

Plagiarism: Intellectual Property Rights

Protect Yourself Now!

The amount of scientific information worldwide grows at an ever-increasing rate. The demands of researchers to keep up with the literature and to produce noteworthy results put a heavy burden on scientists. From academic, government and industrial settings, a frequent refrain is to “*publish, patent or perish.*” This e-pamphlet seeks to empower researchers to avoid ethical pitfalls, minimize the risk of being a victim and protect their own intellectual property. While this e-pamphlet is not intended to give legal advice on patent and/or copyright disputes, it contains relevant information on matters pertaining to plagiarism, copyright and ownership rights and is provided as an educational service from the Committee on Economic and Professional Affairs (CEPA) of the American Chemical Society.

Introduction:

Plagiarism: “the act of stealing another person’s intellectual property (IP) which includes ideas, inventions, original works of authorship, words, slogans, designs, proprietary information, etc. and using them as your own without proper acknowledgment and/or permission of the original author or inventor.”¹

Intellectual Property: “Original and creative ideas or works that have economic value and which are protected by patent, copyright, trademarks and trade secret laws.”¹

As “*plagiarism*” is a serious matter with important legal and ethical implications, academic, industry, government and private institutions should establish guidelines for avoiding theft of **ideas or works under the umbrella of intellectual property** in their respective environments. These guidelines should provide clear definitions and examples for new students, faculty and/or employees. Consequences for violating these rules/guidelines should be clearly stated and enforced.

The same applies to “*intellectual property rights.*” Academic, industry and government institutions should establish guidelines for avoiding **theft of original creative works that have economic value and are protected by** intellectual property laws. These guidelines should be readily available to students and/or employees with specific examples and consequences for violations.

Your Ownership Rights:²

Intellectual Property (IP) Rights: It is important to understand IP ownership rights not only to protect your IP, but also to avoid the possibility of infringing on someone else’s ownership rights. Since IP can have commercial value, ownership rights are in some ways very similar to owning real estate. You can sell, license, inherit and use as a basis for loans. Ownership rights are not a legal monopoly in that they do not give the owner the right to make use of the IP. Instead, they give the owner the right to exclude others from making use of the IP for a defined period of time. IP infringement cases in a court of law can lead to serious financial and professional consequences. The term “IP rights”, refers to patents, copyrights and trademarks, the former

two of which are the means of protection of original creative works. Patent laws protect inventions including new processes, articles of manufacture, compositions of matter, designs and plants. Copyright laws protect literary and artistic works and covers IP from paintings to computer software. Trademark laws protect words and symbols that are identifiers to certain brands, types of goods or services.

Patent: There are three types of patents: design, utility and plant (asexual reproduction).¹ For these types of patents there is a legal ownership right for a limited period of time, patents are issued by the United States Department of Commerce and the Patent and Trademark Office.^{1,2}

Patent Ownership Rights:

- To exclude others from making, using or selling the IP for 20 years from filing date in the US. Other countries have similar laws but the patent terms vary.

Copyrights: A copyright pertains to the ownership rights for “original works of authorship fixed in a tangible medium.” It can be, for example, music, an article, a book, a performance, a photograph, graphics, a computer program and a play.^{2,3} Note that unlike patents, copyrights do not prevent others from independently and without actually copying the original works, practicing anything taught in the original works. For example, Ansel Adams took some outstanding photographs of half dome in Yosemite. Anyone wishing to do so may take their own photographs from the precise site Adams took his without infringing on any copyright his heirs may hold.

Copyrights Ownership Rights:

- To reproduce works
- To distribute
- To display in public
- To perform in public
- To prepare derivative works

In the United States, these rights are for the life of the original author plus 70 years. In case of “work for hire” it is generally 95 years from the date of the publication or 120 years from the date of the creation.²

Trademark: It is a word, a name, a design, or a slogan, which identifies a certain product produced, or provided by a certain group or person(s), which solely identifies the source of the product.³

Trademark Rights:

- The rights to words, names, slogans and designs are for 10 years and renewable every 10 years with evidence of use in commerce.¹⁻³

Trade Secrets: Any information that the owner decides to keep confidential for business reasons. This type of information could include the compilation of information, formula, pattern or device considered essential for possessing an advantage over one’s competitors.⁴

Trade Secrets:

- The ownership rights can conceivably last forever if the information is kept confidential.
- However, independent discovery or development of the proprietary information will then create two or more independent owners of the information, if they also keep the information confidential.

Accusation:

Using Other Creators / Inventors IP

Using another original owner's patented technology, copyright and trademarks and other protected IP without a written permission constitutes an infringement of such IP under federal laws. Trade secrets are generally covered under State laws. Therefore, copying without just compensation to the originator is a violation of the law, and hence a tort issue or in the case of copyrights and trademarks may also be a crime. Copyright and patents protect scientists, inventors, authors, artists and other creators of the IP from losing economic compensation for original works.

Legal means of using someone else's IP requires a license from the owner of the rights. Such a license will define the scope of the permission granted by it. In some cases it may be limited to a given purpose within a defined geographic territory and a defined use. Not-for-profit use would also require written permission, with or without monetary compensation from the original owner.

Resolution:

Protecting Your IP

Since creative ideas or works can easily be copied, protecting your IP requires documentation of your work. The need for documentation is to prove "inventorship." These are important patent disputes when a decision needs to be made as to which of two persons who have applied for patents on the same invention, under the applicable U.S. Patent statutes, is entitled to the patent rights. This process is referred to as an "interference" proceeding and is decided within the United States Patent and Trademark Office. This is only very rarely an issue in a suit for patent infringement in which case it may come up in an attempt to invalidate a patent based on its being fraudulently obtained. With the United States heading in the direction of "first to file system," documentation may become less important but still needed for proof of ownership. If an IP has commercial potential, it is necessary to protect the IP by appropriate legal means such as patents, copyrights, and trademarks or to decide, where possible, to maintain the IP as a trade secret by taking the extraordinary steps to protect against disclosure. Usually it is advisable for the inventor(s) to file their patents early to insure their rights and the IP is protected "sooner" rather than "later."

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References:

1. a. <http://www.answers.com/topic/plagiarism>
b. The 'Lectric Law Library Legal Lexicon' intellectual property,
<http://www.lectlaw.com/def/i051.htm>
c. http://www.bambooweb.com/articles/i/n/Intellectual_Property.html
2. <http://www.copyright.gov>
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