

# PROFESSIONALLY SPEAKING



WINTER 2009

**USING WORDS THAT EMBRACE**

*by Jessica Pettitt*

**PUNCTUATE THIS!**

*by Jeff Rubin*

**READ A GOOD AUDIENCE LATELY?**

*by Daniel Moirao, Ed.D.*

**WORK A FACEBOOK PARTY**

*by Larry Chiang*

**MAKE GOOGLE HAPPY!**

*by Jim Carillo*

**CREATE CONFIDENCE**

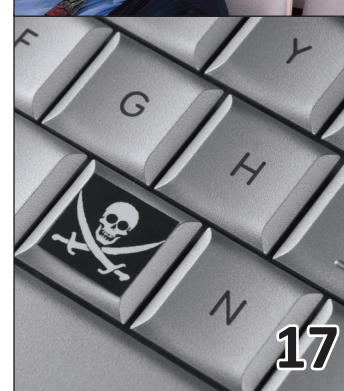
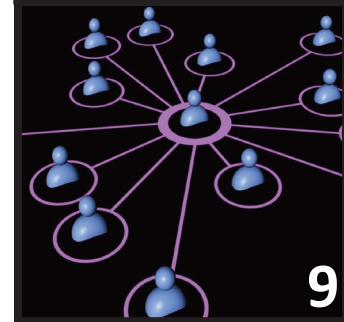
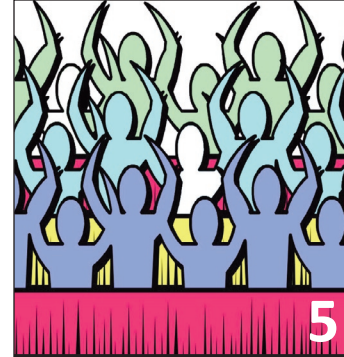
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*Sandy Shepard, Esq.*

Understand the basics of intellectual property protection for speakers pertaining to copyrights, trademarks, trade secrets, trade dress and patents.

# BASIC INTELLECTUAL PROPERTY CONCEPTS FOR PROFESSIONAL SPEAKERS:

## *The Bedrock of Good Business*

By Sandra Shepard, Esq.

### PROTECT YOUR ASSETS

The experts say that when times get tough, the real winners put more money into marketing. Perhaps you have done what many of the marketing gurus tell you — made your list of unique characteristics, learned to present them as benefits, and developed some catchy tag-lines. You've also revamped your speeches with some eye-catching visuals and audio additions. How can you avoid being an intellectual property pirate — and protect your own assets?

#### Intellectual Property Law 101

In general, intellectual property (IP) protection comes in five forms:

1. Copyrights
2. Trademarks
3. Trade secrets
4. Trade dress
5. Patents

This article briefly discusses each. Just enough to freak you out — or at least get you thinking.

#### Contracts 101: A few important warnings

Before we start, it's important to note that by signing your clients' contracts, you may sign over your rights to your intellectual property (IP) — and be forbidden from ever using it again. You can also get into trouble by having others help you on a project, without having a contract assigning their rights to you. It's incredibly important to have your own template contract spelling out exactly how you do business, and to have an attorney briefly review any contracts you consider signing, for any "pitfalls" they might contain. The Resources section of my website, [www.GoodSolutions.com](http://www.GoodSolutions.com), has a free PDF labeled *Contracts 101*, containing some of the pitfalls into which you might already have inadvertently fallen! As a speaker, you want



to be sure that you have your own engagement template. It should cover exactly what you expect, and need, for your engagement to be a success. A personalized contract that you use each and every time will help make the set-up and “back office” portion of your engagements go smoothly.

## Copyright basics

Copyright protects the “expression” — for example, the words, dance, or song-of an idea. If you put a copyright mark on your handouts, be sure to use the correct format. You can instantly lose credibility without saying a word, by having this format out of order. The correct format is: © [date written] [owner]. All rights reserved. So for this article, the copyright would read: © 2008 Sandy Shepard. All rights reserved. Copyright protects the “right” to “copy” the expression of an idea.

“Fair use” is a defense to an infringement lawsuit. (In other words, you are an infringer... you’re just trying to use a *Get Out Of Jail Free* card.) This defense is quite restricted, particularly if you have made any profit (even indirectly) from the copying. So if you’re copying, when in doubt — get permission! And no, you can’t use even a little “snippet” of a film, photograph, or music without having the correct permissions. There is no “six-second” or “six-word” or “I just used a little bit” rule. And you do know that the photographer owns the photo’s copyright, even if the photograph is of you, right? If you don’t have the right permissions, it can lead to trouble.

## Clarifying the meaning of plagiarism

You should also be aware that giving credit to a quote does not protect you from an infringement lawsuit. You might not be a plagiarist, but you might technically be an infringer. They are not synonymous. For more on this and other intellectual property subjects, check my website, again under Resources, for the IP 101 FAQ. (Rest assured, I don’t take your name, or your email, or put you on any newsletter list. I Promise. Downloads are free and anonymous.)

## About derivative works: warning

Copyright also gives holders of a copyright the sole right to make “derivative works” from their property. Neil Diamond learned this when he stated that his song *Heartlight* was “inspired” by the movie *E.T.* — which is the copyrighted work of Steven Spielberg. Copying may be the sincerest form of flattery, but it’s also an actionable infringement. Diamond ended up settling the case for an undisclosed amount.

### I know the words, if you can hum the tune...we can both go to jail

A few years back, ASCAP (the American Society of Composers, Authors & Publishers) informed Girl Scout camps nationwide that they needed to pay license fees to use any of the four million copyrighted songs that they were singing around the campfire. Singing or playing a song like this without a license in a public place is illegal. In fact, ASCAP’s chief operating officer was quoted in the Wall Street Journal as stating: “They buy paper, twine and glue for their crafts — They can pay for the music, too,” and “If offenders keep singing without paying, we will sue them if necessary.”

Now you know why they don’t sing “*Happy Birthday*” (which is still under copyright) when you have a birthday party at a large chain restaurants.



## A bit about patents

While copyrights protect an idea's expression, a patent protects the idea itself. To be patentable, the product or process must be repeatable, novel, and it must not be an "obvious" extension of a current product or process. By filing a patent, you explain in detail how to reproduce your product or process. In exchange, you obtain a monopoly for a number of years. The opposite of a patent is a trade secret, where you keep the process secret. (The recipe for Coke is an example.) There is no expiration of the protection term as there is with a patent, but if a competitor can "reverse engineer" the product or process, you lose it.

## Scared yet? If not, a final bit on trade dress and trademarks

Trade dress protects the "look" of your product, service or establishment, while trademarks and service marks are awarded for words (e.g., tag phrases, brands or names) or pictures (logos), or even colors (e.g., pink on insulation) used on a product or service. Only unique marks can exist within a given channel of commerce, to avoid "consumer confusion." General terms cannot be registered. Even if you do not trademark your own tag lines (which you should) — if they are good, someone else will! It's always wise to check to be sure a "darling" tag line or potential new company name is not already trademarked! Because though a county or state might allow you to pay your money and file for a fictitious business name, they do not guarantee that you can actually use this name without being an infringer. That is why it's so important to make sure that your brand or business name is not already being used by someone else. Finally, with trade dress, don't try to "entice" your competitors' clientele to you by being "just like them." In the speaking business, trade dress could involve trying to mimic someone's "shtick" or look so that an audience may confuse you with the "real thing."

## IN CONCLUSION...

Receiving a "cease and desist" letter is a great way to ruin your day — and your business. So please consider educating yourself on intellectual property and how it affects your business, because ignorance is never a defense. The free documents in the Resources section of GoodSolutions.com are a great place to start. Nolo Press also has publications that can give you enough information to let you know whether you should hire an attorney.

In sum, you protect your business's "tangible" property; it's important to consider your "intellectual" property as well. Taking time to understand and protect these rights can help secure a valuable asset as your company grows and succeeds.



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*Attorney Sandy Shepard leads Good Solutions, a legal services and consulting business, and is a member of the National Speakers Association. She is dedicated to making legal matters more accessible to the public, and is passionate about providing free, thorough, and easy-to-understand resources on her website: [www.goodsolutions.com](http://www.goodsolutions.com). Call her at 415.532.2298 or e-mail her: [sandy@goodsolutions.com](mailto:sandy@goodsolutions.com).*