

TRELLIS

Trellis Legal, LLC


5149 Butler St., Suite 300, Pittsburgh, PA 15201

www.Trellispgh.com

Breaking Down Types of IP

DISCLAIMER: This outline is a general guide. Be sure to contact an attorney if you have questions or specific issues that need to be addressed.

Intellectual Property (or IP) refers to the property rights associated with creations – whether that’s art, graphics, inventions, and other intangibles. This resource breaks down the various types of IP to help you recognize the differences between them and better understand what types may be at play in different scenarios. This resource is merely a 10,000-foot view of a pretty complicated area of the law, so be sure to consult with an attorney if you have IP questions.

Type of IP	Trademarks
What is it?	The United States Patent and Trademark Office defines a trademark as: “any word, phrase, symbol, design, or a combination of these things that identifies your goods or services. It’s how customers recognize you in the marketplace and distinguish you from your competitors.” In other words, a trademark is an “identifier” – a name, logo, or slogan – so your products and services can be clearly discerned from competitors.
What federal law and office governs these?	The Lanham Act, or Trademark Act of 1946 , and enforced/organized/administered by the US Patent and Trademark Office
Examples	Coca-Cola® [a name] Nike’s Just Do It® [a slogan] The Trellis logo!  → Potentially even a scent! (Play-doh did this!)
Ways to protect yours	There are varying levels of trademark protection. If you do not register your trademark, you still have what are called common law rights, but the level of protection you have is limited. And you have to show actual damage to your business in order to sue. You can file a trademark at the state, federal, or international level depending on the use and geographic reach of your trademark. If you register a trademark federally, it can last forever so long as you keep using it and to get monetary damages you just have to show someone used your trademark without permission. You do have a duty to protect your trademark once you have it by using it in the marketplace and policing others’ use of it. You can use the ™ after your own trademarks if not registered, but the ® can only be used in reference to registered marks.
Important Considerations & Notes	Whether you should (or can) register a trademark depends on how you’re using your mark and the geographic reach of it. If you’re only selling your products in one state, and not selling anything online, you likely will not be able to register a trademark federally.

	You may have also heard the term “service mark”. This is a kind of trademark that refers to a unique service rather than a product.
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Type of IP	Copyrights
What is it?	The US Copyright Act explains that the potential for copyright protection exists in “original works of authorship fixed in any tangible medium of expression from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.” In other words, they are any form of expression in a tangible format (i.e., ideas are not tangible, and thus, not copyrightable.)
What federal law and office governs these?	The Copyright Law of the United States (Title 17), enforced/organized/administered by the US Copyright Office
Examples	Music Choreography Articles Literature Films This resource! These blog posts! Photographs Art and more
Ways to protect yours	Like Trademarks, copyrights can also be registered. This strengthens your rights as official proof you are the owner of a work and gives you the ability for damages if your copyrights are unlawfully used. Note that copyrights do not need to be registered to be protected under the law. They’re still yours! But they DO NEED to be registered if you want to sue in court. Copyrights can also be protected through contracts . A creative services contract should clearly address who officially owns what part of the creative produced and what rights each party has related to it. In a licensing agreement , you can grant someone the right to <i>use</i> your intellectual property without outright owning it. This is called a license, and levels of a license can vary based on how long the license lasts, the geographic location to which it extends, who else can use it, and more. (You can also grant licenses for use of a trademark!) You can use the copyright symbol (©) regardless if you’ve registered your work or not –it’s yours! This display shows you are actively displaying your ownership and can go against a claim that someone who used your work didn’t know it belonged to you.
Important Considerations & Notes	As a copyright owner, you have the exclusive right to reproduce the work, to prepare derivative works, to distribute copies, to license it to others, and to display it.

Type of IP	Patents
What is it?	Patents give inventors the right to exclude others from using, making, or selling something they’ve created. In the US, patents are granted to inventors of processes, machines, articles of manufacture, or compositions of matter that are new, useful, and non-obvious.
What federal law and office governs these?	The Patent Act , enforced/organized/administered by the The United States Patent and Trademark Office (USPTO)
Examples	The lightbulb Nike’s Vaporfly “supershoes” Google’s page rank system Pharmaceuticals

Ways to Protect Yours	If you have an invention or process, you'd like patent protection for, a patent attorney will work with you to: understand if your creation is novel (nobody else has thought of it and already patented it) and that is even "patentable" or would make sense to do so; fill out your patent application; and take you through the whole approval process. This can be expensive but is worthwhile if you have created something you want to start selling or using in public. We definitely recommend speaking with a licensed patent attorney for this.
Other notes	Patents expire, and when that happens the information contained within them is no longer protected. For example, you may have heard of generic versions of a drug popping up at the expiration of a patent. The government will NOT patent some things, such as ideas, math formulas or scientific principles.

Type of IP	Trade Secrets
What is it?	Trade secrets are the IP rights of confidential information, such as an algorithm, recipe, or process. Trade secrets must be commercially valuable, only known to a limited group of people, and reasonable steps must be taken to protect them. All three of these components are required for a trade secret to exist.
What federal law governs these?	The Defend Trade Secrets Act of 2016 and Economic Espionage Act of 1996 include language around enforcing your rights in civil claims for those who violate trade secret protections, as well as criminal laws concerning the theft of another's trade secret.
Examples	The Krabby patty secret formula Business plans Unpublished research and analysis Know-how
Ways to Protect Yours	While there is no registration of specific trade secrets like there are with trademarks, copyrights, and patents, there are ways to protect your trade secrets through contracts and business practices. Small businesses must take reasonable steps to protect them. Once a trade secret is no longer a secret, it isn't entitled to legal protection! For example, a non-disclosure agreement outlines ownership of specific IP and the other person's consent not to tell anyone else about it. This is of particular use in the case of trade secrets that may be shared between employer-employee or business partners. (See our NDA template for purchase in Trellis's DIY Documents Template Library that can be used when you have either hired a service provider, or are seeking advice on your business, and you may need to share confidential information about your company but don't want it disclosed.)
Other notes	It's worth discussing with an attorney how your trade secrets can be protected, and how to go about enforcing if you think someone has taken yours. An attorney will also help you decide if it makes sense to patent a process, invention, or creation or come up with some short-term protections like those of trade secrets. Patents are public and might expose people to your ideas!

In all of these types, speaking with an attorney, knowing what's included within these rights (and what's not included, also important!), and maximizing your protections will help you understand and enforce all of these types of IP.