




NONPROFIT ORGANIZATIONS INSTITUTE

MASTER CLASS

Navigating Intellectual Property Issues for Nonprofits

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What is Intellectual Property?

- Intellectual property refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce
 - Examples: patents, copyrights, trademarks, trade secrets
- “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.” Article I, Section 8, Clause 8, of the U.S. Constitution
 - “Science and useful arts” = patents and copyrights
 - Trademarks arise out of the Commerce Clause – consumer protection against confusion as to source of goods/services

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Patents

- Government-granted. A registered right after technical examination (in United States)
- Time-limited (20 years from filing date)
- Territorial (U.S. patents enforced in United States only)
- Negative right of patent owner: keep others from practicing patented invention or to be compensated for such practice.
- Does not allow patent owner to practice the invention
- Types: utility, design, plant
- Patentability: process, machine, manufacture, or composition of matter, ornamental design that is novel, non-obvious
 - NOT: Abstract ideas, laws of nature, physical phenomena
- Infringement – The manufacture, use, sale, offer-for-sale, or importation of patented invention without authorization of patent owner

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Copyrights

- Work of authorship “fixed in a tangible medium of expression”
- Meets threshold requirements of originality and creativity
 - Literary works (including narrative text on websites, marketing materials)
 - Pictorial, graphic and sculptural works;
 - Motion pictures / other audiovisual works;
 - Musical works / sound recordings
 - Software
 - Compilations (selection and arrangement)
- Bundle of copyright rights: (1) reproduce work; (2) prepare derivative work; (3) distribute copies by sale or license; (4) publicly perform/display
- Registration not required
- Term: A long time!
 - Author's lifetime plus 70 years (for most works)
 - For works made for hire – 95 years after publication or 120 years from creation (whichever is shorter)
- Infringement – Evidence of direct copying or “substantial similarity” plus access

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What's Not Protected by Copyright?

- Works in the Public Domain
 - U.S. government works
 - Expired works
 - By dedication
- Excluded Subject Matter
 - Individual words, short phrases, slogans, names, titles
 - Ideas and facts (recipes, algorithms, formulas).
 - Raw data vs. compilation with sufficient selection, arrangement, and coordination
 - Useful/functional articles

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