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What Constitutes "Intellectual Property"?

[Kristie Prinz](#)

Q. Would you please explain the concept of "intellectual property"? What does that include?

-- *leah*

A.

You ask an excellent question.

The term "intellectual property" is an umbrella term, which encompasses the bundle of rights arising from intellectual creations such as creative and artistic works, inventions, marks, and proprietary information. As a general rule, intellectual property is considered to include four categories of intellectual creations:

- Copyrights
- Patents
- Trademarks and
- Trade secrets

In the first category, the term "copyright" refers to the rights arising from creative and artistic works. The U.S. Copyright Office defines "copyright" as a form of protection provided by the laws of the United States (title 17, U.S. Code) to the authors of original works of authorship, including literary, dramatic, musical, artistic, and certain other intellectual works. Works are protected as of the time they are fixed in a tangible form of expression and include the following categories:

- Literary works
- Musical works, including any accompanying words
- Dramatic works, including any accompanying music
- Pantomimes and choreographic works
- Pictorial, graphic, and sculptural works
- Motion pictures and other audiovisual works

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- Sound recordings and
- Architectural works

In the second category, the term "patent rights" refers to rights arising from inventions. The U.S. Patent and Trademark Office describes "patent rights" as the right to exclude others from making, using, offering for sale, or selling the invention in the United States or importing the invention into the United States. There are three types of patents:

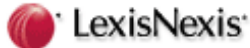
- Utility patents, which may be granted to anyone who invents or discovers any new and useful process, machine, article of manufacture, or composition of matter, or any new and useful improvement
- Design patents, which may be granted to anyone who invents a new, original, and ornamental design for an article of manufacture; and
- Plant patents, which may be granted to anyone who invents or discovers and asexually reproduces any distinct and new variety of plant

In the third category, the term "trademark" refers to rights arising from marks. The U.S. Patent and Trademark Office describes a trademark as a word, name, symbol, or device that is used in trade with goods to indicate the source of the goods and to distinguish them from the goods of others. A servicemark is similar to a trademark, except that it applies to the source of a service rather than a product. Trademark rights may be used to prevent others from using a confusingly similar mark, but not to prevent others from making the same goods or from selling the same goods or services under a clearly different mark.

In the fourth and final category, the term "trade secret" refers to intellectual property arising from proprietary or confidential information or know-how. A trade secret is a formula, practice, process, design, instrument, pattern, or compilation of information used by a business to obtain an advantage over competitors within the same industry or profession. In contrast to copyrights, patents, and trademarks, trade secrets are protected by keeping the information secret, which occurs through the use of confidentiality agreements and, in some cases, through the use of non-compete clauses or agreements.

-- Kristie Prinz

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