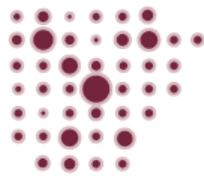




THE ABCs OF

INTELLECTUAL
PROPERTY



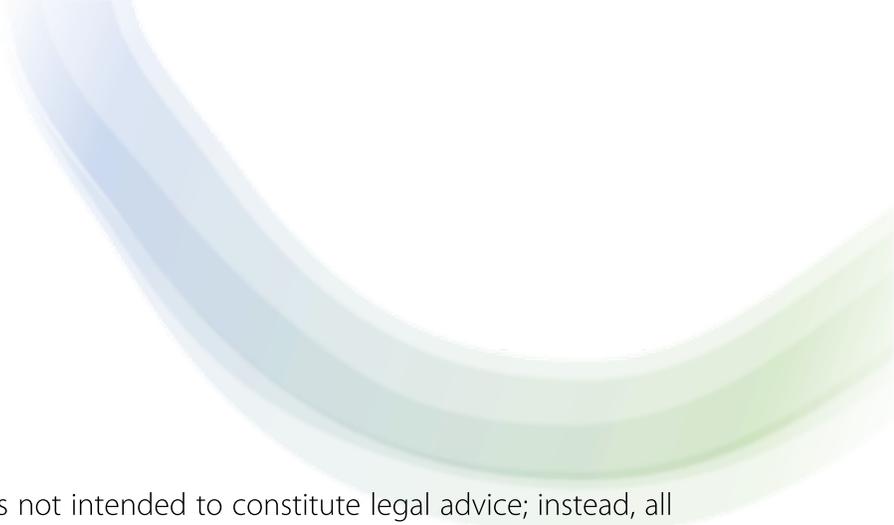
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Intellectual Property

Intellectual property (IP) is a term used to describe original and inventive work product resulting from the human intellect, which can be legally protected by the owner from unauthorized uses.

To protect IP, owners have the option of using legal tools which can help ensure compensation for the owner – either the inventor or to whomever the inventor gives or sells that ownership. IP legal tools come in the form of copyright, trademark, a patent, or a trade secret contract.

Some familiar examples of IP are:

- The poem "Still I Rise" by Maya Angelou (Copyright)
- Hard Rock Café's name (Trademark)
- WD-40's product formulation (Trade Secret)
- Arby's hat logo (Trademark)
- Michael Jackson's song "Thriller" (Copyright)
- The vaccine Gardasil-9 (Patent)
- The latest Xbox game software (Copyright)
- The unique distillation technique of vodka (Patent)
- The navigation device called GPS (Patent)
- The Coca-Cola recipe (Trade Secret)

All these examples are protected intellectual property. Given the breadth of IP in covering such a wide variety of things, it is easy to see that IP impacts virtually everyone.

What are the different types of tools used to protect IP?

From a legal perspective, the legal tools used to protect IP are organized in four separate categories, the last two being closely related: copyright, trademark, patent, and trade secret.



COPYRIGHT



TRADEMARK



TRADE SECRET



PATENT

Copyrights

Copyrights, commonly referred to as authors' right, protect original works of authorship that are fixed in a physical form. Copyrights apply to a broad range of works including literature, music, drama, choreography, pictures, sculptures, audio-visual and sound recordings, and architectural works.

As you can see, the scope is broad; copyrights protect everything from written works such as novels, the adaptation of novel as a motion picture, and even a Broadway production and accompanying choreography based on a novel.

A copyright is established the moment the author expresses or fixes an original idea to a physical form, whether that expression is on a physical sheet of paper or even saved as a digital file.

That seems to include a lot of things. What cannot be copyright protected?

It is important to note that in order for a copyright to exist, the work must be **actually expressed or recorded** in a physical form, meaning mere ideas floating in one's head, or suggestions only verbally made to another, are not eligible for copyright protection.

Therefore, a songwriter who has an idea for a song in his head cannot file for copyright registration until the song has been recorded either electronically, physically on paper, or in some other way resulting in a physical product.

Additionally, because copyright exists from the moment of physical creation, it is imperative that the owner safeguard the contents to prevent somebody else

stealing the work. This can be done either by keeping the work a secret, or by registering the work for copyright protection with the U.S. Copyright Office.

How long does copyright protection last?

The answer to this question is rather complicated. Copyright protection for a work **generally** extends for the life of the author plus 70 years. However, there are several exceptions to this generalization, including for works made by employees in the course of employment. The answer also depends on when the work was created. For more information, please refer to the resources in this toolkit entitled "Introduction to Copyrights."

What is the point of registering my copyright, and how do I register it?

Although copyright is established even without federal copyright registration, doing so is required if the owner decides to file a lawsuit to enforce copyright in federal court. Additionally, registration increases the amount of money an owner can recover. To obtain federal copyright protection, an owner must register the work with the U.S. Copyright Office.

Should I get a lawyer?

Although it is less complex to register copyright than trademarks and patents, seeking assistance from legal counsel for copyright registration is recommended at least the first time one registers a work. The average cost to obtain a copyright with assistance of an attorney can range from \$250 to \$500, and the registration itself can cost between \$45-\$65. For a more detailed explanation of copyrights, please see our "Introduction to Copyrights" e-book and video.

Trademarks

Trademarks protect the identifying “marks” used in association with identification and origin of goods and services used by an operating business. “Marks” can mean a business name, a logo, a symbol, or even a sound.

Essentially, trademarks are tools that a company uses to create a brand or a type of calling card to distinguish its goods or services from those of another company. For instance, NBC’s iconic peacock logo or McDonald’s golden arches both serve as a tool for consumers to automatically associate with a particular brand.

Because trademarks serve as a means of providing consumer shortcuts and product/service association with a particular brand in business, trademarks are only protected as long as they are being used. Thus, if a company obtains a trademark, it must use the trademark in commerce (across state lines) to avoid loss of the right to the mark. This type of loss is referred to as abandonment of a trademark.

A famous example of abandonment is the Hydrox cookie. Hydrox cookies were branded and sold by Sunshine biscuits in 1908, and eventually got sold to Keebler, who discontinued the cookie in 1999. In 2015, a company called Leaf began production of the cookie and was able to claim the trademark since it had been abandoned for a threshold period of time required by the U.S. Patent and Trademark Office (three consecutive years).

Should I register my mark?

Yes, you should seek federal trademark registration in order to have the broadest protection of your mark available. Some states have their own form of trademark protection. However, federal registration is much stronger (applies to all states) and not much more costly. The federal registration application itself currently costs \$250-\$350 per product class or type of use.

Should I get a lawyer?

Yes, and the good news is that it is not as expensive as, for instance, legal fees for a patent. The process of applying for a trademark is somewhat complex, especially if the trademark examiner has follow-up questions; therefore, we strongly suggest seeking legal counsel.

The cost of obtaining a trademark with legal counsel ranges anywhere from \$500 upwards to \$2,000, depending on the complexity of the application. For a more detailed explanation of trademarks, see our "Introduction to Trademarks" resources.

Patents

Patents protect the inventions and underlying designs of technology, product formulations, and other functional items. There are three types of patents: utility, design, and plant.

UTILITY patents are the most commonly issued type of patent because they are used to protect any new or improved useful process, invention of machine, or creation of composition of matter. **DESIGN** patents are used to protect the underlying original design of manufactured goods. **PLANT** patents are used to protect new and distinct varieties of plants.

Patents are commonly used to protect inventions that are easy to reverse engineer and replicate. For instance, functional footrest stools and pharmaceutical formulations are both easily replicated and therefore there are many patents for both. Patent protection is granted for a period of 20 years from the date of application, after which time anybody can freely replicate the invention.

Should I get a lawyer?

Absolutely. The patent registration process is very complex and unlike the copyright and trademark applications, where a lot more correction is allowed, just one mistake on the patent application can prevent your invention from ever being patented at all. For this reason, seeking assistance from a patent attorney is highly suggested.

The cost of obtaining a patent with a patent attorney ranges approximately anywhere from \$5,000 upwards to \$15,000 or more. For a more detailed explanation of patents, see our e-book and video entitled "Introduction to Patents and Trade Secrets."

Trade Secrets

Trade secrets can come in the form of inventions, assets, processes, and formulations created and/or owned by businesses. They are protected by contracts often referred to as non-disclosure agreements, or NDAs. Unlike the other three forms of protection, you do not need to apply to the government to establish this right.

Often, something that can be patented can also be protected by a trade secret instead, and sometimes an inventor will choose to protect their IP as a trade secret if it cannot be easily reverse-engineered. For example, Kentucky Fried Chicken's secret "original recipe" or Coca-Cola's recipe are famous examples of patentable inventions that were never registered, and thus, their secrets have been kept safe for well over 20 years, and in Coca-Cola's case, well over a century!

Should I get a lawyer?

Trade secrets are the easiest form of IP to protect because the owner of the trade secrets need only to keep the work a secret and use a specially designed contract called a non-disclosure agreement (NDA) to make sure the necessary workers keep it a secret, too. The cost of obtaining trade secret protection is dependent on the manner in which the owner decides to protect that secret, whether it be a lockbox or a secured database.

The owner will also want to hire a lawyer to draft a solid NDA as well. For more information on trade secrets, please see our "Introduction to Patents and Trade Secrets" resources.

Conclusion

Operating a business is difficult and takes a lot of time and energy. This Intellectual Property for Small Businesses toolkit is intended to help you make good decisions about protecting your work.

While there is a lot of legwork you can do on your own for free or for very low cost, you will want to make sure you consult with an attorney to draft the legal documents and forms required, or at minimum, to ensure that you are on the right track if you decide to be responsible for the entire process of protecting your IP. All legwork you do yourself can save your attorney time, and save you attorneys' fees, by making it easier for your attorney to register your IP or draft appropriate legal documents.

So it's a great idea to educate yourself as best as possible, in conjunction with the advice of legal counsel. Best of luck on your business adventures!

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