

What Are Copyrights, Patents, Trademarks & Trade Secrets? **Office of the General Counsel, The University of Arizona**

Copyright:

Copyright is a property right, owned by the author of original works of authorship for a limited term of years, as set forth in the U.S. Copyright Law. Copyright *does not* protect facts, ideas, processes, concepts, systems of operation, or principles; and it excludes discoveries and inventions (see Patents); and titles, names and slogans (see Trademarks).

The author's "copyright" actually is a bundle of separate rights that are owned and controlled by the author. These are the rights to copy, distribute, display, perform, create derivative works and transmit the work by digital audio media. The author's exclusive rights under copyright are subject to certain exemptions and limitations, including the Fair Use defense.

To be eligible for copyright, the author's work must be creative, original and expressed in a tangible medium of expression (such as books, articles, photographs, paintings, sculpture, software, architecture, choreography, musical compositions, sound recordings, etc.). No formalities (such as registration or copyright notice) are required under the current law.

Initially, the "author" of the creative work owns the copyright. The author has the right to license or sell all, or only a part, of their copyright bundle of rights. The author frequently is the person(s) who creates the work, but not always. In the case of a "work made for hire," the individual's employer is considered the "author" and copyright owner.

In the case of a "work made for hire" under U.S. copyright law the "author" and owner of the copyright is not the individual creator of the work; instead, the employer of the individual, or the person or entity that ordered or commissioned the work, is the "author" and copyright owner from the moment the work is created.

The 1976 Copyright Act defines a "work made for hire" as either:

A work created by an employee within the scope of employment;

OR

A work that is specially ordered or commissioned, when the parties expressly agree in writing in advance of its creation that the work is a "work made for hire." This category applies only to certain types of works: a contribution to a collective work; as part of an audio-visual work; a translation; a supplementary work; a compilation; an instructional text; a test or answer material for a test; or an atlas.

Patent:

A patent is a limited-term monopoly granted by federal statute to inventors of new, useful and non-obvious inventions. Patentable inventions might include a process, machine,

manufactured item, or composition of matter. Patents can also protect any new, useful and non-obvious improvement on an existing invention. Patents are not issued on ideas, or on unmodified discoveries of naturally occurring phenomena.

Trademark:

A trademark is a word, name, symbol, sound, or color that indicates the source and origin of goods and services, and distinguishes them from those manufactured, sold or provided by others. The term "service mark" is sometimes used to describe a trademark that represents services. Trademark rights are created by use in commerce, and registration is not required. Unlike patents and copyrights, trademarks can last forever, as long as they are being used in commerce. Also, unlike patents and copyrights, trademark rights are subject to both federal and state laws.

Trade Secrets:

Trade secrets are subject to state law. Under the Arizona statute, "trade secret" is defined as information (including a formula, pattern, compilation, program, device, method, data, technique or process) that meets two conditions: (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.