

One Right System for IP – Vision Impossible?

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A Possible Vision of a ‘One Right System’ for IP

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Outline

- ◆ Meaning of a ‘one right system’
- ◆ Getting to(wards) ‘one’
- ◆ A possible one system for IP rights



Meaning of a 'One Right System'

- ◆ 'System of one right'?
 - i.e. one right in each IP regime
- ◆ 'One system of rights'?
 - i.e. only one IP regime
- ◆ 'One system of one right'?
 - i.e. only one IP regime with only one right
- ◆ Something else
 - i.e. some combination of the above



'System of One Right'

- ◆ Unifies within each regime:
 - exclusive rights of protection
- ◆ Leaves un-unified within and across regimes:
 - subject matters of protection
 - innovation contribution thresholds for subsistence of protection
 - exceptions / limitations to protection
 - duration of protection
 - formalities for protection



'One System of Rights'

- ◆ Unifies across regimes:
 - subject matters of protection
 - innovation contribution thresholds for subsistence of protection
 - exceptions / limitations to protection
 - duration of protection
 - formalities for protection
- ◆ Leaves un-unified across regimes:
 - exclusive rights of protection



'One System of One Right'

- ◆ Unifies across regimes:
 - subject matters of protection
 - innovation contribution thresholds for subsistence of protection
 - exclusive rights of protection
 - exceptions / limitations to protection
 - duration of protection
 - formalities for protection



Something Else

- ◆ Unifies across regimes some *combination* of:
 - subject matters of protection
 - innovation contribution thresholds for subsistence of protection
 - exclusive rights of protection
 - exceptions / limitations to protection
 - duration of protection
 - formalities for protection



Getting To(wards) 'One'

- ◆ Components of IP regimes
- ◆ Approaches to unification
- ◆ Pruning the IP system 'tree'



Components of IP Regimes

Requirements for protection	Entitlements of protection
◆ Subject Matter	◆ Rights
◆ Innovation Contribution	◆ Exceptions
◆ Formalities (Examination)	◆ Duration

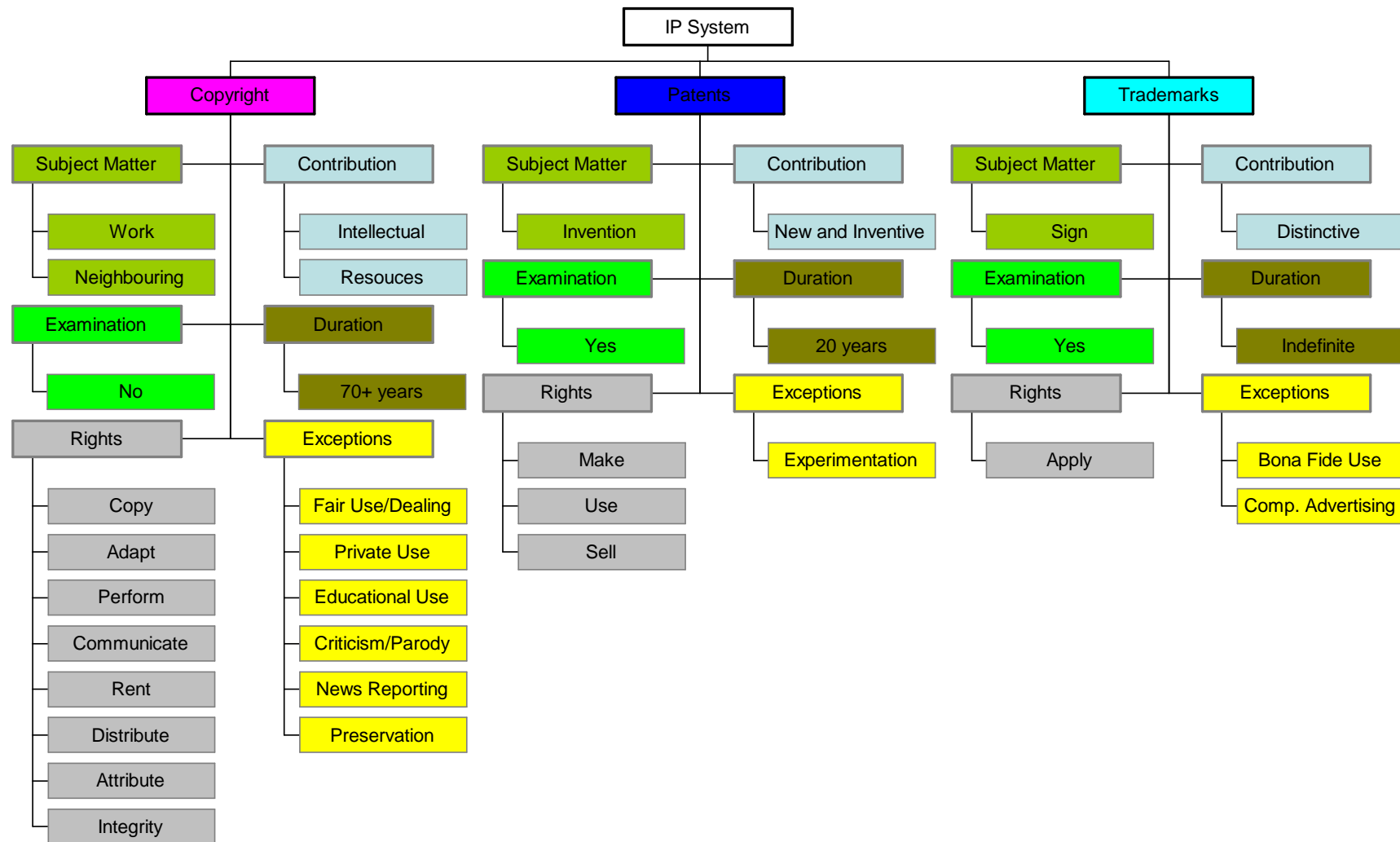
Complexity and Diversity of IP Regimes

CHARACTERISTIC	REGIME	SUBJECT MATTER	CONTRIBUTION	EXAMINATION	RIGHTS	EXCEPTIONS	DURATION
Functionality	Patents	invention	novel; inventive	yes	make; use; sell	experimentation	20 years
Trade secrets	Breach of confidence	information	confidential	no	keep confidential	public interest	indefinite
Aesthetics	Copyright	work (literary, dramatic, musical and artistic); sound recordings; films, broadcasts; performances	created (intellectual creation); produced (not copied)	no	copying; adaptation; publication; performance; communication; rental; distribution; attribution; integrity	fair use/dealing; private use; educational use; news reporting; preservation; criticism/parody; judicial use	life + 70 years
	Designs	visual feature	new	yes	apply design	repair; must fit/must match	10 years
Indications of origin	Trade marks	word; picture; shape; colour; sound; smell	distinctive	yes	use sign	bona fide use; comparative advertising	indefinite
	Passing off	goodwill	reputation	no	prevent confusion		indefinite
<i>Sui generis</i> subjects	Plant breeders' rights	plant variety	distinct; uniform; stable	yes	produce propagating material	private + non-commercial use; breeding; experimentation	20 (or 25) years
	Circuit layout	arrangement of IC components	original; not commonplace	no	produce IC to design	research; evaluation; education; private use	10

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'Tree' of the Current IP System

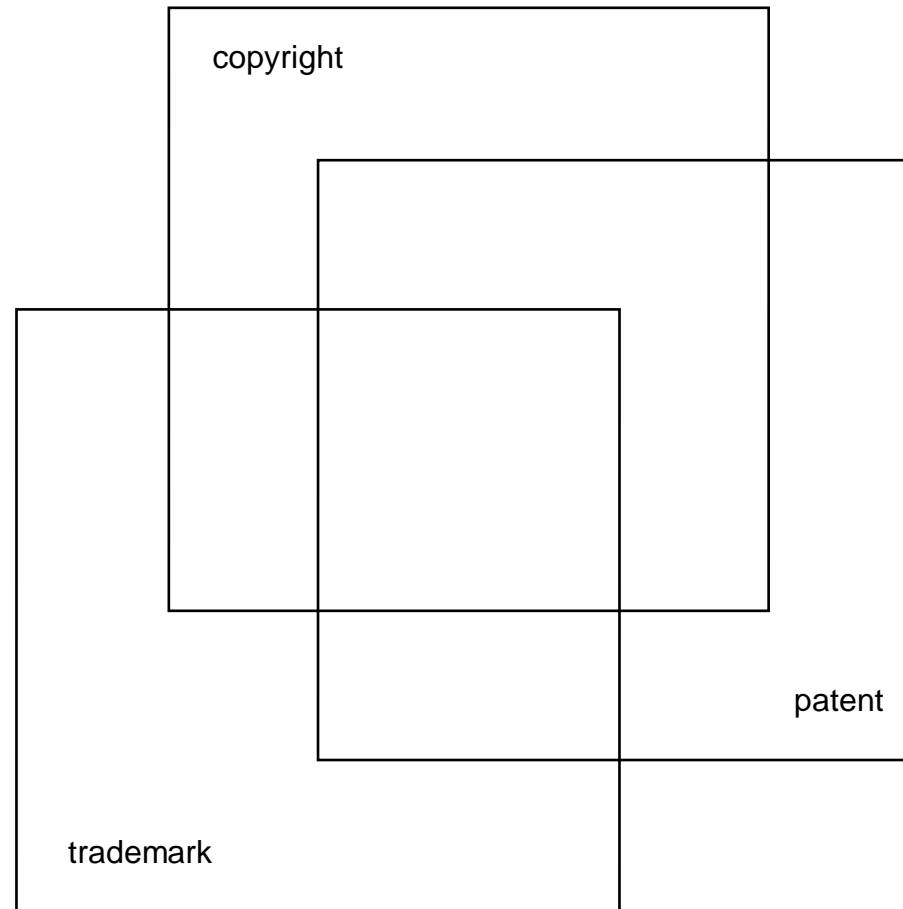


Approach to Unification

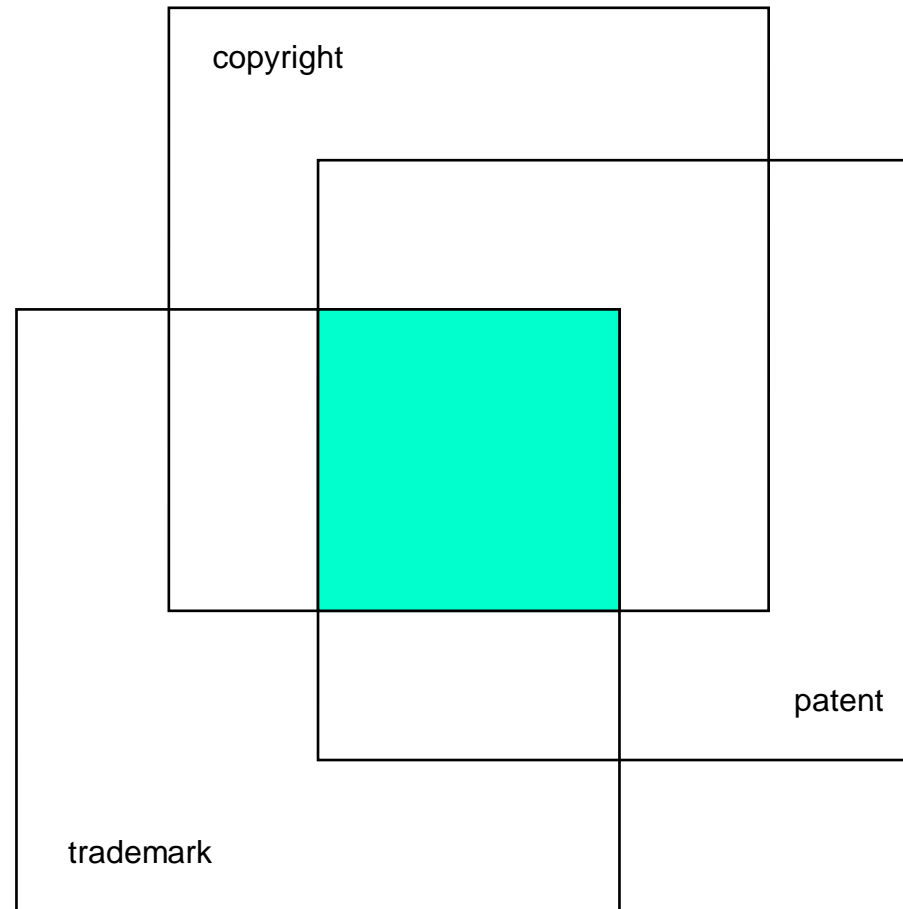
- ◆ Minimalist
 - i.e. unify to the *common* denominators
- ◆ Maximalist
 - i.e. unify to *any* denominator
- ◆ Assimilationist
 - i.e. unify to *some* denominators



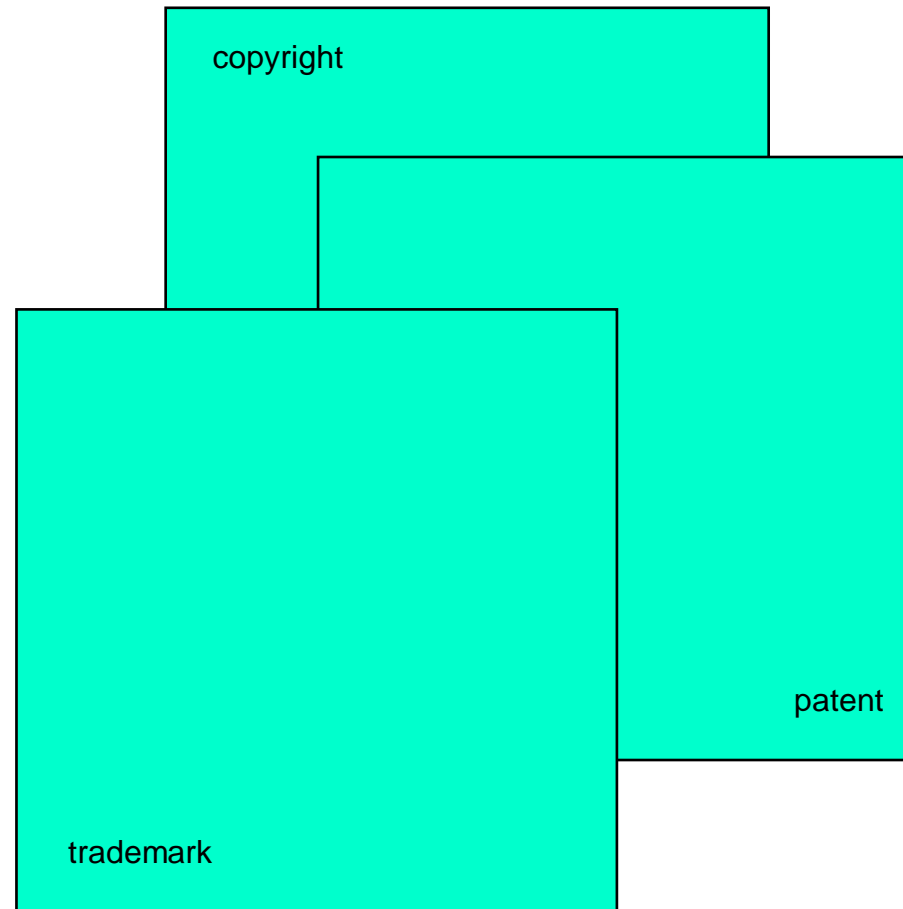
Approach to Unification



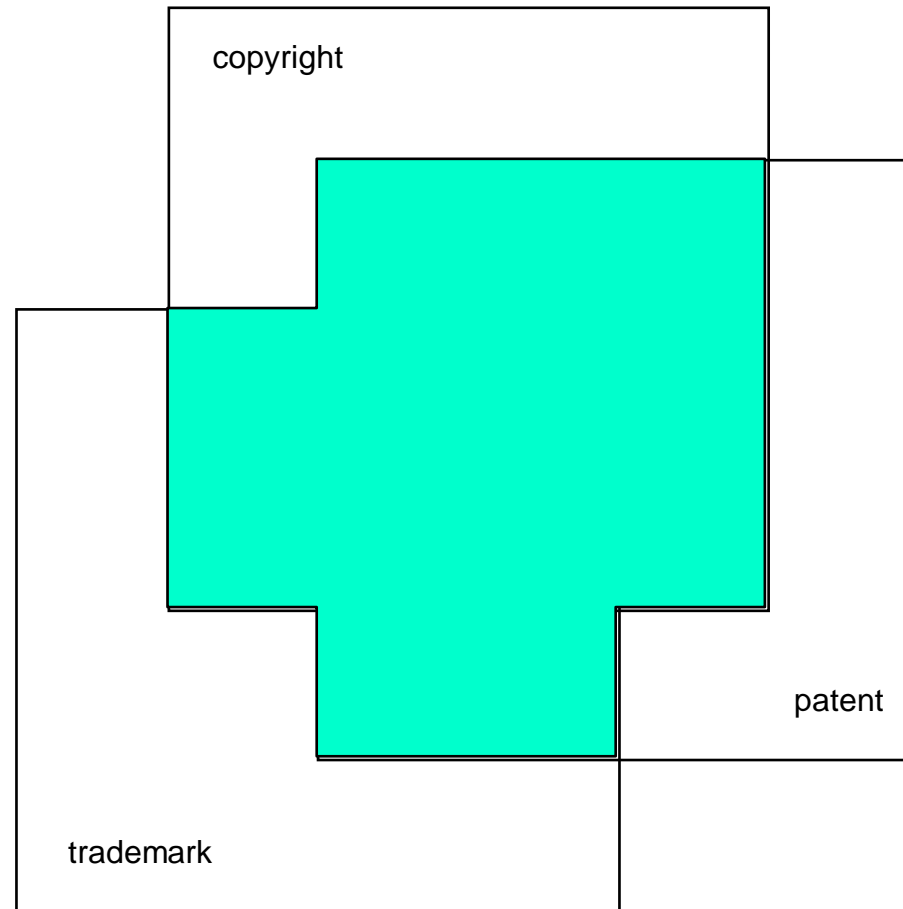
Minimalist Approach to Unification



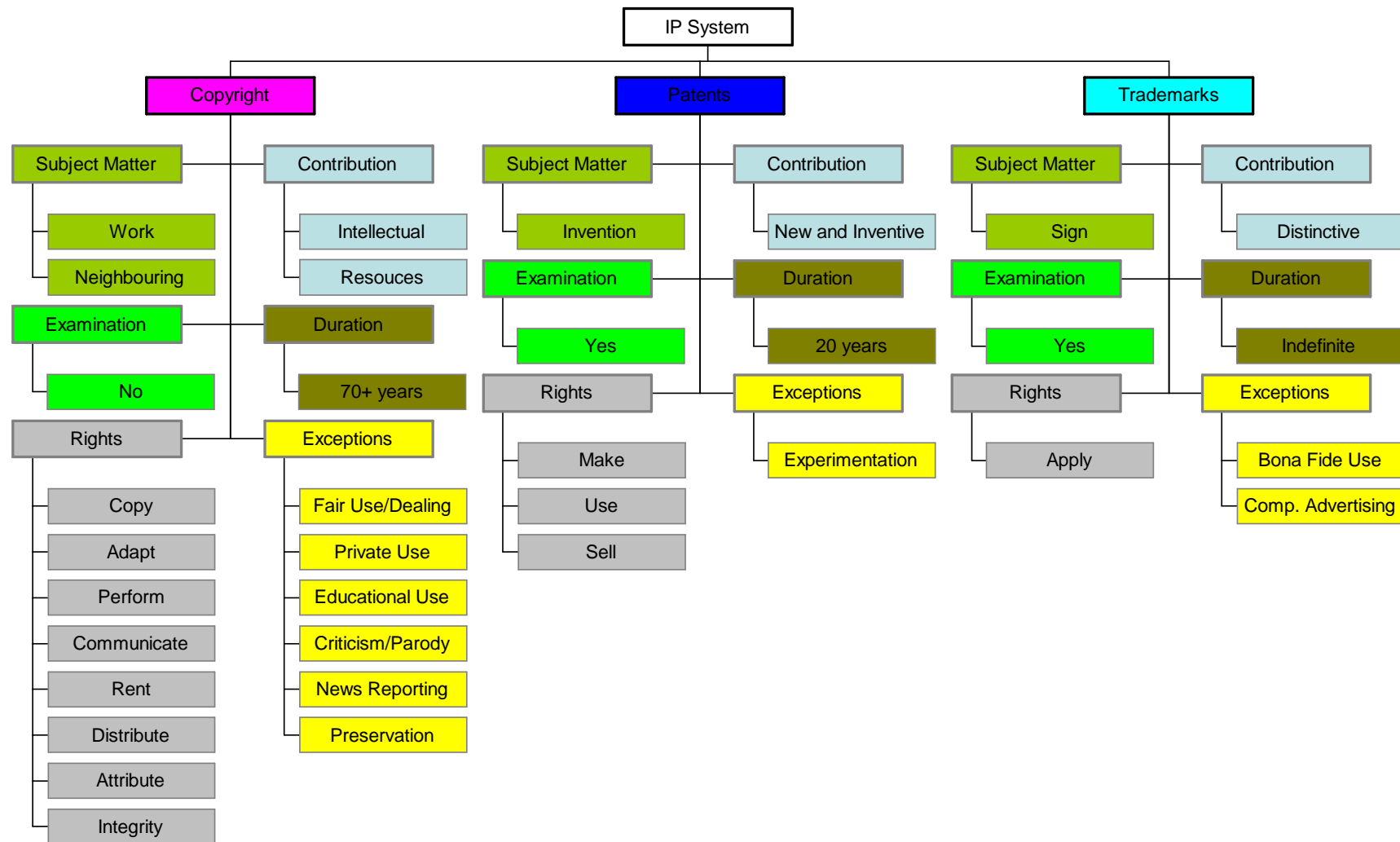
Maximalist Approach to Unification



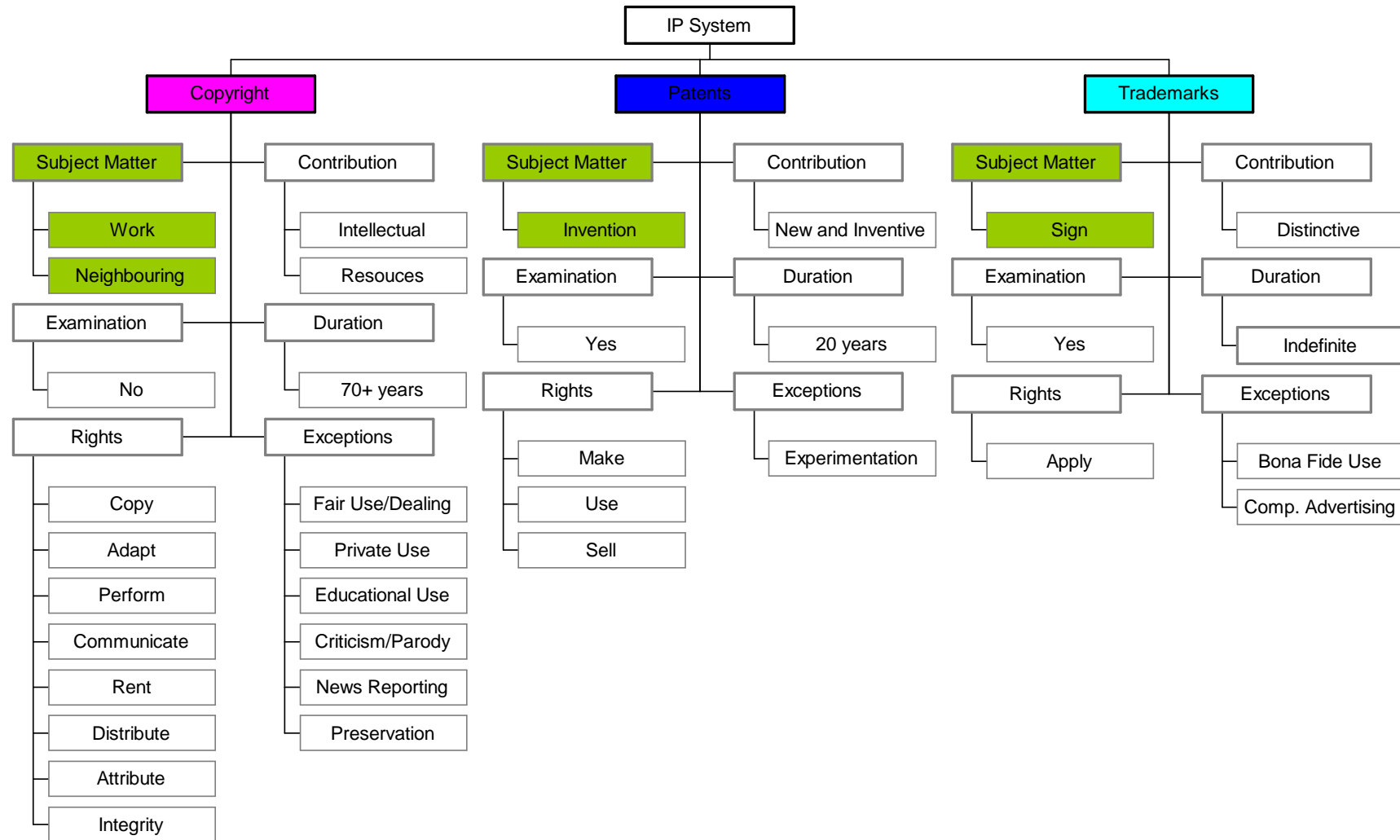
Assimilationist Approach to Unification



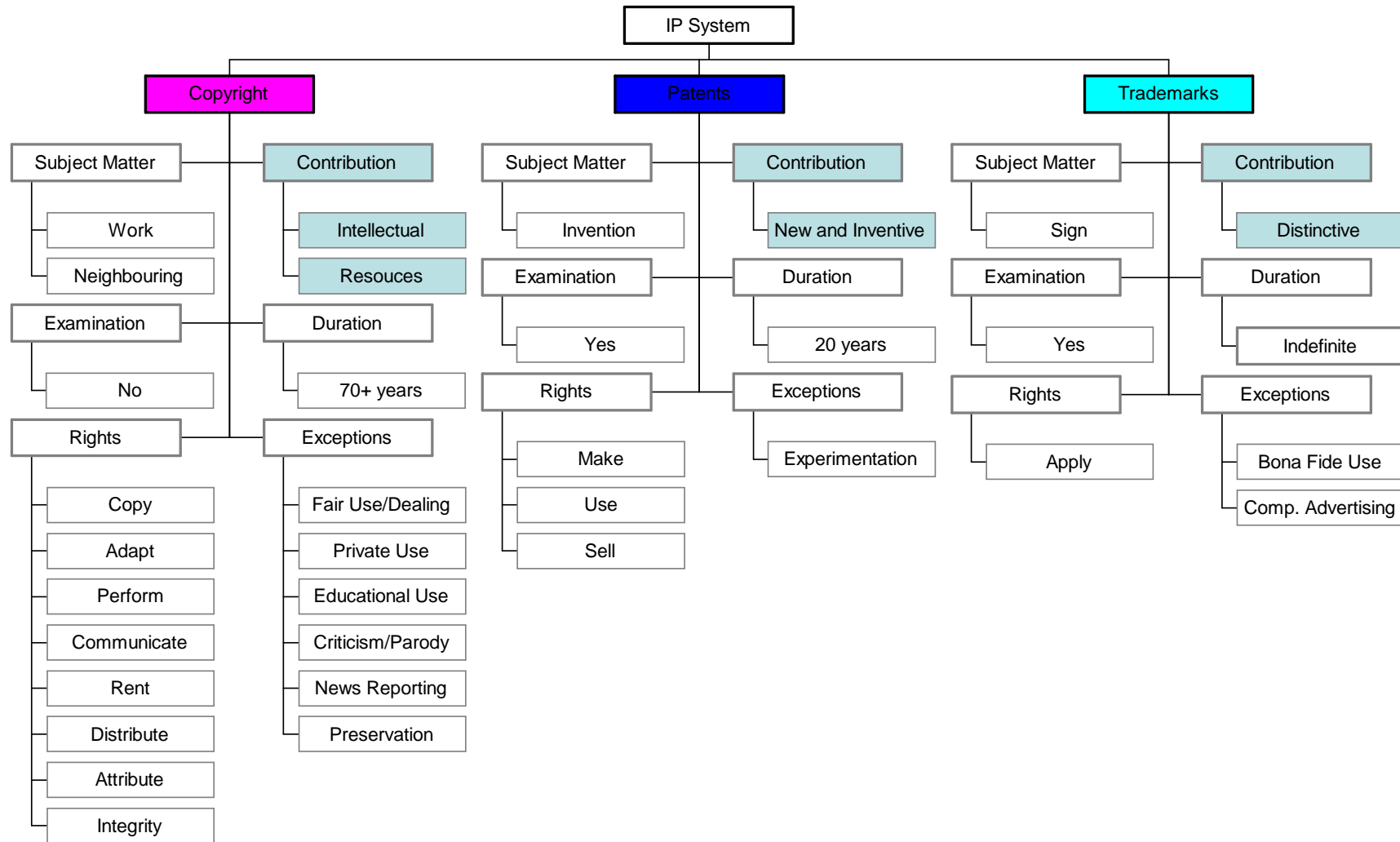
'Tree' of the Current IP System



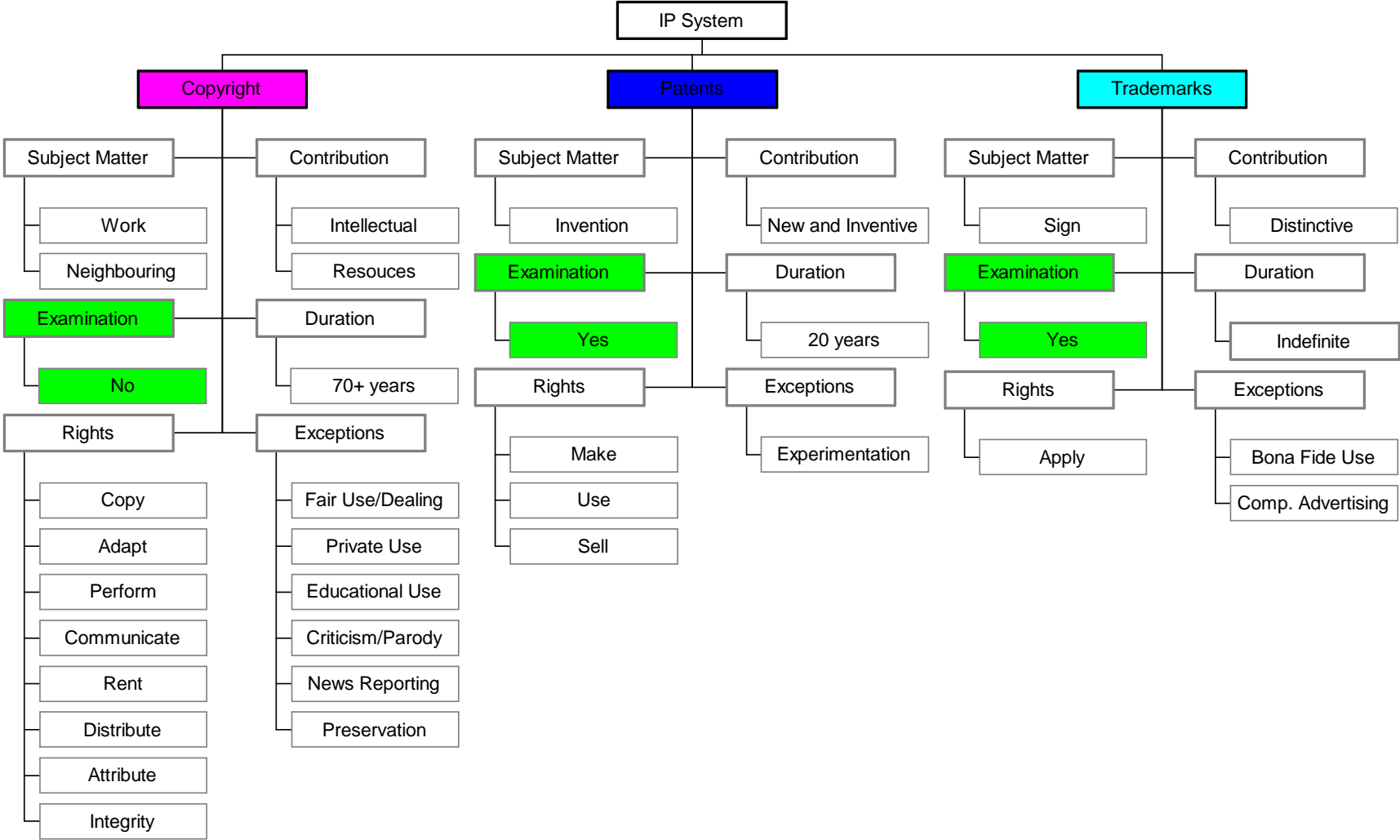
Subject Matter



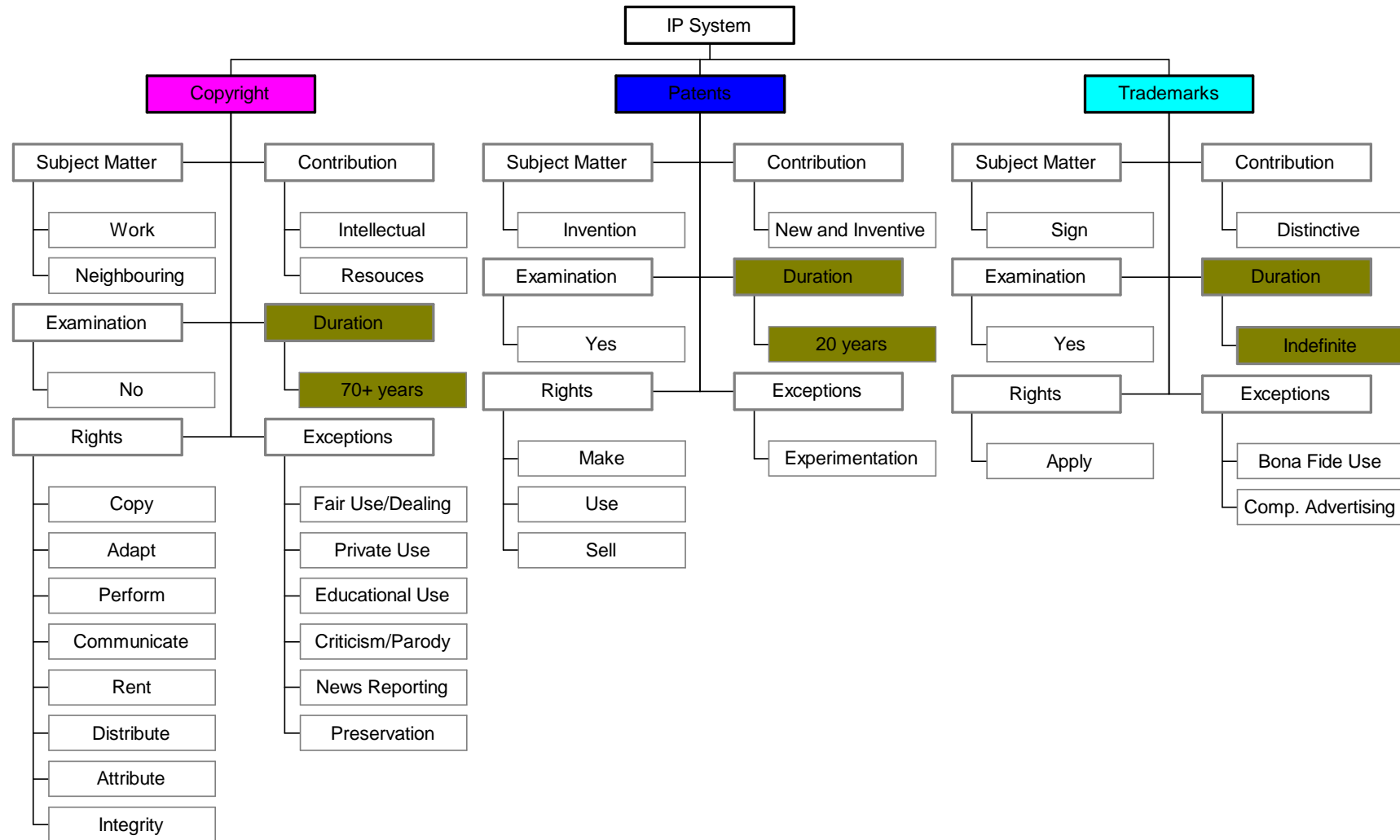
Contribution



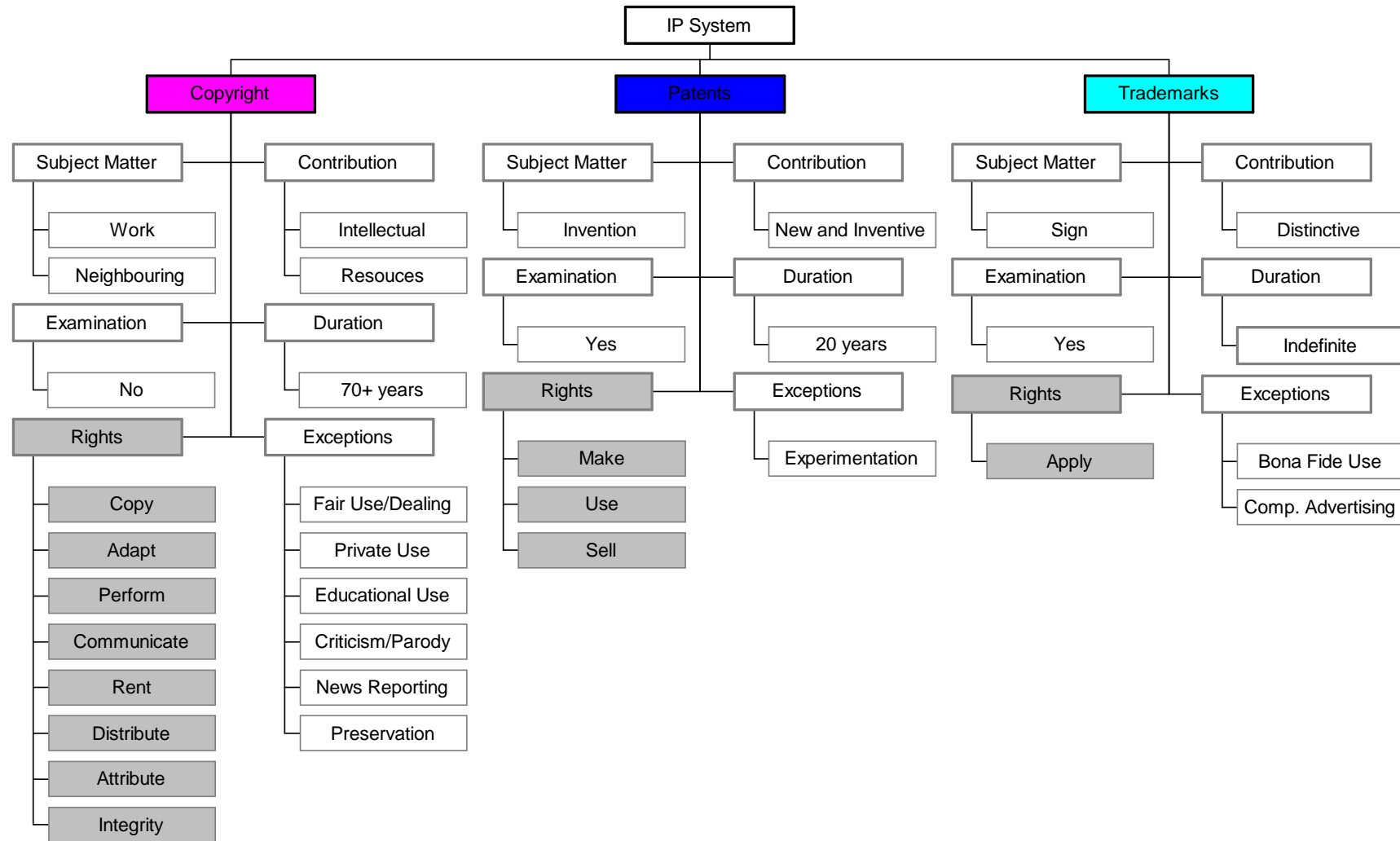
Examination



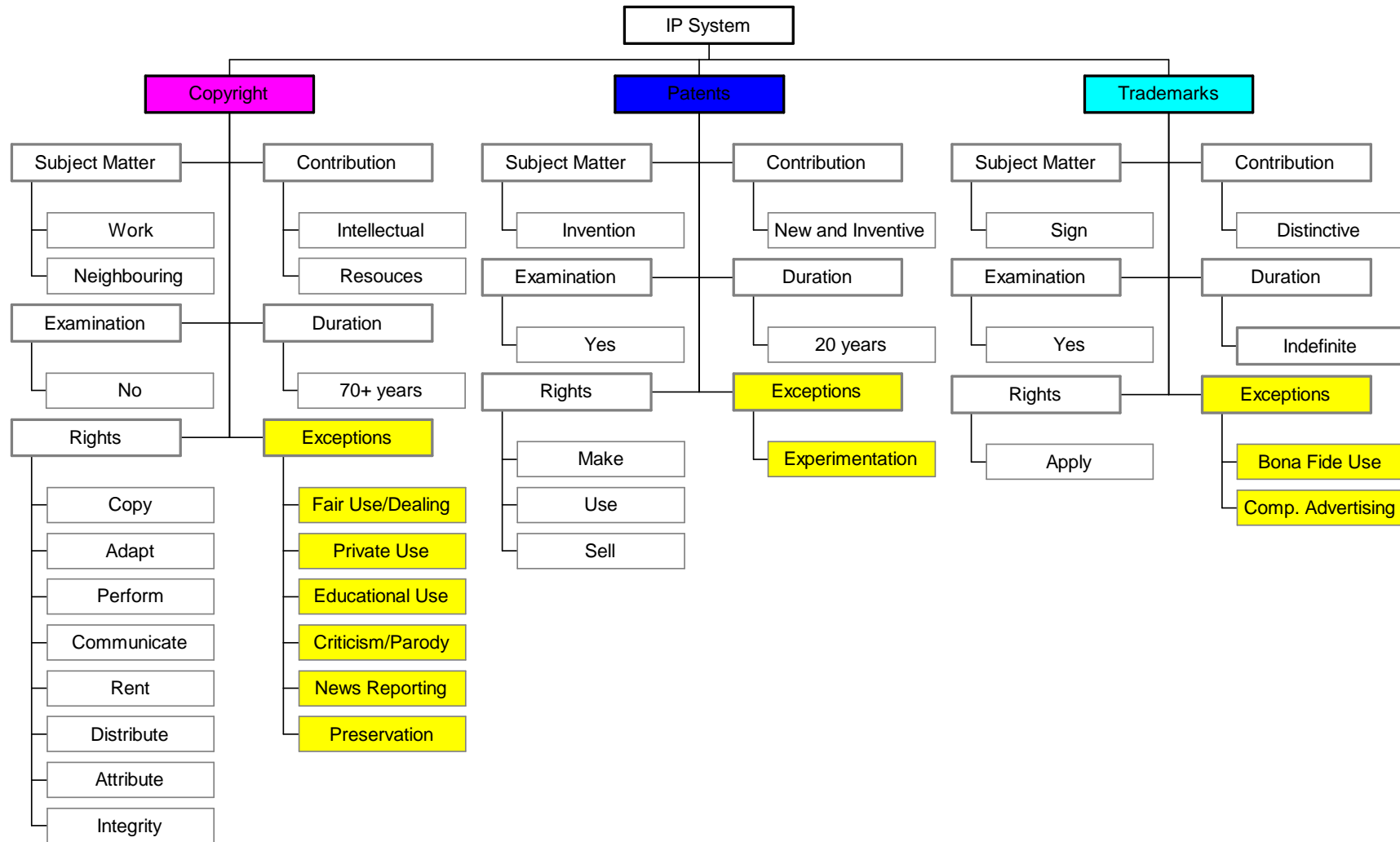
Duration



Rights



Exceptions



Pruning the IP System 'Tree'

	Current Nature	Unification Approach	Outcome
Subject Matter	diverse	maximalist	unified
Contribution	3 types	not applicable	maintained
Examination	binary	not applicable	maintained
Duration	continuum	not applicable	maintained
Rights	3 types	not applicable	maintained
Exceptions	diverse	maximalist	unified

A Possible One System for IP Rights

