

Trademark and Copyright Law



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TRADEMARK AND COPYRIGHT LAW

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SUMMARY OF RECOMMENDATION

**LEGISLATIVE COMMISSION'S COMMITTEE TO STUDY
TRADEMARK AND COPYRIGHT LAW**

Assembly Bill 383
(Chapter 461, *Statutes of Nevada 2011*)

At its meeting on August 20, 2012, the Legislative Commission's Committee to Study Trademark and Copyright Law adopted the following recommendation. The following bill draft request (BDR) will be submitted to the 77th Session of the Nevada Legislature:

Request a bill draft to amend the *Nevada Revised Statutes* to provide for the registration and protection of a single title of a creative work of authorship as a trademark in Nevada. **(BDR -406)**

**REPORT TO THE 77TH SESSION OF THE NEVADA LEGISLATURE
BY THE LEGISLATIVE COMMISSION'S COMMITTEE
TO STUDY TRADEMARK AND COPYRIGHT LAW**

I. INTRODUCTION

The 2011 Nevada Legislature enacted Assembly Bill 383 (Chapter 461, *Statutes of Nevada*) to create the Legislative Commission's Committee to Study Trademark and Copyright Law. The Committee was charged to conduct a study to include: (1) consideration of applicable provisions of federal trademark and copyright law; (2) a survey of the laws of Nevada and other states and territories of the United States relating to the protection of trademarks and copyrights; (3) consideration of proposals to provide greater protections for creative or expressive works in accordance with federal law; (4) an examination of ways in which other jurisdictions have regulated trademark and copyright law; (5) an opportunity for interested parties to participate; and (6) an examination of any other matter relevant to the study. (See Appendix A for a copy of A.B. 383.)

Members

The following legislators served on the Committee to Study Trademark and Copyright Law during the 2011-2012 Interim:

Assemblyman Tick Segerblom, Chair
Senator Mark A. Manendo, Vice Chair
Senator Greg Brower
Senator Moises (Mo) Denis
Assemblyman Jason M. Frierson
Assemblyman Pat Hickey

Staff

The following Legislative Counsel Bureau (LCB) staff members provided support for the Committee:

Brenda J. Erdoes, Legislative Counsel, Legal Division
Matthew Mundy, Deputy Legislative Counsel, Legal Division
Carol M. Stonefield, Managing Principal Policy Analyst, Research Division
Tracey Wineglass, Senior Research Secretary, Research Division
Janet Coons, Senior Research Secretary, Research Division

Meeting

On August 20, 2012, the Committee met at the Grant Sawyer State Office Building in Las Vegas, Nevada. The meeting was videoconferenced to the Legislative Building in Carson City, Nevada. The Committee received information on applicable federal copyright and trademark laws as well as a review of methods by which Nevada and other jurisdictions have regulated trademarks and copyrights under state law. Members adopted one bill draft request to provide statutorily for the registration and protection of a single title of a creative work of authorship as a trademark in this State.

II. BACKGROUND

Copyright Law

Copyright is a body of law that protects original works of authorship which are fixed in a tangible medium of expression. Copyright law protects the right of the creator to reproduce, modify, distribute, perform, or display the original work.

American copyright law is derived from the Copyright Clause of the *United States Constitution* in Article I, Section 8, which empowers Congress:

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.

Federal copyright law preempts the entire field of copyright law. As such, states may not regulate copyright law.

Trademark Law

A trademark is any symbol, word, or other device that indicates the origin of goods or services. Trademarks are protected under both state and federal law. Trademarks have been used for centuries; the earliest trademarks included the branding of cattle with the owner's mark and the impressing of a craftsman's symbol into metal or leather goods.

Federal trademark law does not expressly preempt state law, unless a state law is found to conflict with federal law. Therefore, states may regulate and protect trademarks. Chapter 600 ("Trademarks, Trade Names and Service Marks") of the *Nevada Revised Statutes* provides for the registration and protection of trademarks, trade names, and service marks in Nevada.

III. REVIEW OF MAJOR ISSUES

Copyright Law

At its meeting on August 20, 2012, the Committee received an overview of copyright law and trademark law, presented by Matthew Mundy, Deputy Legislative Counsel, Legal Division, LCB. Mr. Mundy explained that the Copyright Clause of the U.S. Constitution is embodied in the federal Copyright Act of 1976 (17 *United States Code* [U.S.C.]). This act grants to the copyright owner the following:

1. The right of reproduction;
2. The right of modification;
3. The right of distribution;
4. The right to perform publicly; and
5. The right to display publicly.

Mr. Mundy clarified that copyright infringement is the exercise of one of these rights by another party without the authorization from the copyright owner. With regard to copyright, Mr. Mundy explained that federal law expressly preempts the entire field of state copyright law.

In 1998, Congress enacted the Digital Millennium Copyright Act (DMCA). Included in the DMCA are safe harbor provisions for internet service providers which substantially limit the liability of service providers with respect to copyright infringement. (For an overview and discussion of copyright law, prepared by the staff of the Legal Division, see Appendix B.)

Trademark Law

Mr. Mundy testified that trademark law historically served the dual purposes of informing consumers of the source of goods or services and protecting the owner's trademark as property. He said that state trademark laws are not expressly preempted by the federal Lanham Act of 1946 (15 *U.S.C.*), although state laws that directly conflict with the provisions of the Lanham Act are preempted.

Mr. Mundy explained the difference between copyright law and trademark law. Copyright law protects against the copying or reproduction of a protected creative or inventive work, while trademark law protects against the use of a confusingly similar or dilutive good or service in a manner that would confuse the consumer as to the origin or source of the goods or service. He noted case law provides that a plaintiff cannot utilize trademark law to protect copyrighted content; doing so triggers preemption under the federal Copyright Act. Further, jurisdiction for a trademark infringement suit arises in the state where the infringement occurs. (For an overview and discussion of trademark law, prepared by the staff of the Legal Division, see Appendix C.)

State Regulation of Copyright and Trademark Law

Mr. Mundy summarized the scope of state regulation of copyright and trademark law for the Committee. Briefly, due to the preemption of federal law, the Legislature is restricted in its ability to regulate copyright law. However, the Legislature may expand the rights of holders of trademarks so long as a statute does not limit the rights of holders of trademarks under federal law, conflict with federal law, intrude into the field of copyright law, or expand its jurisdiction to activities occurring outside of Nevada. (For a review of the limitations and options available to the Legislature, prepared by the staff of the Legal Division, see Appendix D.)

Internet Copyright Infringement

At the August 20, 2012, meeting of the Committee, Garrett Sutton, J.D., testified that he has authored several books in the *Rich Dad* series. He informed the Committee that he regularly receives Internet alerts regarding websites offering his books for download by subscribers. He said sites will purchase a book, copy the pages, and upload the material to their websites. For a monthly service fee, members can download any number of books without further charge. As an author, he is deprived of royalties for his work. He said this process creates a problem for artists, filmmakers, and musicians as well as authors. Mr. Sutton stated his opinion that there is no procedure at the federal level to deal effectively with this infringement.

Mr. Sutton offered a proposal to establish the Nevada Title Trademark Act, which would create a new class of trademark. The title trademark would combine the name of the title of the creative work with the name of the creator. Mr. Sutton maintained that this proposal would avoid conflict with federal law, which seeks to protect the work but not the title. Although the Lanham Act does not allow for the title of a single creative work to be trademarked, it does allow for greater state protection. This would be accomplished with the new class of title trademark. In order for an aggrieved party to pursue a claim in a State court, he suggested that the trademark owner must be a Nevada resident or the publisher must have a full-time employee residing in Nevada to satisfy jurisdiction requirements. (For a copy of Mr. Sutton's position statement and his proposed Nevada Title Trademark Act, see Appendix E. For a copy of a memorandum to Mr. Sutton from John K. Ellis, J.D., regarding federal copyright or trademark preemption issues, see Appendix F.)

IV. RECOMMENDATION

Based upon the review of copyright and trademark law, the Committee discussed options available to provide greater protection to creators of original works of authorship. Committee members considered federal preemption of copyright law as well as the comparatively fewer restrictions placed on states to enact protections for trademarks.

Further, the members considered Mr. Sutton's opinion that a claim under a state law establishing a new class of trademark called a title trademark, consisting of a combination of the name of the

title of the creative work and the name of the creator, would contain elements different from either federal copyright or federal trademark law. Moreover, according to Mr. Sutton, the proposal would not be preempted by federal law. Therefore, the Committee voted to:

Request a bill draft to amend the *Nevada Revised Statutes* to provide for the registration and protection of a single title of a creative work of authorship as a trademark in Nevada. **(BDR –406)**

V. CONCLUDING REMARKS

A copy of the minutes of the August 20, 2012, meeting are available through the LCB's website (<http://www.leg.state.nv.us/>) and through its Research Library (775/684-6827).

The Legislative Commission's Committee to Study Trademark and Copyright Law wishes to thank the individuals who contributed to this study through correspondence or testimony. The members appreciate the time and expertise of those who contributed to this study.

VI. APPENDICES

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APPENDIX A

Assembly Bill 383 (Chapter 461, *Statutes of Nevada 2011*)

CHAPTER 461

AN ACT relating to trade regulations; directing the Legislative Commission to conduct an interim study concerning trademark and copyright law; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

This bill directs the Legislative Commission to conduct an interim study concerning trademark and copyright law. In relevant part, the committee appointed by the Legislative Commission to conduct the interim study must consider proposals for providing greater protections for the creative or expressive works of authors, artists and other persons in this State in a manner that is consistent with federal law.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. 1. The Legislative Commission shall appoint a committee to conduct an interim study concerning trademark and copyright law.

2. The committee appointed by the Legislative Commission pursuant to subsection 1 must be composed of six Legislators as follows:

- (a) Three members appointed by the Majority Leader of the Senate; and
- (b) Three members appointed by the Speaker of the Assembly.

3. The study must include, without limitation:

(a) Consideration of the applicable provisions of federal law, including, without limitation, the Copyright Act of 1976, Pub. L. No. 94-553 (1976) as amended, and the Digital Millennium Copyright Act of 1998, Pub. L. No. 105-304 (1998) as amended.

(b) A survey of the laws of this State and other states and territories of the United States relating to the protection of trademarks and copyrights.

(c) Consideration of proposals for providing for greater protections for the creative or expressive works of authors, artists and other persons in this State in a manner that is consistent with federal law.

(d) An examination of methods by which other jurisdictions have regulated trademark and copyright law in a manner that is consistent with federal law.

(e) Insofar as is reasonably practicable, input from all parties having an interest in the regulation and protection of trademarks and copyrights.

(f) An examination of any other matter that the committee determines to be relevant to the study.

4. The Legislative Commission shall submit a report of the results of the study and any recommendations for legislation to the 77th Session of the Nevada Legislature.

Sec. 2. This act becomes effective on July 1, 2011.

APPENDIX B

Review of the Applicable Provisions of Federal Law, Including,
Without Limitation, the Copyright Act of 1976 and the
Digital Millennium Copyright Act of 1988

COPYRIGHT LAW

➤ Overview

- Purpose is to provide protection to “original works of authorship.”
- The Copyright Clause of the United States Constitution authorizes Congress to enact copyright legislation. U.S. Const. art. I, § 8, cl. 8.
 - Empowers Congress: “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.”
- Embodied in the Copyright Act of 1976 (“Copyright Act”), which is a federal statute that went into effect in 1978.

➤ Types of Content Protected Under the Copyright Act

- Three Criteria:
 - (1) The work must be original.
 - ◆ The originality requirement does not mean that a work must be novel. It only means that the work was not copied from another work.
 - (2) The work must be a work of authorship.
 - ◆ Literary works.
 - ◆ Musical works.
 - ◆ Dramatic works.
 - ◆ Pantomimes and choreographic works.
 - ◆ Pictorial, graphic, and sculptural works.
 - ◆ Motion pictures and other audiovisual works.
 - ◆ Sounds recordings.
 - ◆ Architectural works.
 - (3) The work must be fixed in a tangible medium of expression.

- ◆ This requirement is satisfied if the work’s “embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration.” 17 U.S.C. § 101. For example, a painting, a story written onto pieces of paper or into a word processing program, a song which has been recorded and a movie which has been recorded on a camera have all become fixed in a tangible medium of expression.

17 U.S.C. § 102(a).

➤ **Rights Granted to the Copyright Owner by the Copyright Act**

- Five Rights (17 U.S.C. § 106):
 - (1) Right of reproduction;
 - (2) Right of modification;
 - (3) Right of distribution;
 - (4) Right to perform publicly; and
 - (5) Right to display publicly.
- Only the owner of the copyright, or a person authorized by the owner of the copyright, may exercise these rights. Generally, copyright infringement is the exercise of one of these rights without authorization from the copyright owner.

➤ **Duration of Copyright Under the Copyright Act**

- The rights of a copyright are exclusive for a limited period (17 U.S.C. § 302):
 - For works created by individuals: The life of the author plus 70 years.
 - For “works made for hire” (i.e., commissioned or created by employees for employers): 95 years from the date of first publication or 120 years from the date of creation, whichever expires first.

➤ **Federal Preemption and Copyright Law**

- Overview

- Occurs when a court finds that federal law displaces state law which attempts to regulate a particular subject that is properly under the purview of federal law.
- Occurs via the Supremacy Clause of the United States Constitution. U.S. Const. art. VI, cl. 2.
- Types
 - Express Preemption
 - ◆ Occurs when Congress expressly reserves the exclusive right to regulate a certain activity. Jones v. Rath Packing Co., 430 U.S. 519, 525 (1977).
 - Implied Preemption
 - ◆ Field Preemption
 - Occurs when Congress has adequately indicated an intent to occupy a particular field of regulation. Fid. Fed. Sav. & Loan Ass'n v. De la Cuesta, 458 U.S. 141, 153 (1982).
 - ◆ Conflict Preemption
 - Occurs when a state law directly conflicts with a federal law. I.e., compliance with both federal and state regulations is a physical impossibility. Florida Lime & Avocado Growers, Inc. v. Paul, 373 US 132, 142-43 (1963)
- **KEY POINT: Federal copyright law expressly preempts the vast majority of state common and statutory law in the field of copyright.**
 - “[A]ll legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright ... are governed exclusively by this title. Thereafter, no person is entitled to any such right or equivalent right in any such work under the common law or statutes of any State.” 17 U.S.C. §301(a).
 - States cannot enact their own laws to protect the same rights as the rights provided by the Copyright Act.
 - State “copyright” laws exist, but they are limited to works that cannot be protected under federal copyright law. They are very narrow in scope.

➤ **Jurisdiction and Copyright Infringement**

- Jurisdiction, generally
 - A court must have jurisdiction over the parties to a lawsuit to satisfy the Due Process Clause of the 14th Amendment to the United States Constitution.
 - The use of protected content on the Internet by nonresidents poses an increasingly significant dilemma for courts as it pertains to jurisdiction in copyright infringement cases.
 - State long-arm statutes extend a state’s jurisdiction to nonresident defendants to the extent those defendants have minimum contact with the forum state.
 - Types of personal jurisdiction for nonresidents
 - ◆ General Jurisdiction
 - Occurs when a person or company has engaged in “continuous and systematic” activities within a forum state. Helicopteros Nacionales de Colum. v. Hall, 466 U.S. 408, 414-16 (1984).
 - ◆ Specific Jurisdiction (“minimum contacts”)
 - Occurs when a nonresident has a transactional relationship with a forum state and meets the threshold for “minimum contacts” with the forum state to trigger jurisdiction. Int’l Shoe Co. v. Wash., 326 U.S. 310 (1945).
 - Three-prong test
 - (1) A defendant must have sufficient “minimum contacts” with the forum state (*i.e.* “purposeful availment”);
 - (2) The claim asserted must arise out of such contacts; and
 - (3) The exercise of jurisdiction must be reasonable. Zippo Mfg. Co. v. Zippo Dot Com, Inc., 952 F. Supp. 1119, 1122 (W.D. Pa. 1997).
 - “Minimum contacts” and “purposeful availment”
 - Foreseeability is critical - *i.e.*, can a defendant foresee that his activity within a forum state would subject him to the laws of the state. Id. at 1123.

➤ **Digital Millennium Copyright Act of 1998 - ISP Liability Under the Safe Harbor Provision - 17 U.S.C. § 512**

- “Service provider” is defined by 17 U.S.C. §512(k)(1)(B) as a “provider of online services or network access, or the operator of the facilities therefor[.]” The term includes, for certain provisions of the safe harbor statute, “an entity offering the transmission, routing, or providing of connections for digital online communications, between or among points specified by a user, of material of the user’s choosing, without modification to the content of the material as sent or received.” 17 U.S.C. § 512(k)(1)(A).
- Congress provided a series of protections for service providers within the DMCA which substantially limit the liability of service providers with respect to copyright infringement.
- Each “safe harbor” represents a particular aspect of the normal operation of the Internet that Congress wanted to protect and promote. Each has a set of particular conditions, all of which must be met to enjoy the protection of the particular exception.
- The four “safe harbors” for service providers are for:
 - (1) Transitory digital network communications;
 - (2) System caching;
 - (3) Information residing on systems or networks at the direction of users; and
 - (4) Information location tools.

Perfect 10, Inc. v. CCBill LLC, 488 F.3d 1102, 1109 (9th Cir. 2007).

- In most cases, some or all of the following conditions must be met to qualify for protection under 17 U.S.C. § 512:
 - The copyrighted material originates from or is transmitted by a person other than the service provider.
 - Lack of actual knowledge of the use of infringing content.
 - Acts expeditiously to remove, or disable access to, infringing material.
 - Does not receive a direct financial benefit which is attributable to the infringing activity.

- Designates an agent to receive notifications of claimed infringement.
 - Responds expeditiously to subpoenas from the owners of copyrighted material.
 - Adopts and implements a policy that provides for the termination of accounts of repeat offenders.
- Case Law
 - MGM Studios, Inc. v. Grokster, Ltd., 545 U.S. 913 (2005).
 - ◆ Held: The Supreme Court of the United States found that an online company (“Grokster”) which distributes software with the object of promoting its use to infringe copyrighted material is liable for the resulting acts of infringement by third-party users.
 - ◆ Evidence revealed that Grokster’s objective was to allow users to download copyrighted works and Grokster took active steps to encourage infringement.
 - ◆ A substantial volume of downloaded material was copyrighted work.
 - ◆ There was no evidence that Grokster made an effort to filter copyrighted material from users’ downloads or otherwise impede the sharing of copyrighted files.
 - Perfect 10, Inc. v. CCBill LLC, 488 F.3d 1102 (9th Cir. 2007).
 - ◆ DMCA notification procedures place the burden of policing copyright infringement squarely on the owners of the copyright.
 - ◆ Under the safe harbor provisions of the DMCA, the 9th Circuit refused to place the burden of determining whether downloadable content was copyrighted on the service provider. The court declined to place any investigative duties on the service provider. Id. at 1114.
 - ◆ Under the DMCA’s safe harbor provisions, service providers are immune from liability for the passive transmission of all digital online communications, not just those that directly infringe. Id. At 1116.
 - Viacom Int’l Inc. v. YouTube, Inc., 718 F. Supp. 2d 514 (2010) (aff’d in part, reversed in part).

- ◆ Held: YouTube qualified for protection under the safe harbor provision of the DMCA.
- ◆ A service provider does not qualify for safe harbor protection if it had actual knowledge that the material on its websites infringed a copyright or was aware of facts and circumstances that made such infringement apparent. Id. at 520-21.
- ◆ Although YouTube was aware that copyright-protected material was being placed on their website, defendants removed the identified material when they received specific notice, they had a policy of terminating the accounts of repeat offenders and they had no duty to search for or investigate infringements with only a general knowledge of such infringements. Id. at 527-29.

➤ **State Copyright Laws**

- Exceptions to Preemption
 - Record piracy laws protecting pre-1972 sound recordings.
 - ◆ Nearly all states, including Nevada, have record piracy statutes. (*See* NRS 205.217)
 - Unpublished works alleging causes of action that arose prior to January 1, 1978.
- California Resale Royalties Act
 - Each time an original piece of art is sold, the artist is entitled to be paid a royalty from the sale.
- Protectable Rights in Ideas
 - California protects the author of any original work of authorship that is not fixed in any tangible medium of expression. Cal. Civ. Code § 980.
 - ◆ The conveyance of an idea can constitute valuable consideration and can be bargained for before it is disclosed to proposed purchaser, but once disclosed, the idea is the purchaser's own and he may work with it and use it as he sees fit. Colvig v. KSFO, 36 Cal. Rptr. 701 (Cal. Dist. Ct. App. 1964).
 - ◆ The format for a radio program may constitute a protectable "product of the mind" if it is original and novel, even though materials, ideas and arrangements have been borrowed from other sources where they may be found separately or in different forms, settings, or combinations. Mut. Broad. Sys., Inc., 221 P.2d 108 (Cal. Dist. Ct. App. 1950).

APPENDIX C

Review of the Applicable Provisions of the Lanham (Trademark) Act of 1946,
Including, Without Limitation, a Survey of the Laws of this State and
Other States and Territories of the United States Relating to the
Protection of Trademarks and Copyrights

TRADEMARK LAW

❖ OVERVIEW

➤ History

- Trademark law is a subset of the broader category of unfair competition law.
- Trademark law historically serves two purposes:
 - (1) Protects consumers from being confused or deceived about the source of goods or services in the marketplace; and
 - (2) Protects the owner's trademark as property.

Mary LaFrance, Trademark Law, 1 (2d ed. 2009); J. McCarthy, Trademarks and Unfair Competition, § 2:2 (4th ed. 2012).

- Trademark rights arise through the actual use of a mark to indicate the source of goods or services. LaFrance, supra, at 1.
- State trademark laws are not expressly preempted by federal trademark law. Therefore, the states are free to regulate trademark law to the extent that such regulation does not narrow the scope of federal rights under the Lanham Act.
- Trademarks are protected under three bodies of law:
 - (1) State common law;
 - (2) State statutory law; and
 - (3) Federal law (the Lanham Act, 15 U.S.C. § 1051, et seq.).

➤ What Can Be Trademarked (*see* LaFrance, supra, at 9-10.)

- Any device that serves as an indication of the origin of their goods or services.
- Examples: words, symbols, sounds, colors, fragrances, graphic designs, or virtually any nonfunctional feature of goods or services.
- There is no requirement that the device must be novel, nonobvious, or original.

➤ **Duration of Trademark**

- Trademark protection, unlike copyright, may last indefinitely.
- Once an identifying mark reaches trademark status, its protection under trademark law lasts indefinitely, until the mark fails to identify the source of the goods or products in the minds of consumers, at which point it becomes generic and no longer has trademark status.

➤ **Federal Preemption and Trademark Law**

- The Lanham Act, unlike the federal Copyright Act, does not expressly preempt state trademark and unfair competition laws. Attrezzi, LLC v. Maytag Corp., 436 F.3d 32, 41 (1st Cir. 2006).
- The Lanham Act was not generally intended to “occupy the field” of state trademark and unfair competition laws. Id.
- However, state laws which are in direct conflict with the Lanham Act are preempted. Id.
- State common law and statutory law may expand the protection of trademarks within the respective states, but it cannot narrow the protections provided to a trademark registered under the Lanham Act.
- State statutory and common law which does not directly conflict with the Lanham Act provides an additional layer of protection to holders of trademarks.

➤ **Trademarks and State Common Law** (*see LaFrance, supra, at 13.*)

- A trademark is protected under state common law, regardless of whether it has been registered, provided that it is in use and distinguishes the goods or services of the merchant who uses the mark.
- Protection is generally limited to the geographic area in which the owner was the first to use the mark. Thus, different parties may be entitled to use of the same mark, concurrently, in distinct geographic areas within the same state.

➤ **Trademarks and State Statutory Law**

▪ **Overview**

- State statutory laws provide for registration systems and enhanced penalties for trademark infringement in addition to federal remedies under the Lanham Act.

- Statewide priority obtained through registration is subject to preexisting common law rights of a prior user. Id.
- A plaintiff may ordinarily bring both state and federal claims for trademark infringement in either federal or state court. Id. at 14.
- There are two basic types of state trademark actions.
 - ◆ (1) **Trademark infringement.** Passing off similar goods under another's trademark.
 - Example: A person bottles their own soda and sells it under the brand name Coca-Cola.
 - ◆ (2) **Trademark dilution.** Passing off dissimilar goods under another's trademark.
 - Example: A person rolls their own cigarettes and sells them under the brand name Coca-Cola.
 - Trademark dilution protection is expanding at both the state and federal levels.
- **Model Acts (see McCarthy, supra, at § 22:5-22:9.25.)**
 - Model State Trademark Act -1996 Version (adopted by Nevada)
 - ◆ Provides for state registration of trademarks and service marks.
 - ◆ Provides for anti-dilution causes of action.
 - ◆ Provides for lost profit damages, treble damages, and attorney's fees.
 - ◆ Includes a provision encouraging courts and agencies to view federal law as persuasive authority in construing trademark law.
 - ◆ Decreases registration period from 10 years to 5 years.
 - ◆ By 1992, 46 states modeled state trademark law on the model act, including Nevada.
 - Not used in West Virginia, Hawaii, Wisconsin, or New Mexico.
 - Model State Trademark Act - 2007 Version
 - ◆ Reflects the (federal) Trademark Dilution Revision Act of 2006.

- ◆ Provides anti-dilution protection for famous marks that are “widely-recognized” by the consuming public of a state.
 - Eliminates protection for items which acquire “niche fame” in a niche product market.
 - Limits injunctive relief to the geographic area of fame, but not beyond the borders of the state.
 - ◆ Amends definition of “dilution” to incorporate “dilution by blurring” and “dilution by tarnishment.”
 - **Dilution by blurring.** An association between marks that impairs the distinctiveness of a famous mark.
 - **Dilution by tarnishment.** An association between marks that harms the reputation of a famous mark.
 - ◆ Makes injunctions available to prevent the use of a mark which is “likely to cause dilution” in addition to use which actually “causes dilution.”
 - ◆ In 2007, California was one of the first states to enact the 2007 model bill.
 - ◆ The 2007 version has also been adopted in whole or in part by at least the following: Alabama, Florida, Massachusetts, Mississippi, Missouri, New York, Oregon, Puerto Rico, and Texas.
- Nevada
 - Trademark laws in Nevada closely track the 1996 version of the Model State Trademark Act.
 - Other miscellaneous trademark/trade name registration statutes:
 - ◆ Marks used on containers, supplies and equipment. (NRS 600.050-600.120, inclusive)
 - ◆ Marks used to designate laundered supplies. (NRS 600.130-600.230, inclusive)
 - ◆ Insignias and names of incorporated association or society. (Chapter 601 of NRS)

- ◆ Appraisers doing business under a trade name. (NRS 684B.040)
- ◆ Meat processors doing business under a trade name. (NRS 583.481)

➤ **Trademarks and Federal Law: The Lanham Act (15 U.S.C. § 1051, et seq.)**

- The Lanham Act: Primary federal trademark law, enacted in 1947.
- Provides a federal registration scheme for trademarks and service marks that are used commercially and provides an array of remedies against parties that infringe such registered marks, including injunctions and damages.
- Provides a federal forum for what is in substance a traditional common law claim.
- Prohibits trademark infringement, trademark dilution, and false advertising.
 - Federal registration does not supersede common law rights of priority which are in existence before federal registration. *See Burger King of Fla., Inc. v. Hoots*, 403 F.2d 904, 907 (7th Cir. 1968).

❖ **TRADEMARK LAW VS. COPYRIGHT LAW**

➤ **Overview**

- Copyrights, patents, and trademarks share the attribute of being personal property and are referred to en masse as “intellectual property.”
- A single product may be protected by both trademark and copyright law.
 - Example: An artistic design may be unique to the extent that it may be copyrighted, while also serving as the logo for a company and therefore trademarkable.
- **KEY POINT: In contrast to copyright law, which protects against the copying or reproducing of a protected work of authorship, trademark law protects against the use of a confusingly similar or dilutive good or service. *LaFrance, supra*, at 11.**

➤ Case Law

- **KEY POINT:** A plaintiff cannot utilize trademark law to protect copyrighted content. Doing so triggers preemption under the federal Copyright Act.

- Am. Footwear Corp. v. Gen. Footwear Co., 609 F.2d 655 (2d Cir. 1979).
 - ◆ Trademark law is not concerned with the content of words or the development of new technology, but rather with the protection of identifying symbols.
- Dastar Corp. v. Twentieth Century Fox Film Corp., 539 U.S. 23, 34 (2003).
 - ◆ The Supreme Court of the United States cautioned against blurring the boundaries between trademark law and copyright law.
 - ◆ Held: Allowing a protectable trademark right in the literal authorship of a trademarkable work infringes upon copyright because the effect is to extend perpetual protection of the creative work vis-à-vis the Lanham Act.

➤ In Dastar, a film company copied a television series that had passed into the public domain and marketed it as its own. Id. at 27-28. Production companies that owned the exclusive television rights from the original book on which the series was based brought a Lanham Act suit, claiming that the lack of attribution to the original series misrepresented the “origin” of the series. Id. The Court held that “origin of goods” in the Lanham Act § 43(a)(1)(A) did not refer to the author of any idea, concept or communication embodied in a good, but to the producer of the tangible good itself. Id. at 37. Otherwise, the Lanham Act would provide authors of creative works with perpetual protection that they did not have under the Copyright Act. Sybersound Records, Inc. v. UAV Corp., 517 F.3d 1137, 1144 (9th Cir. 2008) (discussing the holding in Dastar, 539 U.S. at 37).

➤ The court in Dastar further noted that had the contents of the video been significantly different from the series that it copied, the plaintiff would have a Lanham Act claim for misrepresenting the goods sold. Id. at 38.

- IQ Group, Ltd. v. Wiesner Publ'g, LLC, 409 F. Supp. 2d 587 (D.N.J. 2006).
 - ◆ The court refused to construe the DMCA so as to allow a logo serving as a service mark to come within the definition of copyright management information. This construction of the DMCA would allow trademarks to invoke DMCA provisions meant to protect copyrights. Doing so would turn the DMCA into a “species of mutant trademark/copyright law, blurring the boundaries between the law of trademarks and that of copyright.” Id. at 592.
 - ◆ Intellectual property owners should not be permitted to recategorize one form of intellectual property as another. Id. (citing Chosun Int'l v. Chrisha Creations, Ltd., 413 F.3d 324, 328 (2d Cir. 2005)).
- Whitehead v. CBS/Viacom, Inc., 315 F. Supp. 2d 1 (D.D.C. 2004).
 - ◆ Although titles of books, plays, films, songs, distinctive elements of a television series and distinctive comic book characters have qualified as marks entitled to protection under the Lanham Act, the scope of the Lanham Act does not extend to the corpus of the book, play, film, song, television show or comic book. Id. at 13.
 - ◆ An author may invoke copyright law, not the Lanham Act, to protect original expression in an entire work. The “fundamental difference between copyright law and trademark law” rests on what may qualify as a mark. Whitehead, 315 F. Supp. 2d at 13 (citing Sony Corp. of Am. v. Universal City Studios, Inc., 464 U.S. 417, 439 n. 19 (1984)).
 - ◆ Put simply, in the context of a literary work, the Lanham Act protects the distinctive source-distinguishing mark, not the work as a whole. Whitehead, 315 F. Supp. 2d at 13.
- EMI Catalogue P'ship v. Hill, Holliday, Connors, Cosmopolos Inc., 2000 U.S. App. LEXIS 30761 (2d Cir. 2000).
 - ◆ Held: A musical composition cannot be protected as its own trademark.

- ◆ While there are many cases in which both trademark and copyright claims are appropriate, cases involving trademark infringement should be those alleging the appropriation of symbols or devices that identify the composition or its source, not the appropriation or copying or imitation of the composition itself. Concluding that a song can serve as an identifying mark of the song itself would stretch the definition of trademark -- and the protection afforded under § 43(a) -- too far and give trademark law a role in protecting the very essence of the song, an unwarranted extension into an area already protected by copyright law. Id. at 18.
- **KEY POINT: Jurisdiction for a trademark infringement suit arises in the state where the infringement occurs.**
 - A cause of action for trademark infringement occurs where the passing off occurs. I.e., the cause of action arises in the state where the infringing action occurs. Cottman Transmission Sys., Inc. v. Martino, 36 F.3d 291, 294 (3d Cir. 1994) (citing Tefal, S.A. v. Prod. Int'l Co., 529 F.2d 495, 496 n.1 (3d Cir. 1976); Indianapolis Colts v. Metro. Baltimore Football, 34 F.3d 410 (7th Cir. 1994).

❖ THE NATURE OF TRADEMARKS: WHEN A MARK REACHES TRADEMARK STATUS

➤ Overview

- A trademark is simply a designation used to identify and distinguish the goods or services of a person. Lanham Act, 15 U.S.C. §1127.
- The primary function of a trademark is to identify one seller's goods and distinguish them from the goods sold by others.

➤ Distinctiveness

- **KEY POINT: A trademark must be distinctive to acquire trademark protection.**
 - Courts, including those in Nevada, determine whether and to what degree a trademark is protected under the law by examining the distinctiveness of the mark. Estate of William F. Jenkins v. Paramount Pictures Corp., 90 F. Supp. 2d 706, 709 (E.D. Va. 2000); Sara Lee Corp. v. Kayser-Roth Corp., 81 F.3d 455, 464 (4th Cir. 1996); A.L.M.N., Inc. v. Rosoff, 104 Nev. 274, 278 (Nev. 1988); Gallo Winery v. Gallo Cattle Co., 967 F.2d 1280, 1291 (9th Cir. 1992).

▪ **Testing distinctiveness:**

- Trademarks are divided into four categories:
 - ◆ (1) Generic (receives no trademark protection);
 - ◆ (2) Descriptive (receives trademark protection if distinctive);
 - ◆ (3) Suggestive (receives trademark protection); and
 - ◆ (4) Arbitrary/fanciful (receives trademark protection).

Network Automation, Inc. v. Advanced Sys. Concepts, 638 F.3d 1137, 1149 (9th Cir. 2011).

- Suggestive and arbitrary names or words are considered distinctive and are afforded legal protection against infringement.
- Generic names or words are considered non-distinctive and are offered no protection.
- Descriptive names or words are protected only if they come to have a *secondary meaning* to consumers. Rosoff, 104 Nev. at 278-279 (emphasis added).

➤ **Secondary Meaning: Trademarking Language, Titles and Names**

▪ Overview

- One cannot generally trademark ordinary words, terms or phrases, including names or single titles of creative works.
- Descriptive language is afforded trademark status upon acquiring “secondary meaning.” Id.
- “Secondary meaning” is the consuming public’s understanding that a mark, when used in context, refers not to what the descriptive word ordinarily describes, but to the particular business that the mark is meant to identify. Perini Corp. v. Perini Constr., Inc., 915 F.2d 121, 125 (4th Cir. 1990).
 - ◆ **Example:** Apple computers.
 - One could not trademark the word “Apple” if, when used in context, it merely identifies or describes the physical thing that it is, i.e., an apple.

- However, when the word “Apple” is used in an arbitrary manner to identify a brand of computer, it acquires a secondary meaning, and it may achieve trademark status.
- The Patent & Trademark Office will not register a trademark in the title of a single, expressive work or in an individual’s name. However, both single titles and names which acquire secondary meaning may be protected as trademarks under both federal and state law.
 - ◆ Titles of creative works are, by their very nature, at best descriptive. As such, the title of a single expressive work may receive trademark protection only upon a showing that the title is not generic, and that it has acquired secondary meaning. Paramount Pictures, 90 F. Supp. 2d at 711. *See also* Sugar Busters LLC v. Brennan, 177 F.3d 258, 269 (5th Cir. 1999); Maljack Prod., Inc. v. GoodTimes Home Video Corp., 81 F.3d 881, 887 (9th Cir. 1996).
 - ◆ Words, including the title of a single creative work or an individual’s name, may be trademarked if the words or individual’s name come to have a secondary meaning to consumers beyond the ordinary meaning. Rosoff, 104 Nev. at 278-279; Paramount Pictures, 90 F. Supp. 2d at 709-10; Gallo Winery, 967 F.2d at 1291.
- First Amendment Considerations
 - **KEY POINT #1: The protection of trademarks must be balanced against the public’s interest in free expression and first amendment concerns with respect to trademarking titles and names.**
 - ◆ The Lanham Act should be construed to apply to titles of artistic works only where the public interest in avoiding consumer confusion outweighs the public interest in free expression. Rogers v. Grimaldi, 875 F.2d 994, 999 (2d Cir. 1989).
 - ◆ Titles of expressive works combine artistic expression and commercial promotion. The expressive element of titles requires more protection under the First Amendment than the labeling of ordinary commercial products. Id. at 998.
 - ◆ The Supreme Court of the United States recognizes that the suppression of particular words runs a substantial risk of suppressing ideas. Cohen v. California, 403 U.S. 15, 26 (1971). This recognition has always been balanced against the principle that when a word acquires value as the result of organization and the expenditure of labor, skill and money by an entity, that entity constitutionally may obtain a limited property right in the word.

San Francisco Arts & Athletics, Inc. v. U.S. Olympic Comm., 483 U.S. 522, 532 (U.S. 1987) (determining that Congress' grant of exclusive use of the word "Olympic" to the USOC did not violate the First Amendment).

- ◆ Interpreting the Lanham Act broadly to protect titles of artistic or creative works invokes first amendment concerns. Nonetheless, laws such as the Lanham Act seek to foster free expression by protecting an author's works. In order to balance these concerns, when examining a Lanham Act claim involving artistic works, a court must decide whether the public interest in avoiding consumer confusion outweighs the public interest in free expression. Tri-Star Pictures, Inc. v. Leisure Time Prod., 749 F. Supp. 1243, 1252 (S.D.N.Y. 1990).
- **KEY POINT #2: Trademark rights do not yield to the exercise of First Amendment rights under circumstances where adequate alternative avenues of communication exist.**
 - ◆ Trademark rights need not yield to the exercise of First Amendment rights under circumstances where adequate alternative avenues of communication exist. Mutual of Omaha Ins. Co. v. Novak, 836 F.2d 397, 398 (8th Cir. 1987) (citing Lloyd Corp. v. Tanner, 407 U.S. 551, 567 (1972)).
 - ◆ The "no alternative avenues test" in Lloyd Corp provides insufficient leeway for literary expression in titles. Rogers, 875 F.2d at 999.
- "Secondary meaning" may be established in many ways, including an evaluation of the following:
 - ◆ Direct consumer testimony;
 - ◆ Advertising expenditures;
 - ◆ Consumer studies/surveys;
 - ◆ Sales success;
 - ◆ Unsolicited media coverage of the work;
 - ◆ Attempts to plagiarize or copy the mark;
 - ◆ The manner, length, and exclusivity of the mark's use;

- ◆ The mark's established place in the market; and
- ◆ Evidence of actual confusion.

Art Attacks Ink, LLC v. MGA Enter. Inc., 581 F.3d 1138, 1145 (9th Cir. 2009).

➤ **Nevada and "Secondary Meaning"**

- Nevada prohibits the registration of marks which are not distinctive (i.e., which have not acquired secondary meaning), as do all states which have adopted any of the model trademark acts.
- Subsection 5 of NRS 600.330 prohibits the registration of marks which are "merely descriptive" and provides for the registration of any mark which has "become distinctive of the applicant's goods or services."

SEE TABLE NEXT PAGE

Summary of State Trademark Registration Provisions (as of October 2010)

State	Term (Years)	Registration			Renewal			Assignments			Key & Comments			
		Fee	# of Spec.	Dates of Ist Use	Fee	# of Use Spec.	Use Req'd	Fee	# of Spec.	Form Req.		Class	Serv. Marks	Dilution
AL	10	\$30	3	A,B	\$30	1	yes	\$30	-	no	Int'l	yes	yes	F; Comments
AK	5	50	3	A,B	50	3	yes	25	-	yes	Int'l	yes	yes	
AZ	10	15	3	A,B	15	-	yes	15	-	yes	U.S.	yes	-	Comments
AR	5	50	3	A,B	50	3	yes	20	-	yes	U.S.	yes	yes	
CA	5	70	3	A,B	30	-	yes	30	-	yes	Int'l	yes	yes	Comments
CO	10/5	50	1	B	10	1	yes	10	1	yes	Int'l	yes	-	
CT	5	50	3	A,B	50	3	yes	25	3	yes	Int'l	yes	yes	Comments
DE	10	35	2	A,B	35	2	yes	35	-	yes	U.S.	yes	yes	
FL	5	87.50	3	A,B	87.50	1	yes	50	-	yes	Int'l	yes	yes	Comments
GA+	10	15	3	A,B	15	-	yes	15	-	yes	U.S.	yes	yes	
HI	5	50	1	A,B	50	1	yes	10	-	yes	Int'l	yes	yes	F; Comments
ID	10	30	1	A,B	30	-	yes	30	-	yes	Int'l	yes	yes	
IL	5	10	3	A,B	5	3	yes	5	-	yes	Int'l	yes	yes	Comments
IN	5	10	3	B,C	10	3	yes	10	-	yes	Int'l	yes	-	
IA	5	10	1	A,B	10	1	yes	10	-	yes	U.S.	yes	yes	Comments
KS	5	\$15	3	A,B	\$15	3	yes	\$15	-	yes	-	yes	-	
KY	5	10	3	A,B	5	1	yes	5	-	no	Int'l	yes	-	Comments
LA	10	50	3	A,B	50	3	yes	50	-	no	Int'l	yes	yes	
ME	10	60	3	A,B	60	3	yes	40	-	yes	Int'l	yes	yes	Comments
MD	10	50	3	A,B	50	3	yes	10	-	yes	Int'l	yes	-	
MA	5	50	3/D	A,B	50	2/D	yes	50	-/D	yes	Int'l	yes/E	yes	F
MI	10	50	2	A,B	25	-	yes	15	-	yes	U.S.	yes	-	
MN	10	50	1	B	25	-	yes	15	-	no	Int'l	yes	yes	Comments
MS	5	50	3	A,B	50	-	yes	50	-	no	U.S.	yes	yes	
MO	10	50	2/D	A,B	10	2/D	yes	50	-	yes	U.S.	yes	yes	Comments
MT	5	20	3	A,B	20	3	yes	20	-	yes	U.S.	yes	yes	

State	Registration				Renewal				Assignments				Key & Comments	
	Term (Years)	Fee	# of Spec.	Dates of 1st Use	Fee	# of Use Spec.	Use Req'd	Fee	# of Spec.	Form Req.	Class	Serv. Marks		Dilution
NE	10	100	3/DD	A,B	100	1/DD	yes	5	DD	yes	U.S.	yes	yes	
NV	5	100	1/D	A,B	50	-	yes	100	-	yes	U.S.	yes	yes	
NH	10	50	3	A,B	50	3	yes	10	0	yes	U.S.	yes	yes	
NJ	5	50	3/D	A,B	50	1	yes	50	-	no	U.S.	yes	yes	
		25	Search											
NM	10	25	3	A,B	25	1	yes	25	-	no	Int'l	yes	yes	Comments
NY	10	50	3	A,B	50	1	yes	25	-	no	U.S.	yes/E	yes	
NC	10	75	3	A,B	35	3	yes	25	0	yes	U.S.	yes	-	Comments
ND	10	30	2	A,B	30	2	no	30	-	yes	U.S.	yes	-	Comments
OH	10	125	1	A,B	25	1	yes	25	-	yes	Int'l	yes	-	Comments
OK	10	50	1/D	A,B	25	-/D	yes	25	-/D	no	U.S.	yes	-	Comments
OR	5	50	1	A,B	50	-	yes	50	-	no	Int'l	yes	yes	Comments
PA	5	50	1	A,B	50	1	yes	50	1	no	-	yes	yes	Comments
RI	10	50	3	A,B	50	3	yes	20	3	yes	U.S.	yes	yes	
SC	5	15	3	A,B	5	1	yes	3	0	yes	Int'l	yes	-	Comments
SD	4	100	2	A,B	100	2	yes	100	0	yes	U.S.	yes	-	Comments
TN	5	20	1	A,B	20	1	yes	20	-	yes	Int'l	yes	-	
TX	10	50	2	A,B	25	-	yes	10	-	no	Int'l	yes	yes	Comments
UT	5	22	2	A,B	22	2	yes	7	0	yes	Int'l	yes	-	F; Comments
VT	10	20	1	A,B	20	1	yes	20	-	yes	U.S.	-	-	
VA	5	30	1	A,B	30	1	yes	30	1	yes	Int'l	yes	-	F; Comments
WA	5	55	3	A,B	50	3	yes	10	-	no	Int'l	yes	-	Comments
								5	Cert.					
WV	10	50	3	A,B	50	3	yes	25	-	yes	Int'l	yes	yes	Comments
WI	10	15	2	B	15	2	yes	15	-	yes	-	-	-	Comments
WY	5	100	3/D	A,B	50	3/D	yes	25	3/D	yes	U.S.	yes	yes	

Key:

- *Non Model Act state.
 - *The state contributor for this summary did not respond to requests for updating, as a consequence of which this state's information is only confirmed current as of September 2007.
 - "A" Date of first use anywhere.
 - "B" Date of first use in State.
 - "C" Date of first use in the United States.
 - "D" File form in duplicate; "DID" File duplicate originals.
 - "E" Special form for registering service marks.
 - "F" Law administered by other than Secretary of State; see Statute.
- Note: This summary highlights general provisions. Consult State Statutes and forms for specific provisions.
- Comments:
- CT: \$25.00 for each additional mat in assignment (see Section 35-110. Statute provides for search by Secretary of the State. \$25.00 for mark owner name changes. Fictitious trade name filings are handled by the local offices of town clerks. \$25.00 cancellation fee. Same fees for collective and certification marks. Searches \$25.00; no availabilities. Specimens must be identical and demonstrate use.
- CO: F-Filing became available May 29, 2007 for all trademark documents. All documents must be e-filed. Trademarks are no longer cancelled; they are withdrawn. For any trademark filed on or before May 25, 2007, the term is 10 years. After that next renewal, the term is 5 years. For any trademark filed May 29, 2007 or after, the term is 5 years. Each renewal is for another 5 years. Change of ownership is filed as a transfer not an assignment.
- FL: One specimen must be submitted with renewal if mark is still in use. Specimen is not required if mark is not in use; however, applicant must state its non-use is not due to any intention to abandon mark.
- GA: Voluntary cancellation fee of \$15.00.
- HI: Initial registration is for five years. Renewal, which can be filed from six months before expiration, is for five-year term. Specimens are required only for design marks. No specimens are needed for word marks. Official forms are required for registration and renewals. Hawaii is a Model Act state.
- ID: Amendment filings \$30.
- IL: \$5.00 fee for name or address change on form provided by Secretary.
- IN: Indiana has its own assignment form and suggests applicants use it since it meets all of the requirements.
- IA: Fee of \$5.00 for voluntary cancellation of mark. Renewal term is 5 years. Mark assignable with the goodwill of the business connected with the mark.
- KS: A modified U.S. classification is used. See Statute (Chapter 81 of Kansas Statutes). New rates effective 9/1/03. Voluntary cancellation is \$40.00. Amendments are \$40.00.
- KY: Assignment form available, not required.
- LA: No common law and Intent to Use Provision; see Statute.
- ME: Statute provides for registration of collective and certification marks. \$60.00 for the first class of application; \$10.00 for each additional class. Hearing allowed on rejection of application.
- MIN: No cancellation fee provided specific written notification is submitted.
- MS: Effective January 1, 1997, the term in years for a trademark/service mark registration will be reduced to 5 years. Filing fees for registration, renewals and assignment for residents will be \$50. Filing fees for registrations and renewals for nonresidents will be \$60. Dilution of owner mark effective January 1, 1997. Classification of goods and services set by rule which follows the International Classification System.
- MO: The fee for a new application is \$50.00, a duplicate certificate of registration is \$10.00 and an abstract of a mark registration is \$5.00.

MT: Cancellation fee is \$20.00. Montana has adopted the Revised Model State Trademark Act in our 2003 session, which has an effective date of July 1, 2003. The changes are 1) changing the term from 10 years to 5 years, 2) requiring three specimens, 3) requiring only an original application (a copy of the form is no longer required) and, 4) requiring the classifications of goods and services to conform to the classifications adopted by the United States patent and trademark office.

NM: For assignments no form is required. The assignment shall be by instruments in writing duly executed and may be recorded with the Secretary of State upon payment of (\$25) recording fee. However, the Secretary of State provides forms for assignments upon request and on home page (www.scs.state.nm.us). Effective 7/1/97, the Model Act for state registrations was adopted. Registration of mark requires 3 different specimens.

NC: Requires proof of use with the initial registration or renewal; a 5 year proof of use requirement remains in place during the duration of the 10 year term, as well as 5 year proof of use requirement in each 10 year renewal term.

ND: \$30.00 for the first class of application; \$20.00 for each additional class for both initial application and renewal.

OH: Date of first use must be prior to date registered.

OK: Renewal term is five years. A modified U.S. classification system is used. Cancellation fee is \$25.00 and written notification is submitted. Filing fee for new trademarks is \$50.00 for each classification the trademark will be registered for.

OR: A \$50 fee for processing the cancellation of an existing trademark.

PA: While the Department does not require that assignment be made on a specific form, the Department has promulgated an assignment form for optional use, should the filer not wish to create his own form (do not recognize a cancellation).

SC: Applicant needs to draft form giving name and address of assignor and name and address of assignee. For a cancellation of mark registration no filing fee is required, but a written notification is required.

SD: For a cancellation of a mark registration no filing fee is required, but a written notification is required. South Dakota does not reserve Mark Registrations.

TX: Renewal permitted without use in special circumstances, *see* Statute. Photocopy of originally signed application accepted. Applicant may provide two different specimens of use. Disclaimers of unregistrable components authorized by statute. Applicant provided sixty (60) days within which to respond to objections raised to registration. Applicant may request a suspension of action on a pending application for a period of up to six months, if a proceeding is pending before the United States Patent and Trademark Office or a court that is relevant to the issue of registrability of the applicant's mark. Recordation of certain instruments relating to transfer of ownership of a registered mark, other than assignment (\$10). Recordation of change of registrant's name (\$10). Recordation of change of registrant address (no fee).

UT: Law is administered by the Utah Department of Commerce, Division of Corporations & Commercial Code. The renewal term is within the first six months of the last year of registration.

VA: A legal document is required to be signed by assignor, assignee testifying as to the assignment. Assignment must include goodwill associated with the trademark.

WA: 180 day Reservation period for trademark or servicemark passed legislature and was effective June 9, 1994.

WI: Corporate registrant must be licensed to do business in the state.

WV: \$25 Cancellation fee, no form, written notice required. \$25 Amendment fee, no form, written notice required. \$25 Assignment fee, no form, written notice required.

APPENDIX D

Examination of Methods by Which This State and Other Jurisdictions Have
Regulated and May Regulate Trademark and Copyright Law in a
Manner That is Consistent With Federal Law

SCOPE OF STATE REGULATION REGARDING COPYRIGHT AND TRADEMARK LAW

➤ Copyright Law

- The Legislature is severely restricted in its ability to regulate copyright law in this State due to the preemptive effect of federal law.
- Except for those limited exceptions previously discussed, any state statute which, either expressly or in substance, attempts to protect copyrighted content is preempted by federal law.
- The Legislature may regulate goods which are expressly exempt from, or which fail to qualify for protection under, the Copyright Act of 1976.

➤ Trademark Law

- The Legislature may expand the rights of holders of trademarks in this State to the extent that such legislation does not:
 - (1) Limit any rights of holders of trademarks under federal law;
 - (2) Conflict with federal law;
 - (3) Intrude into the field of copyright law by protecting copyrighted content; or
 - (4) Expand jurisdiction to activities which occur outside of this State.
- The Legislature may be able to specifically extend protection to certain classes of trademarks.
 - Those trademarks would still have to be distinctive in order for the secretary of state to register the mark.
 - Certain marks, such as descriptive words, would have to obtain secondary meaning to acquire trademark status.
- The Legislature may provide for enhanced penalties or other damages for trademark infringement.
- The Legislature may be able to expand the scope of liability for causes of action arising from the improper use of another's mark such as those found under the 2007 version of the Model State Trademark Act.

APPENDIX E

Statement from Garrett Sutton, J.D., Titled “Nevada Title Trademark Act,”
and Proposed Revisions to Chapter 600 (“Trademarks, Trade Names
and Service Marks”) of the *Nevada Revised Statutes*

Nevada Title Trademark Act

Digital piracy is having a huge and very negative impact on the creative industry. A total of 95% of all music downloads are illegal. (See Exhibit A) Book publishers are reeling in the face of free book downloads and file sharing sites.

In my case, one of my books, "Own Your Own Corporation", is available for free on 200 file sharing sites. (Exhibit B) I lose a royalty payment on every download. Tens of thousands of other authors, musicians, film makers and artists are losing their sources of income to digital piracy.

This widespread criminal activity goes on unchecked. The federal copyright law is not up to the internet challenge. Currently, under the Digital Millennium Copyright Act (DMCA) a takedown notice is sent. The infringing site is supposed to take down the copyrighted material. In many cases, the infringing party does not comply. (Remember, they are bad guys making a lot of easy money.) Sometimes, the download comes down only to come back within a month, or, as in my case, to appear on a different site within a day.

When the take down notices don't work (and they don't), the next step in the federal scheme is to file a copyright infringement action in a federal court, a slow and expensive process. The creative community is not well served by the existing legal system.

There are two keys to correcting this:

First, you must focus beyond just the offending free download websites. You must also target their internet service providers (ISP's) i.e. the AOL's and NetZero's of the world. These ISP's are clearly enabling criminal activity. They need to get a clear message to stop.

Second, you need a quick and inexpensive procedure to get a court order enjoining the infringing websites and their ISP's from the wrongful behavior.

By slightly amending Nevada's trademark law, this can be accomplished. The proposed changes are attached as Exhibit C. [To come]

In summary, the proposed amendment provides for:

- 1) The creation of a new class of trademark called the "title trademark". The combination of the book, music, film or other creative work title, along with the individual or group's name is the title trademark. Please know that the federal copyright law covering the content of the work supersedes any state law. However, Nevada's title trademark procedure can avoid a conflict with federal law to

effectively limit the piracy. (When searching for free downloads, one uses the title of the work - which Nevada law will protect - not the copyrighted content - which we cannot and do not want to protect.)

- 2) A summary procedure for obtaining a court injunction. An independent, non profit group known as the Nevada Registration Group Resource, Inc., will certify digital experts. A NRGR member, an expert independent of the owner or publisher, will send out take down notices to websites and enabling ISP's infringing on trademark titles. If they fail to comply, the mark owner or their publisher and the NRGR member go into court on a summary basis for a court order. Failure to comply with the court order allows the mark owner to seek significant penalties.
- 3) To satisfy jurisdiction requirements, the mark owner seeking this remedy must be a Nevada resident. Or, their publisher can pursue the claim in court. The publisher must have one full time employee in Nevada. As well, the NRGR member must be a Nevada resident. A very clear purpose of this bill is to increase Nevada employment.
- 4) A publisher may bring one action for numerous mark owners against numerous infringing sites using one server. This will allow for maximum results. It will also encourage publishers to employ Nevadans.

There is a very big issue at play here: when all creative work is available for free on the internet, you will get what you pay for. Creative activity will decline. Unique voices, thoughts and ideas will not emerge. There will be no incentive for artists, musicians and authors to create, to everyone's huge detriment.

By taking some very simple steps we can eliminate widespread criminal activity, increase Nevada employment and preserve creative expression. Please support the Nevada Title Trademark Act.

Garrett Sutton
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NRS: CHAPTER 600 – TRADEMARKS, TRADE NAMES AND SERVICE MARKS

REGISTRATION AND PROTECTION OF TRADEMARKS, TRADE NAMES
AND SERVICE MARKS

<u>NRS 600.240</u>	Definitions.
<u>NRS 600.250</u>	“Applicant” defined.
<u>NRS 600.260</u>	“Mark” defined.
<u>NRS 600.270</u>	“Publisher” defined.
<u>NRS 600.280</u>	“Registrant” defined.
<u>NRS 600.290</u>	“Service mark” defined.
<u>NRS 600.300</u>	“Trademark” defined.
<u>NRS 600.305</u>	“Title trademark” defined.
<u>NRS 600.310</u>	“Trade name” defined.
<u>NRS 600.320</u>	When mark is deemed to be “used” in Nevada.
<u>NRS 600.330</u>	Restrictions on registration.
<u>NRS 600.335</u>	Title trademark registration.
<u>NRS 600.340</u>	Application for registration: Contents; requirements; fee; return for correction.
<u>NRS 600.343</u>	Criteria for specimen accompanying application for registration; change after registration.
<u>NRS 600.350</u>	Certificate of registration: Issuance; contents; admissibility in evidence.
<u>NRS 600.355</u>	Correction of inaccurate statement in application for registration; issuance of amended certificate of registration; fee.
<u>NRS 600.360</u>	Expiration and renewal of registration; renewal fee.
<u>NRS 600.370</u>	Assignment of mark and registration; fee.
<u>NRS 600.380</u>	Record of registered marks.
<u>NRS 600.390</u>	Cancellation of registrations.
<u>NRS 600.395</u>	Fee for filing cancellation of registration.
<u>NRS 600.400</u>	Regulations defining classes of goods and services for registration.
<u>NRS 600.410</u>	Fraudulent registration.
<u>NRS 600.420</u>	Infringement upon registered mark.
<u>NRS 600.430</u>	Civil remedies.
<u>NRS 600.435</u>	Action to enjoin commercial use of mark that is famous in this State.
<u>NRS 600.440</u>	Rights and remedies cumulative.
<u>NRS 600.445</u>	Summary action to enjoin improper electronic use of a title trademark.
<u>NRS 600.450</u>	Unlawful acts; penalty.

REGISTRATION AND PROTECTION OF TRADEMARKS, TRADE NAMES AND SERVICE MARKS

NRS 600.240 Definitions. As used in NRS 600.240 to 600.450, inclusive, unless the context otherwise requires, the words and terms defined in NRS 600.250 to 600.320, inclusive, have the meanings ascribed to them in those sections.

(Added to NRS by 1979, 595; A 1995, 67; 1997, 159; 2001, 406)

NRS 600.250 “Applicant” defined. “Applicant” means the person filing an application for registration of a trademark and the legal representatives, successors or assigns of such a person.

(Added to NRS by 1979, 595)

NRS 600.260 “Mark” defined. “Mark” includes any trademark, **title trademark**, trade name or service mark, entitled to registration whether registered or not.

(Added to NRS by 1979, 595)

NRS 600.270 “Publisher” defined. “Publisher” means the Nevada agent of the registrant, which agent shall have at least one full-time employee located in the State of Nevada.

NRS 600.280 “Registrant” defined. “Registrant” includes the person to whom the registration of a mark is issued and the legal representatives, successors or assigns of such a person.

(Added to NRS by 1979, 595)

NRS 600.290 “Service mark” defined. “Service mark” means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others.

(Added to NRS by 1979, 595)

NRS 600.300 “Trademark” defined. “Trademark” means any word, name, symbol or device, or any combination of them, adopted and used by a person to identify goods made or sold by that person and to distinguish them from goods made or sold by others.

(Added to NRS by 1979, 595)

NRS 600.305 “Title trademark” defined. “Title trademark” means any title and name(s) used in combination to identify a printed, musical, artistic, photographic, filmed or other creative work made or sold by the named party.

NRS 600.310 “Trade name” defined. “Trade name” means a word, symbol, device, or any combination of them, used by a person to identify the business, vocation or occupation of that person and distinguish it from the business, vocation or occupation of others.

(Added to NRS by 1979, 595)

NRS 600.320 When mark is deemed to be “used” in Nevada. A mark is deemed to be “used” in this State:

1. On goods when it is placed in any manner on the goods, their containers, the displays associated with them or on the tags or labels affixed to them and the goods are sold or otherwise distributed in the State: and

2. On services when it is used or displayed in the sale or advertising of services and the services are rendered in this State: and

3. On internet websites and servers and other electronic distribution channels that are accessible in this State by any means or manner.

(Added to NRS by 1979, 595)

NRS 600.330 Restrictions on registration. A mark must not be registered if it:

1. Contains immoral, deceptive or scandalous matter.

2. Contains matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, national symbols or which may bring them into contempt or disrepute.

3. Resembles or simulates the flag or other insignia of the United States, or of any state or municipality, or of any foreign nation.

4. Contains the name, signature or portrait of any living person, except 1) when the written consent of that living person has been obtained or 2) when the living person files for a title trademark.

5. Consists of a mark which:

(a) When applied to the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of them;

(b) When applied to the goods or services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them; or

(c) Is primarily merely a surname, except when filing for a title trademark.

> but this subsection does not prevent the registration of a mark used by the applicant which has become distinctive of the applicant's goods or services. Proof of continuous use of the mark by the applicant in this State or elsewhere for 5 years next preceding the date of the filing of the application for registration may be accepted by the Secretary of State as evidence that the mark has become distinctive.

6. So resembles a mark registered in this State which has not been abandoned, that it is likely that confusion, mistake or deception may result.

(Added to NRS by 1979, 595; A 1995, 67)

NRS 600.335 Title trademark registration. In the event a title and name(s) for a title trademark appear to be similar, the mark may be further distinguished by the creation date, the city, state and country in which it was created, the names of those to whom the work is dedicated and the names of those acknowledged for assistance with the work. Subject to such mark disquisitions, it is the intent of this section to allow for the registration of multiple title trademarks.

NRS 600.340 Application for registration: Contents; requirements; fee; return for correction.

1. A person who has adopted and is using a mark in this State may file in the Office of the Secretary, on a form to be furnished by the Secretary of State, an application for registration of that mark setting forth, but not limited to, the following information:

(a) Whether the mark to be registered is a trademark, title trademark, trade name or service mark;

(b) A description of the mark by name, words displayed in it or other information;

(c) The name and business address of the person applying for the registration and, if it is a corporation, limited-liability company, limited partnership or registered limited-liability partnership, the state of incorporation or organization;

(d) The specific goods or services in connection with which the mark is used and the mode or manner in which the mark is used in connection with those goods or services and the class as designated by the Secretary of State which includes those goods or services;

- (e) The date when the mark was first used anywhere and the date when it was first used in this State by the applicant or his or her predecessor in business which must precede the filing of the application; and
- (f) A statement that the applicant is the owner of the mark and that no other person has the right to use the mark in this State either in the form set forth in the application or in such near resemblance to it as might deceive or cause mistake.

2. The application must:

- (a) Be signed and verified by the applicant or by a member of the firm or an officer of the corporation or association applying.
- (b) Be accompanied by a specimen or facsimile of the mark on white paper that is 8 ½ inches by 11 inches size and by a filing fee of \$100 payable to the Secretary of State.

3. If the application fails to comply with this section or NRS 600.343, the Secretary of State shall return it for correction.

(Added to NRS by 1979, 596; A 1993, 489; 1997, 159; 1999, 1636; 2001, 3195; 2005, 2277)

NRS 600.343 Criteria for specimen accompanying application for registration; change after registration.

1. A specimen accompanying an application for the registration of a mark must meet the following criteria:

- (a) The specimen must agree with the mark as described in the application, must agree with the mark as used, and evidence use of the mark.
- (b) If the specimen is a drawing, it must be a substantially exact representation of the mark as actually used.
- (c) The specimen must fit on a page of paper not larger than 8 ½ inches by 11 inches.
- (d) A specimen may be a facsimile or photograph of the mark.
- (e) If the specimen is a title trademark, a physical or electronic copy of the work is acceptable.
- (f) The specimen must be suitable for reproduction, retention and retrieval.

2. After registration, an applicant may not change the specimen if the change constitutes a material alteration of the mark.

(Added to NRS by 1997, 158)

NRS 600.350 Certificate of registration: Issuance; contents; admissibility in evidence.

1. Upon compliance by the applicant with the requirements of NRS 600.330, NRS 600.335, NRS 600.340 and NRS 600.343, the Secretary of State shall issue and deliver a certificate of registration to the applicant. The certificate of registration must be issued under the signature of the Secretary of State and the seal of the State, and it must designate:

- (a) The name and business address and, if a corporation, limited-liability company, limited partnership or registered limited-liability partnership, the state of incorporation or organization of the person claiming ownership of the mark;
- (b) The date claimed for the first use of the mark anywhere and the date claimed for the first use of the mark in this State;
- (c) The class of goods or services to which the mark applies;
- (d) A description of the goods or services on which the mark is used;
- (e) A reproduction of the mark;
- (f) The registration date; and
- (g) The term of the registration.

upon recording the assignment, shall issue in the name of the assignee a certificate of assignment for the remainder of the period of the registration.

2. An assignment of any registration is void as against any subsequent purchaser for valuable consideration without notice, unless:

(a) The assignment is recorded with the Secretary of State within 3 months after the date of the assignment; or

(b) The assignment is recorded before the subsequent purchase.

(Added to NRS by 1979, 597; A 1987, 1114; 1993, 490; 1995, 67; 2001, 3196)

NRS 600.380 Record of registered marks. The Secretary of State shall keep for public examination a record of all registered marks.

(Added to NRS by 1979, 597)

NRS 600.390 Cancellation of registrations. The Secretary of State shall cancel from the register:

1. After July 1, 1980, any filing or registration of a mark which has expired and is not renewed in accordance with the provisions of NRS 600.360.

2. Any registration which the registrant or the assignee of record voluntarily requests be cancelled.

3. Any registration concerning which a court of competent jurisdiction finds that:

(a) The registration mark has been abandoned.

(b) The registrant is not the owner of the mark.

(c) The registration was granted improperly.

(d) The registration was obtained fraudulently.

(e) The registered mark is likely to cause confusion or mistake or to deceive because of its similarity to a mark registered by another person in the United States Patent and Trademark Office, before the date of the filing of the application for registration by the registrant under NRS 600.240 to 600.450, inclusive, and not abandoned. But if the registrant proves that he or she is the owner of a concurrent registration of his or her mark in the United States Patent and Trademark Office covering an area including this State, the registration with the Secretary of State must not be cancelled.

4. Any registration when a court of competent jurisdiction orders cancellation of the registration on any ground.

(Added to NRS by 1979, 597)

NRS 600.395 Fee for filing cancellation of registration. The fee for filing a cancellation of registration pursuant to NRS 600.390 is **\$100**.

(Added to NRS by 1987, 1114; A 1993, 490; 2001, 3196)

NRS 600.400 Regulations defining classes of goods and services for registration.

1. The Secretary of State may adopt regulations defining general classes of goods and services for which a mark may be registered. Classes defined pursuant to this subsection are deemed to be for administrative convenience and must not be deemed to be exclusive or limit or extend the rights of the applicant or registrant.

2. A single application for registration of a mark may include any goods within their class on which the mark is used, or any services within their class rendered in connection with the mark. If a mark is used for more than one class of goods or more than one class of services, the applicant must file a separate application for each class.

(Added to NRS by 1979, 598)

NRS 600.410 Fraudulent registration. Any person who for himself or herself, or on behalf of any other person, attempts to procure or procures the registration of any mark in this State by knowingly making any false or fraudulent representation or declaration, verbally or in writing, or by any other fraudulent means, is liable for all damages sustained in consequence of the registration to any party injured thereby.

(Added to NRS by 1979, 598)

NRS 600.420 Infringement upon registered mark. Any person:

1. Who uses, without the consent of the registrant, any reproduction, counterfeit, copy or colorable imitation of a mark registered in this State in connection with the sale, offering for sale or advertising of any goods or services; or likely to cause confusion or mistake or result in deception as to the source of origin of such goods or services; or

2. Who reproduces, counterfeits, copies or colorably imitates any mark registered in this State and applies or causes to apply **or enables** that reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, advertisements **or internet websites, servers or other channels of electronic distribution** intended to be used in conjunction with the sale or other distribution in this State of goods or services, **whether physical or electronic.**

> is liable in a civil action by the owner of the registered mark for any or all of the remedies provided in NRS 600.430, except that the owner of the mark is not entitled to recover profits or damages under subsection 2 unless the act or acts were committed with knowledge that the reproduction, counterfeit, copy, imitation **or electronic version** of the mark was intended to be used to cause confusion, mistake, deception, or improper financial gain. **In the event of such willful knowledge if the defendant is a business, trust or limited liability entity, the owners, beneficiaries, officers, directors, and managers of any such business, trust or limited liability entity shall be personally liable to the owner of the registered mark.**

(Added to NRS by 1979, 598)

NRS 600.430 Civil remedies.

1. Any owner of a mark registered in this State may proceed by suit to enjoin the manufacture, use, display or sale of counterfeits or imitations of it.

2. A court of competent jurisdiction may:

(a) Grant injunctions to restrain such manufacture, use, **electronic transmission,** display or sale as it deems just and reasonable under the circumstances;

(b) Require the defendant to pay to the owner all profits derived from the wrongful acts of the defendant and all damages suffered by reason of these acts;

(c) Require the defendant to pay to the owner treble damages on all profits derived from the willful and wrongful acts of the defendant and treble damages on all damages suffered by reason of these acts;

(d) Order that any counterfeits or imitations in the possession or control of any defendant be delivered for destruction to an officer of the court or to the complainant; and

(e) **In a title trademark matter, require the defendant to pay damages pursuant to NRS 600.445(5).**

3. In an action brought pursuant to this section, the court may award costs and reasonable attorney's fees to the prevailing party.

4. The enumeration of any right or remedy in this section does not affect a registrant's right to prosecute under any penal law of this State.

(Added to NRS by 1979, 599; A 2003, 2832)

NRS 600.435 Action to enjoin commercial use of mark that is famous in this State.

1. Except as otherwise provided in subsection 4, the owner of a mark that is famous in this State may bring an action to enjoin commercial use of the mark by a person if such use:

- (a) Begins after the mark has become famous; and
- (b) Causes dilution of the mark.

2. In determining whether a mark is famous in this State, the court shall consider, without limitation, the following factors:

- (a) The degree of inherent or acquired distinctiveness of the mark in this State.
- (b) The duration and extent of use of the mark in connection with the goods and services with which the mark is used.
- (c) The duration and extent of advertisement and promotion of the mark in this State.
- (d) The geographical extent of the trading area in which the mark is used.
- (e) The channels of trade for the goods or services with which the mark is used.
- (f) The degree of recognition of the mark in the trading areas and channels of trade in this State used by the owner of the mark and the person against whom the injunction is sought.
- (g) The nature and extent of use of the same or similar mark by other persons.
- (h) Whether the mark is registered in this State or registered in the United States Patent and Trademark Office pursuant to federal law.

3. Except as otherwise provided in this subsection, the owner of a mark that is famous may obtain only injunctive relief in an action brought pursuant to this section. The owner of a mark that is famous is entitled to the remedies provided in NRS 600.430 if the person using the mark willfully intended to cause dilution of the mark or willfully intended to trade on the reputation of the owner of the mark.

4. The owner of a mark that is famous may not bring an action pursuant to this section for the fair use of the mark by another person in comparative commercial advertising or promotion to identify the competing goods or services of the owner of the mark.

5. As used in this section:

(a) "Commercial use" means use of a mark primarily for profit. The term does not include use of a mark for research, criticism, news commentary, news reporting, teaching or any similar use that is not primarily for profit.

(b) "Dilution" means a lessening in the capacity of a mark that is famous to identify and distinguish goods or services, regardless of the presence or absence of:

- (1) Competition between the owner of the mark and other persons; or
- (2) Likelihood of confusion, mistake or deception as to the source of origin of goods or services.

(Added to NRS 2005.405)

NRS 600.440 Rights and remedies cumulative. The rights and remedies enumerated in NRS 600.240 to 600.450, inclusive, are in addition to those to which an owner of a mark is entitled under the common law.

NRS 600.445 Summary action to enjoin improper electronic use of a title trademark.

1. The owner of a registered title trademark living in the State of Nevada or their publisher may bring a summary action in any Nevada District Court for a temporary seven month injunction to enjoin the use of the mark on internet websites, servers and through other channels of electronic distribution.

2. Before issuing an injunction the court shall review the following:

(a) Evidence of the mark infringement, either in paper or electronic format. A title trademark shall be infringed by using the title of the work, the creator of the work or both by any person or entity without authorization for gain, whether monetary or otherwise.

(b) A take down notice to the offending party and their internet service provider or electronic channel enabler issued by a member of the Nevada Registration Group Resource, Inc. ("NRGR member"), an independent, Nevada non profit certification group.

(c) An affidavit from the NRGR member that such notice was sent. Proof of actual notice receipt to the internet service provider or electronic channel enabler shall be required.

(d) Testimony from the NRGR member that the offending party and/or their internet service provider or electronic channel enabler has either failed to take down the mark(s) or has initially taken it or them down but has put it or them back up within 6 months from the date of the take down notice.

(e) Testimony from the title trademark owner or their publisher as to ownership of the mark and residency in the State of Nevada.

3. A publisher may seek one injunction for one or more mark owners against numerous websites utilizing one internet service provider or electronic channel enabler.

4. Upon satisfaction of its review of the matters contained in section 2 above, the court in its discretion shall grant a temporary seven month injunction ordering the offending party(s) and the internet service provider and any other enabling party(s) to immediately cease and desist infringing upon the mark owner's title trademark.

5. In the event any party shall ignore, violate or use subterfuge and/or multiple names and entities to avoid the court's order, the registrant or their publisher may bring an action pursuant to NRS 600.420. In addition to the remedies available in NRS 600.430, a party may also seek punitive damages of no less than \$150,000 against all entities and their individual officers, directors, managers, owners and beneficiaries for each violation of a court order issued pursuant to this section.

6. In the event an infringing party does not use the title or name of a title trademark but rather only infringes upon the content of the work, the court shall direct a mark owner or their publisher to pursue a copyright claim in federal court. However, in its discretion, the court shall have broad latitude to find an infringement of a title trademark, including, but not limited to, considering misspellings, phonetic similarities and any infringements into and upon the penumbra of meaning of the mark.

7. It is the public policy of the State of Nevada that creative work shall be protected and encouraged by maintaining and promoting incentives for artistic expression.

NRS 600.450 Unlawful acts; penalty.

1. It is unlawful for any person or corporation:

(a) To imitate any mark registered as provided in NRS 600.240 to 600.450, inclusive;

(b) To use knowingly any counterfeit or imitation thereof;

(c) To use or display such genuine mark unless authorized to do so;

(d) To use or display such genuine mark in a manner not authorized by the registrant; or

(e) To use or display any mark on an internet website, server or other channel of electronic distribution for financial gain unless authorized to do so.

2. Any person violating any provision of subsection 1 is guilty of a misdemeanor.
[3:180:1907; RL § 4637; NCL § 7697]—(NRS A 1967, 620; 1979, 600; 1995, 68)

APPENDIX F

Memorandum dated June 28, 2012, from John K. Ellis, J.D., to Garret Sutton, J.D.,
Regarding the Proposed Nevada Title Trademark Act

MEMORANDUM

To: Garrett Sutton, J.D.
From: John K. Ellis, J.D.
Case: Proposed Nevada Title Trademark Act
Re: No Federal Copyright or Trademark Preemption
Date: June 28, 2012

ISSUE

Is the proposed Nevada Title Trademark Act preempted by either federal copyright or trademark law?

COPYRIGHT LAW

Article I, § 8, cl. 8, pertaining to “[p]atents and copyrights,” of the Constitution of the United States of America provides:

“[The Congress shall have 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;...”

Pursuant to this authority, Congress has enacted the Copyright Act, 17 U.S.C. §§ 101-1332, to define and protect the rights of copyright holders. Under the Act, “the owner of copyright...has the exclusive rights to do and to authorize” others to display perform, reproduce, or distribute copies of the work, and to prepare derivate works. *See*, 17 U.S.C. § 106.

Under the Supremacy Clause, “it has been settled that state law that conflicts with federal law is ‘without effect.’” *See, Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516, 112 S.Ct. 2608, 120 L.Ed.2d 407 (1992), *quoting, Maryland v. Louisiana*, 451 U.S. 725, 746, 101 S.Ct. 2114, 68 L.Ed.2d 576 (1981), *citing, McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 427, 4 L.Ed. 1579 (1819).

State law may be preempted in any one of three ways: explicit preemption, field preemption; and conflict preemption. See, *English v. General Elec. Co.*, 496 U.S. 72, 78-79, 110 S.Ct. 2270, 110 L.Ed.2d 65 (1990). Whatever the form, the key is whether the operation of state law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” See, *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470, 479, 94 S.Ct. 1879, 40 L.Ed.2d 315 (1974), quoting, *Hines v. Davidowitz*, 312 U.S. 52, 67, 61 S.Ct. 399, 85 L.Ed. 581 (1941). However, the Supremacy Clause does not require full congruence between federal and state intellectual property protections. See, *G. S. Rasmussen & Assocs. v. Kalitta Flying Service, Inc.*, 958 F.2d 896, 904-05 (9th Cir. 1992) (federal copyright law does not preempt state copyright law providing greater protection), citing, *Goldstein v. California*, 412 U.S. 546, 93 S.Ct. 2303, 37 L.Ed.2d 163 (1973).

17 U.S.C. § 301 of the Copyright Act provides in relevant portion:

“On and after January 1, 1978

“(a) On and after January 1, 1978, all legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106 in works of authorship that are fixed in a tangible medium of expression and come within the subject matter of copyright as specified by sections 102 and 103...are governed exclusively by this title. Thereafter, no person is entitled to any such right or equivalent right in any such work under the common law or statutes of any State.

“(b) Nothing in this title annuls or limits any rights or remedies under the common law or statutes of any State with respect to--

“(1) subject matter that does not come within the subject matter of copyright as specified by sections 102 and 103, including works of authorship not fixed in any tangible medium of expression; or

“... ”

“(3) activities violating legal or equitable rights that are not equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106;...”

The United States Court of Appeals for the Ninth Circuit has adopted a two-part test to determine whether a state law claim is preempted by the Copyright Act:

“We must first determine whether the ‘subject matter’ of the state law claim falls within the subject matter of copyright as described in 17 U.S.C. §§ 102 and 103. Second, assuming that it does, we must determine whether the rights asserted under state law are equivalent to the rights contained in 17 U.S.C. § 106, which articulates the exclusive rights of copyright holders.” *See, Laws v. Sony Music Entm’t, Inc.*, 448 F.3d 1134, 1137-38 (9th Cir. 2006); *Downing v. Abercrombie & Fitch*, 265 F.3d 994, 1003 (9th Cir. 2001).

In the present case, the proposed Nevada Title Trademark Act is not preempted by federal copyright law. The proposed Act calls for the creation of a new class of trademark called the “title trademark,” which consists of the combination of the book, music, or other creative work title, along with the individual’s or group’s name. Although federal copyright law preempts the content of the book, music, or other creative work, and thereby supersedes state law, the proposed Act avoids a conflict with federal law under the above-described, two-part test promulgated by the Ninth Circuit. *See, Laws, supra*, 448 F.3d at 1137-38; *Downing, supra*, 265 F.3d at 1003.

With respect to the first prong of the above-described two-part test, the “subject matter” of the proposed Nevada Title Trademark Act does not fall within the subject matter of sections 102¹

¹17 U.S.C. § 102 provides:

“(a) Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:

“(1) literary works;

“(2) musical works, including any accompanying words;

“(3) dramatic works, including any accompanying music;

and 103,² which pertain solely to the content of the book, music, or other creative work, and not to the “title trademark,” which is *sui generis* in copyright law.

With respect to the second prong of the above-described two-part test, the rights asserted under the proposed Nevada Title Trademark Act are not equivalent to the rights contained in section 106.³ The proposed Act calls for the creation of an entirely new class of trademark called the “title

“(4) pantomimes and choreographic works;

“(5) pictorial, graphic, and sculptural works;

“(6) motion pictures and other audiovisual works;

“(7) sound recordings; and

“(8) architectural works.

“(b) In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.”

²17 U.S.C. § 103 provides:

“(a) The subject matter of copyright as specified by section 102 includes compilations and derivative works, but protection for a work employing preexisting material in which copyright subsists does not extend to any part of the work in which such material has been used unlawfully.

“(b) The copyright in a compilation or derivative work extends only to the material contributed by the author of such work, as distinguished from the preexisting material employed in the work, and does not imply any exclusive right in the preexisting material. The copyright in such work is independent of, and does not affect or enlarge the scope, duration, ownership, or subsistence of, any copyright protection in the preexisting material.”

³17 U.S.C. § 106 provides:

“Subject to sections 107 through 122, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

“(1) to reproduce the copyrighted work in copies or phonorecords;

trademark,” which consist of the combination of the book, music, or other creative work title, along with the individual’s or group’s name. Thus, the elements of a state law claim under the proposed Nevada Title Trademark Act are not identical to the elements of copyright law, and, moreover, contain qualitatively different elements than those contained in a claim in copyright. This “extra element” transforms the nature of the action and satisfies the second prong of the above-described two-part test, because the proposed Act protects rights which are qualitatively different from copyright rights.

A. Names Alone Are Not Copyrightable and Are Not Preempted by the Copyright Act.

In *Downing, supra*, the United States Court of Appeals for the Ninth Circuit concluded that protection from the unauthorized appropriation of one’s name, image, or likeness was not preempted by the Copyright Act. 265 F.3d at 1003-05.

In *Downing, supra*, Appellant surfers brought a diversity action against Abercrombie and Fitch for publishing a photograph of them, with identification of their names, for Abercrombie's

“(2) to prepare derivative works based upon the copyrighted work;

“(3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

“(4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;

“(5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and

“(6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.”

commercial benefit without their authorization. Appellants alleged a violation of California's common law and statutory prohibition against misappropriation of a person's name and likeness for commercial purposes, a violation of the Lanham Act for confusion and deception indicating sponsorship of Abercrombie goods, and a claim for negligence and defamation. The district court entered summary judgment for Abercrombie, holding that their California state claims were foreclosed because Abercrombie's use of the photograph was protected by the First Amendment, and those claims were also preempted by the federal Copyright Act; that Hawaii law was the proper choice of law for some of these claims; that the Lanham Act claim was precluded by the First Amendment and it was also precluded by the nominative fair use doctrine; and that there was insufficient evidence to sustain the negligence or defamation claims. The United States Court of Appeals for the Ninth Circuit disagreed, reversed the grant of summary judgment, and remanded the case for trial. 265 F.3d at 999.

In an opinion authored by the Honorable Procter R. Hug, Jr., Circuit Judge, the Ninth Circuit Court noted that Abercrombie contended that its right to reproduce and publish the photograph of the Appellants was governed by the federal Copyright Act, and that the Appellants' state law claims were preempted by federal copyright law. The Court pointed out that, in order for preemption to occur under the federal Copyright Act, two conditions must be satisfied: (1) first, the content of the protected right must fall within the subject matter of copyright as described in sections 102 and 103; and (2) second, the right asserted under state law must be equivalent to the exclusive rights contained in section 106 of the Copyright Act. 265 F.3d at 1003. However, the Court observed that it was not the publication of the photograph itself, as a creative work of authorship, that was the basis for Appellants' claims, but rather, it was the use of the Appellants' likenesses and their names pictured in the published photograph:

“The Nimmer treatise on copyright law states:

““The “work” that is the subject matter of the right of publicity is the persona, i.e., the name and likeness of a celebrity or other individual. A persona can hardly be said to constitute a “writing” of an “author” within the meaning of the copyright clause of the Constitution. *A fortiori* it is not a “work of authorship” under the Act. Such name or likeness does not become a work of authorship simply because it is embodied in a copyrightable work such as a photograph.” 1 *Nimmer on Copyright* § 1.01[B][1][c] at 1-23 (1999).

“The same point is made in McCarthy’s Treatise on Right of Publicity and Privacy:

“The ‘subject matter’ of a Right of Publicity claim is not a particular picture or photograph of plaintiff. Rather, what is protected by the Right of Publicity is the very identity or persona of the plaintiff as a human being... While copyright in a given photograph may be owned by the person depicted in it, the exact image in that photograph is not the underlying ‘right’ asserted in a Right of Publicity case. To argue that the photograph is identical with the person is to confuse illusion and illustration with reality. Thus, assertion of infringement of the Right of Publicity because of defendant’s unpermitted commercial use of a picture of plaintiff is not assertion of infringement of copyrightable ‘subject matter’ in one photograph of plaintiff. McCarthy, *Rights of Publicity and Privacy* § 11.13[C] at 11-72-73 (1997).” 265 F.3d at 1003-04.

Citing *Brown v. Ames*, 201 F.3d 654, 661 (5th Cir. 2000) (protection from the unauthorized appropriation of one’s name, image, or likeness was not preempted by the Copyright Act), and *KNB Enterprises v. Matthews*, 92 Cal.Rptr.2d 713 (Cal.App. 2000) (the state law right of publicity claims were not pre-empted by the Copyright Act), the Ninth Circuit Court in *Downing, supra*, agreed with the approach taken by the Fifth Circuit and the reasoning employed in *KNB Enterprises, supra*, and concluded that the subject matter of Appellant surfers’ statutory and common law right of publicity claims was their names and likenesses; that a person’s name or likeness is not a work of authorship within the meaning of section 102; that this was true notwithstanding the fact that Appellants’ names and likenesses were embodied in a copyrightable photograph; and that the same concept was specifically embodied in section 103, which provides that the copyright in derivative works extends

only to the material contributed by the author as distinguished from preexisting material employed in the work. 265 F.3d at 1004-05. Thus, the Court concluded that the first requirement for copyright preemption was not met.

Likewise, in *Downing, supra*, the Ninth Circuit Court noted that the second requirement for copyright preemption as noted above is that the right asserted under state law must be equivalent to the exclusive rights contained in section 106 of the Copyright Act. The Court concluded that the second requirement was not met, because the subject matter of Appellant surfers' statutory and common law right of publicity claims was their names and likenesses, which were not copyrightable, and that their claims were not equivalent to the exclusive rights contained in section 106. Thus, the Court concluded that the second requirement for copyright preemption was not met.

In the present case, since the unauthorized appropriation of one's name is not preempted by the Copyright Act, and by a parity of reasoning, the "trademark title," which is defined by NRS 600.305 of the proposed Nevada Title Trademark Act as "any title and name(s) used in combination to identify a printed, musical, artistic, photographic, filmed or other creative work made or sold by the named party," is not preempted by the Copyright Act. *See, Downing, supra*, 265 F.3d at 1003-05.

Therefore, it is well settled that names alone are not copyrightable and are not preempted by the Copyright Act.

B. Titles Alone Are Not Copyrightable and Are Not Preempted by the Copyright Act.

The Copyright Act does not protect names, titles, slogans, or short phrases.

37 CFR 202.1(a), pertaining to "[m]aterial not subject to copyright," provides:

"The following are examples of works not subject to copyright and applications for registration of such works cannot be entertained:

“(a) Words and short phrases such as names, titles, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering or coloring; mere listing of ingredients or contents;...”

The exclusion of these types of materials is not an exception to copyright law, but merely an application of the requirements for copyright protection. To be protected by copyright, a work must contain at least a minimum amount of authorship in the form of original expression. Names, titles, and other short phrases are simply too minimal to meet these requirements.

In *Kepner-Tregoe, Inc. v. Executive Dey, Inc.*, 79 F.Supp.2d 474 (D.N.J. 1999), the United States District Court for the District of New Jersey noted:

“The Copyright Office has explicitly stated that, although they may constitute ‘expression,’ ‘words and short phrases such as names, titles, and slogans’ are unprotectable. 37 C.F.R. § 202.1(a); see, e.g., *Becker v. Loew’s Inc.*, 133 F.2d 889 (7th Cir. 1943) (denying protection to phrase: ‘We who are young’); *Warner Bros. Pictures, Inc. v. Majestic Pictures Corp.*, 70 F.2d 310 (2d Cir. 1934) (finding phrase ‘Gold Diggers’ uncopyrightable); *Magic Mktg. Inc. v. Mailing Svcs. of Pittsburgh Inc.*, 634 F.Supp. 769, 772 (W.D. Pa. 1986) (‘Terse phrases...[and] even more colorful descriptions...are not accorded copyright protection.’.)” 79 F.Supp.2d at 485.

Therefore, it is well settled that titles alone are not copyrightable and are not preempted by the Copyright Act.

TRADEMARK LAW

The Lanham Act (15 U.S.C. § 1051 et seq.) was enacted in order to provide “national protection for trademarks used in interstate and foreign commerce.” See, *Park’N Fly, Inc. v. Dollar Park and Fly, Inc.*, 469 U.S. 189, 193-94, 105 S.Ct. 658, 83 L.Ed.2d 582 (1985). The Act does not, however, occupy the entire field of trademark protection. In fact, it expressly contemplates and accepts the existence of more restrictive protections provided by state law. See, 15 U.S.C. § 1065 (1982).

A. Names Alone Are Not Trademarkable and Are Not Preempted by the Lanham Act.

In *Park 'N Fly, Inc., supra*, the Supreme Court of the United States concluded that generic marks are not registrable:

“The provisions of the Lanham Act concerning registration and incontestability distinguish a mark that is ‘the common descriptive name of an article or substance’ from a mark that is ‘merely descriptive.’ §§ 2(e), 14(c), 15 U.S.C. §§ 1052(e), 1064(c). Marks that constitute a common descriptive name are referred to as generic. A generic term is one that refers to the genus of which the particular product is a species. *Abercrombie & Fitch Co v. Hunting World, Inc., 537 F.2d 4, 9 (CA2 1976)*. Generic terms are not registrable, and a registered mark may be canceled at any time on the grounds that it has become generic. See §§2, 14(c), 15 U.S.C. §§ 1052, 1064(c). A ‘merely descriptive’ mark, in contrast, describes the qualities or characteristics of a good or service, and this type of mark may be registered only if the registrant shows that it has acquired secondary meaning, *i. e.*, it ‘has become distinctive of the applicant’s goods in commerce.’ §§ 2(e), (f), 15 U.S.C. §§ 1052(e), (f).” 469 U.S. at 193-94.

15 U.S.C. § 1052(c) of the Lanham Act, pertaining to “[t]rademarks registrable on the principal register,” provides in relevant portion:

“No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it--

“... ”

“(c) Consists of or comprises a name, portrait, or signature identifying a particular living individual except by his written consent,...”

Above-quoted 15 U.S.C. § 1052(c) of the Lanham Act absolutely bars registration of a designation that identifies a particular living individual absent written consent. *See, In re Hoefflin*, 97 U.S.P.Q.2d (NBA) 1174 (2010).

Therefore, it is well settled that names alone are not trademarkable and are not preempted by the Lanham Act.

B. Titles Alone Are Not Trademarkable and Are Not Preempted by the Lanham Act.

The title of a single creative work is not trademarkable. Section 1202.08, Title of a Single Creative Work, of the Trademark Manual of Examining Procedure (the "TMEP"), provides in relevant portion:

"The title of a single creative work is not registrable on the Principal Register or the Supplemental Register. Examples of 'single creative works' include books, videotapes, films and theatrical performances. *Herbko International, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1162, 64 USPQ2d 1375, 1378 (Fed. Cir. 2002) ('the title of a single book cannot serve as a source identifier'); *In re Cooper*, 254 F.2d 611, 615-16, 117 USPQ 396, 400 (C.C.P.A. 1958), cert. denied, 358 U.S. 840, 119 USPQ 501 (1958) ('A book title...identifies a specific literary work...and is not associated in the public mind with the publisher, printer or bookseller....'); *In re Posthuma*, 45 USPQ2d 2011 (TTAB 1998) (title of a live theater production held unregistrable); *In re Hal Leonard Publishing Corp.*, 15 USPQ2d 1574 (TTAB 1990) (INSTANT KEYBOARD, as used on music instruction books, found unregistrable as the title of a single work); *In re Appleby*, 159 USPQ 126 (TTAB 1968) (title of single phonograph record, as distinguished from series, does not function as mark).

In *In re Cooper, supra*; 254 F.2d at 617, appellant therein authored a book and sought trademark registration for the book's title. The examiner of trademarks refused registration, and the assistant commissioner affirmed. On appeal, the United States Court of Customs and Patent Appeals affirmed, holding that because the subject matter of appellant's application was the name, and the only name, by which the copies of appellant's book could be identified, it was not a trademark, and was not registrable under the Lanham Act (15 U.S.C. § 1052). The Court noted that the title of a book, however arbitrary, novel or nondescriptive of the book's contents, nevertheless described the book, and thus was unregistrable, since the Act prohibited registration of marks merely descriptive in nature. The Court ruled that the title of appellant's book did not refer to, and was not analogous to, a "kind" or "make" of book, rather it denoted a discrete or specific work, and being thus descriptive of the work, was unregistrable.

In *Herbko International, Inc., supra*, 308 F.3d at 1162-63, the United States Court of Appeals

for the Federal Circuit concluded that the title of a single book cannot serve as a source identifier and cannot be registered as a trademark, because the publication of a single book cannot create, as a matter of law, an association between the book's title (the alleged mark) and the source of the book (the publisher).⁴

In *In re Posthuma*, the Trademark Trial and Appeal Board concluded that the title of a live theater production was not a registrable service mark for entertainment services in the nature of live theatre production:

“The materials of record in the application leave no doubt that PHANTASM is the title of applicant's play. PHANTASM appears in prominent fashion as the title on tickets, playbills and advertisements for the performances. In the ‘Producers’ Notes’ section of the playbill, the following language appears: ‘Welcome to the debut of *Phantasm*... The word *Phantasm* means an illusion, or a false perception of reality. This title was chosen because it demonstrates the conflicts that occur in the spiritual world as well as the material world.’ [emphasis added] The cassette tape sound track recording reads ‘Phantasm A Musical.’ In sum, the materials of record all identify PHANTASM as the name of the live theater production, and the purchasing public likely would perceive it as the title of the play, as opposed to perceiving it as a service mark identifying source or origin. In this connection, we believe that the title of a play is perceived in the same manner as is the title of a book which, as discussed above, is unregistrable.” 45 USPQ2d 2011 (BNA), at 7.

In *In re Posthuma, supra*, the Trademark Trial and Appeal Board noted that “[t]hrough the years the Board has reiterated that titles of single works are not registrable as trademarks.” 45 U.S.P.Q.2d 2011 (BNA), at 7, citing, *Paramount Pictures Corp. v. Romulan Invasions*, 7 U.S.P.Q.2d 1897, 1899 (TTAB 1988); *In re Hal Leonard Publishing Corp., supra*, 15 U.S.P.Q.2d 1574; and *In re Scholastic, Inc.*, 23 U.S.P.Q.2d 1774, 1776 (TTAB 1992).

In re Hal Leonard Publishing Corp., supra, the Trademark Trial and Appeal Board concluded that INSTANT KEYBOARD, as used on music instruction books, was unregistrable as

⁴In *Herbko International, Inc., supra*, 308 F.3d at 1162 n. 2, the Court pointed out that, while titles of single works are not registrable, they may be protected under section 43(a) of the Lanham Act upon a

the title of a single work:

"This brings us to the second ground of refusal on the basis that INSTANT KEYBOARD is merely the title of a single creative work and therefore does not function as a trademark to indicate source. Over 30 years ago the Court of Customs and Patent Appeals recognized that it was then a settled principle that the title of a book cannot be registered as a trademark, and that principle remains unchanged today. *See, [In re Cooper, supra].*" 15 U.S.P.Q.2d 1574 (BNA), at 4-5.

Therefore, it is well settled that titles alone are not trademarkable and are not preempted by the Lanham Act.

CONCLUSION

In summary, the proposed Nevada Title Trademark Act calls for the creation of a new class of trademark called the "title trademark," which consists of the combination of the book, music, or other creative work title, along with the individual's or group's name. The elements of a state law claim under the proposed Nevada Title Trademark Act are not identical to the elements of either federal copyright law or federal trademark law, and, moreover, contain qualitatively different elements than those contained in a claim in either copyright or trademark. Consequently, the proposed Nevada Title Trademark Act is not preempted by either federal copyright law or federal trademark law.

showing of secondary meaning.

APPENDIX G

Suggested Legislation

The following bill draft request will be available during the 2013 Legislative Session, or can be accessed after “Introduction” at the following website: <http://www.leg.state.nv.us/Session/77th2013/BDRList/page.cfm?showAll=1>.

BDR -406 Provides for the registration and protection of single titles of creative works of authorship as trademarks in this State.

