

INTELLECTUAL PROPERTIES SUMMARY

Many of our SCORE clients have basic questions about intellectual property, especially computer programs and websites. This document is a summary of definitions, reasons for and other information to give you an understanding of your options and other research leads. These are the topics covered:

- Copyrights
- Trademarks or Service Marks
- Trade Secrets
- Patents
- Website Managers
- Computer Programs

1. Copyrights ©

Registration is simple. Fill out a brief application form to the U.S. Copyright Office listing the title of the work, who created the work, when it was created and who owns the copyright. A small fee and 1 or 2 copies of the work maybe required. It lasts the life of the author plus 70 years.

A copyright is a legal devise for the creator of a work to control how the work is used. These right include reproduction, distribution, adaptations and display rights.

A copyright protects works like movies, poetry, video games, recorded music, novels, sculptures, photographs and architectural designs. The work must exist in physical form such as scribbled notes, RAM, recording media, etc. The work must be original and reflect some creative effort by the author. Copyright does not protect ideas on which the expression is based or facts – scientific, historical, biographical or news of the day.

2. Trademarks TM

A trademark is a distinctive word, phrase, logo symbol, slogan or other device used to identify the source of a product or distinguish a manufacturer from others, example Gatorade. A service mark does the same thing for service, like FedEx or Google. A trade dress is the same but based on packaging, like the arches of McDonalds or the blue and yellow of Advil boxes. To stop others depends on whether it is used on competing products, whether consumers would be confused or whether it is in the same part of the country and you must be actively using it.

3. Trade Secrets

A trade secret may be a formula, pattern, physical device, idea or process that provides the owner with a competitive advantage or can prevent the public from learning about it. Some examples are a recipe (Coca Cola), computer algorithms, and survey methods; “negative know-how” like a drug your research reveals is ineffective, or a marketing strategy. Trade secrets often are a way to protect information not covered by other forms of intellectual property.

4. Patents

A patent is a grant that allows the inventor to monopolize the manufacture, use, sale or importation of the invention. A patent lasts 20 years from application date. To establish an invention keep a log of every step, each diagram of development, you may have to develop a prototype, it must be new and you must be able to show how it works. An invention must fall within one of the following categories: A process (DDT to kill bugs), a machine (lawnmower), a manufactured article (toothbrush), a composition (mixture of ingredients or drug) or an improvement to any of preceding.

You need to make a business decision to patent because it costs over \$1,500 (without a patent attorney) to file. You must do a thorough search of all earlier developments and literature in the field.

How do you protect yourself from someone “stealing” your idea? The costs and time can be significant as technologies become more complex – biotech, software development, etc. The primary ways are: a) document the building and testing, b) file a regular patent request (a utility patent lasts 20 years, a design patent lasts 14 years) and mark your product with ‘patent pending’, or c) file a provisional patent which last for 12 months, costs less and allows you to claim ‘patent pending’ status. A provisional patent is cheaper (couple hundred dollars vs thousands), is easier (a short document of text and drawings in plain English) and preserves your rights but does not automatically become a patent

5. Website Managers

Don’t just assume you can use someone else’s work on your website. Technically it is easy to copy code, logos and images – but copyright and trademark laws still apply. To protect yourself consider these tips:

- a. Assume the work you might use is protected

Generally get permission to reproduce text, music, photos and artwork. It is not enough to give credit or thanks to the copyright holder

- b. Clip Art agreements

Read the terms and conditions of the “click to accept” agreements or “read me” files which most of us ignore when installing purchased software.

- c. Seek permission if in doubt.

Copyright laws do apply to small personal or organization sites, especially photos that may be taken by a friend or club member. Email or verbal consent is the minimum you should get.

- d. Know your site statistics

A licensing fee is usually based upon some website measure. So your should know your hits per page, visits per page, the location of your page within a website, and whether your site is informational or commercial.

e. Watch you links to other sites

Linking – links that bypass the home page can cause disputes since you are skipping basic site information and advertisements.

Framing – is the process of dividing your page and displaying the contents of someone else’s page within a frame on your site. Seek permission.

Inlining – is incorporating a graphic file from another site. A Federal Court in 2003 ruled this is fair use – but be cautious.

f. Immediately remove any unauthorized material if you get a complaint

g. Post disclaimers that you do not endorse or have affiliation with another site.

h. Fair Use Doctrine

This is the doctrine which allows using copyrighted material to review the text, quote a portion or pop songs for limited purposes.

6. Computer Programs ® for registered trademarks © for Copyrights

The best way to protect your rights is to register your work even though you own the rights when it becomes fixed in a tangible medium. To sue in Federal court you must first be registered which entitles you to actual damages plus “statutory damages” of up to \$100,000 per event without having to establish actual damages.

Software is a murky area. Litigation has seen three stages: 1) Is it copyrightable? 1980 amendment to Copyright Law says “Yes”, 2) What aspects are copyrightable? Congress decided it was source code, object code, audiovisual displays and microcode. and 3) the ongoing issue of how similar one program can be to another. Historically, software was first patented then revoked, then International Law equates to literary works and places them under copyright law. Computer companies augment with “end user license agreements (EULA) to prevent unauthorized copying.

7. Miscellaneous

A good site to get legal advice, find a intellectual property attorney and related information is: <http://www.nolo.com>

Government agency: U. S. Patent and Trademark Office <http://www.uspto.gov/>
www.Wikipedia.org History and links to licenses, copyrights, etc.

“A Guide to Intellectual Property”, published by Minnesota Department of Employment and Economical Development

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