

Intellectual Property Information Sheet

Definitions:

Intellectual Property

Creations of the mind (eg. literary, artistic, and commercial) over which the creator has legal rights.

Copyright

Exclusive legal rights given to the creator of a literary or artistic product such as a creative use of words, phrase, or musical creation. The protection is not for an idea, procedure, process, system, or discovery.

A creation does not receive copyright protection until it is in a fixed, tangible form. The protection begins immediately. A work does not have to be registered to receive protection, but by registering a creation it is easier to defend the creator's legal rights to protect and control its use. Copyright protection exists for the life of the author plus an additional 70 years.

These legal rights are granted by Acts of the United States Congress which have been updated and challenged in courts many times. Other countries have established their own copyright laws, and there are international treaties and agreements that address copyright protection.

Trademark

Exclusive legal rights given to businesses for words, symbols, and other devices affixed to goods and products for the purpose of identification. ® is the sign for a registered trademark.. TM is the symbol for an unregistered trademark.

Patent

Exclusive legal rights granted to the creator of an invention. Prior to 1995, a patented invention was granted legal protection for 17 years. Beginning in 1995, the duration of legal protection was increased to 20 years.

There are four kinds of patents:

1. **software patents** (eg. a feature of a application program such as a shopping cart for online purchases);
2. **functional patents** (eg. the spork);
3. **"standards-essential" patents** - inventions needed to meet a standard. (eg. 4G network); and
4. **"trade dress" patents** (how a product appears such as the shape of an cell phone).

Public Domain

Content, ideas, or products that are not owned by anyone and are therefore public property and available for anyone to use. Intellectual property may enter into the public domain as a result of legal protection expiring (eg. copyright and patent) or by neglect (eg. trademark).

The Digital Millennium Copyright Act (DMCA)

Passed in 1998, this act attempted to address many of the issues that came about due to the development and rapid growth of the internet which facilitates easy transfer of digital information, and it was designed to align American laws with international treaties.

Some general highlights of DMCA are:

- makes it a crime to circumvent anti-piracy technology that is built into most software;
- limits internet service providers (ISPs) from copyright infringement liability for simply transmitting information;
- sets the expectation that ISPs remove material from users' websites if they appear to violate copyright protection; and
- requires that "webcasters" pay licensing fees to music production companies.

Fair-use Provision of the Copyright Act of 1976

In this act, the United States Congress set up rules to help users know when and to what extent they can use the creations of others without having to receive permission from the creator. Section 107 contains a list of the various purposes for which the reproduction of a particular work **may** be considered fair, such as criticism, comment, news reporting, teaching, scholarship, and research. Section 107 also sets out **four factors** to be considered in determining whether or not a particular use is fair:

- The purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes
- The nature of the copyrighted work
- The amount and substantiality of the portion used in relation to the copyrighted work as a whole
- The effect of the use upon the potential market for, or value of, the copyrighted work

Creative Commons

This is a non-profit organization that promotes the sharing of intellectual property by offering free legal tools to the creators of intellectual property. The purpose of this organization is to increase the amount of copyrighted material that can be legally used by empowering the creator to expand the legal use of their intellectual property beyond existing copyright law without losing ownership of the property.

Plagiarism

A form of academic dishonesty. The Modern Language Association of America (MLA) states that to use "...another person's ideas, information, or expressions without acknowledging that person's work is intellectual theft." (52). Furthermore, the MLA states that plagiarism may be a "moral or ethical offense" that constitutes fraud if it is used to obtain "a better grade or gain some other advantage." (52). It is not against the law, but the consequences for plagiarizing can be significant, the most significant of which is damage to one's reputation.

The Modern Language Association of America, *MLA Handbook of Writers of Research Papers*, 7th Ed., New York: MLA, 2009. Print.