



# Contract Basics for Creatives



# Disclaimers

- The choice of a lawyer is an important decision and should not be based solely upon advertisements.
- This presentation is provided for informational purposes only and is not intended, nor should it be taken as, legal advice. This presentation does not create an attorney-client relationship.



# Outline

## Anatomy of a Contract

- Legal Elements
- Typical Layout
- Force Majeure

## Statute of Frauds

## Intellectual Property

- Copyrights
- Trademarks
- Patents

## Licensing

- Key Terms
- Rights



# Anatomy of a Contract

## Legal Elements

- Offer, Consideration, Acceptance, Mutuality
- Memorialization of the risks and rewards borne by each party
- Core Terms
  - Products/Services – what is being exchanged
  - Price – for how much
  - Manner of Delivery - how are the good or services to be delivered
  - Damages or Liquidated Damages
- Common Boilerplate
  - Choice of law
  - Integration
  - Dispute resolution
  - Time is of the essence
  - Force Majeure / Impossibility / Impracticability



# Anatomy of a Contract

Typical Layout



TITLE

Introduction

Recitals

Core Terms

Boilerplate

Signature Block





# Anatomy of a Contract

## Force Majeure/Impossibility/Impracticability

- Force Majeure

- Example: No delay, failure, or default, other than a failure to pay fees when due, will constitute a breach of this Agreement to the extent caused by hurricanes, earthquakes, epidemics, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, acts of war, terrorism, acts of governments such as expropriation, condemnation, embargo, changes in laws, and shelter-in-place or similar orders, or other causes beyond the performing party's reasonable control.



- Impossibility/Impracticability – not necessarily a clause, but may be a defense to performance



# Statute of Frauds

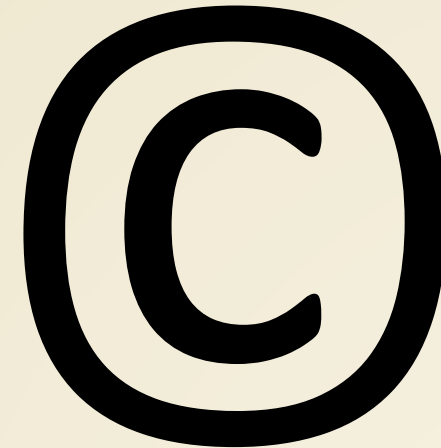
When do you need a written contract?

- RSMO 432.010
  - Marriage
  - Land
  - Longer than 1 year
  - Guarantees for another's debts
  - Executor for the debts of the estate
- RSMO 400.2-201
  - Sale of goods over \$500
- Unless work has already begun and there is evidence of an agreement

# Intellectual Property – Copyright

## Artistic Categories

- Literary, musical, and dramatic works
- Pantomimes and choreographic works
- Pictorial, graphic, and sculptural works
- Sounds recordings
- Motion pictures and other A/V works
- Computer programs
- Compilations of works and derivative works
- Architectural works



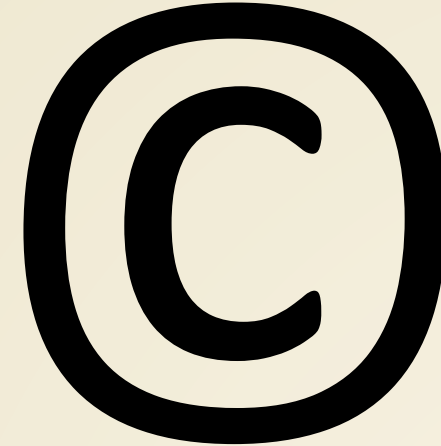




# Intellectual Property – Copyright

## Core Rights

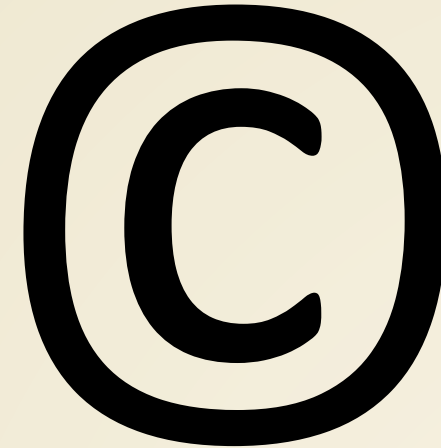
- 17 USC 106
  - (1) to **reproduce** the copyrighted work in copies or phonorecords;
  - (2) to prepare **derivative works** based upon the copyrighted work;
  - (3) to **distribute** copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, 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**.



# Intellectual Property – Copyright

## Attachment

- Copyright attaches upon fixation
- Rights are maximized by registering with US Copyright Office



# Intellectual Property – Trademark/Service Marks



- Trademark – used for goods
- Service Mark – used for services
- Used to prevent confusion in the marketplace
- Cannot be purely descriptive

TM



# Intellectual Property – Trademark/Service Marks



- Duty to defend
  - If you know of infringement, you have a duty to defend your mark

TM

- Tools
  - Cease and Desist Letters
  - Lawsuits for damages – if registered



# Intellectual Property – Trademark/Service Marks



- Protection attaches upon use in trade or business
- Protection is maximized through registration with the US Patent and Trademark Office

TM

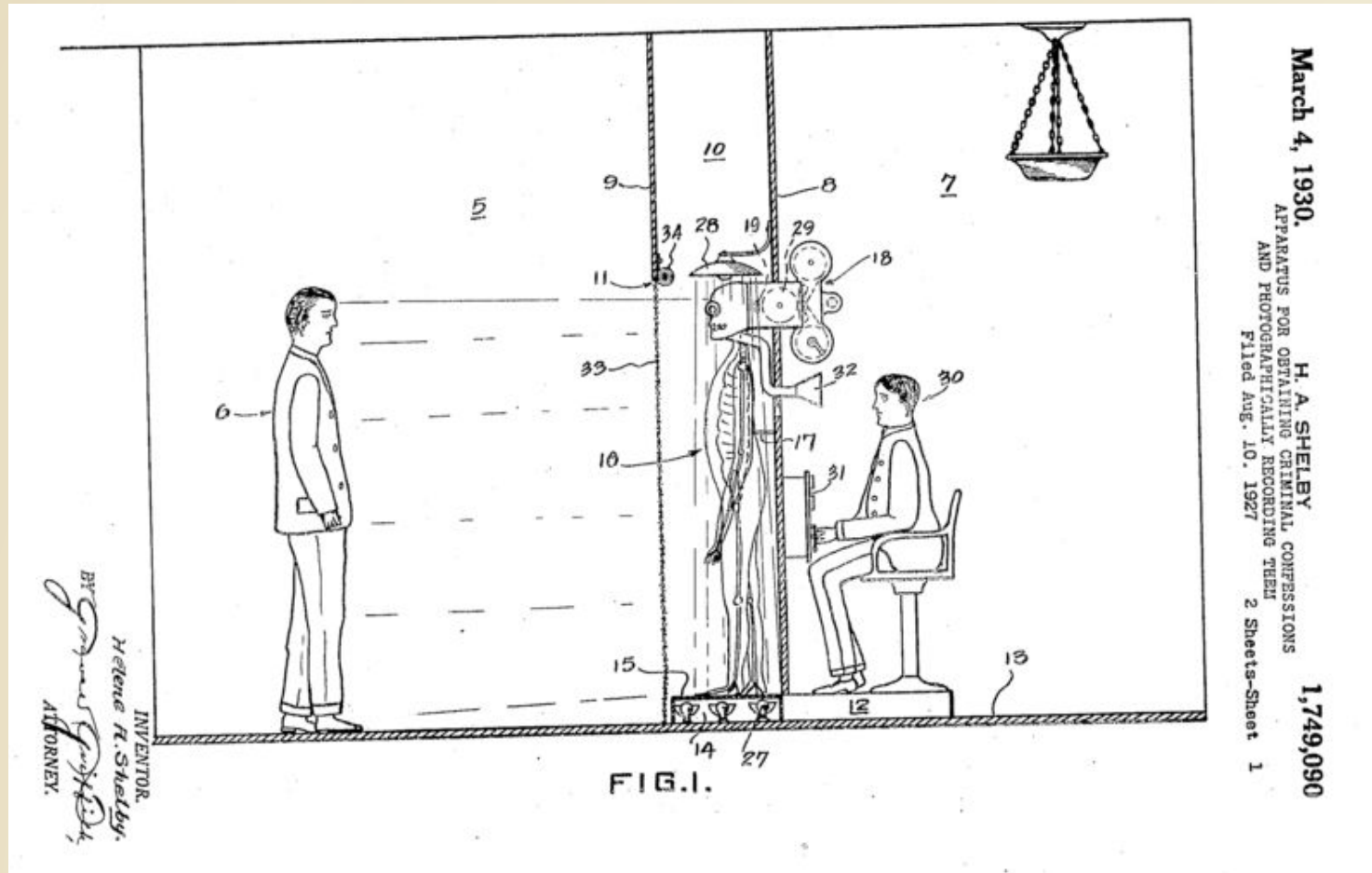




# Intellectual Property - Patents

- New
  - Substantially different from all public knowledge
  - Can combine two ideas
- Useful
  - Must serve some type of purpose
- Nonobvious
  - Not easily perceived by someone with expertise in the field
- Registered through the United States Patent and Trademark Office

# Intellectual Property - Patents



# Intellectual Property – Licensing

## Licensor Considerations

- What rights do you have?
- What rights are you giving up completely?
- What rights are you “renting” to the other party?
- What protections do you want?





# Intellectual Property – Licensing

## Licensee Considerations

- What rights are you getting outright?
- What rights are you ”renting”?
- Indemnification for infringement





Questions?



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