

# Basic Intellectual Property Law Principles

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Despite its importance, business owners and entrepreneurs are often bewildered by the field of intellectual property law. As such, it is not uncommon for individuals to avoid taking important steps to protect their inventions, brands, and creative works because of confusion or lack of available information. While this area of the law is complex, knowledge of a few basic principles can be helpful as a framework for identifying potential issues and maximizing the efficiency of time spent with counsel. The following sets forth some important basic principles of intellectual property law.

Important Notice: **The following is not a substitute for legal advice.** It is important to speak with an attorney skilled in the area of intellectual property law prior to making decisions that can affect legal rights.

## ***Trade Secrets***

Subject Matter Protected: Trade secret law essentially protects any valuable information that is not generally known or readily ascertainable by others.

Requirements for Protection: Reasonable steps to safeguard the information and prevent its dissemination to the public are required. Any public disclosure of the information can destroy trade secret protection. No separate registration is required.

Rights: Trade secret law protects against stealing or otherwise obtaining protected information through improper means.

Drawbacks: Trade secret law does not prevent or protect against independent creation or reverse engineering of the subject matter.

Important Considerations: Formal policies and procedures should be developed and implemented to identify and maintain the confidence of potential trade secrets. Written agreements with partners, employees, and contractors should be obtained that set forth ownership interests in existing and future trade secrets.

## **Patents**

**Subject Matter Protected:** Patentable subject matter includes any new or improved product or process, including software, mechanical devices, compositions, and electrical circuits.

**Requirements for Protection:** Registration with the U.S. Patent Office is required.

**Rights:** Patents protect against independent creation and reverse engineering as well as against making, using, selling, offering to sell, and importing of the patented invention.

**Drawbacks:** Patents are enforceable for a limited term of about seventeen years. Publication is required upon patent issuance and by default occurs eighteen months after filing, which publication eliminates any trade secret protection.

**Important Considerations:** Patent applications should be filed early and prior to any disclosures, publications, displays, or offers for sale of the inventive subject matter. Proper notice should be given as to the patent pending or patented status of an invention. Written agreements with partners, employees, and contractors should be obtained that set forth ownership interests in existing and future patentable subject matter.

## **Trademarks**

**Subject Matter Protected:** Trademarks include any source identifier of a product or service, including names, slogans, and logos. Trademarks may also apply to product packaging and configurations.

**Requirements for Protection:** Registration of trademarks with the Trademark Office is highly recommended because of the enhanced protection afforded. Some limited protection is provided without registration.

**Rights:** Trademark law protects against confusingly similar uses of the trademark by others.

**Important Considerations:** Trademark applications should be filed early and do not require actual sales prior to application filing; although, actual sales are required prior to completion of the application process. A trademarks application is independent from domain name registration and business or trade name registration. Proper notice should be given as to both registered and unregistered trademarks. Ongoing trademark rights depend upon continued sales using the trademark.

## **Copyrights**

**Subject Matter Protected:** Copyrights may apply to any creative expression embodied in a tangible medium, including of course music, books, and art as well as business manuals, websites, software code, marketing materials, and other similar material.

**Requirements for Protection:** Registration of copyrights with the Library of Congress is highly recommended because of the enhanced protection afforded. Some limited protection is provided without registration.

**Rights:** Copyright law protects against unauthorized reproduction, distribution, and display of copyrighted material by others.

**Drawbacks:** Copyright law does not prevent or protect against independent creation or copying of an idea or principle.

**Important Considerations:** Copyright applications should be filed as soon as possible. Proper notice should be applied to any creative work. Written agreements with partners, employees, and contractors should be obtained that set forth ownership interests in existing and future copyrightable subject matter.

## **Infringement**

In addition to protecting intellectual property, one must also be concerned with infringing any trade secrets, patents, trademarks, or copyrights of others.