

Determining which tool is offers the best protection

Copyrights and trade secrets can be important assets that can add value to your business.

They are also an important protection for work of your creation or customer information, know-how and other business information developed over time or in current use and proprietary to you.

If properly used they can give you an edge over your competition in business and serve as a low cost, practical barrier to entry.

The best protection for inventions is utility patents, which offer a 20-year



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monopoly from date of grant. Even those who do not copy or independently develop are barred from use unless they license from the patent holder.

However, to gain patent protection, the invention must be a "useful process, machine, manufacture or composition of matter" or improvement of the same.

It cannot be obvious and must be an advance over prior art, with the application filed within a year of first publication, public use or offer for sale. It must be fully disclosed and can take several years and generally \$7,000 to \$12,000 in filing and legal fees, and after vetting by the U.S. Patent and Trademark Office, it may prove to be too narrow to protect against infringement.

Thus, if the invention is not intended for mass marketing, or if disclosure, time delays or costs or patent requirements raise concerns, then, copyright or trade secret protection may offer

cheaper and more practical intellectual property protection.

Copyright filings: Copyright is the exclusive right to copy and control publication of original expressive work fixed by the author in a written work, sketch, computer code, audio or video recording, architectural work or other tangible medium. Thus, copyright protects the expression but not the idea itself and bars against copying but not independent development.

Federal filing within three months of publication or prior to infringement is needed to gain statutory damages and attorney fees in later infringement actions to defend works. A deposit of materials is needed, but filing costs and expected attorney fees are a fraction of patent costs — generally, less than \$1,000, even with compilation and serial filings, and sometimes even less than \$500, with registration secured in months not years. Yet, duration is longer than patents — author's or joint author's life plus 70 years, or 35 years from author's transfer, or 95 years from publication in case of "work for hire."

Copyright protection for computer source and object code is also possible, where disclosure in the form of Copyright Office deposit blots out most of the source code.

Trade secrets: A trade secret may consist of any formula, pattern, device or compilation of information used in one's business that gives the owner an opportunity to obtain advantage over competitors who do not know or use it.

Thus, while trade secrets have the broadest scope in information covered, with novelty or even expression not required, they are the hardest to safeguard because they must be kept confidential and vigilance is needed.

State law and court decisions that uphold trade secrets look to these elements:

- Extent to which information is known outside business and within business.
- Extent of measures taken to guard the secrecy of information.
- Value of information to owner and its competitors.
- Amount of money or effort expended in developing information.
- Ease or difficulty to properly acquire or duplicate information by others.

Trade secret protection involves confidential information agreements with employees, contractors and sometimes distributors and clients as well — those with access to the information and further programs internally to demonstrate care and protection afforded information. Attorney fees for such work may be \$1,000 or more, still far less than patent costs. Duration is as long as secret is maintained. Some continuing trade secrets have existed for centuries.

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- If you or your company would like help to protect confidential information from use in competition with your business
- Or if you have other questions or issues involving or copyrights, trade secrets, trademarks or a service marks or other intellectual property

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