

Keeping Secrets Secret

A company's secrets can be among the most valuable of its possessions. Yet few companies take the necessary steps to effectively protect their secrets.

Consider your secrets: they include not just special formulas (like the Coca-Cola® recipe) but also many other things such as the names, addresses and history of your customers, your product and marketing plans, the names and addresses of your current and former employees, their salary and benefit information, financial information, your suppliers, your discount and collection policies, things that didn't work or that you'd never try again. Indeed, anything that gives you a benefit over your competitors, or that would give them a benefit over you if known, and that you keep secret, can be and should be a trade secret of your company.

It is essential to keep company secrets secret for them to be protectable in court. To keep them secret, you can (1) keep them under lock and key, and restrict all access to company information to only those with a need to know, (2) have an open-file policy and give all employees access to company info, or (3) combine these two policies. In any case, you should provide notice to your employees of your trade secrets, mark your trade secrets as such, and regularly remind your employees of the importance of keeping company secrets secret. If you'd like more information about such policies and practices, call us.

The Rights of Copyrights

Since March 1989, in the U.S., the author of something that is copyrightable automatically owns the copyright. It is not necessary to mark it, or to register it, to own the copyright. (But it is

desirable to mark each copyrightable thing with a copyright notice, and it is desirable to register each copyrightable thing within three months after its creation.)

So, what is copyrightable. The easy answer is to say "all writings of an author" because that is what the statute says. These "writings" include such things as any text of more than a minimal length that includes any esthetic element. In other words, almost everything that you write. Copyrightable works also include songs, plays, poems, choreographic directions, art, designs, software, all sorts of sculpture, and now even integrated circuit chip designs.

Who owns the copyright? The author. If the work was one made "for hire," then the hiring party is the author and owner. Since corporations can only act through people, it is important that they define and protect the copyrightable works that are created for them by those they employ. We can help you do this. We can also help in many other ways concerning your copyrights and in respecting the copyrights of others.

Privacy Rights

In recent decades, U.S. courts have come to respect and protect privacy rights. So you should too.

There are basically two kinds of privacy rights: An individual's right to be left alone, and an individual's right to profit from his or her image and name.

The right to be left alone was the first privacy right to be recognized. Basically, it protects individuals from publicity unless they are involved in a newsworthy event, or unless they have done something to attract attention.

The right to profit from one's image or name is of more recent origin. It is the right which prevents anyone from using the name, voice or

likeness of an actor, or anyone else that by their accomplishments has achieved some degree of public interest (e.g. Albert Einstein). In some states this right can survive the death of the individual; in other states it does not. When you are getting into this area, you should have proper legal advice, which we would be happy to provide.

Marking Your Copyrights, Patents, and Trademarks

Though not required by law for all your intellectual properties, proper marking does provide several advantages including notice of your claimed rights, deterrence of potential infringement, and even possibly increased damages in case of infringement.

Copyright

Proper copyright marking consists of using the symbol ©, or the word "Copyright" followed by the year of first publication and the name of the owner of the copyright in the work

i.e., © 2004 IBM Corporation or
Copyright 2004 IBM Corporation

Patent

Patented articles must be marked as such in order to obtain damages resulting from infringement of the patent. Proper patent marking consists of using the word "Patent" or abbreviated "Pat." followed by the number of the patent.

i.e., Patent 1,234,567 or
Pat. 1,234,567

Trademark

Trademark notices should directly follow the mark.

For registered* marks, proper trademark marking consists of using the ® symbol or the phrase "Registered in U.S. Patent and Trademark

Office," or "Reg. U.S. Pat. & Tm. Off" in connection with the mark:

i.e., YAHOO®

For marks which have been used in connection with goods or services but not registered on the Federal Register, proper trademark marking consists of using the TM (trademark) or SM (service mark) symbol in connection with the mark:

i.e., GOOGLE™
MORGAN STANLEYSM

Also remember, **always** use a trademark as an adjective modifying a noun. **Never** use a trademark as a noun.

If you need further information or would like to learn more about any of the foregoing, call us.

(*Registration with the PTO)

Recent Happenings at the PTO

The United States Patent and Trademark Office (PTO) has announced that Trademark Commissioner Anne Chasser has resigned. No word yet about who will replace her. She was appointed in 1999, and has done an outstanding job.

The PTO has been working with the other two major trademark rights offices, the European Trademark Office and the Japanese Trademark Office, to streamline the trademark registration process for owners of marks used in international commerce. They just announced agreement on a common list of goods and services identifications, which is a major step forward.

Finally, the Trademark Operations unit of the PTO is in the process of moving its offices from Arlington, Virginia to Alexandria, Virginia. The move is expected to be completed by December 2004.