

OVERVIEW OF INTELLECTUAL PROPERTY

Ryan F. Coutinho, Ph.D., Esq.

An understanding of the legal regimes that protect intellectual property assets is crucial to the success of any business. In the United States, intellectual property is largely governed by federal law. However, each state has some limited protections for certain types of intellectual property as well. Each type of intellectual property has its own set of rights, requirements, and rules about what is in the public domain, or not eligible for protection. This article provides an overview of intellectual property laws in the United States.

Patent

Patent law provides a limited monopoly for new and inventive products, processes, and designs. To be eligible for patent protection, the invention must be a significant improvement over the prior art, or in legal terms, new, useful, and non-obvious. Patents are issued only by the United States Patent and Trademark Office (USPTO). A patent is not granted if the invention was patented or described in a printed publication in the United States or a foreign country more than one year before the application date, or if the invention was in public use or on sale in the United States for more than one year before the application date. U.S. patent protection lasts for twenty years. A patent owner has the right to exclude others from making, using or selling the patented invention in the United States during the term of the patent. Go to www.uspto.gov for additional information.

Copyright

Copyright law protects "original works of authorship" such as literary works, musical works, dramatic works, pantomimes and choreographic works, pictorial, and graphic works, motion pictures and other audiovisual works, and sound recordings. A copyright owner has five exclusive rights: (a) reproduction, (b) modification, (c) distribution, (d) public performance, and (e) public display. Registration is optional and not required because rights arise automatically when an original work of authorship is fixed in a tangible medium of expression. A registration may be obtained at Copyright Office of the Library of Congress. Registered copyrights are entitled to greater remedies if infringed. In general, copyright protection now lasts for seventy years after the author's death, but under certain circumstances the time is shorter. Some defenses to copyright infringement are: (a) fair use, (b) work is in the public domain, (c) work is factual or an idea. Go to www.copyright.gov for additional information.

Trademark

Trademarks and service marks are words, names, symbols, or devices used by manufacturers of goods and providers of services to identify their goods and services, and to distinguish their goods and services from goods manufactured and sold by others. A registration may be obtained at the USPTO or in the Secretary of State's office of each state. Unlike federal registrations, state registrations do not require use in interstate commerce. A federal registration gives the holder certain legal rights and remedies when others attempt to use a mark that is identical or similar to the registered mark. Although, a state registration does not provide the comprehensive rights and remedies of a federal registration, it serves as a deterrent to others planning to use the mark. Trademark registrations are valid for ten years if properly documented, and can be renewed indefinitely under appropriate conditions. Go to www.uspto.gov for additional information.

Trade Secret

Trade secret law protects any valuable information, not generally known, that has been kept secret by its owner. A generally used definition for trade secret is "information, including a formula, pattern, compilation, program, device, method, technique, or process that derives independent economic value from not being generally known and not being readily ascertainable

and is subject to reasonable efforts to maintain secrecy." State law governs protection of trade secrets. No registration is required because trade secret protection automatically attaches when the information is kept secret by the owner. A trade secret owner has the right to keep others from misappropriating and using the trade secret. Some defenses to a claim of misappropriation include independent research and reverse engineering.

Other Laws

Each state has other laws related to intellectual property. For example, the right to publicity gives an individual the right to control his name, face, image, or voice for commercial purposes. Defamation law (libel and slander) protects an individual against the dissemination of falsehoods about him or her. The law of unfair competition is primarily comprised of torts that cause an economic injury to a business, through a deceptive or wrongful business practice. Go to your state's code book for additional information.