

INTELLECTUAL PROPERTY LAW

Intellectual property law seeks to identify and protect rights and responsibilities connected to the value of ideas. The advent of modern technology has raised the public's awareness about the existence of intellectual property rights. This section will discuss some of the most common intellectual property interests.

COPYRIGHTS

The United States Constitution gives Congress the ability to establish a national system of copyrights and patents. United States Constitution, Article I, Section 8, clause 8.

A copyright is similar to what it sounds like – a right to copy. The holder of a copyright has the exclusive right to copy, distribute, and adapt the work for which he or she holds the copyright. One may hold a copyright for various kinds of creative works, such as manuscripts, essays, art pieces, photographs, films, music, and lyrics. 17 United States Code §102. In most cases, a copyright is protected from the time the work is created until 70 years after the creator's death.

Registering a copyright has advantages, including the creation of a public record of the copyright holder's claim, and a basis for bringing a lawsuit for copyright infringement.

Infringement of a copyright may result in civil and/or criminal liability. The statute of limitations for criminal proceedings is five years, while for a civil action it is three years. 17 U.S.C. §507.

PATENTS

Copyrights and patents are easily confused but are two very different intellectual property interests. A patent protects an underlying idea, whereas a copyright protects the right to copy a work.

Patents protect novel inventions. A patent gives the holder a right "to exclude others from making, using, offering for sale, or selling the invention throughout the United States or importing the invention into the United States." 35 U.S.C. §154. Patents are protected for up to 20 years. The statute of limitations for a civil action for patent infringement is six years. 35 U.S.C. §286.

"False marking" occurs when an individual uses an idea protected by a patent while falsely asserting that the use is with permission of the patent holder, with the intent of deceiving the public. 35 U.S.C. §292. "False marking" can be a criminal offense or grounds for a civil claim.

TRADEMARKS

A trademark is a mark that is used to associate a name, logo, slogan, image, or other symbol with a business. Some items cannot be used as part of a trademark. For example, the U.S. Patent and Trademark Office may refuse to register a mark that contains a flag of a country or features a living person. 15 U.S.C. §1052.

A trademark lasts for ten years. In the one-year period preceding the expiration of the mark, the holder may re-register the mark in order to continue having exclusive rights to its use. 15 U.S.C. §1058.

Getting Help

General Legal

Student Legal Services, 858.534.4734 or <http://sls.ucsd.edu>

Copyrights

U.S. Copyright Office website,

<http://www.copyright.gov>.

Patents & Trademarks

U.S. Patent and Trademark Office website,

<http://www.uspto.gov>.

For more information on patents and copyrights for UCSD students, see UCSD's TechTips website, <http://invent.ucsd.edu/>.