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Protective Impulses Should Apply to Original Works, Trade Secrets

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Copyrights and trade secrets can protect two types of intangible assets that can be the basis of business success.

Copyrights apply to original literary, dramatic, musical and artistic works. They can protect blueprints, computer software, jewelry, television ads and performances.

Trade secrets are any bits of information or ideas that, if leaked, could be used by another company to undercut the originator's competitive advantage. A customer list or computer code could be a trade secret, and the precise formula for the Coca Cola soft drink has been a trade secret for decades. An example of partial failure of trade secret protection is when another company reverse-engineers computer software, uses the concepts discovered and writes source code from scratch embodying the concepts.

Copyrights are simple to obtain, while trade secrets can be more difficult to protect. An entrepreneur should consult a lawyer for specific advice on how to protect any commercially viable intellectual property.

Mark of the maker

Copyrights are most significant in the computer software and art industries, but they also protect advertising copy and technical writings.

Copyrights are automatically applied worldwide to any eligible work and last 95 years for a business or life plus 70 years for an individual. While it isn't necessary to take any action to protect an original work, a copyright registration allows for damages and other protections not afforded by a copyright that is not registered.

Protection can be as simple as placing a copyright notice on the work that includes the creator's name and the year the work is first made public. Or it can be registered with the U.S. Copyright Office within three months of first publication. This step costs only \$45 (\$35 if filed electronically) and allows the copyright holder to receive statutory damages of up to \$150,000 per item copied — and often attorney's fees — if he or she is forced to sue for copyright infringement. Copyright registration forms are available from the Library of Congress Copyright

Office, 101 Independence Ave. S.E., Washington, D.C. 20557; (202) 707-3000 or www.copyright.gov.

Can you keep a secret?

The duration of trade secret protection is indefinite, but once the information enters the public domain, the originator has no legal recourse unless the information was obtained illegitimately. Given that, entrepreneurs should protect proprietary information as early as possible after its creation.

Trade secret protection can have multiple layers. Employees can be warned that certain information is proprietary and should not be disclosed outside the company. A company can include provisions in employment agreements stating that employees and independent contractors acknowledge the duty to keep certain information secret.

And trade secrets can be limited to a core group within the company: Just a few employees of KFC, for example, know the “11 herbs and spices” that comprise Colonel Harland Sanders’ secret recipe, and they’re not talking.

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