



# Newsletter

AUGUST 2002

Professional Legal Assistors  
5525 Canoga Avenue  
Suite 304  
Woodland Hills, CA 91367-6648  
(818)347-0101 / (800)621-7008  
fax (818)347-1823 / (888)232-9022  
Email: [dottie@biz-usa.com](mailto:dottie@biz-usa.com)  
Visit us at  
<http://www.biz-usa.com>

Our office will be closed for the following holidays:

September 2 – Labor Day

October 14 - Columbus Day

November 11 – Veterans Day

November 28 & 29 – Thanksgiving

December 25 – Christmas

January 1 – New Years Day

Our next newsletter will be mailed out the beginning of January 2003. Remember if you have an article that you would like to contribute to our newsletter just fax it to us for our review. We must receive the article no later than December 15<sup>th</sup> for our January newsletter. ♦

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## Trademark Questions & Answers and New International Classes

**Intellectual Property used to mean patents, copyrights and trademarks. What does it mean now?** They are still the primary forms of intellectual property, and new things have cropped up on the internet environment – domain names, multimedia presentations, website designs and so on -- fall under that category. The existing laws still cover digital property. The big difference is that a lot of people who use the internet have no respect for those laws.



**Should Intellectual Property holders just accept that piracy is part of the internet age or is there something they can do to protect themselves?** Intellectual Property holders have reacted with a four-pronged defense. One is to try to get Intellectual Property laws strengthened in their favor, and they've been fairly successful in this. The second is to sue more aggressively – a good example of this is the Record Industry Association of America's lawsuit against Napster. The third way is to employ technological fixes that make it impossible to access Information unless you have a password or ID. The fourth is to limit access to users who agree to a license. In response, there is a real groundswell of opinion among users that this is giving far too much away to the rights holders. Both camps are moving into entrenched positions and we're getting closer to an all-out war.

**So what is the solution?** The rights holders should consider whether piracy is a desperately dangerous threat or a business opportunity. One example, Cult TV shows such as the X-Files have lots of websites devoted to them, often with audio or multimedia clips that were illegally downloaded. Some of the owners of the TV shows get very heavy handed and insist that the websites close down while others take the view: "Help yourselves guys; it's all spreading the word and boosting our audiences figures."

**What does a website owner need to know about copyright?** That all the content and images are copyrighted, including trademarks if there are logos on the site. He/she needs to police the web to see if anything is being ripped off, not necessarily to complain but just to see what's happening and, if needs be, to complain.

**Who do you complain to?** You sue in the country in which you're set up.

**What about trademarks?** There have been quite a few court cases involving international trademark disputes. The biggest one involved Prince plc, a British shoe company, and Prince Inc., a US company. Prince Inc. sued Prince plc for using the domain name prince.co.uk, but it lost because prince.co.uk was registered before prince.com. The lesson here is to get your domain name registration - and, indeed, a registered trademark at the same time - done as soon as you possibly can.

**Are there legal snares involved in putting hyperlinks on a website?** Simply noting that "Joe Bloggs has written on this subject and here's the link" is fine. There might be a problem of slander or libel, however, if you're the Philip Morris website, for example, and you characterize Joe Bloggs as a Marlboro man when, in fact, he's vehemently against smoking. If you add a simple URL plus a title that's also fine, but if you include a digest of the material at that URL, you might be infringing copyright. You really take risks with framing, and by that I mean linking to a website that pops up in a frame on your website. You must make sure that clicking on a hyperlink clearly takes users to the new site. The second potentially dangerous area is if you bypass a home page of the hyper linked site and go directly to a page embedded in that site.

**EFFECTIVE JANUARY 1, 2002, the 8<sup>TH</sup> edition of the Nice Agreement governing the classification of goods and services divided prior International Class 42 and new International Class 43, 44 and 45.**

**Class 42 - Computer, scientific & legal** –Scientific and technological services and research and design relating thereto; industrial analysis and research and

services; design and development of computer hardware and software; legal services.

*Explanatory Note*

Class 42 includes mainly services provided by persons, individually or collectively, in relation to the theoretical and practical aspects of complex fields of activities; such services are provided by members of professions such as chemists, physicists, engineers, computer specialists, lawyers, etc.

*Includes, in particular:*

- \* the services of engineers who undertake evaluations, estimates, research and reports in the scientific and technological fields;
- \* scientific research services for medical purposes.

*Does not include, in particular:*

- \* business research and evaluations (Class 35); word processing and computer file management services (Class 35);
- \* financial and fiscal evaluations (Class 36); mining and oil extraction (Class 36); computer (hardware) installation and repair services (Class 37);
- \* services provided by the members of professions such as medical doctors, veterinary surgeons, psychoanalysts (Class 44);
- \* medical treatment services (Class 44);
- \* garden design (Class 44)

**Class 43 – Hotels and restaurants** – Services for providing food and drink; temporary accommodations.

*Explanatory Note*

Class 43 includes mainly services provided by persons or establishments whose aim is to prepare food and drink for consumption and services provided to obtain bed and board in hotels, boarding houses or other establishments providing temporary accommodations.

*Includes, in particular:*

- \* reservation services for travelers' accommodations, particularly through travel agencies or brokers;
- \* boarding for animals.

*Does not include, in particular:*

- \* rental services for real estate such as houses, flats, etc., for permanent use (Class 36);
- \* arranging travel by tourist agencies (Class 39);
- \* preservation services for food and drink (Class 40);
- \* discotheque services (Class 41);
- \* boarding schools (Class 41);
- \* rest and convalescent homes (Class 44).

**Class 44 – Medical, beauty & agricultural** - Medical services; veterinary services; hygienic and beauty care for human beings or animals; agriculture, horticulture and forestry services.

*Explanatory Note*

Class 44 includes mainly medical care, hygienic and beauty care given by persons or establishments to human beings and animals; it also includes services relating to the fields of agriculture, horticulture and forestry.

*Includes, in particular:*

- \* medical analysis services relating to the treatment of persons (such as x-ray examinations and taking of blood samples);
- \* artificial insemination services;
- \* pharmacy advice;
- \* animal breeding;
- \* services relating to the growing plants such as gardening;
- \* services relating to floral art such as floral compositions as well as garden design.

*Does not include, in particular:*

- \* vermin extermination (other than for agriculture, horticulture and forestry) (Class 37);
- \* installation and repair services for irrigation systems (Class 37);
- \* ambulance transport (Class 39);
- \* animal slaughtering services and taxidermy (Class 37);
- \* timber felling and processing (Class 40);
- \* animal training services (Class 41);
- \* health clubs for physical exercise (Class 41);
- \* scientific research services for medical purposes (Class 42);
- \* boarding for animals (Class 43);

**Class 45 – Personal** – Personal and social services rendered by others to meet the needs of individuals; security services for the protection of property and individuals.

*Explanatory Note*

*Includes, in particular:*

- \* investigation and surveillance services relating to the safety of persons and entities;
- \* services provided to individuals in relation with social events, such as social escort services, matrimonial agencies, funeral services.

*Does not include, in particular:*

- \* professional services giving direct aid in the operations or functions of a commercial undertaking (Class 35);
- \* services relating to financial or monetary affairs and services dealing with insurance (Class 36);
- \* escorting of travelers (Class 39);
- \* security transport (Class 39);
- \* services consisting of all forms of education of persons (Class 41);
- \* performances of singers and dancers (Class 41);
- \* legal services (Class 42);
- \* services provided by others to give medical, hygienic or beauty care for human beings or animals (Class 44);
- \* certain rental services (consult the Alphabetical List of Services and General Remarks relating to the classification of services).



The only thing we have to fear on this planet is man.

**Carl Jung**

## HOW TO TRANSFORM YOUR BUSINESS INTO AN IRON FORTRESS

Asset protection is not only for individuals. Businesses are also vulnerable and need their own brand of financial protection. In fact, without its own solid asset protection program, your business may be even more vulnerable to financial attack.

Surprisingly, few businesses go through the rigid drill to take the high-ground should they need to fend-off creditors and other financial threats. Why? Business start-ups are the product of entrepreneurs, and entrepreneurs are fueled by an overload of optimism, not realism. Those who journey into business happily see the upside benefits, but seldom the downside risks. With an eye only on success, they overlook the possibility of failure and ignore those precautionary steps to protect themselves should their rosy future turn bleak. Realists, on the other hand, shun rose-colored glasses. They act early and decisively to reduce risk and safeguard their enterprise. Realists prepare themselves and their business for battle long before war erupts so they gain a strong defensive position.

You too can transform your business into an iron fortress. You must believe that action now will make a vital difference in outcome should serious problems arise. Examine businesses that fail to pull out of their tailspin. You'll quickly realize how good defensive planning can be decisive in whether your business survives the hard times.

Timing is also as critical to your business as it is to our own personal situation. Don't delay. When you properly position your business:

- You- not your creditors – stay in control.
- You-not your creditors – are in the best position to negotiate business-saving terms.
- You-not your creditors- are in position to gain more if your business does fail.

Judgment proofing your business is not a complicated task.

## WHY CORPORATE PROTECTION IS ESSENTIAL TODAY

To turn your business into an iron fortress you must first choose the correct form of business organization. The corporation is always the one best choice because only a corporation protects your personal assets from business obligations. Why venture into business without corporate protection? Why foolishly gamble your personal wealth on the success of the enterprise? Since small companies routinely fail, this gamble gives you extremely poor odds.

Surprisingly, there are still over three million unincorporated businesses in America. One explanation: Small business owners are unsophisticated in business

and legal matters and don't appreciate the importance of personal protection only a corporation offers. Attorneys also fail to appreciate the hazards of business. Many do not incorporate their clients. Accountants, often more in tune with the extra paperwork of a corporation than its liability protection, also may discourage incorporation. Don't let your advisors dissuade you. Incorporating your business is the most valuable insurance you can buy. With a corporation you limit your potential losses only to what you invest in your business. Operate as a sole proprietorship and you and your business are considered one and the same. If your business fails, your business creditors have full recourse against your personal assets.

A partnership form of organization is even more dangerous. With a partnership you can lose your personal wealth not only for your own misdeeds, but also for your partners. Nor are there tax advantages with a proprietorship or partnership. An "S" corporation offers the same legal protection as a regular corporation but with the tax benefits of a proprietorship or partnership.

## ASSETS YOUR BUSINESS SHOULD NEVER OWN AND NEVER LOSE

Are you an unthinking business owner with valuable assets owned by your operating company? It's a mistake. Why needlessly lose these valuable assets if your business fails? Valuable assets should be owned by another entity where they'll be safe from the business creditors. They may be owned by a corporation established for that sole purpose. These assets can then be leased or licensed to your operating company. From a tax viewpoint it may be advantageous to have them personally owned. Check this with your accountant.

Real estate is one asset that should always be owned by an entity apart from the operating company. Example: You own and operate a restaurant located in a valuable building owned by your same restaurant corporation. When the restaurant fails-as so many do-the restaurant's creditors claim the building since it is an asset of the same corporation. Why expose the real estate? It's smarter to own the real estate personally, through another corporation, a trust or even a limited partnership. The real estate then remains safe no matter what happens to the restaurant.

Valuable equipment? Ownership through another entity can again make sense. It may also be wise to title important trademarks, copyrights and patents in still another entity, and license their use to the operating company.

The objective is obvious: Limited creditors to the fewest assets possible should your business fail. With your assets sheltered, you can either use these same assets to start another business, or sell or lease the assets for personal profit. Either way you come out the winner. If your corporation owns real estate, high-cost equipment or valuable intangible assets, then separate ownership of these assets is not only smart from the viewpoint of asset protection, but you may even gain some tax advantages in the process.

Caution: If you personally guarantee business debts, don't title these assets in your own name. Should your business fail, creditors holding your personal guarantee would then have recourse to these assets. Instead, title these assets in a limited partnership, trust or corporation.

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The roots of education are bitter, but the fruit is sweet.

**Aristotle**

Professional Legal Assistors  
5525 Canoga Avenue  
Suite 304  
Woodland Hills, CA 91367-6648

ADDRESS CORRECTION REQUESTED

