

From the Intellectual Property Group

What is IP?

Intellectual Property (IP) can be anything from a particular manufacturing process to a company's logo, a trade secret like a formula, or song lyrics. The formal definition, according to the World Intellectual Property Organization, is creations of the mind—inventions, literary and artistic works, symbols, names, images, and designs used in commerce. Unlike physical property, such as real estate, stocks or bonds, IP constitutes intangible personal property. IP rights protect your right to use your original creation, but does not protect the idea itself. Some IP rights last for a specific amount of time, while others can, in theory, last forever.

What are the Different Types of IP?

From a legal standpoint, there are four types of intellectual property:

Patents: A patent is the right to utilize an invention and to allow others to use it as you choose, generally for 20 years. A patent is granted by the government in exchange for the inventor publicly disclosing the invention—in short, this means telling the world how to re-create the discovery so that other scientists and researchers can build upon it. After a patent term ends, anyone is free to utilize the invention.

Examples of Patents: computer software, cosmetics, and machines.

Trademarks: Trademarks enable the public to identify the source of goods or services. A trademark can be a word, picture, symbol, or other distinguishing mark, or even a sound or smell. These are the brand names of our favorite products. These brands allow us to identify competing products by quickly looking at their marks. *Examples of Trademarks: the word APPLE for computers, McDonald's double arches, and the Coca Cola bottle.*

Copyrights: Copyright is a form of property that grants exclusive rights to the author of a work. The protected work must be fixed and in a tangible medium, including books, computer programs, plays, paintings, photographs, sculptures, movies, music, television shows, blogs, architectural works, and more. Copyright does not protect ideas alone, facts, or functional parts of works. *Examples of Copyrights: books, theatrical works, photographic works, and music.*

Trade Secrets: Trade secrets are pieces of information, such as a recipe, process or technique, that give a business an advantage over competitors. The information is valuable specifically because it is not widely known, and disclosing it would decrease or even destroy the value. *Examples of Trade Secrets: Coca-Cola formula and the KFC Colonel's secret recipe.*

Do You Own IP?

Most business owners, inventors, authors, artists and other innovators believe they should have protection for their unique efforts but do not know which “category” of IP their work falls into. It is common for someone to say they need to “patent a work of art” or “trademark an invention.” These are typical IP misnomers and means the person is likely not realizing the full benefits of his or her work or protecting his or her rights adequately. If you think you own intellectual property, then you should contact an IP attorney that can help you determine whether you have important rights to protect.

How Can You Protect Your IP?

Do your research. Before filing for protection, you need to make sure your IP does not already exist. Because these searches can get complicated, you should consider consulting with an IP attorney to correctly search and clarify the type and extent of the IP filing.

File for protection. Registering your IP with the appropriate governmental agency (both domestically and internationally) can help ensure that it remains your property.

Police your IP. Your IP cannot be simply shelved and forgotten. Your IP must be managed, monitored, maintained, and policed in an ongoing cultivation of your IP rights.

Licensing agreements. If you decide to license your IP, have a lawyer review (or draft) your licensing agreement to be sure it is in your best interest and comprehensively protects our IP rights.

Are Your IP Rights Automatically Protected Abroad?

No. Other countries do not necessarily recognize your IP rights as protected by U.S. law and you must file for protection in every country where you want it.

What do ©, “TM,” “SM,” and ® Mean and How do You Use Them?

The copyright symbol, or copyright notice, designated by ©, is an identifier placed on copies of the work to inform the world of copyright ownership. While use of the copyright notice was once required as a condition of copyright protection, it is now optional. Use of the copyright notice is the responsibility of the copyright owner and does not require advance permission from, or registration with the Copyright Office. The copyright symbol is useful because it informs the public that the work is protected by copyright, identifies the copyright owner, and shows the year of first publication.

Any time you claim rights in a trademark and you haven't federally registered it, you may use the “TM” (trademark) or “SM” (service mark) designation to alert the public to your claim. Typically the TM or SM is indicated by a raised superscript to the right of the trademark, e.g. SHINE DOWN ON ME™.

The ® is the federal registration symbol, and may only be used once the mark is actually registered with the U.S. Patent and Trademark Office. Even if an application is pending, the registration symbol cannot be used until a certificate of registration is issued. The federal registration symbol should only be used on goods or services that are the subject of the federal trademark registration.

What Can You Do if You Discover Someone Illegally Using Your IP?

Knowledgeable legal counsel can help you determine the most practical, cost-effective remedy to stop the infringement, and obtain damages if applicable. This may range from a cease and desist letter, DMCA takedown notice, licensing agreement, or filing a lawsuit.

**To learn more, contact our
Intellectual Property Group**