

ПРАВО ІНТЕЛЕКТУАЛЬНОЇ ВЛАСНОСТІ

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INTELLECTUAL PROPERTY AND IT'S TYPES

The Internet has made it easier for people to access journals, publications, and any piece of information that is digital. This is leading to several users thin-king that any information on the internet can be reproduced because it is available in the public domain. After the lockdown was declared, according to renowned sources, there was a growing incidence of fake domains being created that had copyright-protected information in them

The vast majority of IP assets fall into four categories: patents, trademarks, copyrights and trade secrets.

1.1. What Is Copyright and it's Features

Copyright is a type of intellectual property right that gives the creator or author an exclusive right over his/her original literary work to make copies of it, usually for a limited period of time. The creative work includes educational, artistic, literary, musical, soft-ware forms of work. Copyright aims to protect the original work of your particular idea that you are going to generate with creativity. It is subject to certain limitations which are based on public interest.

Copyrights are generally granted by the public law where it is considered as «territorial rights». They are granted according to the laws set by the government of certain territory which may vary from country to country. According to the Copyrights Act in India, the duration of a copyright is valid till the lifetime of the author plus 60 years after his death from the beginning of the year with an organization the article is being published, de-pending upon the jurisdiction of the states. Many countries need various copyright formalities to establish copyrights. Some countries recognize copyrights in any form completed work without indulging in the long procedures of registrations, which is very different from recognized formal registrations.

Features:

1. Copyright is divisible. The copyright holder may assign a non-exclusive right to reproduce or republish a work to another person.

2. Copyright is also transferable. A copyright owner's exclusive rights (either in whole or in part) can be transferred to another party, but it must be in writing and signed by the copyright owner to be considered valid.

3. Copyright is an intangible property which lasts for only a limited period of time: Copyrights are a form of intangible property, as they confer certain rights to their owners that are not perceivable through the physical senses. Small-business owners often need to manage a variety of intangible assets, which can copyrights.

4. Copyright restricts unauthorized use of any sort of work: Copyright gives the sole right the owner to produce/reproduce the piece of their original work.

5. Copyright protection is automatic: As of January 1, 1978, under US copyright law, a work is automatically protected by copyright when it is created. Specifically, «A work is created when it is «fixed» in a copy or phonorecord for the first time». you do not have to register, and you do not have to affix a copyright notice. So, all eligible works are copyrighted.

6. Copyright can be sued: It permits the right to sue an infringer in federal court, in case the owner holds a copyright which is obtained after registration. The copyright owner has the right to oppose any of-fender who claims the ownership of that particular work.

7. Copyright creates financial benefits: Another advantage is benefiting by selling or transferring the copyright. In case any third party wants the copyright then the initial owner has the privilege of deciding whther to sell/transfer the copyright or not. A Copyright registration enables financial benefits by the licensing the piece of the original work.

1.2. How Copyrighting Works

When someone creates a product that is viewed as original and that required significant mental activity to create, this product becomes an intellectual property that must be protected from unauthorized duplication. Examples of unique creations include computer software, art, poetry, graphic designs, musical lyrics and compositions, novels, film, original architectural designs, web-site content, etc. One safeguard that can be used to legally protect an original creation is copyright.

Under copyright law, a work is considered original if the author created it from independent thinking void of duplication. This type of work is known as an Original Work of Authorship (OWA). Anyone with an original work of authorship automatically has the copyright to that work, preventing anyone else from using or replicating it. The copyright can be registered voluntarily by the original owner if they would like to get an upper hand in the legal system in the event that the need arises.

Not all types of work can be copyrighted. A copyright does not protect ideas, discoveries, concepts, or theories. Brand names, logos, slogans, domain names, and titles also cannot be protected under copyright law. For an original work to be copyrighted, it has to be in tangible form. This means that any speech, discoveries, musical scores, or ideas have to be written down in physical form in order to be protected by copyright.

1.3. Copyright Act of 1957 and Features of it

Copyright is an exclusive right granted by the law to creators of literary, dramatic, musical and artistic works and producers of cinematography films and sound recordings. In fact, it is a bunch of rights including, rights of reproduction, communication to the public, adaptation and translation of the work. There could be slight variations in the form of the rights depending on the work

First Act to protect copy right was introduced in 1914 and was followed by Copyright Act 1957.1957 Act adopted many English provisions introduced new ideas and concepts and was enforced from 21 January 1958.

– Creation of Copyright Board: Copyright Office and a Copyright Board was created to make registration process of Copyright easy and to address the related to copyright and compulsory licensing of Copy-right.

– Definition of Work: It defines clearly various categories of work in which copyright can subsist and the scope of the rights. A work means any artistic, dramatic, musical, artistic work or cinematographic film or sound recording.

– Authorship & Ownership: According to the Act the author/creator is the first owner of the work. In case of musical work the composer is the author or creator, in case of cinematograph film the producer is the author /owner whereas in case of Government work normally the concerned Government body is the author.

– Term: The general term of Copyright is 60 years. Term of copyright for musical, dramatic and artistic works, except for photograph is sixty years from the year in which the author died.

– Assignment & Compulsory Licensing: The copyright owner can transfer his/her rights to another person in return of some fixed royalty. The owner can transfer the all the rights or some of the rights to the Assignee (The person whom the rights will be transferred. The owner can license his rights to another person as well. It is known as Compulsory Licensing. It helps in curbing misuse of rights by the owner.

– Formation of Copyright Societies: Copyright Society is a registered administrative body that looks after the management and protection of copyrights.

– Broadcast reproduction rights: The Act gives special rights, to a broadcast organization, known as «Broadcast reproduction Rights». It is given for 25 years.

– Performers' rights: It gives protection to the performers. The right is given for fifty years.

– International Copyright: According to this provision a foreigner is entitled to enjoy copyright for his work in India.

– Infringement Defined: When a person, without permission from the owner tries to use the rights related to the work, it is known as infringement. e.g. A person making copies of a Book without license.

– Exception: If a person uses the work for research, analysis or for educational purpose, he does not require any permission from the author.

– Remedies against infringement: Civil and criminal remedies are available against infringe

2. Patents

A patent is a document, issued by the federal government, that grants to its owner a legally enforceable right to exclude others from practicing the invention described and claimed in the document. Congress allows this right, for a term ending twenty years from the date of filing of an application for patent, to encourage the public disclosure of technical advances and as an incentive for investing in their commercialization.

Thus, the overall progress of technical innovation is favored, while at the same time inventors are rewarded for their specific contributions. Like other forms of property, the rights symbolized by a patent can be

inherited, sold, rented, mortgaged and even taxed. When a patent expires, or is held invalid, the right to exclude the others ceases. The public is the ultimate beneficiary of the technical advance.

Most inventors seek a patent to obtain the actual or potential commercial advantages that go along with the right to exclude others. Given the high cost of research and development, the opportunity to recoup these costs through commercial exploitation of the invention may be the primary justification for undertaking research in the first place.

Patent rights can be commercially exploited in two basic ways: (1) directly, by the inventor's practice of the invention to obtain an exclusive marketplace advantage (as where the patented technology results in a better product or produces an old product less expensively) and/or (2) indirectly, by receiving income from the sale or licensing of the patent.

It is important to note that a patent (i.e., the right to exclude others) does not give the inventor the right to practice the invention. The inventor can practice his invention only if by so doing he does not also practice the invention of an earlier unexpired patent. While only one patent can be granted on a particular invention, it is easy to see how more than one patent could be infringed by making a single product. For example, consider that A has a patent on a new type of door and B invents an improved door of this type with a special lock. B could not sell the improved locking door since A's patent broadly covers all doors of this type. On the other hand, A could not incorporate the improved lock in his basic door since B's patent covers this combination. In these circumstances both A and B can be free to practice the best technology (locking door) only if each grants a patent license to the other.

The indirect exploitation of a patent may be exclusive, e.g., by selling all rights in the patent or granting an exclusive license. Licenses can be non-exclusive, allowing many parties, including the inventor, to practice the invention simultaneously. A patent may also provide commercial advantages in addition to the potential for an exclusive market position or licensing income. A patent often lends business credibility to start up ventures and can open doors to both technical assistance and financing necessary to bring a new product to market. An improvement patent may

also provide the barter necessary to cross license any basic patents held by others which block the path to market.

3. Trademarks/Brands

A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. Trademarks are protected by intellectual property rights.

A brand is a marketing concept that encompasses how people feel about your product or service. Customers associate certain elements with different brands, such as reputation, image, and emotion. For example, a certain brand might have been developed to encourage you to feel confident, calm, or secure.

On the other hand, a federal trademark registration can provide nationwide legal protection for your brand in connection with particular goods or services. It is your choice whether to protect your brand under trademark law. Many business owners choose to protect their brand names for their main or dominant goods or services. You might also choose to protect a slogan or logo for those goods or services, if you have one.

Deciding what you want to protect and to what extent is up to you. You can have a brand, but decide not to protect that brand by registering it as a trademark. If you choose not to register your brand as a trademark, however, anyone could misuse your brand or create a brand so similar to yours that people can't tell the difference between them. So, even if consumers want to purchase your products or services because they trust your brand's reputation, that customer might purchase someone else's by mistake because they can't tell the difference between the trademarks.

4. Trade secrets

are essential pieces of information regarding the processes, products or services of an organization that are not intended to be published or otherwise distributed and that directly benefit the owner by dint of their confidentiality. All things being equal, these secrets will only be known to other parties if shared with a business partner. Recipes for food and beverages or algorithms used in software may fall under this category.

Trade Secret Protection Plan:

If you have a trade secret that you want to protect, it is imperative that it be kept a secret. Trade secrets are lost once the secret becomes public know-ledge. Such disclosure can be made in a variety of ways, including

by employees or licensees, by theft, or even by a general failure of the company to keep secrecy measures in place. Once lost, the protection is gone forever.

The best way to protect secrecy is to implement a trade secret protection plan:

1. **Identify Your Trade Secrets:** The first step is to identify your trade secrets. Ask yourself, «is this information that only my company knows that allows it a competitive advantage over competitors?» If yes, then you should treat it as a trade secret. In addition, you should treat your customer list, supplier list, employee list and vendors list as confidential as these qualify as trade secrets.

2. **Keep Trade Secrets Secret By Restricting Access:** If there is physical evidence of the trade secret such as on paper or in computers, you should limit physical or computer access, through use of confidential computer passcodes, or keeping hard copies of such information in a locked file cabinet. Next, you should greatly limit who knows the trade secret. This includes employees, contractors, and any vendors or licensees you use and the trade secret should be shared only with those who «need to know.» Many companies mark stamp «Confidential» on papers

3. **Protect the Trade Secret through Contractual Obligations:** Every party that has access or knows your trade secret should be bound by contractual obligations. Employees and independent contractors should sign employment or independent contractors' agreements or at the very least should agree to simple confidentiality agreements. A confidential information, invention and non-compete agreement with employees is generally a smart move by employers. Vendors and licensees privy to the information should also have signed agreements that specifically include confidentiality provision that cover trade secrets. Importantly, the terms of confidentiality should specifically stay in place beyond the term of any agreement.

4. **Maintain Secrecy By Diligently Policing:** Following an initial agreement to a duty of confidentiality over trade secrets, you should regularly remind employees, contractors, vendors, or licensees of their duty to maintain the secrecy of your trade secrets. This is especially important when employees with knowledge leave the company. In

addition, you should include a noticeable disclaimer on any document that has a trade secret that it is confidential.

5. How do you protect your IP?

The phrase "You can never be too careful" applies perfectly to IP assets. Registering IP in every jurisdiction relevant to your business is key, especially for patents and trademarks, and entering into the WIPO's framework helps facilitate more far-reaching protection and save money. If you expect significant infringement risk in specific jurisdictions, obtaining registered copyrights is of additional benefit. Meanwhile, trade secrets must be secured with appropriate secrecy mechanisms, for instance, blockchain encryption, and covered by NDAs if they are to be shared for any reason.

Timely renewal and upkeep (i.e., fee payment and declarations of use) are also essential protective steps with all registered IP rights. These should not be allowed to lapse without due commercial and strategic consideration.

Furthermore, staying vigilant regarding all risks to your IP portfolio is crucial, which means more than just looking out for infringement and being abreast of regulatory trends. Issues such as the internal mishandling of your intangible asset portfolio could also endanger its value. An IP audit from Dennemeyer's impartial experts can help you assess the state of your IP and work procedures to mitigate or eliminate any liabilities that may be present.