

## **What the Heck is *Intellectual Property*, Anyway?**

It is not a brainy building and although it does not have an address and may not have “location, location, location” going for it, it is everywhere and it mostly certainly is valuable.

We generally refer to five different types of intellectual property: specifically, trademarks (including service marks), trade secrets, copyrights, patents, and the right of publicity. One can think of it like real estate in that it consists of certain ownership rights that the law protects in various ways. Like real property, these rights can be transferred (and licensed for royalties) but unlike real property, however, most IP rights exist only for a limited time.

Trade dress may be a sixth type; it is similar to trademarks and service marks. It consists of the appearance of a particular product including such things as shape, color, copy, arrangement of words and figures and other visual aspects that tend to identify a particular product in the market place and distinguish it from others. Trade dress can exist so long as the trade dress of a particular item continues to be distinctive.

Likewise, trade secrets consisting of formulae, patterns, compilations of data, programs, methods, techniques, processes and the like that are in fact kept secret can continue to be protected by state trade secret law for so long as the trade secret status exists. Many businesses consider customer lists as trade secrets and they can be depending on a number of factors including the type of business and so long as diligent efforts are made to actually keep the information secret not only from outside inquiry but within the company by undertaking security measures beginning with physically segregating it and taking steps to be sure that it is only disclosed to employees who have a need to know and who themselves abide by company policies to keep the information secret. Indiana is one of 42 states that have enacted the Uniform Trade Secrets Act.

Trademarks are protected under both state and federal law. Registration of a mark in Indiana with the Secretary of State is a relatively simple process and can provide some limited intra-state protection. Marks can last indefinitely so long as they continue to be used in commerce and as long as they are periodically renewed with the Secretary of State on the state level or the U.S. Patent and Trademark Office on the federal level or both.

Copyrights are creatures of federal law and exist to protect original works of authorship that appear in a tangible medium including such things as film, paper, digital or electronic media and even things such as actual products, i.e., an original design of a unique widget can have copyright protection. For the best level of protection, copyrights are registered with the U.S. Copyright Office and should show a copyright notice.

Patents are issued only by the U.S. Patent and Trademark Office for any new and useful process, machine, manufactured article, or composition of matter (even plants!) as well as

any new and useful improvement of those things and give the owner the right to exclude others from making or selling those things for 20 years from the first patent application. All sorts of things can be patented and for a different slant on inventions, check out [patentlysilly.com](http://patentlysilly.com) and the patent museum at [ipwatchdog.com](http://ipwatchdog.com).

The right of publicity is just what it sounds like (the control of the commercial use of a person's name, likeness, etc.) and Indiana has perhaps the broadest right of publicity statute protecting a deceased individual's right of publicity for a period of 100 years after death.

Obviously, the above is an **extremely limited** treatment (not to be relied upon) of this complex and fascinating field. Business owners should be evermore alert to the IP implications of all transactions and day to day operations (from both the defensive and offensive perspective) in an increasingly competitive market and flat world. IP can be just as valuable or more valuable to a business as the other kind of property on which its factory or office sits.

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