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Classification And Protection Of Intellectual Property

[Kristie Prinz](#)

Q. I have written several published articles about a new framework for strategic planning. The framework has a name, a diagram depicting the process and several key ideas that make it unique. It is getting a lot of attention and I want to protect as much of it as I can so others can not write about it, use it or claim it for their own. I have researched a bit but am confused as to whether I need a copyright, trademark or patent (or something else). Please advise.

-- Paul

A.

Your confusion on this issue is understandable, since aspects of your framework could be protectable under each of these areas of the law. Moreover, trade secret law may also apply to protect your work.

First of all, your diagrams and articles about the new framework are most likely eligible for protection under copyright law. Copyright law protects original works of authorship, whether published or unpublished, including literary, dramatic, musical, artistic, and certain other intellectual works. While ideas, processes, methods, and systems are not eligible for copyright protection, the illustrations, explanations, and descriptions of those ideas, processes, methods, and systems should be eligible for protection.

Second of all, the name of your framework should be protectable under trademark law. Trademark law protects words, phrases, symbols or designs, or combinations of words, phrases, symbols or designs that identify and distinguish the source of the goods or services of one party from those of others. Since in the present circumstance, the name of your framework identifies and distinguishes the source of your process and ideas, it should be eligible for trademark protection.

Third of all, the method of your framework could potentially be eligible for protection under patent law as a business method. Patent law protects inventors of products from the loss of their property rights in an invention, and business method patents protect process claims in an invention. Although business method patents have become the subject of some controversy in the post-Internet era, I do not practice in the area

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of patent prosecution and am not up-to-speed on the types of business methods that the United State Patent and Trademark Office ("USPTO") is currently willing to grant patents on. Having said this, you should certainly explore whether or not your framework would be eligible for this type of protection.

Finally, in addition to these other types of intellectual property protection, the know-how involved in your framework may be eligible for protection under trade secret law, provided that you protect such know-how from disclosure and keep it out of the public domain. A trade secret constitutes the formula, practice, process, design, or instrument enabling one business to have a competitive advantage over another, and comprises the confidential information of a business. To the extent that know-how exists with respect to your framework, then it should be protectable as a trade secret.

Thus, as you can see, no single area of intellectual property protection protects all aspects of your framework, which likely is the reason for your confusion on the issue. My recommendation is that you consult with an intellectual property attorney in your jurisdiction in order to discuss the specifics of your framework in more detail and to determine which areas of intellectual property protection are most relevant in your particular circumstances. Such an attorney should be able to look at each of potential areas for protection and advise you on how best to proceed with protecting your work.

-- *Kristie Prinz*

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