Trademark, Patent, or Copyright

Trademarks, patents, and copyrights are different types of intellectual property.

The U.S. Patent and Trademark Office grants patents and registers trademarks.

The U.S. Copyright Office at the Library of Congress registers copyrights.

	Trademark	**Patent**	**Copyright**
What's legally protected?	A **word, phrase, design**, or a combination that identifies your goods or services, distinguishes them from the goods or services of others, and indicates the source of your goods or services.	**Technical inventions**, such as chemical compositions like pharmaceutical drugs, mechanical processes like complex machinery, or machine designs that are new, unique, and usable in some type of industry.	Artistic, literary, or intellectually **created works**, such as novels, music, movies, software code, photographs, and paintings that are original and exist in a tangible medium, such as paper, canvas, film, or digital format.
What's an example?	Coca-Cola® for soft drinks	A new type of hybrid engine	Song lyrics to "Let It Go" from "Frozen"
What are the benefits of federal protection?	Protects the trademark from being registered by others without permission and helps you prevent others from using a trademark that is similar to yours with related goods or services.	Safeguards inventions and processes from other parties copying, making, using, or selling the invention without the inventor's consent.	Protects your exclusive right to reproduce, distribute, and perform or display the created work, and prevents other people from copying or exploiting the creation without the copyright holder's permission.

What is a Trademark?

A trademark can be 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.

The word "trademark" can refer to both trademarks and service marks. A trademark is used for goods, while a service mark is used for services.

A trademark:

- Identifies the source of your goods or services.
- Provides legal protection for your brand.
- Helps you guard against counterfeiting and fraud.

A common misconception is that having a trademark means you legally own a particular word or phrase and can prevent others from using it. However, you don't have rights to the word or phrase in general, only to how that word or phrase is used with your specific goods or services.

For example, let's say you use a logo as a trademark for your small woodworking business to identify and distinguish your goods or services from others in the woodworking field. This doesn't mean you can stop others from using a similar logo for non-woodworking related goods or services.

Another common misconception is believing that choosing a trademark that merely describes your goods or services is effective. Creative and unique trademarks are more effective and easier to protect.

Owning a trademark vs. having a registered trademark

You become a trademark owner as soon as you start using your trademark with your goods or services. You establish rights in your trademark by using it, but those rights are limited, and they only apply to the geographic area in which you're providing your goods or services. If you want stronger, nationwide rights, you'll need to apply to register your trademark with us.

You're not required to register your trademark. However, a registered trademark provides broader rights and protections than an unregistered one.
For example, you use a logo as a trademark for the handmade jewelry you sell at a local farmer's market. As your business grows and you expand online, you might want more protection for your trademark and decide to apply for federal registration. Registering your trademark with us means that you create nationwide rights in your trademark.

Using the trademark symbols TM, SM, and ®

Every time you use your trademark, you can use a symbol with it. The symbol lets consumers and competitors know you're claiming the trademark as yours. You can use "TM" for goods or "SM" for services even if you haven't filed an application to register your trademark.

Once you register your trademark with us, use an ® with the trademark. You may use the registration symbol anywhere around the trademark, although most trademark owners use the symbol in a superscript or subscript manner to the right of the trademark. You may only use the registration symbol with the trademark for the goods or services listed in the federal trademark registration.

What is a Patent?

A patent for an invention is the grant of a property right to the inventor, issued by the United States Patent and Trademark Office. The right conferred by the patent grant is, in the language of the statute and of the grant itself, "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. What is granted is not the right to make, use, offer for sale, sell or import, but the right to exclude others from making, using, offering for sale, selling or importing the invention. Once a patent is issued, the patentee must enforce the patent without aid of the USPTO.

There are three types of patents:

1) **Utility patents** 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 thereof;
2) **Design patents** may be granted to anyone who invents a new, original, and ornamental design for an article of manufacture; and
3) **Plant patents** may be granted to anyone who invents or discovers and asexually reproduces any distinct and new variety of plant.

What Can Be Patented

The patent law specifies the general field of subject matter that can be patented and the conditions under which a patent may be obtained.

In the language of the statute: Any person who "invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent," subject to the conditions and requirements of the law.

The word "process" is defined by law as a process, act, or method, and primarily includes industrial or technical processes. The term "machine" used in the statute needs no explanation. The term "manufacture" refers to articles that are made and includes all manufactured articles. The term "composition of matter" relates to chemical compositions and may include mixtures of ingredients as well as new chemical compounds. These classes of subject matter taken together include practically everything that is made by man and the processes for making the products.

The patent law specifies that the subject matter must be "useful." The term "useful" in this connection refers to the condition that the subject matter has a useful purpose and also includes operativeness, that is, a machine which will not operate to perform the intended purpose would not be called useful, and therefore would not be granted a patent.

Interpretations of the statute by the courts have defined the limits of the field of subject matter that can be patented, thus it has been held that the laws of nature, physical phenomena, and abstract ideas are not patentable subject matter.

A patent cannot be obtained upon a mere idea or suggestion. The patent is granted upon the new machine, manufacture, etc., as has been said, and not upon the idea or suggestion of the new machine. A complete description of the actual machine or other subject matter for which a patent is sought is required.

What is a Copyright?

Copyright is a form of protection provided by U.S. law to the authors of "original works of authorship" fixed in any tangible medium of expression. The manner and medium of fixation are virtually unlimited. Creative expression may be captured in words, numbers, notes, sounds, pictures, or any other graphic or symbolic media. The subject matter of copyright is extremely broad, including literary, dramatic, musical, artistic, audiovisual, and architectural works. Copyright protection is available to both published and unpublished works.

Under the 1976 Copyright Act, the copyright owner has the exclusive right to reproduce, adapt, distribute, publicly perform, and publicly display the work. In the case of sound recordings, the copyright owner has the right to perform the work publicly by means of a digital audio transmission. These exclusive rights are freely transferable, and may be licensed, sold, donated to charity, or bequeathed to your heirs. It is illegal for anyone to violate any of the exclusive rights of the copyright owner.

How do I secure a Copyright

Copyright is secured automatically when the work is created, and a work is "created" when it is fixed in a "copy or a phonorecord for the first time." For example, a song can be fixed in sheet music or on a CD, or both. Although registration with the Copyright Office is not required to secure protection, it is highly recommended for the following reasons:

- Registration establishes a public record of the copyright claim.
- Registration is necessary before an infringement suit may be filed in court (for works of U. S. origin).
- If made before or within 5 years of publication, registration establishes prima facie evidence in court of the validity of the copyright and of the facts stated in the certificate.
- If registration is made within 3 months after publication of the work or prior to an infringement of the work, statutory damages and attorney's fees will be available to the copyright owner in court actions. Otherwise, only an award of actual damages and profits is available to the copyright owner.
- Registration allows the owner of the copyright to record the registration with the U. S. Customs Service for protection against the importation of infringing copies.