Copyright, Trademark and Intellectual Property

by Sophia

WHAT'S COVERED

Information systems have had an impact far beyond the world of business. New technologies create new situations that we have never dealt with before. How do we handle the new capabilities that these devices empower us with? What new laws are going to be needed to protect us from ourselves? In this tutorial, we will discuss the impact that information systems have on intellectual property, and the methods used by individuals, organizations, and businesses to protect their intellectual property.

Our discussion will break down as follows:

1. Intellectual Property

One of the domains that has been deeply impacted by digital technologies is the domain of intellectual property. **Intellectual property** is defined as property (as an idea, invention, or process) that derives from the work of the mind or intellect. Song lyrics, a computer program, a new type of toaster, or even a sculpture, are all examples of intellectual property. Digital technologies have driven a rise in new intellectual property claims. However, it is very difficult to protect an idea. Instead, intellectual property laws are written to protect the tangible results of an idea. As an example, coming up with a song in your head is not protected, but if you write the song down it can be protected. Three of the most commonly known and used intellectual property protections are copyright, patent, and trademark. In the next section, we will review each type of intellectual property protection.

TERM TO KNOW

Intellectual Property

Property (as an idea, invention, or process) that derives from the work of the mind or intellect.

2. Intellectual Property Protection

Protection of intellectual property is important, because it gives people an incentive to be creative. Innovators with great ideas will be more likely to pursue those ideas if they have a clear understanding of how they will benefit. Outside of the United States, intellectual property protections vary. You can find out more about a

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specific country's intellectual property laws by visiting the World Intellectual Property Organization.

2a. Copyright

Copyright is the protection given to songs, computer programs, books, and other creative works; any work that has an "author" can be copyrighted. Under the terms of copyright, the author of a work controls what can be done with the work, including:

- Who can make copies of the work
- Who can make derivative works from the original work
- Who can perform the work publicly
- Who can display the work publicly
- Who can distribute the work

Many times, a work is not owned by an individual, but is instead owned by a publisher with whom the original author has an agreement. In return for the rights to the work, the publisher will market and distribute the work, and then pay the original author a portion of the proceeds.
Copyright protection lasts for the life of the original author, plus 70 years. In the case of a copyrighted work owned by a publisher or another third party, the protection lasts for 95 years from the original creation date. For works created before 1978, the protections vary slightly. You can see the full details on copyright protections by reviewing the Copyright Basics document available at the U.S. Copyright Office's website.

The first sale doctrine, codified at 17 U.S.C. § 109, provides that an individual who knowingly purchases a copy of a copyrighted work from the copyright holder receives the right to sell, display or otherwise dispose of *that particular copy*, notwithstanding the interests of the copyright owner.

Copyright

Protection given to songs, computer programs, books, and other creative works; any work that has an "author."

2b. Trademark

A **trademark** is a word, phrase, logo, shape, or sound that identifies a source of goods or services. For example, the Nike "Swoosh," the Facebook "f", and Apple's apple (with a bite taken out of it) are all trademarked. The concept behind trademarks is to protect the consumer. Imagine going to the local shopping center to purchase a specific item from a specific store, and finding that there are several stores all with the same name! Being able to recognize a trademarked logo or slogan will help ensure that you are buying the product that you want, and not from another company using the same name.

Two types of trademarks exist — a **common-law trademark** and a **registered trademark**. As with copyright, an organization will automatically receive a trademark if a word, phrase, or logo is being used in the normal course of business. A common-law trademark is designated by placing "TM" next to the trademark. A registered trademark is one that has been examined, approved, and registered with the trademark office, such as the Patent and Trademark Office in the United States. A registered trademark has the circle-R (®) placed next to the trademark. While almost any word, phrase, logo, shape, or sound can be trademarked, there are a few limitations. A trademark will not hold up legally if it meets one or more of the following conditions:

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1. The trademark is likely to cause confusion with a mark in a registration or prior application.
2. The trademark is merely descriptive of the goods or services. For example, trying to register the trademark “blue” for a blue product you are selling will not pass muster.
3. The trademark is a geographic term.
4. The trademark is a surname. You will not be allowed to trademark “Smith’s Bookstore.”
5. The trademark is ornamental as applied to the goods. For example, a repeating flower pattern that is a design on a plate cannot be trademarked.

As long as an organization uses its trademark and defends it against infringement, the protection afforded by it does not expire. Because of this, many organizations defend their trademark against other companies whose branding even only slightly copies their trademark. For example, Chick-fil-A has trademarked the phrase “Eat Mor Chikin” and has vigorously defended it against a small business using the slogan “Eat More Kale.” Coca-Cola has trademarked the contour shape of its bottle, and will bring legal action against any company using a bottle design similar to theirs.

DID YOU KNOW

Some trademarks have been diluted and have lost their protection in the United States; for example, “aspirin” (originally trademarked by Bayer), “escalator” (originally trademarked by Otis), and “yo-yo” (originally trademarked by Duncan).

TERMS TO KNOW

Trademark
A word, phrase, logo, shape, or sound that identifies a source of goods or services.

Common Law Trademark
Designated by placing “TM” next to the trademark.

Registered Trademark
Trademark that has been examined, approved, and registered with the trademark office, such as the Patent and Trademark Office in the United States.

2c. Patent

Another important form of intellectual property protection is the patent. A**patent** creates protection for someone who invents a new product or process. The definition of invention is quite broad and covers many different fields. Here are some examples of items receiving patents:

- circuit designs in semiconductors;
- prescription drug formulas;
- firearms;
- locks;
- plumbing;
- engines;
- coating processes; and
- business processes.

Once a patent is granted, it provides the inventor with protection from others who may be infringing on his or

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her patent. A patent holder has the right to “exclude others from making, using, offering for sale, or selling the invention throughout the United States or importing the invention into the United States for a limited time in exchange for public disclosure of the invention when the patent is granted.” As with copyright, patent protection lasts for a limited period of time, before the invention or process enters the public domain. In the United States, a patent lasts 20 years. This is why generic drugs are available to replace brand-name drugs after 20 years.

TERM TO KNOW

Patent

Protection for the invention of a new product or process.

3. Obtaining Intellectual Property Protection

In the United States, a copyright is obtained by the simple act of creating the original work. In other words, when an author writes down that song, makes that film, or designs that program, he or she automatically has the copyright. However, for a work that will be used commercially, it is advisable to register for a copyright with the U.S. Copyright Office if you are working in the United States. If you plan on deploying your work internationally, then an international copyright would be highly advised. A registered copyright is needed in order to bring legal action against someone who has used a work without permission.

Unlike copyright, a patent is not automatically granted when someone has an interesting idea and writes it down. In most countries, a patent application must be submitted to a government patent office. A patent will only be granted if the invention or process being submitted meets certain conditions:

- It must be original. The invention being submitted must not have been submitted before.
- It must be non-obvious. You cannot patent something that anyone could think of. For example, you could not put a pencil on a chair and try to get a patent for a pencil-holding chair.
- It must be useful. The invention being submitted must serve some purpose or have some use that would be desired.

4. Fair Use

Another important provision within copyright law is that of **fair use**. Fair use is a limitation on copyright law, that allows for the use of protected works without prior authorization in specific cases. For example, if a teacher wanted to discuss a current event in her class, she could pass out copies of a copyrighted news story to her students without first getting permission. Fair use is also what allows a student to quote a small portion of a copyrighted work in a research paper. Unfortunately, the specific guidelines for what is considered fair use and what constitutes copyright violation are not well-defined. Fair use is a well-known and respected concept and will only be challenged when copyright holders feel that the integrity or market value of their work is being threatened. The following four factors are considered when determining if something constitutes fair use:

1. The purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes;
2. The nature of the copyrighted work;

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3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole;
4. The effect of the use upon the potential market for, or value of, the copyrighted work.

If you are ever considering using a copyrighted work as part of something you are creating, you may be able to do so under fair use.

TERM TO KNOW

Fair Use

A limitation on copyright law that allows for the use of protected works without prior authorization in specific cases.

5. Open Source Licensing

While electronic media, such as computer software, is afforded the same copyright protection as non-electronic media, there are some situations in which software developers allow others to freely modify their software in spite of its copyright or licensing agreement. In fact, it has become commonplace among software developers to provide a way for others to modify software without fear of penalty. Open source is the term used to describe software that can be modified by anyone. Businesses and organizations that utilize open source software packages often times modify the software to suit the particular needs of their situation. Open source licenses are licenses that comply with the Open Source definition and are packaged with open source software, thus allowing for the software to be freely used, modified, and shared. To be approved by the Open Source Initiative (also known as the OSI), a license must go through the Open Source Initiative's license review process. The following OSI-approved licenses are popular, widely used, or have strong communities:

- Apache License 2.0
- BSD 3-Clause "New" or "Revised" license
- BSD 2-Clause "Simplified" or "FreeBSD" license
- GNU General Public License (GPL)
- GNU Library or "Lesser" General Public License (LGPL)
- MIT license
- Mozilla Public License 2.0
- Common Development and Distribution License
- Eclipse Public License

TERM TO KNOW

Open Source

Term used to describe software that can be modified by anyone.

SUMMARY

The rise of information systems has forced us to rethink how we deal with **intellectual property**. From the increase in patent applications swamping the government's patent office, to the new laws that must be put in place to enforce copyright protection, digital technologies have impacted our behavior. In this tutorial, we covered the various methods, **copyright**, **trademark**, and **patent** used to protect

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intellectual property.

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Intellectual Property
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Patent
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