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https://osucolab.org
OSU-Cascades Innovation Co-Lab

The Co-Lab is an **incubator** that helps new ventures by providing one-on-one coaching, flexible workspace, and a pool of student consultants.
The Truth About Intellectual Property

The Slides will be made available after this presentation
Anno Octavo

Annae Reginae.

An Act for the Encouragement of Learning, by Ves-
ing the Copies of Printed Books, in the Authors or
Purchasers of Such Copies, during the Times therein
mentioned.

Whereas Printers, Booksellers, and other
Persons have of late frequently taken
the Liberty of Printing, Reprinting, and
Publishing, printing to be Printed,
Reprinted, and Published Books,
and other Writings, without the Con-
tent of the Authors or Proprietors of
Such Books and Writings, to their
very great Detriment, and too often
to the Ruin of them and their Fam-
ilies: For Preventing therefore Such
Practices for the future, and for the
Encouragement of Learned Men to Compose and Write útil
Books: Hop it please your Majesty, that it may be En-
acted, and be Enacted by the Queen's most Excellent Majes-
y, and with the Advice and Consent of the Lords Spiritual and
Temporal, and Commons in this present Parliament Assembled,
and by the Authority of the same, Thir, Your, and, after the
The Difference Between Then and Now

We were local farmers and merchants.

Then we were regional industrial workers.

Now we live in a global information economy.
Technology Adoption is Faster

Technology adoption rates

- Running water
- Stove
- Automobile
- Home air conditioning
- Dryer
- Washing machine
- Central heating
- Dishwasher
- Landline
Technology and Information Creation is Faster

This is just the growth of marketing software companies over the past few years.
Given these changes, what is the truth about intellectual property?
What is intellectual property?
Our Topics

• What is intellectual property?
  • Trade secrets
  • Trademarks
  • Patents
  • Copyrights

• What are some strategies to protect yourself?

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What is Property?
Property

“Property is the right or lawful power, which a person has to a thing.”

-James Wilson
U.S. Supreme Court
1790-1791
5th Amendment

No person shall...be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation
A Bundle of Rights

the right to possession
the right to control
the right to exclude
the right to enjoy
the right to transfer

You can own, use, exclude, and transfer your property in any legal manner.
What is Intellectual Property?
“The Congress shall have the power...to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.” U.S. Constitution Article I. Section 8. Clause 8.

Why do we treat discoveries as property?
Democracy thrives on speech!

Intellectual property is \textit{intended} to get inventors and creators to share their knowledge so that others may:

- Learn from this knowledge
- Build upon this knowledge

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One Slide Summary of Intellectual Property

You *may* protect certain intellectual property:
• Trade Secret
• Trademark
• Patent
• Copyright

You *may* contract for the property rights in each.
Trade Secret
## Trade Secret

<table>
<thead>
<tr>
<th>What does it protect?</th>
<th>Typically it protects formulas, data, compilation, device, programs, process, customer lists that is used in one’s business and gives them an opportunity to obtain an advantage over one’s competitors.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Example: Coca-Cola</strong></td>
<td>Protects against misappropriation - Disclosure of information, or acquiring information by improper means.</td>
</tr>
<tr>
<td>How do you get it?</td>
<td><strong>Contracts and efforts to maintain secrecy.</strong></td>
</tr>
<tr>
<td>Do you file or register for this?</td>
<td>No.</td>
</tr>
<tr>
<td>How long does protection last?</td>
<td>Perpetuity</td>
</tr>
<tr>
<td>How much does it cost to protect?</td>
<td>There are no filings, but you will need contracts drafted, executed, and signed.</td>
</tr>
<tr>
<td>How do you get one?</td>
<td><strong>Get contracts in place.</strong></td>
</tr>
</tbody>
</table>
| Advantages and Disadvantages? | + Low Cost  
  - Low Protection (If someone discovers it independently, you can’t enforce it)  
  - Narrow protections |
Trademark
<table>
<thead>
<tr>
<th><strong>Trademark Registration</strong></th>
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<tbody>
<tr>
<td><strong>What does it protect?</strong></td>
</tr>
<tr>
<td>Identifying <strong>symbols</strong>, such as words, names emblems, devices, slogans, scents (very rare), and logos</td>
</tr>
<tr>
<td>Ex: Nike and the Nike Swoosh</td>
</tr>
<tr>
<td><strong>How do you get it?</strong></td>
</tr>
<tr>
<td>Use in commerce + trademark application</td>
</tr>
<tr>
<td><strong>How long does protection last?</strong></td>
</tr>
<tr>
<td>They last 10 years and you can renew them. They are perpetual as long as you maintain them and don’t allow them to become generic.</td>
</tr>
<tr>
<td><strong>How much does it cost to protect?</strong></td>
</tr>
<tr>
<td>$375+</td>
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<tr>
<td><strong>How do you get one?</strong></td>
</tr>
<tr>
<td>Search for (or pay for a search for) trademarks using the <strong>Trademark Electronic Search System, or TESS</strong></td>
</tr>
<tr>
<td>File an application with the USPTO, use Trademark Engine, or go through an attorney.</td>
</tr>
<tr>
<td><strong>Advantages and Disadvantages?</strong></td>
</tr>
<tr>
<td>+ Low Cost</td>
</tr>
<tr>
<td>+ Perpetual as long as you keep up with filings and fees</td>
</tr>
<tr>
<td>- Can become generic if you don’t protect them 3rd party use</td>
</tr>
<tr>
<td>- Don’t protect merely descriptive marks</td>
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Patent
<table>
<thead>
<tr>
<th><strong>Patent Filing</strong></th>
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<tbody>
<tr>
<td><strong>What does it protect?</strong></td>
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<tr>
<td><strong>How do you get it?</strong></td>
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<tr>
<td><strong>What types of applications can you file?</strong></td>
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<td><strong>How much does it cost to protect?</strong></td>
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<td><strong>How do you get one?</strong></td>
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What can you patent? (continued)

Inventions must be:

• Novel
• Useful
• Non-obvious

35 USC 101-103

US Patent #6,293,874
How do you develop your patent?

- Look up prior art
- USPTO or Google Patents
- Publications
- R&D
- Corporate Research Office at Univ.
- ScienceExchange.com
- Government Money
- Grants
- SBIR/STTR

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Patent Business Models

**Assignment or Licensing of Rights** – Execute a contract by which a 3rd party (usually a company) uses your IP and sells a product. (ex: assignment agreement or licensing agreement)

Start a Company and Sell Your Products/Services
Patent Tradeoffs

What happens if you get a patent?
• You may have to continue to pay fees
• You may have to pay to enforce it
• You may spend a lot of time doing it

What happens if you don’t get a patent?
• Patent “trolls” or other companies may come for you
• You may sell, you may grow, but you may not get investment because you don’t have a “moat” around your business.
Advice for Patents

Don’t express that “No One is Doing This.”

Don’t Publicly Disclose Before You’re Ready.

Don’t File if You Have No Intent to License or Enforce.

Use a patent attorney. Pay the money.

Don’t get so wrapped up in the IP that you lose sight of selling a product.

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<td><strong>What does it protect?</strong></td>
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<tr>
<td><strong>How do you get it?</strong></td>
</tr>
<tr>
<td><strong>Do you have to register?</strong></td>
</tr>
<tr>
<td><strong>How long does protection last?</strong></td>
</tr>
<tr>
<td><strong>How much does it cost to protect?</strong></td>
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<tr>
<td><strong>Advantages/Disadvantages</strong></td>
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[https://www.copyright.gov/help/faq/faq-general.html#mywork](https://www.copyright.gov/help/faq/faq-general.html#mywork)
[https://www.copyright.gov/help/faq/faq-duration.html](https://www.copyright.gov/help/faq/faq-duration.html)
If you own Copyright:

• You have the right to reproduce the work
• The right to prepare derivative works
• The right to distribute the work
• The right to publicly perform the work
• The right to publicly display the work
• The right to transfer or license the work
If you don’t own Copyright:

Using a substantial portion or (portion with substantial similarity) of the work is an infringement, and a lawsuit for infringement could follow.

• The work need only be copyrighted before the infringement occurs,
• The registration process must be completed before the suit is filed.
Rely on Fair Use in Certain Circumstances

Reproduction of a particular work may be considered fair, such as criticism, comment, news reporting, teaching, scholarship, and research.

17 USC 107
Determine Whether the Use is Fair

Whether the use is fair, depends on 4 Factors:

1. The purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes

2. The nature of the copyrighted work

3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole

4. The effect of the use upon the potential market for, or value of, the copyrighted work
Copyright Business Models

• License your copyright
• Create a platform for others to license their copyright

• Proprietary Licensing
• Open source Licensing
• Dual Licensing
Finding A Strategy
Ways to Protect Yourself

• Don’t talk about your solutions

• Non-Disclosure Agreements (NDAs)

• Watch out for big issues with contracts
  • Scopes of confidentiality
  • Non-compete clauses
  • Anti-circumvention clauses
  • Data destruction clauses
  • Jurisdiction and venue
  • Export Control
  • Termination and survivability

There are always opportunity costs and risks.
How to Avoid Issues

• Set expectations early.
• Send your agreement first.
• Be ready to refuse and say no.
• Give yourself time to say no.
• Give yourself time to negotiate.
• Use contract negotiation strategies.

There are always opportunity costs and risks.

You manage risk better by working with seasoned advisors and legal counsel.