

MAHAR ENTERPRISES, INC

Intellectual Property Primer (quick facts)

Written or Recorded

Physical Things (and ways of using them)

Names, Brands, Slogans, Decals

COPYRIGHT

© (print)

P (performance)

Right of Ownership lasts for the lifetime of the Owner and 70 years after death.

FEE: \$35/submission
(or as a collection of work)

AGENT: Do It Yourself or pay someone in the "\$hundreds".

- Books
- Websites
- Manuals
- Poetry
- Lyrics
- Melody
- Performance Recordings
- Sheet Music
- Video/Film
- Animation
- Photos
- Drawings & Paintings
- Scripts & Screenplays

Our general interpretation is: *"Your UNIQUE EXPRESSION of an IDEA or ART"*

Copyrights are granted "automatically" and you don't have to "register" your property in order to legally own it. (Registration is required to defend it)

Filing your rights (as with the Library Of Congress (or Writer's Guild of America) is the act of "legally documenting your property" with an entity that has the ability to verify the claims you *might* make about when it was created and who created it.

Copyright Registration is CHEAP and EASY

Patents and Copyrights were designed to help society advance at a faster pace through the open sharing of ideas, art and innovation (while protecting the people who share their art & innovation against "piracy").

You can have "secrecy" or you can have "disclosure with protection" (but not both)

PATENT

Design Patent

Utility Patent

Plant Patent

"Patent Number xxxxx"
"Patent Pending"

Exclusive "Use and Sale" of something for a period of years (decided by the Patent Office). Advancements are eligible for Patents (even by someone else).

FEE: Initially in the "\$hundreds" based on uniqueness of claims/patent type.

AGENT: in the "\$thousands" (to "tens of \$thousands")

"IDEAS" cannot be patented.
Recipes cannot be patented.
(see also Trade Secrets)

Design Patents cover things like the shape of a soda bottle. A cartoon character might be eligible for a Design Patent & Trademark (if the Design is used in marketing).

Utility Patents cover things like an engine.

If your DESIGN is the actual UTILITY behind why your thing "works the way it does", there is some grey area. For instance, the way the hood of a car is used to direct air to an engine (a functional exterior DESIGN) may fit a Utility or Design Patent (but not both).

TRADE SECRET

Your Secret is Yours.

Never revealed to the public.

NEVER revealed to the public.

Yours as long as you protect its secrecy! (never revealed to the public)

COST: Whatever it costs you to keep the secret, protect it (or license it).

AGENT: Talk to a Lawyer if you are unsure about how to achieve confidentiality in your trade.

TRADEMARK™

Registered®

Service Mark (SM)

Certification Mark

Trade Dress

Collective Mark

Exclusive "Use" in marketing. Renewable forever (as long as it is actively being used by owner).

FEE: Initially in the "\$hundreds" based on category.

AGENT: In the "\$hundreds" to "thousands" (or "Do It Yourself")

- Logo
- Organizational Seal
- Emblem
- Badge
- Color Scheme
- Font
- Slogan
- Company Name
- Organization Name
- Made Up Word
- Grey Area:
- Internet Domain Names & Common Business Names (the logos can be trademarked)
- "dot-com" idea- spend the \$10 and buy it now (www.highwaymerge.com)

Our general interpretation is: "The public will think of your product, service, organization and/or a have an emotional or consumer reaction based on your exclusive choice of words, colors, etc..."

If it "elicits a prescribed consumer response" (particularly if your marketing investment has created that association with consumers) you should consider Registering your Trademark.

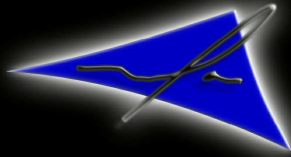
A Patent or Trademark essentially Voids "Trade Secrets" protection

Offering a product for sale (prior to obtaining a patent) can void Patent Eligibility

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Websites
Manuals
Poetry
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Melody
Performance Recordings
Sheet Music
Video/Film
Animation
Photos
Drawings & Paintings
Scripts & Screenplays

The Library of Congress is just that...a library.

All they do is say "yup, it's here and we received it on this date". You still have to pay all the costs of defending your rights if you ever need to pick a fight.

NOTE: Screenwriters in particular may be interested to know that the Writer's Guild of America (www.wga.org) ALSO has a registry specifically structured around the Film Industry. The benefit of the WGA is that you will be assigned a registration number for your script (recognized by the industry) and the WGA offers free legal support in the event you need to pursue your rights (unlike the Library of Congress).

If you are a screenwriter or playwright you might want to register with BOTH - \$70+/- is a small price to pay for "double insurance AND legal support".

SUMMARY: If your idea is an "expression", Copyrights offer the most economical way of recording and registering your 'general' intellectual property rights (artists, writers, designers and creative minds) ...but **Copyrights do NOT protect INVENTIONS.**

COPYRIGHTS relate to "expression". A Copyright is automatically the property of the owner from the moment it is expressed in a tangible form (on paper, on film, on the Internet, etc...).

Copyrights protect works of authorship, such as writings, music, and works of art that have been tangibly expressed. Copyrights are an automatic right but it is wise to record your rights with the appropriate entity.

MAIL IT TO YOURSELF?:

This is the most common "over the counter" advice I hear and I DO NOT RECOMMEND it.

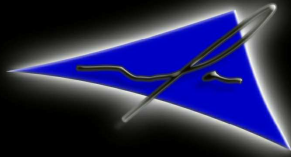
Sure, the truth is that you could mail your manuscript to yourself in a genuinely "tamper proof" envelope with a certified receipt and postmark for about \$25...and even open it in front of a judge as "proof" that it has been sealed for whatever period of time...but in order to get in front of a judge to claim "damages" your copyright needs to be registered with the Library of Congress anyway...might as well spend the extra \$10



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PATENTS (and "patent pending")...

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PATENTS relate to INVENTIONS (not ideas): a US PATENT gives an Inventor the exclusive right to the Invention in the USA for a certain period of time. Once a PATENT is issued to an Inventor they become the only person/company who can legally sell, make and/or use the invention which is covered by the PATENT. In exchange for this protection the government requires you to publicly disclose "how it works" (this way, when your patent expires, the world can benefit from your genius). **PATENTS EXPIRE (14-20yrs)**

DESIGN PATENT (A Cow Shaped Milk Jug?)

<http://www.uspto.gov/main/glossary/index.html#design>

See also: "Trade Dress" under "Trademarks"

UTILITY PATENT (a snow-plow or a new bacteria)

<http://www.uspto.gov/main/glossary/index.html#utility>

PLANT PATENT (Breed plants? - congrats on your Cactus Walnuts)

<http://www.uspto.gov/main/glossary/index.html#plant>

ACTUAL COST is tough to calculate without knowing the complexity of an invention, but if you have a "single patent" for an invention that can be easily conveyed on paper here is an honest "guess":

APPLICATION FEES will run \$395-\$2,500 PREP & LEGAL FEES will run \$500-\$15,000

Applications are scrutinized for legal language, trade related terminology and have to be submitted with considerations for related patents that may already exist (or may come to exist). Good Patents cover a wide territory requiring "carefully chosen words" - which is why you should work with a professional wordsmith in your "trade" (because using the word "knob" to describe a "cam" is the type of thing that will compromise your patent).

Patent applications are basically "the written description" of what your invention is (accompanied by illustrations) - think about describing the way a toilet flushes and you can begin to see how much the right words make a difference. The claims you make are then validated or denied by the great and powerful "Patent OZ" (this is your list of things that you claim "weren't possible before your genius mind came up with them"). IDEAS ARE NOT PATENTABLE- only the APPLICATION OF AN IDEA can be patented. For instance: The law of gravity *isn't patentable*, but an elevator *is patentable* (using weights and pulleys to apply the laws of gravity is a "unique application" of science).

RECIPES ARE NOT PATENTABLE - see "Trade Secrets".

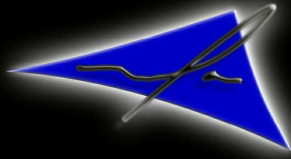
SUMMARY: PATENTS can be an improvement upon someone else's invention or be a completely new invention...but the result has to be more than an "idea"- it has to be "useful" (and scientifically identifiable as uniquely yours) in order to qualify for patent protection. You can get a **Design Patent** for a certain color scheme and accessory package (even if it is on someone else's product). You can get a **Utility Patent** for a new type of seat to be used on a popular brand of bicycle (even if the bicycle already has a patent and it is made by another company).

We're not trying to make you an expert so that about covers it.

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TRADEMARKS...

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TRADEMARKS & SERVICE MARKS

TRADEMARKS basically relate to what most of us call "**BRANDS**": These could be Fonts, Names, Logos, Symbols, Colors, etc...a good measure of a Trademark is whether the use of it in advertising makes an impression towards specific products and services that are uniquely associated with the trademark holder. **TRADEMARKS can be renewed forever** (as long as they are being used in commerce).

NOTE: An abandoned TRADEMARK can be registered by someone else (Chock Full O' Nuts Brand coffee is an example of a TRADEMARK that was abandoned and then became registered by a different party and is now a Brand you see again on store shelves).

TRADEMARK (Furniture Store Logo/Slogan - "A Product")

SERVICE MARK (Consulting Company Logo/Slogan - "A Service")

CERTIFICATION (a marking that "certifies", like a "seal")

SOUND/MOTION (like a computer "LOG ON" screen and sound)

TRADE DRESS (A Cow Shaped Milk Jug; widely interpretive)

COLLECTIVE (An group using a "Mark" for their group)

ACTUAL COST is based on how many categories and ways you want your "Mark" recognized and protected. Generally Speaking: Application will run \$275-3,000 (from "Do It Yourself" to "Contracted")

The point of a trademark is to prevent your competitor from coming out with an identity in commerce that will confuse the consumer as to the *source of the goods*. (SERVICE MARKS relate to the **source of services**; they are pretty much the same thing- "a Mark" is precisely what it seems- a memory device).

A Trademark can be filed fairly easily (even online). This is one of the few areas of intellectual property where the "Do It Yourself" entrepreneur can save a little money. Before filing a Trademark or Service Mark be sure and get familiar with the rules and regulations (read a couple [books](#) and/or learn your way around the www.uspto.gov website).

SUMMARY: If you use it in marketing to say who you are without saying "who you are"...that is a marketing impression gained from an association you built (and it is likely intellectual property).

TRADE NAMES and COMMON WORDS cannot be TRADEMARKED. Tennessee Windows cannot be trademarked unless it is uniquely attached to something that has taken on a new meaning in commerce as a result of their brand (if Tennessee Windows was a pickle jar company they might have a case for Trademark protection). A logo is not a trade name. An image is an image (the distinction is important).

TRADEMARK™

Registered®

Service Mark (SM)

Certification Mark

Trade Dress

Collective Mark

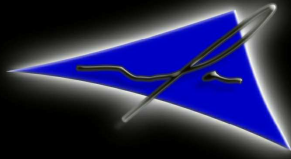
**Exclusive "Use" in marketing.
Renewable forever (as long as it is actively
being used by owner).**

FEE: Initially in the "\$hundreds" based on category.
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TRADE SECRETS...

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TRADE SECRETS

TRADE SECRETS are your highly prized confidential pieces information, methodology and/or strategy. Simply put: *"Information that shouldn't be made public because your competition could use it to compete with you"*.

RECIPES are not eligible for Patent Protection.

If something makes your company, product or service more valuable (especially if is ALSO eligible for Patent protection) you need to ask yourself the following: Would a Patent (public disclosure) ruin your ability to make money off of a trade secret? If you are better served by investing your time, money and energy towards KEEPING IT A SECRET, do that instead.

There are laws in the United States that protect companies against theft of trade secrets. In any case, the important component of trade secrecy is your obligation to it. If you openly share your secrets with your employees, customers or vendors (especially without legally obligating them to also "keep it a secret") you really have no way of claiming that your trust or secret was violated.

The magic words here are "CONTRACT" and "PRIVILEGE". If you have a sensitive trade secret you should take every precaution to have a contract in place for anyone who becomes privileged to that information.

PIECES OF SECRETS: Many companies protect the integrity of their TRADE SECRETS by breaking their recipe or methods into separately executable parts. A Baker, for instance, may mix all of the dry "secret" ingredients in a separate room (even off the premises) and then give those measured quantities to a person that adds them with the rest of the ingredients. The same could be done with a data entry process or a manufacturing method.

That still doesn't stop the fact that "Baker's know how to bake" and some really good Baker with a superb sense of taste can eventually figure out how to make your "special brownies" (even if by trial and error [or "reverse-engineering"]). The important notion here is that your secret gives you an advantage for however long you can keep it a secret.

NOTE: If your secret can easily be "reverse-engineered" you should still keep an eye on secrecy but **also TURN YOUR FOCUS TO MARKETING YOUR PRODUCT OR SERVICE BEFORE YOUR COMPETITORS FIGURE IT OUT** (so that you can keep your advantage while your competitors are still trying to catch up). There is something to be said about being "first to market".

SUMMARY: If it should be a secret, keep it a secret (if you need to ask someone's advice have them swear to secrecy before asking- and that includes if you have to ask **MEInc.** a question).

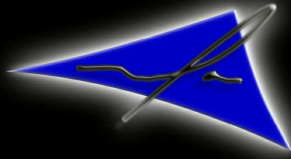
If anyone you deal with isn't willing to sign a confidentiality/secrecy document in order to learn about your sensitive business information (even for legitimate reasons, and especially for legitimate reasons), you are best served by finding someone else to hire, consult or contract for that scope of work.



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THE PUBLIC DOMAIN...

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PUBLIC DOMAIN

PUBLIC DOMAIN is the final life of intellectual property- when intellectual property becomes "Public Property" it is completely subject to the use, sale, interpretation and exploitation by the general public. When PATENTS, TRADEMARKS & COPYRIGHTS "expire" (and TRADE SECRETS become public knowledge) they are part of the PUBLIC DOMAIN.

Generally speaking, as a member of the "public" you are entitled to use (or otherwise exploit) anything that is in the PUBLIC DOMAIN.

PUBLIC DOMAIN

SONGS WRITTEN BEFORE 1926
WORKS OF ART & LITERATURE
GOVERNMENT INFORMATION

Government information is an interesting category of PUBLIC DOMAIN. It is after all "for the people, by the people". What makes Government information so valuable is that access to it is relatively inexpensive, it is widely available and in most cases a LOT of money and talent has gone into the accuracy of the information (your tax money).

EXAMPLES:

If you wanted to write a book on the subject of "patents and copyrights" or "the coolest inventions of 1998" you could go to the Library of Congress and the Patent Office archives and reproduce any public information in your book, without having to pay royalties (and YOU can copyright your book because it is a protected "expression" - you've gone through the trouble of organizing that information "your way"). If you wanted to publish a book of your favorite Shakespeare quotes along with your own illustrations and art you can- Shakespeare's work is in the PUBLIC DOMAIN...(and YOU can copyright your book because it is "your interpretation").

Elvis Presley recorded many songs that used the melody of old folk, blues and even gospel songs (music that was in the PUBLIC DOMAIN at the time). For some of his biggest hits he only wrote new lyrics (and some cases he used the song just as it was written and only added his unique "rock n roll" flavor to it). "How Great Thou Art" is a Gospel Hymn- no royalties paid to a songwriter because it was in the PUBLIC DOMAIN (as are things like the National Anthem and most Gospel, Folk and multi-generational songs from early America)...and Elvis copyrighted is new songs...as "his artistic expression".

NOTE: To make a point here...please note that "ELVISTM" is a **TRADEMARKED** use of *Elvis Presley's name (all capital letters)*. **IF YOU CAN VALIDATE YOUR RIGHTS TO A BRAND IDENTITY YOU CAN OWN IT. See Trademarks**



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