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ASSIGNMENT

QUESTION

Briefly discuss the following intellectual property protection methods;

- Patent
- Copyright
- Trademark
- Trade secret

PATENT

A patent is a right granted to an inventor by the federal government that permits the inventor to exclude others from making, selling or using the invention for a period of time. The patent system is designed to encourage inventions that are unique and useful to society. Congress was given the power to grant patents in the Constitution, and federal statutes and rules govern patents.

The U.S. Patent and Trademark Office (USPTO) grants patents for inventions that meet statutory criteria. The following provides a general overview of what a patent is.

Patent Categories

There are three different kinds of patents: utility patents, design patents and plant patents.

1. *Utility Patents:* The most common type of patent, these are granted to new machines, chemicals, and processes.
2. *Design Patents:* Granted to protect the unique appearance or design of manufactured objects, such as the surface ornamentation or overall design of the object.
3. *Plant Patents:* Granted for the invention and asexual reproduction of new and distinct plant varieties, including hybrids (asexual reproduction means the plant is reproduced by means other than from seeds, such as by grafting or rooting of cuttings).

Examples of Patentable Items

These categories include practically everything made by humans and the processes for

making the products. Examples of things that are patentable include:

- Computer software and hardware;
- Chemical formulas and processes;
- Genetically engineered bacteria, plants, and animals;
- Drugs;
- Medical devices;
- Furniture design;
- Jewelry;
- Fabrics and fabric design; and
- Musical instruments.

COPYRIGHT

Copyright refers to the legal right of the owner of intellectual property. In simpler terms, copyright is the right to copy. This means that the original creators of products and anyone they give authorization to are the only ones with the exclusive right to reproduce the work.

Copyright law gives creators of original material the exclusive right to further use and duplicate that material for a given amount of time, at which point the copyrighted item becomes public domain

Copyright is a form of intellectual property protection provided by the laws of the United States. Copyright protection is available for original works of authorship that are fixed in a tangible form, whether published or unpublished. The categories of works that can be protected by copyright laws include paintings, literary works, live performances, photographs, movies, and software.

It's important to understand that copyright law covers the "form of material expression," not the actual concepts, ideas, techniques, or facts in a particular work. This is the reason behind why a work must be fixed in a tangible form in order to receive copyright protection. A couple examples of works being fixed in a tangible form include stories written on paper and original paintings on canvas.

A Copyright Owner's Rights

The primary goal of copyright law is to protect the time, effort, and creativity of the work's creator. As such, the Copyright Act gives the copyright owner certain exclusive rights, including the right to:

- Reproduce the work
- Prepare "derivative works" (other works based on the original work)
- Distribute copies of the work by sale, lease, or other transfer of ownership
- Perform the work publicly
- Display the work publicly

The copyright owner also has the right to authorize other people to do any of the rights mentioned above. The copyright owner has the option and ability to transfer his or her exclusive rights -- or any subdivision of those rights -- to others as well. The Copyright Office does not have forms for these transfers, so a transfer of copyright is usually done through a contract. It is not legally required for a transfer to be recorded with the Copyright Office, but having a legal record of the transaction is often a good idea.

If an author or artist creates a work for a company or in the course of his or her employment, the creator is usually not the copyright owner. This situation is known as a "work made for hire," and it gives copyright ownership to the employer or person who commissioned the work. A work made for hire situation can occur when an independent contractor is hired to create a particular work, or if the work is created by an employee while he or she is on the job. For example, if an employee writes articles for a company, the company is the copyright owner not the actual writer.

Registering Your Copyright

Registration with the U.S. Copyright Office is not necessary to secure copyright protection in a work; however, it does have its advantages. For example, registering your copyright provides a public record of the copyright claim. Copyright registration is also necessary (for works of U.S. origin) before a copyright owner can file an infringement lawsuit in court. Finally, if you register your copyright within three months of publishing the work or before an infringement occurs, you have the ability to recover attorney's fees and statutory damages in the event of a lawsuit.

The application to register a copyright contains three basic elements: the application form, a non-refundable filing fee, and a non-returnable "deposit" of a copy of your work. The best way to register your copyright is to do it online through the electronic Copyright Office (eCO). Online filing has several advantages including a quicker processing time, lower filing fees, and the ability to track your status online.

Copyright Notice

Although previously a requirement under United States law, a copyright notice is no longer required in accordance with the Berne Convention (for any work created after March 1989). Please keep in mind, however, that a notice of copyright can still benefit the copyright owner.

First of all, it gives notice to the public that the work is under copyright protection. It also notifies the public who the copyright belongs to and the year in which the work was first published. It's also easy to add the copyright notice because it doesn't require the copyright holder to seek any kind of permission to include the notice or to register with the Copyright Office. The final reason a copyright notice is a good idea is because it prevents a defendant from claiming an innocent infringement defense (a claim that it was an "accidental" infringement) in a copyright infringement case.

The Limits of Copyright Protection

Copyright law only covers the particular form or manner in which information or ideas have been manifested, known as the "form of material expression." The law does not cover the actual ideas, concepts, facts, or techniques contained in the copyright work. For example, the Superman comic books are copyrighted, which means that they cannot be reproduced and distributed for sale without authorization from the copyright owner. The copyright also prohibits anyone else from creating similar works involving the Superman character present in the comic books. However, the copyright does not prohibit anyone from creating a work about a super-human character in general.

Keep in mind that things not covered by copyright law may be covered under other forms of intellectual property. For instance: ideas, procedures, methods, systems, and processes are not covered by copyrights, but they can be protected under patent law. Similarly, titles, names, slogans, and symbols cannot be copyrighted, but can be trademarked.

Learn About Your Copyright Protections: Speak With an Attorney

Your copyrighted work has value; but if you don't properly protect it, you could lose what you've worked so hard to create. Understanding what a copyright is -- or is not -- is the first step. If you have any questions about whether your work qualifies for copyright protection or would like help registering your copyright, you may want to contact an experienced small business lawyer in your area who specializes in intellectual property laws.

Next Steps

Contact a qualified business attorney to help you identify how to best protect your business' intellectual property.

TRADERMARK

Trademark is a form of intellectual property protection. Certain symbols, names, words, or devices that are used in connection with a good or service can be protected under trademark laws. Trademarks allow your company to indicate the source of your goods or services and distinguish them from others providing similar goods or services. FindLaw's Trademarks section provides information on creating, registering, and

protecting a trademark, and tips on avoiding trademark infringement problems. In this section you can also find links to forms and resources from the U.S. Patent and Trademark Office (USPTO).

Similar to a trademark, a service mark identifies and distinguishes the source of a service rather than a product, and the term "trademark" is often used to refer to both trademarks and service marks. Trademarks are generally considered a form of intellectual property.

Types of trademarks include;

Service marks

Strong trademarks

Fanciful Trademarks

Arbitrary Trademarks

Suggestive Trademarks

TRADE SECRET

A trade secret is any practice or process of a company that is generally not known outside of the company. Information considered a trade secret gives the company an economic advantage over its competitors and is often a product of internal research and development.

To be legally considered a trade secret in the United States, a company must make a reasonable effort in concealing the information from the public, the secret must intrinsically have economic value, and the trade secret must contain information. Trade secrets are a part of a company's intellectual property. Unlike a patent, a trade secret is not publicly known.

Trade secrets are defined differently based on jurisdiction, but all have the following characteristics in common:

- They are not public information.
- Their secrecy provides an economic benefit to their holder.
- Their secrecy is actively protected

The federal law defines trade secrets as "all forms and types of" the following information:

- Financial
- Business

- Scientific
- Technical
- Economic
- Engineering

Such information, according to federal law, includes:

- Patterns
- Plans
- Compilations
- Program devices
- Formulas
- Designs
- Prototypes
- Methods
- Techniques
- Processes
- Procedures
- Programs
- Codes