

# PROTECT YOUR INTELLECTUAL PROPERTY RIGHTS

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## PATENTS

- **Identify Your Inventions:** Device, machine, process, etc., that is new, nonobvious, & useful
- **Keep Notes:** Use an Inventor's Notebook to track invention date, use dates, etc.
- **Identify Your Goals:** Sell it yourself? License rights? Sell rights?
- **Check for Patentability:** Search by yourself, keep notes, & call a patent attorney asap!
- **File a Patent App ASAP:** Keep secret until you file to avoid loss of patent rights
- **Get Ownership Straight:** Identify *everyone* who contributed to the invention's design; Be aware that many employers require employees to assign away all rights in an invention
- **Save Your Money:** Acquiring a patent can cost \$10,000–\$20,000 on average.
- **Mark Properly:** "Patent Pending" "Pat. Pending" "Patent No. \_\_\_\_"

## TRADEMARKS

- **Identify Your Trademarks:** Anything that indicates the source, origin, sponsorship, or endorsement of a good or service (e.g., logos, product names, business names, product design, packaging design, sounds, colors, and smells)
- **Keep Notes:** How and when did you pick your mark? When and how did you first use it?
- **Check for Registerability:** Search by yourself, keep notes, & call an IP attorney asap!
- **Seek Federal Registration:** Federal TM Registration gives the broadest protection.
- **Mark Properly:** ® only with registered marks. TM or SM with unregistered marks.

## COPYRIGHTS

- **Identify Your Copyrighted Work:** Original works of authorship fixed in tangible forms of expression (e.g., books, music, photographs, website designs, logo designs, software source code, instruction manuals, product packaging)
- **Keep Notes:** Keep Drafts. When did you create the work? When did you publish it? Keep copy of final.
- **Get Ownership Straight:** Work-for-hire owned by the employer. Work of joint authorship owned by joint authors.
- **Register the Work:** Requirement to sue for infringement. Delay can lead to loss of right to damages (\$\$\$)
- **Mark Properly:** © [Year of first publication] [Name of copyright owner]

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PATENTS ♦ TRADEMARKS ♦ TRADE DRESS ♦ COPYRIGHTS ♦ TRADE SECRET ♦ LICENSING  
INTERNET/DOMAIN LAW ♦ INTELLECTUAL PROPERTY LITIGATION

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# AVOID VIOLATING ANOTHER'S IP RIGHTS

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## IN GENERAL

- **Avoid Being Sued:** Ask not whether you would win at trial, whether you can afford to have to prove you did nothing wrong!

## PATENTS

- **Do Not:** Make, use, sell, offer for sale, or import anything that practices a live patent.
- **Clear New Products:** Does someone else have a patent that covers your product?
- **Get a Legal Opinion:** Having a legal opinion can be helpful in defending against a lawsuit.

## TRADEMARKS & DOMAIN NAMES

- **Do Not:** Adopt or use a mark that is likely to cause confusion of customers (i.e., using a mark confusingly similar to someone else's mark)
- **Clear New Product Names / Business Names / Logos / Etc:** Does someone else have a registered trademark that is confusingly similar?
- **Clear New DOMAIN NAME REGISTRATIONS:** Does your website incorporate someone else's trademark in such a way that it could confuse customers?
- **Get a Legal Opinion:** Having a legal opinion can be helpful in defending against a lawsuit.

## COPYRIGHTS

- **Do Not:** Reproduce, display or perform publicly, or prepare a derivative work of another's copyrighted work without express, written permission.
  - **Avoid Statutory Damages:** \$750–30,000 generally (\$200 if prove of nonwillfulness); up to \$150,000 for willfulness
- **Assume It's Copyrighted:** Best to assume all works are protected by copyright, regardless of whether marked or registered.
- **Fair Use Exceptions:** Criticism, comment, news reporting, teaching, scholarship, and research.
  - **Beware the Fuzzy Line:** Consider (1) purpose and character of use (commercial vs. nonprofit or education); (2) nature of work; (3) amount used; (4) effect/value of use
- **Get a Legal Opinion:** If you must copy and can't get permission, get a legal opinion as to noninfringement first!

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