

Intellectual Property: An Artist's Primer

Philadelphia Volunteer Lawyers for the Arts
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200 S. Broad Street, Suite 700
Philadelphia, PA 19102

Phone: 215.790.3836, ext. 1
Fax: 215.790.3888

PVLALegal@artsandbusinessphila.org
www.artsandbusinessphila.org/pvla

What Every Artist Should Know - A Pocket Survival Guide

By Shannon Petty for Philadelphia Volunteer Lawyers for the Arts

Intellectual property law is an essential element to most artistic works. While most artists are familiar with the terms copyright, trademark, and patent, confusion exists about their precise meanings.

Copyrights extend to original, creative works that are fixed in a tangible form. Copyright protects works actually expressed — things on paper and film — but does not extend to mere ideas. Common examples include literary works, music, dramatic works, choreography, pictures, graphic and sculptural works, motion pictures, sound recordings, and architectural works.

Trademarks function as a means of legal branding. Trademarks exist to help consumers identify the source of a given product. Words and logo designs are the most common forms of trademark. Some examples of trademarked company names include Coca-Cola, FedEx, and Apple.

Patents provide legal protection to inventions, processes and methods. Works eligible for patent tend to be more technical in nature. Patents differ from copyright in that they offer legal protection for some ideas as well as physical inventions.

What do I get with a copyright, trademark, or patent?

Copyright, trademark, and patent provide various, distinct rights to an owner. Most importantly, they provide an owner with certain exclusive rights in a work. The following chart briefly details the various rights associated with copyright, trademark, and patent. For more information, please visit our website at <http://www.artsandbusinessphila.org/pvla>.

COPYRIGHT

The exclusive rights to reproduce, prepare derivative works, distribute, perform, & display the work. A work copyrighted today would generally be protected for *the life of the author plus seventy years*.

TRADEMARK

An exclusive right to use the mark in connection with your goods, including protection from infringement or dilution (others using or weakening the mark). Trademark protection *exists in perpetuity*, provided you choose to renew it.

PATENT

Once approved by the US Patent and Trademark Office, the exclusive right to make, sell, use, or offer to sell an invention, process, or method. Patent protection exists for *twenty years after the patent is issued*.

How do I know which protection I should seek for my work?

For a work to receive **copyright** protection, it must meet two important requirements:

1. The work must be original — but not necessarily brand new. In the copyright realm, originality is found where a work is original to its author and contains a minimal spark of creativity. A work is original to the author when it is the author's independent creation; if two authors write two very similar poems about Rittenhouse Square, then each work is original to the respective artist as long as no copying occurred. This actually makes it easier for works to receive copyright protection because works do not have to be entirely novel creations.

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2. The work must also be fixed in a tangible medium. A work must therefore be physically embodied so that others may experience it. For example, if the work exists on paper, canvas, or as an audio or video recording, it qualifies where an improvised, unrecorded performance would not.

It is generally accepted that copyright protection does not extend to ideas or processes. Facts alone are also not afforded copyright protection. Only an artist's particular expression of an idea is protected. For example, while the facts in a newspaper are not protected by copyright, the creative elements in assembling the facts are protected. If it conforms to the above rules, a creative work for copyright purposes can be almost anything.

Trademark protection extends to words, phrases, logos, graphic symbols, or any combination thereof. In some instances, even a color or shape can be trademarked. Those looking to distinguish their product from others in the market should seek trademark protection.

Patent protection should be obtained for any work that includes an invention, process, or method. For a work to receive patent protection, it must first meet a novelty requirement. The US Patent and Trademark Office will evaluate your work to make sure it has never before been known or used by others. This extensive evaluation is central to the patent application process. Patents require that a work be "new" so that it may reward protection to the first and true inventor. However, exceptions exist to the "novelty" requirement. For example, if you find a new artistic use for an already known photography development technique, patent protection may be obtained even though the technique may not be novel. Combinations of previously patented methods may also receive protect if the combination is not obvious. Due to the complexity involved with patents, it is wise to speak with a patent attorney for more information. Contact PVLA for assistance.

MATERIALS PROTECTED BY COPYRIGHT		
• Books • Movies • Poems	• Songs • Pictures	• Paintings • Buildings
MATERIALS PROTECTED BY PATENT		
• Eyelash curler • Tennis Racket • Nose Hair Trimmer	• Pacifier • Treadmill	• Electric Guitar • iPod
TRADEMARK EXAMPLES		
• Apple (company name) • NBC chimes (sound) • NBC peacock (brand)	• McDonald's double arch (logo) • Coca-Cola (logo)	• McDonald's — "I'm Lovin It" (slogan)

Where can I get additional information?

This pocket guide was designed to provide artists with basic information containing intellectual property. For additional details, please visit the following:

- The US Patent & Trademark Office - <http://www.uspto.gov>
- US Copyright Office - <http://www.copyright.gov>
- Philadelphia Volunteer Lawyers for the Arts - <http://www.artsandbusinessphila.org/pvla>

For more information regarding these or any other arts-related legal issues, contact:

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