



# INTELLECTUAL PROPERTY 101



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IP encourages new works and new products by protecting the ability of creators and innovators to make a living from those new works and products.

## WHAT IS IP?

Intellectual property (IP) is a set of laws that protect creative and innovative products through legal rights called patents, copyrights, and trademarks. It is sometimes described as property that is a product of the mind or a product of intellectual capital. While the source, goals, and forms of IP are different, they can all be seen as protecting and encouraging creative efforts.

In short, copyright protects creative expression, a patent protects a new invention, and a trademark identifies and distinguishes the source of goods of one party from another. IP encourages new works and new products by protecting the ability of creators and innovators to make a living from those new works and products. IP is the promise that those who combine the spark of imagination with the grit and determination to see their vision become reality in books, technology, medicines, designs, sculpture, services, and more will have opportunities to reap the benefits of their innovation.

## WHY DO WE PROTECT IP?

The reasons that we protect IP are similar to the reasons we protect any other property, primarily to reward and encourage hard work and protect against those who freeload. IP is a unique type of property, and some additional considerations come into play when protecting that property.

International law recognizes the fundamental human right to IP in the United Nations Universal Declaration of Human Rights. Article 27 specifically calls for the protection of both the “moral and material interests” of those who create “scientific, literary or artistic” works.<sup>1</sup> Additionally, Article 17 provides that everyone has the right to property and shall not be arbitrarily deprived of it.

## WHAT ARE THE DIFFERENT TYPES OF IP RIGHTS?

### PATENTS

A patent is the right to utilize an invention and to allow others to use it as you choose, generally for 20 years. A patent is granted by the government in exchange for the inventor publicly disclosing the invention—in short, this means telling the world how to re-create the discovery so that other scientists and researchers can build upon it. After a patent term ends, anyone is free to utilize the invention.

<sup>1</sup>. United Nations Universal Declaration of Human Rights, accessible at: [www.un.org/en/documents/udhr](http://www.un.org/en/documents/udhr).



To be eligible for patent protection, inventions must be new, non obvious, and useful. Inventions must also be tied to some process, machine, manufacture, or composition of matter.

Certain concepts cannot be patented by rule, such as abstract ideas or laws of nature. Other inventions cannot be patented by policy; for example, certain inventions related to nuclear weapons or nuclear energy. Also, a person cannot be patented.

Patents allow inventors to realize the investment in their work for a relatively short period of time. Without a patent, people could spend years in a research and development laboratory or tinkering in their garages, creating the next life-changing invention—only to have their invention quickly copied by a free-rider who put zero investment in the invention. If the incentive for hard work is stolen, it is less likely that people will want to invest in new inventions.

## COPYRIGHTS

Copyright is a form of property that grants exclusive rights to the author of a work. The protected work must be fixed and in a tangible medium, including books, computer programs, plays, paintings, photographs, sculptures, movies, music, television shows, blogs, architectural works, and more. Copyright does not protect ideas alone, facts, or functional parts of works.

There are several limitations and exceptions to the exclusive rights granted by copyright law. For example, certain nonprofit and educational uses are allowed by law, even without the author's permission. Copyright law includes several compulsory licenses, including for cable and satellite television.

Copyright also allows for "fair use" of works, which permits uses without permission that are beneficial and do not unduly harm the copyright owner. This is guided by factors in the law, but it is ultimately what its name says, a doctrine of fairness.

The benefit of copyright protection is that it fosters creativity and this, in turn, enhances our collective culture. It is less likely for authors to write, painters to paint, or computer programmers to program unless they will recapture that investment in time, energy, and money. Of course, people can still create without being paid as copyright is diverse enough to allow these

authors to make that choice. Some people make their works available for free—but on the condition that those who make changes allow those changes to be free as well. This is known as a creative commons approach, and while it is nontraditional, it relies on copyright law to enforce rules of openness.

## TRADEMARKS

Trademarks enable the public to identify the source of goods or services. A trademark can be a word, picture, symbol, or other distinguishing mark, or even a sound or smell. These are the brand names of our favorite products. These brands allow us to identify competing products by quickly looking at their marks.

A trademark gains protection against unauthorized use by others only when it is used to identify goods or services. In other words, a trademark must be distinctive. If the mark fails to be distinctive for that good or service, it loses its protection.

Trademark law is helpful because it protects consumers from being confused about who created something. It also saves people time by making the brand they are looking for easily identifiable.

Trademarks encourage manufacturers and producers to create goods that are consistent in quality. If a company started making clothes that fell apart or cars that had brakes that failed, you would know to avoid those brands and alternatively buy only quality brands.

Our trademark system also allows trademark owners to capitalize on their investments in creating a product or service by preventing free riders from counterfeiting their marks. So when you create the next great innovation and sell it under your own brand, some latecomer can be prevented from passing off a cheap imitation as your quality product. The owner of a trademark can protect against uses that would create a likelihood of confusion with the mark.

Because trademarks function to protect and inform consumers, they do not have a term of years. Brands can lose trademark protection if the brand loses its distinctiveness. Another way to say this is if a brand becomes generic, it will cease to function as a trademark.



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