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### CONCLUSION

Intellectual property law is premised on incentivizing innovative and creative activities by providing limited property rights for the fruits of such activities in order to increase the storehouse of creative and innovative knowledge for the betterment of society.

A careful balance has been developed under each major body of intellectual property law – patent, copyright, and trademark – in an effort to provide property rights that promote creative and innovative conduct without such property rights interfering too greatly with public access to the fruits of such conduct.

The subject matter protectable under patent, copyright, and trademark law has greatly expanded in recent years. To some extent, this expansion reflects an excessive or unitary focus on protecting the property rights of innovators in an effort to incentivize investment in creative and innovative activities. This approach leads to overprotection when it fails to properly balance the resulting property protection against the right of the public to use the results of such creative and innovative activities.

Additionally, this expansion of covered subject matter under each specific area of intellectual property law has occurred with little regard to its effect on the other areas of intellectual property law. The unintended result has been the ability to protect certain subject matter simultaneously under patent, copyright, and/or trademark law. Such overlapping protection undermines the careful balance individually developed under each body of intellectual property law. For example, patent law is based on the premise that upon expiration of a patent the covered subject matter passes into the public domain. However, simultaneous protection under copyright law means limitations on public access will continue after patent expiration since the term of copyright protection significantly exceeds the length of protection under patent law. Likewise, simultaneous trademark protection can further exacerbate the problem because trademark rights are not time-limited like patent and copyright rights.

Solving the problems due to overlapping protection – or at least not compounding the problem by further subject matter expansion – requires both legislators and courts to have a better understanding of the balancing policy that undergirds intellectual property law. Legislative enactments and judicial decisions that expand the reach of intellectual property law should not be made in

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a vacuum. Therefore, expansion of the subject matter protected under either patent, copyright, or trademark law should only occur if it does not undermine the careful balances struck under each of the other bodies of intellectual property law. This can prevent unintended over-protection of intellectual property which protects the rights of creators and innovators at the expense of the public. Finally, investing a single federal entity or agency with power to oversee all intellectual property, in lieu of the current fragmented approach, might facilitate a more coordinated development of the various bodies of intellectual property law.