

Patents, Trademarks, Copyrights--What's the Difference?

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Patents

A [patent](#) protects your invention through federal law giving you a monopoly to exclude others from practicing the invention. Inventions are your creative ideas for new products (articles of manufacture), machines, processes, methods, compositions of matter, ornamentation on, or shape of, products, or new plants. An improvement on an existing product may also be patented. Utility patents protect the majority of these. To be patentable, your invention must be useful, novel and non-obvious. Design patents protect the ornamentation on, or shape of, devices. Plant patents protect new plant varieties. Utility patents give you a monopoly (no one else can make, use, sell, offer for sale, or import your invention) for twenty years from the date of filing. Design patents give you a monopoly for fourteen years from the date of issue, and prevent others from making the patented device with your ornamentation on them or made of your shape. (By way of example, a table is a useful device. If you could obtain a utility patent on a table with a flat surface and supporting legs, you could stop anyone from making a table. That would be a utility patent and would be very powerful. If your table had an unusual ornamental shape or surface pattern, and obtained a design patent on it, you would be able to prevent others from making tables with that shape or surface pattern, but they could still make other tables.) Plant patents last for twenty years from the filing date of the patent application. Infringement of your patent allows you to potentially obtain treble damages plus attorney fees.

Trademarks

A [trademark](#) (or service mark for services) protects names, logos, slogans, and the like through both federal and state laws. Your name, logo or slogan identifies you to your prospective customers as the source of the goods and services that you are offering, and thus constitutes a trademark. Even your business name is a trademark if you use it with your goods or services. There are both federal trademarks and state trademarks. There are also common law trademarks that are not registered at either the federal or state level. Federal trademark applications can be filed even before you are using the trademark name, logo or slogan to reserve your trademark. These are called "Intent to Use" trademark applications. Other than common law trademarks, federal and state trademarks must periodically be renewed. Federal trademarks must be renewed every ten years. If you no longer use the trademark, you lose your rights. Otherwise, so long as you continuously use and/or renew the mark, you will continue to have rights forever. Giving up the mark for as little as a day could cause you to lose the mark. Infringement of your trademark allows you to potentially obtain treble damages and attorney fees.

Copyrights

Copyright protects your creative artistic expression, but only once it is set into a tangible form. For instance, you create and sing a song. There is no copyright unless the song is recorded or written, because there is no tangible representation of your artistic expression. (Note: Under certain circumstances the performance, even if unrecorded may have rights associated with it, so you should avoid copying or repeating the songs even from memory.) However, once you write, record, photograph, draw, or otherwise create a tangible record of your artistic expression, you automatically have copyright. That is, you are the only one who has the right to make or sell copies. Ideas cannot be copyrighted. They may only be patented. Examples of copyrightable materials are written words, such as in books, magazines, poems, songs; written music; performances of music; paintings and drawings; photographs, videos, architectural plans, website content and layouts, and computer software. Copyright lasts for 70 years plus the life of the creator (or last to die for multiple authors) for new works under current law. If the work is made for hire, then the term is the shorter of 95 years from publication or 120 years from creation. Federal laws provide you with the right to enforce your copyright, but only once it is registered. There is the possibility of obtaining statutory damages of up to \$150,000.00, plus the possibility of being awarded attorney fees. Thus, it is very important to register your copyright as soon as practicable. Other Finally, trade secret protection is another means of providing protection to ideas. However, the key word here is “secret”. Let someone who has no need to know in on the secret and it is no longer protected. Trade secrets are most suitable to keep secret formulas or processes protected. However, if it can easily be reverse engineered independently, it won’t remain protected for long. Lastly, you must actively keep the secret secret. That is, you should have policies in place that prevent its disclosure.

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If you are considering protecting your intellectual property, you should consult with an attorney of your choice.

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