



Frequently Asked Questions

1. What does the U.S. Patent and Trademark Office do?

The U.S. Patent and Trademark Office (USPTO) carries out several functions. The USPTO examines patent applications to determine if the applicants are entitled to the exclusive rights that are granted by the government of the United States if the contents of the applications comply with the legal standards set forth by Congress and the courts. The USPTO also reviews trademark applications to determine if they meet the requirements for Federal registration. It does not decide, however, whether an applicant has the right to use a mark (which differs from a right to register).

In addition to examining patent and trademark applications, the USPTO leads the effort within the Federal government to develop and strengthen domestic and international intellectual property policy and protection.

2. What is the Small Business Education Campaign?

Over the past year, the Administration has developed the Strategy Targeting Organized Piracy (STOP!) initiative, a comprehensive and coordinated U.S. government effort to smash the criminal networks that traffic in fakes; stop trade in pirated and counterfeit goods at America's borders; block bogus goods around the world; and help small businesses secure and enforce their rights in overseas markets. The USPTO's Small Business Education Campaign is part of this comprehensive government-wide effort to curb IP crime and strengthen IP enforcement – both domestically and overseas.

3. What is intellectual property?

As defined by Article 2, section (viii), of the Convention Establishing the World Intellectual Property Organization, done at Stockholm, July 14, 1967, "intellectual property" shall include the rights relating to: literary, artistic and scientific works, performances of performing artists, phonograms, and broadcasts, inventions in all fields of human endeavor, scientific discoveries, industrial designs, trademarks, service marks, and commercial names and designations, protection against unfair competition, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields."

A **patent** for an invention is the grant of a property right to the inventor, issued by the United States Patent and Trademark Office. The right conferred by the patent grant is "the right to exclude others from making, using, offering for sale, or selling" the invention in the United States or "importing" the invention into the United States for a limited time in exchange for public disclosure of the invention when the patent is granted. Patents are territorial in that patent protection must be applied for in each country where protection is sought.

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A **trademark** protects words, names, symbols, sounds, or colors that distinguish goods and services from those manufactured or sold by others and indicate the source of the goods. Trademarks, unlike patents, can be renewed forever as long as they are being used in commerce. Registration of a trademark is not required in the U.S., although there are benefits to obtaining a Federal trademark registration through the USPTO. Trademarks are territorial; unlike the United States, most countries require registration of trademark rights.

A **copyright** is a form of protection provided to the authors of “original works of authorship” including literary, dramatic, musical, artistic, and certain other intellectual works, both published and unpublished. A copyright protects the form of expression rather than the subject matter of the writing. The U.S. Copyright Office handles copyright registrations. Owners of copyrighted works seeking protection in other countries should first determine the extent of protection available to works of foreign authors in that country.

Generally, a **trade secret** can include a formula, pattern, compilation, program, device, method, technique or process that is used in one’s business, and has independent economic value that provides an advantage over competitors who are not aware of it or use it. Under most circumstances, a trade secret is lost once it is independently discovered.

4. What is the difference between piracy and counterfeiting?

The term "counterfeit" describes fake goods. The term "piracy" describes the act of reproducing movies, music, books or other copyrighted works without permission from the copyright owner.

5. What kind of protection I should apply for? What types of things can be patented, trademarked and copyrighted?

Different types of intellectual property are protected by different means. In the U.S., patents may be available to any person who “invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” Patent protection must be sought by application with the USPTO. Trademarks protect words, names, symbols, sounds, or colors that distinguish goods and services from those manufactured or sold by others and to indicate the source of the goods. Registration with the USPTO is not required, but does provide certain advantages. Copyrights protect original works of authorship, including literary, dramatic, musical, artistic and certain other works, both published and unpublished. In the United States, the U.S. Copyright Office handles copyright registration that, although not required for protection, does confer advantages.

6. How long does patent, trademark or copyright protection last?

A U.S. utility patent is granted for 20 years from the date the patent application is filed; however, periodic fees are required to maintain the enforceability of the patent. U.S. trademarks can last forever, as long as the trademark is used in commerce and defended against infringement. Copyright protection is for a limited term. For works created after January 1, 1978, copyrights last for 70 years after the death of their owner. For works made for hire (covering the usual type of work owned by a small business), the copyright lasts for 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.

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7. How are IP protection laws enforced?

Most intellectual property law in the United States is Federal law, giving the Federal courts exclusive jurisdiction to handle patent and copyright cases, and those claims brought under the Lanham Act (trademark and unfair competition). Under U.S. Federal law, patent, copyright, and Federally registered trademark rights holders have civil remedies available to them for infringement of their rights. This normally involves the filing of a civil action by the right holder in a Federal district court and the subsequent adjudication of the case in Federal court.

Although the majority of IP enforcement in the United States is carried out through private civil actions, there are also IP offenses and penalties in State and Federal criminal codes. Criminal prosecutions often result from referrals by the right holder to the investigative agencies including the Federal Bureau of Investigation and U.S. Immigration and Customs Enforcement, or to Federal prosecutors in the U.S. Attorneys' Offices or the Department of Justice. The assistance of the right holders in cases of commercial-scale copyright piracy, trademark counterfeiting or the theft of trade secrets is often invaluable to a successful prosecution. Criminal IP investigations are also initiated based upon evidence developed directly by prosecutors and investigators, particularly in cases involving large-scale online copyright violations.

There is no Federal agency that is directly responsible for administrative enforcement of intellectual property rights, except for U.S. Customs and Border Protection, which is authorized to enforce intellectual property laws at the nation's borders. Intellectual property owners may seek to have infringing imports stopped at the border, by recording a copyright or trademark registration with Customs, obtaining a court order to detain and seize shipments, or by obtaining an exclusion order from the International Trade Commission which is in turn enforceable by Customs.

State law remedies may also be available for certain acts of unfair competition or unfair trade practices under state laws, or claims based on common law trademark protection.

Like the U.S., each country has its own system for enforcing IP rights. You may wish to consider retaining specialized legal counsel in the U.S. and abroad to help your small business negotiate the local laws and procedures of enforcement.

8. How can I protect my business from IP theft?

The first step in protecting your business from IP theft is to protect your IP - both in the United States and in other countries where you do business and source products. Most IP rights are territorial, meaning, for example, a U.S. patent or trademark only provides protection in the United States. To receive IP protection in other countries, one needs to apply for protection in those countries.

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9. Do I need to file for protection overseas?

If you plan on selling or distributing or sourcing your products abroad, you should consider registering or filing with each country's intellectual property authorities. Information on filing for patents and contact information for authorities around the world can be found at [the World Intellectual Property Organization Web site](#). In addition, the USPTO has worked with the U.S. embassies in China, Korea, and Mexico to develop "IPR toolkits", which also provide a wealth of detailed information on how you can protect and enforce your intellectual property rights in those specific markets, and IPR toolkits for additional countries will be coming online.

Filing for protection may not be appropriate for every business. The circumstances for determining what type of IP protection is best for your business may be complicated and differ for each individual business. Furthermore, international protection can be costly. Some issues to consider when making this decision are:

- Will I be conducting business outside the U.S.?
- Do I think I will ever export my product overseas?
- Do I think I will ever manufacture my product overseas?
- Can I afford international IP protection? If so, in what markets would my product most likely be commercially sold?
- What forms of IP are available to me?

It is important for businesses to keep in mind that certain actions may bar certain types of protection, so the earlier a business considers IP protection, the better. If a business is interested in seeking patent protection in many countries, it may be beneficial to consider the Patent Cooperation Treaty (PCT), which is an international filing mechanism that permits an applicant to file a single patent application that acts as if an application was filed in 126 different countries; however, examination under the PCT must be requested by the business in each individual country in order to be granted a patent in that country (with limited exceptions). Also, if a business is interested in seeking trademark protection in a number of countries, it may be beneficial to consider filing an application under the Madrid Protocol, which offers one-stop-shopping for seeking trademark protection in more than one Member country.

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10. Will the USPTO help me file for protection or help me if I discover that a business is illegally copying my products?

The USPTO maintains a toll-free telephone hotline, 1-866-999-HALT, as part of the Administration's [Strategy Targeting Organized Piracy](#) (STOP!) initiative that businesses can call for help. Callers on the STOP! hotline will be connected to USPTO IP attorneys with regional expertise who can provide information on how to protect and enforce your IP right overseas, and share strategies on how to evaluate IP problems. It is up to individual businesses, however, to secure protection for their intellectual property and to enforce these rights both here in the U.S. and overseas. The USPTO's attorneys can provide helpful information and tips to help you protect and enforce these rights. However, they cannot provide legal advice, and are not a substitute for competent legal counsel.

11. How big a problem is IP theft? Which sectors are most affected?

Piracy, counterfeiting and the theft of intellectual property assets pose a serious threat to all American businesses. According to the FBI, Interpol, the World Customs Organization and the International Chamber of Commerce estimates, roughly 7-8% of world trade every year is in counterfeit goods. That is the equivalent of as much as \$512 billion in global lost sales. Of that amount, U.S. companies lose between \$200 billion and \$250 billion. IP theft has a major impact at home, too: according to the U.S. Chamber of Commerce, overall intellectual property theft costs 750,000 jobs a year. IP theft poses a risk to all industry sectors; those most commonly affected by IP theft are manufacturing, consumer goods, technology, software, and biotechnology, including pharmaceuticals.

12. How big of a problem is IP theft among small businesses?

While it is difficult to determine the exact scope and extent of the problem, every indication is that copyright piracy, trademark counterfeiting, and patent infringement have become significant problems in the business community in general, including small businesses. Certainly any small business that exports its IP protected products abroad or sources its products or parts overseas must take into account the potential for rampant IP theft in many countries.

U.S. small businesses are at a particular disadvantage, however, because they may lack the knowledge, expertise or resources necessary to prevent the theft of their ideas and products. In fact, research conducted by the USPTO this year found that only 15 percent of small businesses that conduct business overseas know that they need to file for IP protection abroad.

Many small businesses also may not have personnel and operations overseas, so they lack the "eyes and ears" needed to be vigilant globally and the theft of their IP can often go undetected. In addition, small businesses generally do not have the level of access or the resources, such as specialized legal counsel, that may be available to larger companies.

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13. What is the USPTO doing to help small businesses protect their intellectual property?

The USPTO is taking steps to assist small businesses in America to determine when or if to file for IP protection, what type of protection to file for, where to file and how to go about it. As part of this program, the USPTO is hosting a series of seminars across the country to educate small businesses about the realities of piracy, counterfeiting, and infringement, and inform them about how to protect their intellectual property interests where they do business and source products.

The USPTO also is making a number of tools and resources available to small businesses to assist them in protecting their intellectual property:

- This Web site is specifically designed to answer common questions small businesses have so they can better identify and address their IP protection needs.
- The STOP! hotline, which is part of the Administration's Strategy Targeting Organized Piracy (STOP!) initiative, provides a one-stop-shop for businesses to protect their intellectual property at home and abroad. Callers on the hotline (1-866-999-HALT) receive information from USPTO IP attorneys with regional expertise on how to protect and enforce patents, trademarks, copyrights, and trade secrets in domestic and overseas markets.
- Outreach to national trade and business organizations is helping spread the word about the benefits of filing for IP protection both domestically and abroad.
- Free informational materials [link to the "Materials To Download" page] are available to help guide small businesses through the often complicated world of intellectual property protection.
- Attention-grabbing Internet announcements are running on websites commonly used by small businesses, linking them to the resources available.

14. What is the Bush Administration doing to address this problem?

President Bush has made combating IP theft a top priority. The Administration is keenly aware and fully understands that intellectual property protection is critical to the competitiveness of our economy and that U.S. businesses face enormous challenges in protecting their IP overseas. Secretary of Commerce Gutierrez is dedicated to carrying out his vision of marshalling all U.S. government efforts and agencies to reduce IP theft.

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