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**ASSIGNMENT**

**BRIEFLY DISCUSS THE FOLLOWING INTELLECTUAL PROPERTY PROTECTION METHOD**

**PATENT**

A **patent** is a form of [intellectual property](https://en.wikipedia.org/wiki/Intellectual_property) that gives the owner the legal right to exclude others from making, using, selling and importing an [invention](https://en.wikipedia.org/wiki/Invention) for a limited period of years, in exchange for publishing an [enabling public disclosure](https://en.wikipedia.org/wiki/Sufficiency_of_disclosure) of the invention. In most countries patent rights fall under [civil law](https://en.wikipedia.org/wiki/Private_law) and the patent holder needs to sue someone [infringing the patent](https://en.wikipedia.org/wiki/Patent_infringement) in order to enforce his or her rights. In some [industries](https://en.wikipedia.org/wiki/Outline_of_industry#Major_industries) patents are an essential form of [competitive advantage](https://en.wikipedia.org/wiki/Competitive_advantage); in others they are irrelevant.

The procedure for granting patents, requirements placed on the patentee, and the extent of the exclusive rights vary widely between countries according to national laws and international agreements. Typically, however, a patent application must include one or more [claims](https://en.wikipedia.org/wiki/Patent_claim) that define the invention. A patent may include many claims, each of which defines a specific property right. These claims must meet relevant [patentability](https://en.wikipedia.org/wiki/Patentability) requirements, such as [novelty](https://en.wikipedia.org/wiki/Novelty_%28patent%29), [usefulness](https://en.wikipedia.org/wiki/Utility_%28patent%29), and [non-obviousness](https://en.wikipedia.org/wiki/Inventive_step_and_non-obviousness).

Under the [World Trade Organization](https://en.wikipedia.org/wiki/World_Trade_Organization)'s (WTO) [TRIPS Agreement](https://en.wikipedia.org/wiki/TRIPS_Agreement), patents should be available in WTO member states for any invention, in all fields of technology, provided they are new, involve an inventive step, and are capable of industrial application. Nevertheless, there are variations on what is [patentable subject matter](https://en.wikipedia.org/wiki/Patentable_subject_matter) from country to country, also among WTO member states. TRIPS also provides that the [term of protection](https://en.wikipedia.org/wiki/Term_of_patent) available should be a minimum of twenty years. In most jurisdictions, there are ways for third parties to challenge the validity of an allowed or issued patent at the national patent office; these are called [opposition proceedings](https://en.wikipedia.org/wiki/Opposition_proceeding). It is also possible to challenge the validity of a patent in court. In either case, the challenging party tries to prove that the patent should never have been granted. There are several grounds for challenges: the claimed subject matter is not [patentable subject matter](https://en.wikipedia.org/wiki/Patentable_subject_matter) at all; the claimed subject matter was actually not new, or was obvious to the [person skilled in the art](https://en.wikipedia.org/wiki/Person_skilled_in_the_art), at the time the application was filed; or that some kind of fraud was committed during prosecution with regard to listing of inventors, representations about when discoveries were made, etc. Patents can be found to be invalid in whole or in part for any of these reasons.

**Infringement**

Patent infringement occurs when a third party, without authorization from the patentee, makes, uses, or sells a patented invention. Patents, however, are enforced on a nation by nation basis. The making of an item in China, for example, that would infringe a U.S. patent, would not constitute infringement under US patent law unless the item were imported into the U.S.

**Enforcement**

Patents can generally only be enforced through [civil lawsuits](https://en.wikipedia.org/wiki/Lawsuit) (for example, for a U.S. patent, by an action for patent infringement in a United States federal court), although some countries (such as [France](https://en.wikipedia.org/wiki/France) and [Austria](https://en.wikipedia.org/wiki/Austria)) have criminal penalties for [wanton](https://en.wiktionary.org/wiki/wanton#Adjective) infringement. Typically, the patent owner seeks monetary compensation for past infringement, and seeks an [injunction](https://en.wikipedia.org/wiki/Injunction) that prohibits the defendant from engaging in future acts of infringement. To prove infringement, the patent owner must establish that the accused infringer practises all the requirements of at least one of the claims of the patent. (In many jurisdictions the scope of the patent may not be limited to what is literally stated in the claims, for example due to the [*doctrine of equivalents*](https://en.wikipedia.org/wiki/Doctrine_of_equivalents)).

An accused infringer has the right to challenge the validity of the patent allegedly being infringed in a [counterclaim](https://en.wikipedia.org/wiki/Counterclaim). A patent can be found invalid on grounds described in the relevant patent laws, which vary between countries. Often, the grounds are a subset of requirements for [patentability](https://en.wikipedia.org/wiki/Patentability) in the relevant country. Although an infringer is generally free to rely on any available ground of invalidity (such as a [prior publication](https://en.wikipedia.org/wiki/Novelty_%28patent%29), for example), some countries have sanctions to prevent the same validity questions being relitigated. An example is the UK [Certificate of contested validity](https://en.wikipedia.org/wiki/Certificate_of_contested_validity).

Patent [licensing agreements](https://en.wikipedia.org/wiki/License) are [contracts](https://en.wikipedia.org/wiki/Contract) in which the patent owner (the licensor) agrees to grant the licensee the right to make, use, sell, and/or import the claimed invention, usually in return for a royalty or other compensation. It is common for companies engaged in complex technical fields to enter into multiple license agreements associated with the production of a single product. Moreover, it is equally common for competitors in such fields to license patents to each other under [cross-licensing](https://en.wikipedia.org/wiki/Cross-licensing) agreements in order to share the benefits of using each other's patented inventions.

**Ownership**

In most countries, both natural persons and corporate entities may apply for a patent. In the United States, however, only the inventor(s) may apply for a patent although it may be [assigned](https://en.wikipedia.org/wiki/Assignment_%28law%29) to a corporate entity subsequently and inventors may be required to assign inventions to their employers under an employment contract. In most European countries, ownership of an invention may pass from the inventor to their employer by rule of law if the invention was made in the course of the inventor's normal or specifically assigned employment duties, where an invention might reasonably be expected to result from carrying out those duties, or if the inventor had a special obligation to further the interests of the employer's company.

A patent is requested by filing a written [application](https://en.wikipedia.org/wiki/Patent_application) at the relevant patent office. The person or company filing the application is referred to as "the applicant". The applicant may be the inventor or its assignee. The application contains a description of how to make and use the invention that must provide [sufficient detail](https://en.wikipedia.org/wiki/Sufficiency_of_disclosure) for a person skilled in the art (i.e., the relevant area of technology) to make and use the invention. In some countries there are requirements for providing specific information such as the usefulness of the invention, the [best mode](https://en.wikipedia.org/wiki/Sufficiency_of_disclosure) of performing the invention known to the inventor, or the technical problem or problems solved by the invention. Drawings illustrating the invention may also be provided.

The application also includes one or more [claims](https://en.wikipedia.org/wiki/Patent_claim) that define what a patent covers or the "scope of protection".

After filing, an application is often referred to as "[patent pending](https://en.wikipedia.org/wiki/Patent_pending)". While this term does not confer legal protection, and a patent cannot be enforced until granted, it serves to provide warning to potential infringers that if the patent is issued, they may be liable for damages.

Once filed, a patent application is ["prosecuted"](https://en.wikipedia.org/wiki/Patent_prosecution). A [patent examiner](https://en.wikipedia.org/wiki/Patent_examiner) reviews the patent application to determine if it meets the [patentability](https://en.wikipedia.org/wiki/Patentability) requirements of that country. If the application does not comply, objections are communicated to the applicant or their [patent agent or attorney](https://en.wikipedia.org/wiki/Patent_attorney) through an [Office action](https://en.wikipedia.org/wiki/Office_action), to which the applicant may respond. The number of Office actions and responses that may occur vary from country to country, but eventually a final rejection is sent by the patent office, or the patent application is granted, which after the payment of additional fees, leads to an issued, enforceable patent. In some jurisdictions, there are opportunities for third parties to bring an [opposition proceeding](https://en.wikipedia.org/wiki/Opposition_proceeding) between grant and issuance, or post-issuance.

Once granted the patent is subject in most countries to [renewal fees](https://en.wikipedia.org/wiki/Maintenance_fee_%28patent%29) to keep the patent in force. These fees are generally payable on a yearly basis. Some countries or regional patent offices (e.g. the [European Patent Office](https://en.wikipedia.org/wiki/European_Patent_Office)) also require annual renewal fees to be paid for a patent application before it is granted.

**COPYRIGHT**

is the [exclusive right](https://en.wikipedia.org/wiki/Exclusive_right) given to the creator of a [creative work](https://en.wikipedia.org/wiki/Creative_work) to reproduce the work, usually for a limited time. The creative work may be in a literary, artistic, educational, or musical form. Copyright is intended to protect the original expression of an idea in the form of a creative work, but not the idea itself. A copyright is subject to [limitations](https://en.wikipedia.org/wiki/Limitations_and_exceptions_to_copyright) based on public interest considerations, such as the [fair use](https://en.wikipedia.org/wiki/Fair_use) doctrine in the United States. Some jurisdictions require "fixing" copyrighted works in a tangible form. It is often shared among multiple authors, each of whom holds a set of rights to use or license the work, and who are commonly referred to as rights holders. These rights frequently include reproduction, control over [derivative works](https://en.wikipedia.org/wiki/Derivative_work), distribution, [public performance](https://en.wikipedia.org/wiki/Performing_rights), and [moral rights](https://en.wikipedia.org/wiki/Moral_rights) such as attribution.

Copyrights can be granted by public law and are in that case considered "territorial rights". This means that copyrights granted by the law of a certain state, do not extend beyond the territory of that specific jurisdiction. Copyrights of this type vary by country; many countries, and sometimes a large group of countries, have made agreements with other countries on procedures applicable when works "cross" national borders or national rights are inconsistent.

Typically, the public law [duration of a copyright](https://en.wikipedia.org/wiki/Copyright_term) expires 50 to 100 years after the creator dies, [depending on the jurisdiction](https://en.wikipedia.org/wiki/List_of_countries%27_copyright_lengths). Some countries require certain [copyright formalities](https://en.wikipedia.org/wiki/Copyright_formalities)to establishing copyright, others recognize copyright in any completed work, without formal registration.

The concept of copyright developed after the [printing press](https://en.wikipedia.org/wiki/Printing_press) came into use in Europe in the 15th and 16th centuries. The printing press made it much cheaper to produce works, but as there was initially no copyright law, anyone could buy or rent a press and print any text. Popular new works were immediately re-[set](https://en.wikipedia.org/wiki/Typesetting) and re-published by competitors, so printers needed a constant stream of new material. Fees paid to authors for new works were high, and significantly supplemented the incomes of many academics.

Printing brought [profound social changes](https://en.wikipedia.org/wiki/Print_culture). The rise in [literacy](https://en.wikipedia.org/wiki/Literacy) across [Europe](https://en.wikipedia.org/wiki/Europe) led to a dramatic increase in the [demand](https://en.wikipedia.org/wiki/Demand) for reading matter. Prices of reprints were low, so publications could be bought by poorer people, creating a mass audience. In German language markets before the advent of copyright, technical materials, like popular fiction, were inexpensive and widely available; it has been suggested this contributed to Germany's industrial and economic success. After copyright law became established (in 1710 in England and Scotland, and in the 1840s in German-speaking areas) the low-price mass market vanished, and fewer, more expensive editions were published; distribution of scientific and technical information was greatly reduced.

**Conception**

The concept of copyright first developed in [England](https://en.wikipedia.org/wiki/England). In reaction to the printing of "scandalous books and pamphlets", the [English Parliament](https://en.wikipedia.org/wiki/Parliament_of_England) passed the [Licensing of the Press Act 1662](https://en.wikipedia.org/wiki/Licensing_of_the_Press_Act_1662), which required all intended publications to be registered with the government-approved [Stationers' Company](https://en.wikipedia.org/wiki/Worshipful_Company_of_Stationers_and_Newspaper_Makers), giving the Stationers the right to regulate what material could be printed.

The Statute of Anne, enacted in 1710 in England and Scotland provided the first legislation to protect copyrights (but not authors' rights). The Copyright Act of 1814 extended more rights for authors but did not protect British from reprinting in the US. The Berne International Copyright Convention of 1886 finally provided protection for authors among the countries who signed the agreement, although the US did not join the Berne Convention until 1989.[[20]](https://en.wikipedia.org/wiki/Copyright#cite_note-:2-20)

In the US, the Constitution grants Congress the right to establish copyright and patent laws. Shortly after the Constitution was passed, Congress enacted the Copyright Act of 1790, modeling it after the Statute of Anne. While the national law protected authors’ published works, authority was granted to the states to protect authors’ unpublished works. The most recent major overhaul of copyright in the US, the 1976 Copyright Act, extended federal copyright to works as soon as they are created and "fixed", without requiring publication or registration. State law continues to apply to unpublished works that are not otherwise copyrighted by federal law.[[20]](https://en.wikipedia.org/wiki/Copyright#cite_note-:2-20) This act also changed the calculation of copyright term from a fixed term (then a maximum of fifty-six years) to "life of the author plus 50 years". These changes brought the US closer to conformity with the Berne Convention, and in 1989 the United States further revised its copyright law and joined the Berne Convention officially.[[20]](https://en.wikipedia.org/wiki/Copyright#cite_note-:2-20)

Copyright laws allow products of creative human activities, such as literary and artistic production, to be preferentially exploited and thus incentivized. Different cultural attitudes, social organizations, economic models and legal frameworks are seen to account for why copyright emerged in [Europe](https://en.wikipedia.org/wiki/Europe) and not, for example, in Asia. In the [Middle Ages](https://en.wikipedia.org/wiki/Middle_Ages) in Europe, there was generally a lack of any concept of literary property due to the general relations of production, the specific organization of literary production and the role of culture in society. The latter refers to the tendency of oral societies, such as that of Europe in the medieval period, to view knowledge as the product and expression of the collective, rather than to see it as individual property. However, with copyright laws, intellectual production comes to be seen as a product of an individual, with attendant rights. The most significant point is that patent and copyright laws support the expansion of the range of creative human activities that can be commodified. This parallels the ways in which [capitalism](https://en.wikipedia.org/wiki/Capitalism) led to the [commodification](https://en.wikipedia.org/wiki/Commodification) of many aspects of social life that earlier had no monetary or economic value per se.[[21]](https://en.wikipedia.org/wiki/Copyright#cite_note-21)

Copyright has developed into a concept that has a significant effect on nearly every modern industry, including not just literary work, but also forms of creative work such as [sound recordings](https://en.wikipedia.org/wiki/Sound_recording_and_reproduction), [films](https://en.wikipedia.org/wiki/Film), [photographs](https://en.wikipedia.org/wiki/Photograph), [software](https://en.wikipedia.org/wiki/Software), and [architecture](https://en.wikipedia.org/wiki/Architecture).

## Obtaining protection

### Ownership

The original holder of the copyright may be the employer of the author rather than the author himself if the work is a "[work for hire](https://en.wikipedia.org/wiki/Work_for_hire)". For example, in [English law](https://en.wikipedia.org/wiki/English_law) the Copyright, Designs and Patents Act 1988 provides that if a copyrighted work is made by an employee in the course of that employment, the copyright is automatically owned by the employer which would be a "Work for Hire". Typically, the first owner of a copyright is the person who created the work i.e. the [author](https://en.wikipedia.org/wiki/Author). But when more than one person creates the work, then a case of [joint authorship](https://en.wikipedia.org/wiki/Joint_authorship) can be made provided some criteria are met.

### Eligible works

Copyright may apply to a wide range of creative, intellectual, or artistic forms, or "works". Specifics vary by [jurisdiction](https://en.wikipedia.org/wiki/Jurisdiction), but these can include [poems](https://en.wikipedia.org/wiki/Poem), [theses](https://en.wikipedia.org/wiki/Theses), [fictional characters](https://en.wikipedia.org/wiki/Copyright_Protection_for_Fictional_Characters), [plays](https://en.wikipedia.org/wiki/Drama) and other [literary works](https://en.wikipedia.org/wiki/Book), [motion pictures](https://en.wikipedia.org/wiki/Film), [choreography](https://en.wikipedia.org/wiki/Choreography), [musical](https://en.wikipedia.org/wiki/Music) compositions, [sound recordings](https://en.wikipedia.org/wiki/Sound_recording), [paintings](https://en.wikipedia.org/wiki/Painting), [drawings](https://en.wikipedia.org/wiki/Drawing), [sculptures](https://en.wikipedia.org/wiki/Sculpture), [photographs](https://en.wikipedia.org/wiki/Photography), [computer software](https://en.wikipedia.org/wiki/Computer_software), [radio](https://en.wikipedia.org/wiki/Radio) and [television](https://en.wikipedia.org/wiki/Television) [broadcasts](https://en.wikipedia.org/wiki/Broadcasting), and [industrial designs](https://en.wikipedia.org/wiki/Industrial_design). Graphic [designs](https://en.wikipedia.org/wiki/Designs) and industrial designs may have separate or overlapping laws applied to them in some jurisdictions.

Copyright does not cover ideas and information themselves, only the form or manner in which they are expressed. For example, the copyright to a [Mickey Mouse](https://en.wikipedia.org/wiki/Mickey_Mouse) cartoon restricts others from making copies of the cartoon or creating [derivative works](https://en.wikipedia.org/wiki/Derivative_work) based on [Disney's](https://en.wikipedia.org/wiki/The_Walt_Disney_Company) particular [anthropomorphic](https://en.wikipedia.org/wiki/Anthropomorphic) mouse, but does not prohibit the creation of other works about anthropomorphic mice in general, so long as they are different enough to not be judged copies of Disney's. Note additionally that Mickey Mouse is not copyrighted because characters cannot be copyrighted; rather, [*Steamboat Willie*](https://en.wikipedia.org/wiki/Steamboat_Willie) is copyrighted and Mickey Mouse, as a character in that copyrighted work, is afforded protection.

### Originality

Typically, a work must meet [minimal standards of originality](https://en.wikipedia.org/wiki/Threshold_of_originality) in order to qualify for copyright, and the copyright expires after a set period of time (some jurisdictions may allow this to be extended). Different countries impose different tests, although generally the requirements are low; in the [United Kingdom](https://en.wikipedia.org/wiki/United_Kingdom) there has to be some "skill, labour, and judgment" that has gone into it.[[36]](https://en.wikipedia.org/wiki/Copyright#cite_note-36) In [Australia](https://en.wikipedia.org/wiki/Australia) and the United Kingdom it has been held that a single word is insufficient to comprise a copyright work. However, single words or a short string of words can sometimes be registered as a [trademark](https://en.wikipedia.org/wiki/Trademark) instead.

Copyright law recognizes the right of an author based on whether the work actually is an [original creation](https://en.wikipedia.org/wiki/Original_work), rather than based on [whether it is unique](https://en.wikipedia.org/wiki/Plagiarism_checker); two authors may own copyright on two substantially identical works, if it is determined that the duplication was coincidental, and neither was copied from the other.

### Registration

In all countries where the [Berne Convention](https://en.wikipedia.org/wiki/Berne_Convention_for_the_Protection_of_Literary_and_Artistic_Works) standards apply, copyright is automatic, and need not be obtained through official registration with any government office. Once an idea has been reduced to tangible form, for example by securing it in a fixed medium (such as a drawing, sheet music, photograph, a videotape, or a computer file), the copyright holder is entitled to enforce his or her exclusive rights. However, while registration isn't needed to exercise copyright, in jurisdictions where the laws provide for registration, it serves as [*prima facie*](https://en.wikipedia.org/wiki/Prima_facie) evidence of a valid copyright and enables the copyright holder to seek [statutory damages](https://en.wikipedia.org/wiki/Statutory_damages_for_copyright_infringement) and attorney's fees. (In the US, registering after an infringement only enables one to receive actual damages and lost profits.)

A widely circulated strategy to avoid the cost of copyright registration is referred to as the [poor man's copyright](https://en.wikipedia.org/wiki/Poor_man%27s_copyright). It proposes that the creator send the work to himself in a sealed envelope by registered mail, using the [postmark](https://en.wikipedia.org/wiki/Postmark) to establish the date. This technique has not been recognized in any published opinions of the United States courts. The United States Copyright Office says the technique is not a substitute for actual registration. The United Kingdom Intellectual Property Office discusses the technique and notes that the technique (as well as commercial registries) does not constitute dispositive proof that the work is original or establish who created the work.

### Fixing

The [Berne Convention](https://en.wikipedia.org/wiki/Berne_Convention) allows member countries to decide whether creative works must be "fixed" to enjoy copyright. Article 2, Section 2 of the Berne Convention states: "It shall be a matter for legislation in the countries of the Union to prescribe that works in general or any specified categories of works shall not be protected unless they have been fixed in some material form." Some countries do not require that a work be produced in a form to obtain copyright protection. For instance, Spain, France, and Australia do not require fixation for copyright protection. The United States and Canada, on the other hand, require that most works must be "fixed in a tangible medium of expression" to obtain copyright protection. U.S. law requires that the fixation be stable and permanent enough to be "perceived, reproduced or communicated for a period of more than transitory duration". Similarly, Canadian courts consider fixation to require that the work be "expressed to some extent at least in some material form, capable of identification and having a more or less permanent endurance".

## **Limitations and exceptions**

In many jurisdictions, copyright law makes exceptions to these restrictions when the work is copied for the purpose of commentary or other related uses. United States copyright law does not cover names, titles, short phrases or listings (such as ingredients, recipes, labels, or formulas) However, there are protections available for those areas copyright does not cover, such as [trademarks](https://en.wikipedia.org/wiki/Trademark) and [patents](https://en.wikipedia.org/wiki/Patent).

**TRADEMARK**

A **trademark** (also written **trade mark** or **trade-mark** is a type of [intellectual property](https://en.wikipedia.org/wiki/Intellectual_property) consisting of a recognizable [sign](https://en.wikipedia.org/wiki/Sign_%28semiotics%29), [design](https://en.wikipedia.org/wiki/Design), or [expression](https://en.wikipedia.org/wiki/Expression_%28language%29) which identifies [products](https://en.wikipedia.org/wiki/Good_%28economics_and_accounting%29) or [services](https://en.wikipedia.org/wiki/Service_economies) of a particular source from those of others, although trademarks used to identify services are usually called [service marks](https://en.wikipedia.org/wiki/Service_mark). The trademark owner can be an individual, [business organization](https://en.wikipedia.org/wiki/Business_organizations), or any [legal entity](https://en.wikipedia.org/wiki/Juristic_person). A trademark may be located on a [package](https://en.wikipedia.org/wiki/Packaging_and_labeling), a [label](https://en.wikipedia.org/wiki/Label), a [voucher](https://en.wikipedia.org/wiki/Voucher), or on the product itself. For the sake of [corporate identity](https://en.wikipedia.org/wiki/Corporate_identity), trademarks are often displayed on company buildings. It is legally recognized as a type of [intellectual property](https://en.wikipedia.org/wiki/Intellectual_property).

The first legislative act concerning trademarks was passed in 1266 under the reign of [Henry III](https://en.wikipedia.org/wiki/Henry_III_of_England), requiring all bakers to use a distinctive mark for the bread they sold. The first modern trademark laws emerged in the late 19th century. In France the first comprehensive trademark system in the world was passed into law in 1857. The [Trade Marks Act 1938](https://en.wikipedia.org/wiki/Trade_Marks_Act_1938) of the United Kingdom changed the system, permitting registration based on "intent-to-use”, creating an examination based process, and creating an application publication system. The 1938 Act, which served as a model for similar legislation elsewhere, contained other novel concepts such as "associated trademarks", a consent to use system, a defensive mark system, and non-claiming right system.

The symbols ™ (the [trademark symbol](https://en.wikipedia.org/wiki/Trademark_symbol)) and ® (the [registered trademark symbol](https://en.wikipedia.org/wiki/Registered_trademark_symbol)) can be used to indicate trademarks; the latter is only for use by the owner of a trademark that has been registered.

## **Registration**

Some law considers a trademark to be a form of [property](https://en.wikipedia.org/wiki/Property). [Proprietary](https://en.wiktionary.org/wiki/proprietary) rights in relation to a trademark may be established through actual use of that trademark in the [marketplace](https://en.wikipedia.org/wiki/Marketplace) or through registration of the mark with the relevant trademarks office (or "trademarks registry") of a particular jurisdiction. In some jurisdictions, trademark rights can be established through either or both means. Certain jurisdictions[[*which?*](https://en.wikipedia.org/wiki/Wikipedia%3AAvoid_weasel_words)] generally do not recognize trademarks rights arising merely through use. If trademark owners do not hold registrations for their marks in such jurisdictions, the extent to which they will be able to enforce their rights through [trademark infringement](https://en.wikipedia.org/wiki/Trademark_infringement) proceedings may be limited. In cases of dispute, this disparity of rights is often referred to as "first to file" (i.e., register) as opposed to "first to use." Some countries, such as Germany, offer a limited amount of [common law](https://en.wikipedia.org/wiki/Common_law) rights for unregistered marks where to gain protection, the goods or services must first occupy a highly significant position in the marketplace — where this could be 40% or more market share for sales in the particular class of goods or services.

In the United States, the registration process includes several steps. First, the trademark owner files an application with the United States Patent and Trade Mark Office to register the trademark. About three months after it is filed, the application is reviewed by an examining attorney at the U.S. Patent and Trademark Office. The examining attorney checks for compliance with the rules of the Trademark Manual of Examination Procedure. This review includes procedural matters such as making sure the applicant's goods or services are identified properly. It also includes more substantive matters such as making sure the applicant's mark is not merely descriptive or likely to cause confusion with a pre-existing applied-for or registered mark. If the application runs afoul of any requirement, the examining attorney will issue an office action requiring the applicant to address certain issues or refusals prior to registration of the mark. If the examining attorney approves the application, it will be "published for opposition." During this 30-day period third parties who may be affected by the registration of the trademark may step forward to file an Opposition Proceeding to stop the registration of the mark. If an Opposition proceeding is filed it institutes a case before the Trademark Trial and Appeal Board to determine both the validity of the grounds for the opposition as well as the ability of the applicant to register the mark at issue. Finally, provided that no third-party opposes the registration of the mark during the opposition period or the opposition is ultimately decided in the applicant's favor, the mark will be registered in due course.

Outside of the United States the registration process is substantially similar to that found in the U.S. save for one notable exception in many countries: registration occurs prior to the opposition proceeding. In short, once an application is reviewed by an examiner and found to be entitled to registration a registration certificate is issued subject to the mark being open to opposition for a period of typically 6 months from the date of registration.

A registered trademark confers a [bundle](https://en.wikipedia.org/wiki/Bundle_of_rights) of [exclusive rights](https://en.wikipedia.org/wiki/Exclusive_right) upon the registered owner, including the right to exclusive use of the mark in relation to the products or services for which it is registered. The law in most jurisdictions also allows the owner of a registered trademark to prevent unauthorized use of the mark in relation to products or services which are identical or "colourfully similar" to existing registered products or services, and in certain cases, prevent use in relation to entirely dissimilar ones. The test is always whether a consumer of the goods or services will be confused as to the identity of the source or origin, not just the area of rights specified by the trademark. An example might be a very large multinational electronics brand such as [Sony Corporation](https://en.wikipedia.org/wiki/Sony) where a non-electronic product such as a pair of sunglasses might be assumed by a consumer to have come from Sony Corporation of Japan despite being outside a class of goods to which Sony has rights, yet still protected by Sony's trademark; a similarly-named psychotherapy office or line of hamburger buns or summer camps, however, would not be infringing on Sony Corporation's trademark because the service or products being offered are so vastly different from Sony Corporation's trademark claim of rights and range of manufactured goods.

Once trademark rights are established in a particular jurisdiction, these rights are generally only enforceable in that jurisdiction, a quality which is sometimes known as "territoriality". However, there is a range of international trademark laws and systems which facilitate the protection of trademarks in more than one jurisdiction.

**TRADE SECRETS**

**Trade secrets** are a type of [intellectual property](https://en.wikipedia.org/wiki/Intellectual_property) that comprise [formulas](https://en.wikipedia.org/wiki/Formula), [practices](https://en.wikipedia.org/wiki/Best_practice), [processes](https://en.wikipedia.org/wiki/Business_process), [designs](https://en.wikipedia.org/wiki/Design), [instruments](https://en.wikipedia.org/wiki/Legal_instrument), [patterns](https://en.wikipedia.org/wiki/Pattern), or compilations of information that have inherent economic value because they are not generally known or readily ascertainable by others, and which the owner takes reasonable measures to keep secret. In some [jurisdictions](https://en.wikipedia.org/wiki/Jurisdiction), such secrets are referred to as [*confidential information*](https://en.wikipedia.org/wiki/Confidential_information).

## **Definition**

The precise language by which a trade secret is defined varies by jurisdiction, as do the types of information that are subject to trade secret protection. Three factors are common to all such definitions:

A trade secret is information that

* is not generally known to the public;
* confers economic benefit on its holder *because* the information is not publicly known; and
* where the holder makes reasonable efforts to maintain its secrecy.

In international law, these three factors define a trade secret under article 39 of the [Agreement on Trade-Related Aspects of Intellectual Property Rights](https://en.wikipedia.org/wiki/TRIPS_Agreement), commonly referred to as the TRIPS Agreement.

Similarly, in the United States [Economic Espionage Act of 1996](https://en.wikipedia.org/wiki/Economic_Espionage_Act_of_1996), "A trade secret, as defined under [18 U.S.C.](https://en.wikipedia.org/wiki/Title_18_of_the_United_States_Code) [§ 1839](https://www.law.cornell.edu/uscode/text/18/1839)(3)(A),(B) (1996), has three parts: (1) information; (2) reasonable measures taken to protect the information; and (3) which derives independent economic value from not being publicly known."

## **Value**

Trade secrets are an important, but invisible component of a company's [intellectual property](https://en.wikipedia.org/wiki/Intellectual_property) (IP). Their contribution to a company's value, measured as its [market capitalization](https://en.wikipedia.org/wiki/Market_capitalization), can be major. Being invisible, that contribution is hard to measure. Patents are a visible contribution, but delayed, and unsuitable for internal [innovations](https://en.wikipedia.org/wiki/Innovation). Having an internal [scoreboard](https://en.wikipedia.org/wiki/Dashboard_%28management_information_systems%29) provides insight into the cost of risks of employees leaving to serve or start competing ventures

## **Protection**

In contrast to registered intellectual property, trade secrets are, by definition, not disclosed to the world at large. Instead, owners of trade secrets seek to protect trade secret information from competitors by instituting special procedures for handling it, as well as technological and legal security measures. Legal protections include [non-disclosure agreement](https://en.wikipedia.org/wiki/Non-disclosure_agreement)s (NDAs), and [work-for-hire](https://en.wikipedia.org/wiki/Work-for-hire) and [non-compete clauses](https://en.wikipedia.org/wiki/Non-compete_clause). In other words, in exchange for an opportunity to be employed by the holder of secrets, an employee may sign agreements to not reveal their prospective employer's proprietary information, to surrender or assign to their employer ownership rights to intellectual work and work-products produced during the course (or as a condition) of employment, and to not work for a competitor for a given period of time (sometimes within a given geographic region). Violation of the agreement generally carries the possibility of heavy financial penalties which operate as a disincentive to reveal trade secrets. However, proving a breach of an NDA by a former stakeholder who is legally working for a competitor or prevailing in a lawsuit for breaching a non-compete clause can be very difficult. A holder of a trade secret may also require similar agreements from other parties he or she deals with, such as vendors, licensees, and board members.

As a company can protect its confidential information through NDA, work-for-hire, and non-compete contracts with its stakeholders (within the constraints of employment law, including only restraint that is reasonable in geographic- and time-scope), these protective contractual measures effectively create a perpetual monopoly on secret information that does not expire as would a [patent](https://en.wikipedia.org/wiki/Patent) or [copyright](https://en.wikipedia.org/wiki/Copyright). The lack of formal protection associated with registered intellectual property rights, however, means that a third party not bound by a signed agreement is not prevented from independently duplicating and using the secret information once it is discovered, such as through [reverse engineering](https://en.wikipedia.org/wiki/Reverse_engineering).