

Intellectual Property Law Fundamentals

Intellectual Property Law Fundamentals

SECOND EDITION

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Walter Toomey
Bettina M. Lengsfeld



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Michael gives thanks to his wife, Christine, whose love, kindness, and poetic nature make everything in life possible and worthwhile.

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Preface

This introductory text explores the origins, sources, function, and values of the exciting world of Intellectual Property (IP). Topics covered include copyright, trademark, patent, trade secret, domain names, and geographical indication, with primary attention given to IP law in the United States and ample coverage of key international laws. The history, development, and modern language is presented in an easy-to-absorb modular format with exercises and review questions designed to breakdown the many aspects of US and international IP law. This book is designed as a text for classroom use.

Text Outcomes: Paralegal and Legal Studies students using this text should be able to:

1. Identify and describe the basic types of protectable IP rights in the United States;
2. Identify how IP rights have changed in the United States throughout history until the present laws;
3. Differentiate between the different forms of IP and the specific common law and statutory rights secured under both United States and, to a more limited degree, foreign law;
4. Identify the limits of IP rights by duration and statutory interpretation of language like the “fair use” doctrine for copyrights, and constitutional boundaries under the First Amendment;
5. Understand the basic research process used to discover or locate existing protectable interest in IP in the United States;
6. Understand the basic application processes used in the United States to register certain types of IP in order to obtain greater protection, and be familiar with the scope of that greater protection;
7. Demonstrate a basic familiarity with some common government websites and online research tools used in IP legal practice;

8. Articulate causes of action to protect IP rights, and understand the common defenses to claims of infringement or unfair competition;
9. Understand the various remedies available to address IP infringement or unfair competition in the United States, including civil and criminal proceedings and monetary and non-monetary remedies;
10. Discuss the public policy and societal value considerations behind modern IP rights and their limits.

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Our outside reviewers offered meaningful assistance to make the text tighter and more focused.

Comparison and Reference Chart

	Copyright	Trademark
Subject Matter Protected	Works of original authorship fixed in a tangible medium of expression such as writing, music, painting, photo, literature, software, games, sculpture, sound recordings	Identifying devices, signs, or symbols, which may include words, names, emblems, designs, and logos
Requirements	Originality, expression, fixation	Identify and distinguish sources of goods or services without confusion
Term of Protection	For works created after January 1, 1978, life of the author plus an additional 70 years. For an anonymous work, a pseudonymous work, or a work made for hire, a term of 95 years from the year of its first publication or a term of 120 years from the year of its creation, whichever expires first. For works first published prior to 1978, the term varies	20 year renewable federal terms, potentially unlimited state protection with continuous use
Manner of Acquisition	Automatic; Registration with U.S. Copyright Office provides advantages	Automatic with use. Federal and state registration grants more protection
Infringement	Copying substantial portion of work; substantial similarity	Likelihood of confusion, mistake, deception, or dilution
Variations		GI, Service Marks, Certification Marks, Collective Marks, Trade Dress

Geographical Indications	Patent	Trade Secret
Identifying devices, signs, or symbols, which may include words, names, emblems, designs, and logos	Process, machine, manufacture, or composition of matter, or any new and useful improvement thereof	Undisclosed information that is valuable because it is secret, such as a formula, customer list, or business information
Identify and distinguish the geographical source of products	Novelty, non-obviousness, utility, definiteness and enablement	Reasonable effort to maintain secrecy, information not easily obtainable
Protected as trademarks in the United States.	20 years from the effective filing date, 14 years for design patents	Potentially limitless as long as secrecy is maintained
Automatic with use. Federal and state registration grants more protection	Application to the PTO	Automatic as long as secrecy is maintained
Likelihood of confusion, mistake, deception, or dilution	Making, using, offering to sell, selling, or importing into the U.S.	Unauthorized use or disclosure of information obtained through improper means
	Design Patent, Plant Patent	

