

How Can I Protect My Thoughts And Ideas?

Every business person wants to protect the product he or she created, whether it be a physical object, a process, or an idea. Following is an overview of what constitutes "intellectual property." You may be surprised to find that you may have unknowingly violated intellectual property laws.

Article I, Section 8, clause 8 of the United States Constitution directs Congress to adopt laws which will "promote the Progress of Science and useful Arts, by securing for limited times to Authors and Inventors the exclusive Right to their respective writings and Discoveries." That provision, drafted in 1789, is very specific as to what rights are protected (writings and discoveries), and as to the duration of those rights for the author and/or inventor (limited, not perpetual). That provision of the Constitution is the basis for this country's intellectual property laws, the law of patents, trademarks and copyrights.

A patent gives its owner the exclusive right to the "new and useful process, machine, manufacture or composition of matter, or any new and useful improvement thereof". Thus, not only may the products be protected, but the actual manufacturing process itself may be protected under patent laws. Patent protection extends for seventeen (17) years, after which the invention may be copied by any person. The inventor, therefore, has a limited right in the discovery for seventeen years, and during that period, only those who have reached an agreement with the inventor can make use of the discovery. Usually, such an agreement will involve some sort of compensation to the inventor for the value of the invention. After the patent period has expired, however, anyone may make use of the discovery without the need to compensate the inventor.

Another aspect of intellectual property deals with the aesthetic thoughts we may have, and is found in copyright law. Copyright protection is afforded, among others, to artists for their artwork, composers for their musical compositions, authors for their works of fiction and non-fiction, sculptors for their sculpture, software designers for their software, and television and movie producers for their television programs and movies. How often have you heard the warning near the end of a sporting event on television that that particular event is a "product" of the National Football League or the American Baseball Association, and that reproduction of the show is prohibited without permission. Books generally contain a copyright notice on the reverse of the title page, and video cassettes contain a WARNING indicating that reproduction will be a violation of federal law.

The author, musician, sculptor, artist, etc. can register his creation with the Copyright Office. The protection begins, however, when the work is created, and not when registered. Copyright protection generally extends for

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fifty (50) years beyond the life of the creator. Thus, a copyright may be part of an estate, passed on to the family for use after the author's death. For instance, the rights to the recording of Nat King Cole singing "Unforgettable" were recently used by his daughter some twenty-five years after his death to produce a joint recording of that song.

Trademarks have long been considered a part of intellectual property law, although not truly a writing or discovery. Rather than protecting the inventor's invention or the author's writing, a trademark protects the manner in which the invention becomes known to the public. Trademark protection is granted to words, colors and designs associated with a particular manufacturer.

If your favorite soft drink is cola flavored, you may prefer any cola soft drinks, or a specific brand of cola soft drink, for instance, COKE or PEPSI. "Cola soft drink" brings no specific visual image to mind, but when you think of the term COKE or PEPSI, most of you can probably visualize the can or bottle label of that product. Each manufacturer has created a particular color scheme, a unique print type, and other visual designs which are unique to its own product. The manufacturers of COKE and of PEPSI are able to protect that visual description of their product by registering the design with the United States Trademark Office. No other manufacturer can market its product with the same color scheme, under the same name, or with the same design; nor may it use one deceptively similar. To do so would be a violation of the Lanham Act, governing trademark protection.

Trademark law benefits two classes of people. First, it benefits the manufacturer who may have spent thousands of dollars designing a specific logo to achieve instant identification for its product and does not want to see "knock off" copies of that design attached to inferior goods. Secondly, it protects the consumer, who has certain expectations when purchasing a product with a recognizable trademark and who is entitled to have those expectations met. Trademark protection can be for an unlimited period of time so long as the owner of the trademark regularly files an affidavit establishing that the trademark continues to be used.

Finally, there is intellectual property protection afforded authors and inventors even when they have failed to obtain a patent for their invention, or to register their trademark or copyright their original composition. This protection falls under the common law theories of unfair trade practices and trade secrets. For instance, some inventors, rather than taking a limited right in their invention for seventeen years, have chosen to keep the invention process a trade secret, and achieve perpetual protection, so long as the secret is not revealed.

You now have an overview of the law of intellectual property. If you would like more details, or to discuss your own matter, you can contact the firm of Rothman Gordon at (412) 338-1100.