwarfing the films’ \$4 billion worldwide box office take.

- In 1996, the Expanded Universe reached a new level of complexity with *Star Wars: Shadows of the Empire*. A multimedia production, it told a single story through a novel, a series of comics, a line of toys, a set of trading cards, and a video game for the new Nintendo 64 console. There was even a sound track and a making-of book.

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- This paved the way for the 1997 rerelease of the first three pictures, which together grossed \$250 million in the United States alone and were the number one box office draw for six weeks.
- The reissue of *Star Wars* alone made \$135 million. It was only a matter of time before more films were in the pipeline.

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- And that in turn led to the three prequels, which grossed \$2.4 billion worldwide and generated the sale of yet more novels, comics, toys, action figures, video games, trading cards, and sundry other items.
- ALL of which exploited intellectual property rights.

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## Lucas:

- “Everyone talks about how brilliant I was to get the licensing and the sequels and everything (but) I had three movies, because my movie got too big and I cut it in three different pieces. My only interest was to see I got those three movies made...I got the rights so I could control it, and I wanted to get the licensing because I wanted to make posters and tee-shirts and promote the film.”

# Disney

<http://www.disney.co.uk/>

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- Walt Disney believed that children, with adults in tow, could be the driving force of the entertainment industry.
- Snow White and the Seven Dwarfs was the first film in history to gross \$100 million.

- In 1928, frustrated at the loss of the rights to Oswald the Lucky Rabbit, (designed by his friend and colleague Ub Iwerks), Disney decided to always control rights to all characters in the future.
- Soon after, Ub Iwerks drew a talking mouse.

- Iwerks designed and animated virtually all of Disney's early characters and animated all of Disney's Silly Symphonies.
- However, he later fell out with Disney (feeling he wasn't being given due credit and disliking Disney's work practices). He was bought out by Walt and Roy Disney and moved on to a competitor.

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- By 1932 Disney was already licensing Mickey mouse to watch manufacturers.
- Mickey and his other characters became international stars, and international licenses.
- Local fan-clubs were established in more than 30 countries.

- In the fifties, while other studios resisted television, Disney began selling his Mickey Mouse Clubs to the networks – they paid for him to merchandise to the audience.
- In 1954, with the help of ABC network, he was able to finance Disneyland in Anaheim, California.

- By the nineties Disney had bought ABC (amongst other media assets).
- The company's "key objective" remained, according to chairman Michael Eisner, developing "powerful brand and character franchises".

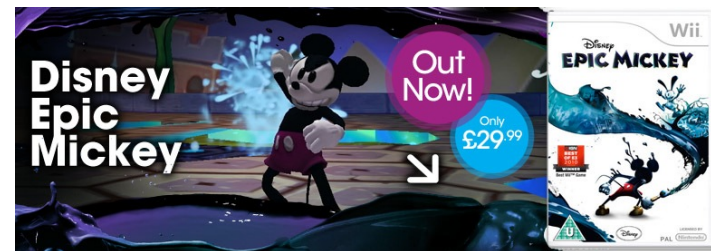
- The Walt Disney animation studio grew into the Walt Disney Company. It owned – with it's 1996 \$19 billion acquisition of CapitalCities/ABC Corporation – a television network, a radio network, cable networks, theme parks, cruise ships and other assets.

## Disney monetising rights.

- By summer 2014, The Lion King theatrical musical had earned \$6.2bn (the film made a mere \$1bn). Both figures exclude posters, cds, and other merchandise related to the property.
- (It's worth noting Elton John and Tim Rice, while paid a one-off soundtrack fee in 1994 of £2.5m and \$76m each from 2% of weekly theatre receipts, a 3D version of the film was not included in the original contracts - no share for them!),

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- Michael Eisner: “**a true full-service entertainment enterprise..in the vast entertainment firmament**”.



- More recently Disney merged with PIXAR.



## Bought Marvel...



## ...and Lucasfilm.



- It's all about the rights, and the exploitation of those rights.

## What is intellectual property?

*Confidentiality*

*Trade Marks*

*Copyright*

*Patents*

*Design Right*

*Regd. Designs*

## Copyright

- Cannot copyright an idea, only the expression of that idea.
- No official registration system.
- Good record keeping-Audit (evolution).
- Footprints, watermarks.
- Disclaimer- 'All rights reserved'.

## What Copyright protects

Anything that is a product of the mind, in tangible form.

- It is an **original work** as long as it has some element of creative thought involved in originating the work – if you can demonstrate that it would not have existed without your input.
- This can include adaptations of pre-existing work.



The most common rights covered under copyright include:

- the right to reproduce the copyrighted work
- the right to prepare derivative works
- the right to distribute copies to the public
- the right to publicly display the work

## Who owns Copyright?

Usually the first creator or author...

...or their employer if produced in the ordinary course of their employment

However, a contractor will retain ownership unless their contract is explicit to the contrary

Even if the creator sells their rights, they have 'moral rights' over how their work is used

## Primary Infringement

Any of the following without the consent of the rights owner

Copying / Reproducing

Adaptation

Distributing

Issuing or renting

Public performance

Broadcasting

**IGNORANCE IS NO DEFENCE**

## Secondary Infringement

Any of the following without the consent of the rights owner

Selling

Importing

Possession for business purposes

Facilitating primary infringement

Only guilty if done knowingly, or if you ought to have known

## 'Defences'- permitted acts

The following are allowable even when they technically breach Copyright: "Fair Dealing"

Private study

Research

News reporting

Public Interest

Criticism / reviews

Some official reports

Education, libraries

Video/DVD 'time-shifting'

- There are two competing traditions in copyright:
- European – emphasis is on protecting the author, via a set of "moral rights" for example.
- UK/US – emphasis is on protecting business i.e. the owner of rights (rarely the originator).

## **Copyright-Moral rights**

- Moral rights give the **authors** of literary, dramatic, musical, artistic works and film directors the right:
- to be **identified as the author** of the work or director of the film in certain circumstances, e.g. when copies are issued to the public.
- Also right to remove your name or use a pseudonym.
- to **object to derogatory treatment** of the work or film which amounts to a distortion or mutilation or is otherwise prejudicial to the honour or reputation of the author or director.

## Agencies for Copyright

Copyright Directorate (08459 500505) [www.ipo.gov.uk](http://www.ipo.gov.uk)

"Collecting Societies", eg:

Copyright Licensing Agency

Phonographic Performance Ltd

Performing Rights Society

Association of Independent Music, British Music Rights, British Phonographic Industry, British Video Association, Music Publishers' Association, Music Users' Council of Europe, Producers' Alliance for Cinema & TV, Authors' Licensing & Collecting Society, Copyright Advice & Anti-Piracy Hotline, UK Copyright Service, Educational Copyright Users' Forum, Federation Against Software Theft, Mechanical Copyright Protection Society, Museums' Copyright Group, Anti-Copying in Design (ACID), Publishers' Association, Newspaper Publishers' Association...

## Creative Commons

- In December 2002, Creative Commons released its first set of [copyright licenses](#) for free to the public. Creative Commons developed its licenses — [inspired in part](#) by the Free Software Foundation's GNU General Public License (GNU GPL) — alongside a Web application platform to help you license your works freely for certain uses, on certain conditions; or dedicate your works to the public domain.
- In the years the licenses have been further improved, and ported to over 50 [international jurisdictions](#).
- <http://creativecommons.org>

## There are four major conditions of the Creative Commons:

- Attribution (BY), requiring attribution to the original author;
- Share Alike (SA), allowing [derivative](#) works under the same or a similar license (later or jurisdiction version); generates a “viral” license.
- Non-Commercial (NC), requiring the work is not used for commercial purposes; and
- No Derivative Works (ND), allowing only the original work, with out derivatives.

## There are six major licenses of the Creative Commons:

- Attribution (CC-BY)
- Attribution Share Alike (CC-BY-SA)
- Attribution No Derivatives (CC-BY-ND)
- Attribution Non-Commercial (CC-BY-NC)
- Attribution Non-Commercial Share Alike (CC-BY-NC-SA)
- Attribution Non-Commercial No Derivatives (CC-BY-NC-ND)
- Additional options include the CC0 option, or "No Right Reserved."

If work is not copyright free or creative commons, you need to make sure you have clearance, or the rights-holder can cause big problems for you later.

## Fair Use/Fair Dealing

- **“fair use”** = Copying of copyrighted work for limited/ transformative purpose:
  - Criticism
  - Parody
  - Comment
  - reporting current events
  - court proceedings
  - teaching, research or study - a reasonable amount can be used without permission for academic, research and criticism purposes.

## Fair Use

- Four factors come into consideration when something is ‘fair use’:
- **Purpose and character** of use: is it commentative/ transformative- new meaning? New value given to work?
- **Nature** of the copyrighted work – e.g. public benefit in quoting factual work.
- **Amount & Substance** – less used, more likely to be fair use. Likelihood of confusion.
- **Effect on market value of original** – will your use decrease sales of copyrighted work? Degree of profit/ non-profit v commentative purpose.

## Fair Use

- Rulings over what constitutes **‘borrowing’** and **transformative** work and/or **parody/comment** are inconsistent.

## Trade Marks

## A Registered Trade Mark is...

Any sign which is capable of being represented graphically

Any sign which is capable of distinguishing the goods or services of one undertaking from another

“A Badge of Origin”

## What can be registered?

Name      Logo

Domain name      Slogan

Colour      Shape

Music      Non-traditional







## Be Inventive

- **Google** – an intentional misspelling of googol (1 followed by 100 ‘0’s).
- **Blaupunkt** – originally called ideal – a blue dot was attached if the headphones came through the quality test.
- **LEGO** – Danish “leg godt” – play well ( coincidentally “I learn” in Latin).
- **Starbucks** - a character in Herman Melville’s novel Moby Dick.
- **Intel** – Gordon Moore/Bob Noyce – sounded too close to more noise, so adopted Integrated Electronics.

## Use your name

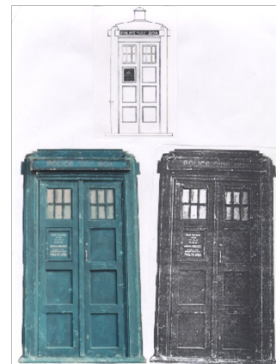
- **Amstrad** – Sir Alan Michael Sugar trading
- **B&Q** – founders Block & Quayle
- **DHL** – Adrian Dalsey, Larry Hillblom & Robert Lynn
- **Hasbro** - Henry & Helal Hassenfeld – **Hassenfield Brothers**
- **Mercedes** – the first name of salesman Emil Jellineks daughter
- **Mitel** – **Mike & Terry’s Lawnmowers** – Michael Cowpland & Terry Matthews

### Colours as Trade Marks

-  - as applied to the outside of petrol filling stations
-  - in relation to roadside recovery services
-  - in relation to milk chocolate
-  - in relation to cat food
-  - in relation to baked beans
-  - in relation to mobile communications



### Shapes as Registered Trade Marks



### Music as Registered Trade Marks



**directline.com**  
**A GOOD DEAL BETTER**

## Domain names

Trade Mark registration is **not** company name or domain name registration

A domain name may be registered as a Trade Mark

Incorporating another's RTM into your domain name or meta-tag may be an infringement

## Design Rights

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## Registered Designs

- Protects shape or configuration (3D) and/or pattern or ornamentation (2D).

## Registered Designs

Apple Inc

“an austere, abstract, platonic-looking form that somehow also manages to feel warm and organic and ergonomic”

Jonathan Ive, Apple's head of design



Design Registration No. 748314- 1

## Registered Designs



Design No 3001664

Mazzmatazz and her Ood patterns V BBC



# Patents



# Confidentiality

(Trade Secrets)

## Confidential Information

Know-how & Show-how

Customer Lists

Pricing Strategies

Technical Information

Methodologies

Commercial Intelligence

## Trade Secrets & NDAs

- A trade secret is any commercial information on a property that is not known publicly.
- You can seek to protect that information via Non-Disclosure Agreements (NDAs).

- And finally, two cautionary tales.

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- [Truth, Justice and the American Way!](#)

Is it a bird, is it a plane.....?



## Superman.

- 1937: Jerry and Joe got a cheque for **\$130** in return for signing a release surrendering all rights to the publisher.
- The first issue of Superman, out in 1939, sold over **900,000** copies.
- When the creators sought ownership of their work, they were fired.
- The property has gone on to make billions.

Jerry Siegel wrote, while working as a lowly mail clerk, in 1975 after decades of DC Comics making millions from his creation:

- “The publishers of Superman comic books...murdered my days, killed my nights, choked my happiness, strangled my career. What an infernal, sickening superstench emanates from National Periodical Publications”.

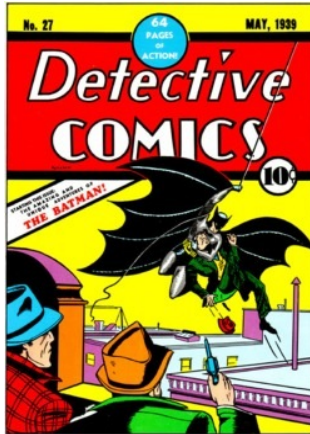
## Have tangible proof of creation of the IP

- (..and clear contracts, especially where collaborators are involved)

## Collaboration

- Define and agree who does what.
- Define and agree who owns what.
- Define scope of ownership
- Agree **in writing** who will own IP arising from collaboration **before** commercialisation.
- Get it all in writing legally when all is still friendly and fair.

## Holy Bat-fraud, [Batman!!!](#)



## Created by Bob Kane?

- What about Bill Finger (and Jerry Robinson, Sheldon Moldoff, Jim Mooney and others)?
- (And what about the creators of The Shadow, Zorro, and the existing pulp crime-fighters “The Bat” and “the Black Bat”, Green Hornet etc.

Finger suggested that Batman ought to look like a bat, looking up "bat" in the dictionary and showed Kane the accompanying illustration. From that, Finger suggested the design of the costume.

Finger also wrote the stories that introduced Robin, Catwoman, the Joker, the Penguin, the Batmobile, the Batcave and Gotham City, as well as Batman's origin story.

- Bob Kane's deal meant that in the years to come he was allowed to call himself Batman's creator, and he made a lot of money from his cut of merchandising, from the early days through to the comics and television series of the sixties and onwards.