

# *Intellectual Property*

## *Chapter 4*

## Copyright Basics

**Q: What is a copyright?**

**A:** A copyright is a grant of rights from the government for original works of authorship that are fixed in a *tangible medium of expression*.

**Q: What are “works of authorship”?**

**A:** *Works of authorship* include, but are not limited to, books, songs, plays, dances, computer programs, pictures, sculptures, motion pictures, CD-ROMs, and buildings.

**Q: What is a “tangible medium of expression”?**

**A:** It is any method of storing the original works of authorship, such as the canvas of the “Mona Lisa” or the CD on which the Beatles’ song, “Yesterday,” is recorded. The media can be paper (such as advertising, instructions, training manuals or drawings) or something that requires a machine to be seen (such as DVDs or CDs).

**Q: I have a great idea. Can I copyright it?**

**A:** No. Copyright protection is limited to protecting *expression* and does not protect the *ideas* expressed in the work. For example, J. K. Rowling cannot copyright the idea for the Harry Potter books in the United States; however, she copyrighted the individual books in the United States.

**Q: How do I get copyright protection?**

**A:** Copyright protection exists automatically from the moment the work is fixed on some type of tangible media. However, in the United States, generally the work must be registered with the Copyright Office of the Library of Congress before a lawsuit may be brought against an infringer (someone who violates a copyright, for example, by passing himself or herself off as the author of someone else’s book). Registration is also a prerequisite to the awarding of some types of damages for infringement.

**Q: Do I need a copyright notice?**

**A:** Until a few years ago, if a work was published without a copyright notice, all copyright protection was waived. That is no longer true for newly published works. It is helpful to display a copyright notice because it makes it easier to pursue infringers. The copyright notice includes the word “copyright” and/or the copyright symbol, ©, the name of the copyright owner, and the year the work was first published.

**Q: How long does copyright protection last?**

**A:** Effective in 1998, the Sonny Bono Copyright Term Extension Act increased the term of copyright protection. For instance, now protection lasts for the life of the author plus seventy years after he or she dies, if the author is an individual and the work was created after January 1, 1978. The Act extended the protection 20 years.

**Q: How long does the protection last for works created by an employee?**

**A:** Copyright works created by an employee during the scope of his or her employment are owned by the employer. The Sonny Bono Copyright Extension Act also extended the copyright term for such works. If the work was created after January 1, 1978, the copyright protection in that work lasts for a term of 95 years from the year of the work’s first publication or a term of 120 years from the year of creation of the work, whichever expires first.

***Q: Is the act named after the famous partner of Cher?***

**A:** Yes. Sonny Bono, the famous partner of Cher, was also a member of Congress before his death. The act was named in his honor.

*—by Patricia A. Walker, an attorney and principal with the Medina firm, Walker & Jocke.*

## **“Fair Use” Doctrine Permits Limited Copying of Copyrighted Material**

***Q: What is a copyright?***

**A:** A copyright is a grant of rights from the government for original works of authorship, such as books, songs, plays, computer programs, CD-ROMs, that are fixed in a tangible medium of expression. Any method of storing the original works of authorship, such as the canvas of the “Mona Lisa” or the CD on which the Beatles’ song, “Yesterday,” is recorded is a *tangible medium of expression*. The media can be paper (advertising, instructions, training manuals or drawings) or something that requires a machine to be seen (video tapes, computer disks or CD-ROMs).

***Q: What is copyright infringement?***

**A:** A copyright owner has certain exclusive rights. These include the rights to reproduce, distribute, display and perform the work. The copyright owner also has the exclusive right to prepare *derivative works*, which are works based on the original, but which include some different or additional material. A violation of any of the copyright owner’s rights constitutes copyright infringement. Copyright infringement most commonly occurs whenever a copyrighted item is copied in whole or in part. Copyright infringement may occur even when the infringing copy is not identical, but only *substantially similar* to the original. When a substantial portion of a copyrighted work is used in another work, it also usually infringes as an unauthorized *derivative work*. For instance, if you owned an original painting and you made prints of that painting, you infringed on the copyright of the artist who painted the picture. Only the artist or someone who contractually received that right from the artist can reproduce the painting.

***Q: Are there some instances where a work of an author can be copied without infringing the copyright?***

**A:** Yes. A work of authorship can be reproduced, distributed, displayed and performed by someone other than the work’s creator without constituting copyright infringement in limited situations. The United States statutes concerning copyrights contain exceptions to a copyright owner’s exclusive rights. However, the broadest exception is the “doctrine of fair use.”

***Q: What is a “fair use”?***

**A:** Reproducing, distributing, displaying or performing a copyrighted work may, in limited circumstances, be found to be a *fair use*. A fair use is something that is permitted by law that would otherwise constitute copyright infringement. For example, if a page from an encyclopedia is copied at the public library for personal use, it is probably a fair use.

Unfortunately, deciding whether a use is a fair use is often difficult. Therefore, it is always wise to consult an attorney experienced in intellectual property law in order to determine whether or not you might be infringing a copyright.

***Q: How is it determined if a use is a fair use?***

**A:** A determination of fair use requires the weighing of a number of factors. Some of the factors in determining whether a use is a fair use are:

- 1) the purpose and character of the use;
- 2) the nature of the work;
- 3) the amount of the work involved;
- 4) the effect of the activity on the market for the original work; and
- 5) whether the original work is published or unpublished.

***Q: What is the most important factor in the fair use analysis?***

**A:** Often the character of the use is the most important factor. If the use is related to a profit-making activity this suggests that the use is not a fair use. For instance, photocopying a Dilbert® cartoon, framing it, and selling it would not be a fair use. However, hanging that framed photocopy in your own home study would probably be a fair use. If, however, it is determined that the framed cartoon reduces the market for framed Dilbert® cartoons sold by Scott Adams, it may not be fair use. The fair use analysis is not always easy.

***Q: Is copying a copyrighted work for a non-profit organization always a fair use?***

**A:** No. A number of churches have gotten into trouble for copying music or lyrics. The copying reduces the market for the sheet music and therefore is not considered a fair use.

***Q: What if the work copied is a collection of facts?***

**A:** The doctrine of fair use grants broader use without infringement if the work is a collection of facts such as a database of baseball statistics or an encyclopedia, as opposed to a fictional work such as *Appeal* by John Grisham.

***Q: How does the amount of the work copied affect the determination of fair use?***

**A:** If the amount of the copyrighted material copied is small and it does not impact the copyright owner's ability to make money on his or her work, it will weigh in favor of fair use. For instance, a literacy critic who quotes a line or two from a book in his or her review will probably be protected by the doctrine of fair use.

***Q: Is it a fair use to copy an unpublished work?***

**A:** Uses of unpublished works are less likely to be fair uses than published works. The law gives a copyright owner the right to control when his or her work is first published. All of the fair use factors must be considered and weighed in deciding if an activity is exempt from infringement liability. As this involves making a legal judgment, questions about fair use should be referred to an attorney experienced in copyright law.

***Q: What are the penalties for copyright infringement?***

**A:** The penalties for copyright infringement can be severe. The law provides the copyright owner with the right to obtain actual damages or *statutory damages*. Statutory damages are those set by law and can range from \$200 to \$150,000 per work infringed plus attorney fees. As a result, damage awards can be much higher than the actual loss to the copyright owner. Also, in some circumstances copyright infringement may be a criminal offense punishable by fine or imprisonment. For these reasons it is important to work with experienced legal counsel when dealing with copyright issues.

—by Patricia A. Walker, an attorney and principal with the Medina firm, Walker & Jocke.

## Frequently Asked Questions about Copyrights

***Q: What is a copyright and what does it protect?***

**A:** It is a bundle of rights that gives the owner the exclusive right to do the following and to authorize others to do the following with original works of authorship:

- reproduce the work;
- prepare derivative works based upon the prior work;
- distribute copies;
- display the work publicly; and
- perform the work publicly.

***Q: Who can claim copyright?***

**A:** In general, the author who created the work. The exception is work for hire, which means either: 1) an employee who prepared the work within the scope of employment (which is owned by the employer), or 2) the work is one of nine specified categories of works, and the parties agree in writing the copyright is owned by the commissioning party. Joint authors are co-owners of the copyright absent a written agreement.

***Q: What is the first sale doctrine?***

**A:** It is the right of the owner of a manuscript, painting, phonograph, architectural work or other copyrighted work to sell, lend or lease the object. It does not transfer the copyright or convey any rights in the copyright.

***Q: What is required to register a copyright?***

**A:** In general, you need only submit to the Copyright Office of the Library of Congress a two-page form, a \$45 filing fee and a copy of the work. You may also file your application electronically.

***Q: Why register a copyright?***

**A:** If the copyright to a work is registered within three months of publication or before infringement, the chief benefit is to permit the copyright owner to request statutory damages (between \$750 and \$30,000 and up to \$150,000 for willful infringement) for each infringement and attorneys' fees and costs. Statutory damages often exceed actual damages, and the possibility of statutory damages gives the copyright owner substantial leverage.

***Q: Must I register the copyright to use the copyright symbol ©?***

**A:** No. It is generally advisable to use © to put others on notice of rights regardless of whether registered. It also precludes an innocent infringer defense to infringement. The proper copyright notice is: © [year of publication or creation] [copyright owner's full or abbreviated name or how it is known].

***Q: If fair use exists, why do I need permission of the copyright owner?***

**A:** The fair use defense is highly factual specific. It is only available for use for purposes such as criticism, comment, news reporting, teaching, scholarship or research. If even a small part of a copyrighted work is being used in advertising or for commercial gain, it is always safer to obtain permission.

**Additional information is available from the U.S. Copyright Office as follows:**  
**Via the Internet**, circulars, announcements, regulations and all application forms are available at [www.copyright.gov](http://www.copyright.gov).

**Via e-mail**, ask a copyright question by submitting an inquiry to [www.copyright.gov/help/general-form.html](http://www.copyright.gov/help/general-form.html).

**Via telephone**, information specialists are available to answer general questions at (202)707-5959, but they cannot give specific legal advice and opinions.

*—by Susan D. Rector, an attorney with the Columbus office of Schottenstein, Zox & Dunn Co., LPA.*

## Copyright Notice and Registration Benefits Copyright Owner

By the time they begin to read, most people have seen a copyright notice. Most, however, misunderstand the meaning of the notice and its role and purpose in protecting copyrights. If the work is infringed, proper copyright notice and proper registration of the copyright can enhance the copyright owner's award of damages.

It is a myth that copyright notice is required for a copyright in a work to exist. However, the myth does have some basis in history. In the past, according to United States law, the copyright notice was required for creating and maintaining copyrights—with some exceptions.

Since March 1, 1989, however, even if a work does not have a copyright notice on it, copyrights can exist and be enforced, with a few exceptions. Under copyright law in the United States today, including a copyright notice on a work is entirely optional. The copyright owner does not even have to include a copyright notice on publicly distributed copies of a work. For example, a newspaper publisher does not have to include a copyright notice in the newspaper to assert a valid copyright.

Although the copyright notice is no longer necessary, it is very advantageous to use it. For example, if a copyright infringement suit is brought on a work distributed with a copyright notice, it is easier to assert damages against the purported infringer because the infringer cannot claim to be an *innocent infringer* who did not know the work was copyrighted. Thus, the copyright owner likely will be entitled to a greater amount if the court determines there has been an infringement and orders the defendant to pay damages. And, if the U.S. copyright owner has properly registered the work in a timely manner with the U.S. Copyright Office, there is a potential for even greater damages (referred to as *statutory damages*) against the infringer. If the copyright owner is eligible for statutory damages, then, in the case of a willful infringement, the court in its discretion may increase the award of statutory damages to a sum of not more than \$150,000. Also, in certain circumstances, the court may award court costs and a reasonable attorney's fee to the prevailing party.

Registration of the copyright in the U.S. Copyright Office is a relatively inexpensive process, particularly if one considers the valuable legal rights available to properly registered copyright works. Copyright registration can, for most works, now be done online using the Electronic Copyright Office (eCO). Basic copyright registration claims that can now be done online include literary works (*e.g.*, books, computer programs), visual arts works, performing arts works, sound recordings, motion pictures, and single serial issues.

While a copyright notice is no longer required for a copyright to exist (but highly recommended because of the benefits afforded the copyright owner under the Copyright Law in the United States), if you are going to use it, you might as well do it right. Federal law sets forth the proper elements of a copyright notice.

The general form of the copyright notice is set forth in the federal copyright statute (17 U.S.C. 401). There are three parts to the copyright notice under this law:

- The first part has three options: the © symbol (the letter “C” in a circle), the abbreviation “Copr.,” or the word “Copyright.” (In the case of a sound recording, the letter “P” in a circle is used instead.)
- The second part of the notice is the year of first publication of the work.

- The third part of the notice is the name of the copyright owner or some abbreviation by which the name can be recognized, or some generally known alternative designation of the owner (e.g., “IBM”).

The year of first publication may be omitted when a pictorial, graphic or sculptural work, with accompanying text matter, if any, is reproduced in or on greeting cards, postcards, stationary, jewelry, dolls, toys, or any useful articles.

The positioning of the copyright notice on the work is important. A notice should be affixed to the copies of the work in such a manner and location as to give reasonable notice to the claim of copyright.

Examples of possible copyright notice positions include:

- For a book: Copyright notice should be placed on the title page or the page immediately following, either side of the front or back cover, or the first or last page of the main body of the work.
- For computer programs: Copyright notice should be placed with or near the title or at the end of the work on paper printouts of the work, at the user’s terminal at sign-on (and removed only after the user takes some action such as pressing a key or clicking on a mouse), on continuous display on the terminal, in the “About” box, or reproduced durably on a label securely fastened to the copies or to a container used as a permanent receptacle for the copies. Proper placement of the copyright notice depends on the specific work.

The bottom line is that a proper copyright notice, along with the proper and timely registration of the copyrights in the work, can greatly enhance the copyright owner’s remedies in the event the work is infringed.

*—by Alan S. Wernick, an attorney in private practice focused on information technology and intellectual property law, and a member of the bar in IL, NY, OH, & DC. ©2009 ALAN S. WERNICK. WWW.WERNICK.COM. All rights reserved. Reprinted by the OSBA with permission.*

## Spreadsheets and Intellectual Property

Susan, an employee, develops a spreadsheet. She says that she created it at home, on her own time, and using her own computer. While it is beyond the scope of what her employer expects of her, it will be useful to her company.

Susan brings the spreadsheet to work, and it becomes the rave. It is novel and useful, displaying and analyzing crucial data in a new way. It saves the company money, and actually starts making money for the company. Competitors do not have this.

Weeks later, she applies for another position at her company, but it goes to someone else. Susan quits, taking the spreadsheet file with her, and warning her former employer to stop using it, or else. Company managers say it belongs to the company, and that they will use it as long as they want.

Somewhere, an intellectual property trial attorney smiles, and an insurance defense attorney feels a chill. We have copyright, trade secret, and possibly patent law issues here. Problems of proof and discovery abound. Was the work done within the scope of her employment? Whose resources were used? How much money did the company make or save? Was Susan really an employee, or just an independent contractor? Did she register the copyright?

First of all, let us consider what *intellectual property* entails. Intellectual property is something derived from the work of the mind, from human creativity. It includes ideas, inventions (patentable or not), trade secrets, processes, data, formulae, literature, music, art, expression of all kinds, and other activities of human beings.

Secondly, creation of intellectual property is not the exclusive domain of artists, engineers, musicians, or programmers. We are all capable of producing it, and tools available today present a wealth of opportunities. Susan produced something from her mind that proved to be quite valuable. Certainly, that spreadsheet is intellectual property.

So how might this problem have been prevented? One preventive measure is something that technology companies have used for years: agreements that define and assign rights in intellectual property, commonly called *IP agreements*. Susan did not sign such an agreement. If she had, the agreement probably would have defined the intellectual property at hand, assigned rights to the employer, and asked the worker to pledge to cooperate if and when it should be time to register copyrights, seek patents, or take similar steps. Clauses in IP agreements define and use terms such as *software*, *algorithms*, and *improvements*. These days, the clauses should also include *spreadsheet* and *database*, as well as other works created from ordinary desktop computer tools and adapted for specific tasks. And, everyone who creates intellectual property must sign these agreements.

Not every spreadsheet is as valuable as Susan's, but some are. All companies, not just technology companies, must recognize and protect their assets by having employees sign IP agreements—not just programmers and engineers.

—by Steven A. Hill, a Reynoldsburg attorney.

## **What You Don't Know about Patents Could Hurt Your Business**

Most business people rarely confront a legal matter that involves a patent. However, anyone who runs a business should know the basics about patents, because they can provide a dramatic advantage (or cause a disaster) for your company.

***Q: Why should I care about patents?***

**A:** Any business that manufactures a product or provides a service should consider intellectual property protection. If you are not protected, your competitors are free to copy your products or business activities. In addition, if your competitors obtain patents, you may lose your ability to compete with them or be forced to pay for infringing on their patent rights. Ultimately, your failure to care about patents could put you out of business.

***Q: What is a patent?***

**A:** A patent is a grant of special rights from the government. A patent owner is given the right to prevent others from making, using, selling, or offering to sell his or her invention. In the United States, patent rights may last for 20 years from the date the patent application is made.

***Q: What can be protected by a patent?***

**A:** There are three types of patents: utility, design, and plant patents. Utility patents are the type with which most people are familiar. These patents protect a wide variety of things, such as devices, machines, processes, methods, chemical compounds, and even genetically engineered bacteria. Design patents protect ornamental designs for manufactured articles. Plant patents protect new types of asexually reproduced plants.

***Q: How does the government decide if an invention is entitled to be patented?***

**A:** A patent application describing the invention is submitted to the U.S. Patent and Trademark Office. The application includes *claims* which precisely describe the invention the applicant believes he or she is entitled to own. The U.S. Patent and Trademark Office examines the application, and decides if a patent should be granted. Although the legal tests used to determine whether or not an invention can be patented are complicated, according to a *rule of thumb* a patent will be granted if the invention is substantially different and better than the state of the art.

***Q: Is it possible to lose the opportunity to obtain a patent?***

**A:** Yes. Unfortunately, it happens often. Most commonly, someone waits too long before filing a patent application. In the United States, generally it is too late to apply for a patent if an invention has been on the market for a year. Although this may seem harsh, the rules in foreign countries are even worse. In most countries, a patent cannot be obtained if an item was disclosed to the public before a patent application was filed. This is why business people who plan to sell overseas should consider filing for a patent early in the development of any new product.

*—by Ralph E. Jocke, an attorney and principal with the Medina firm, Walker & Jocke.*

## **What You Don't Know about Trademarks Could Hurt Your Business**

Almost every business uses trademarks. However, most business people rarely think about trademarks, even though a trademark represents one of a business's most valuable assets: its reputation. Trademark rights may be lost if they are not properly obtained and protected. The trademark rights of the competition also must be understood, or a business may have to pay a great deal of money for infringing on those rights.

***Q: What is a trademark?***

**A:** Anything customers associate with a business's products or services can be a *trademark*. Trademarks are usually words, slogans, or designs, but in some situations, sounds, colors, or even distinct scents can be trademarks. Words that merely describe goods and services cannot, however, be protected as trademarks.

***Q: What is a service mark?***

**A:** A service mark is a type of trademark. *Service mark* refers to a mark used in conjunction with services.

***Q: How do you protect a trademark?***

**A:** A business has some legal rights simply because it has used a mark. Better protection is available through registration of the mark with the U.S. Patent and Trademark Office. A person can apply for registration before his or her business begins using the mark.

***Q: What is the effect of federal registration of a trademark?***

**A:** Except in certain situations, once a trademark is registered, the owner of the registration is the only one in the United States who may use the trademark in conjunction with goods and services for which the mark has been registered. A trademark also serves as protection against competitors' use of confusingly similar marks.

***Q: Does it matter when a person applies for registration?***

**A:** It can make a big difference. If a company does not register a trademark, another firm in the same business may be able to use it. The other firm also may obtain a federal registration, which may limit the first company's ability to use the mark. The legal rules in such situations are tricky. One thing is certain: the earlier an entity registers its mark with the U.S. Patent Trademark Office, the stronger the entity's legal position will be in the event a trademark problem arises.

***Q: Can a trademark be registered with the state of Ohio instead of the U.S. Patent and Trademark Office?***

**A:** Most states, including Ohio, will register a trademark. A state registration, however, usually only documents that someone is using a mark. It does not provide the legal rights available through federal registration.

***Q: What is the best way to select a new trademark?***

**A:** Picking a new trademark involves finding a mark that customers will like and remember. Generally, the best trademarks are arbitrary or fanciful marks. Made up words such as Kodak<sup>®</sup> or Teflon<sup>®</sup> are very distinctive. Trademarks that are somewhat suggestive

of the business's products or services are often used, but may not be as distinctive. Of course, marks that are generic names or merely descriptive of the goods or services cannot be protected as trademarks and should not be considered. Once a possible new trademark is selected, it is best to have a trademark attorney make sure that it can be used without infringing on someone else's trademark. Someone who infringes may not only be prevented from using the mark, but may also have to pay damages and attorney fees.

***Q: Is it possible to protect a trademark in foreign countries?***

**A:** Yes. Almost every country recognizes some type of trademark rights. It is generally necessary to register the mark with the authorities in each country or regional trademark jurisdiction to have protection. The federal registration of a mark in the United States provides no rights in other countries. Businesses should consider protecting their trademarks in all countries where they have distributors or a significant number of customers.

*—by Ralph E. Jocke, an attorney and principal with the Medina firm, Walker & Jocke.*

## Frequently Asked Questions about Trademarks

***Q: Can a word, logo or tagline be protected as a trademark?***

**A:** Yes; any distinctive word, name, symbol, device, slogan, package design or any combination of these that identifies and distinguishes a specific product or service from another can be protected.

***Q: What is the difference between a trademark and a service mark?***

**A:** Trademarks are used to identify products, and service marks are used to identify services provided to third parties (such as consumers, corporations, etc.). The term *trademark* is often used to refer to both types of marks.

***Q: What is the difference between a trademark and a brand?***

**A:** While a trademark is used to help consumers identify a product and its source, a brand generally goes beyond identifying the source or origin of goods and services. A successful brand is well known to consumers and builds authority by promising particular qualities, including intangible qualities (such as taste, durability, reliability, prestige, etc.).

***Q: When is it proper to use the symbols <sup>TM</sup> and <sup>®</sup>?***

**A:** The symbol <sup>TM</sup> or <sup>SM</sup> is used to identify the brand of a particular product while it awaits registration with the U.S. Patent and Trademark Office (a process that can take 12 to 18 months or more). It can also indicate the use of a symbol as a mark when trademark registration is *not* being sought (the owner need not have a pending federal registration to use <sup>TM</sup> or <sup>SM</sup>). It is proper to use <sup>®</sup> when a mark is federally registered.

***Q: What is the benefit of registering a trademark?***

**A:** Registration puts others on notice that the owner claims rights to the mark and deters unauthorized use. Federal registration has the significant benefit of freezing prior users who have not federally registered in their geographical boundaries and gives the registrant the exclusive right to use the mark throughout the rest of the United States.

***Q: How do I determine if a mark is already registered or being used?***

**A:** Federally registered marks are listed on the U.S. Patent and Trademark Office Web site at [www.uspto.gov](http://www.uspto.gov). Online databases can be searched for a fee to detect registered marks and those that are being used, but are not registered. National trademark search firms will also conduct more exhaustive searches to determine what trademarks are being used and provide full reports of their search results.

*–by Susan D. Rector, an attorney with the Columbus office of Schottenstein, Zox & Dunn Co., LPA.*

## **What You Don't Know about Trade Secrets Could Hurt Your Business**

Although you may not think that your business owns any *trade secrets*, they are probably used every day. Businesses of every kind, large and small, have information that can be protected as a trade secret. Unfortunately, the failure to protect trade secret information properly may place your valuable business information in the hands of the competitors.

**Q: *What is a trade secret?***

**A:** A trade secret is something not generally known or readily discoverable by people outside your business that gives you an advantage over your competition. Although most people think of trade secrets as exotic formulas and processes, more common things may also be trade secrets, such as customer lists, marketing plans, sources of supply, assembly processes, dimensional tolerances for parts, and future product concepts.

**Q: *Are there any advantages in protecting something as a trade secret instead of with a patent?***

**A:** Yes. In some circumstances, you can protect non-patentable concepts and information as trade secrets. In addition, while patent protection may last for a maximum of about 20 years, trade secret protection will last for as long as the information remains secret. It is also sometimes less costly to protect a trade secret than to acquire a patent.

**Q: *Are there any drawbacks in using trade secret protection?***

**A:** The major drawback is that you must always be careful that the information remains secret. An accidental "public" disclosure may result in the loss of protection. Having adequate protection may require having your employees and contractors sign *confidentiality agreements*. It may also require keeping doors and files locked to prevent customers and delivery people from having access to the information. Unfortunately, anything that can be readily *reverse-engineered* (re-created by looking at a final product and determining how it was created originally) cannot be protected as a trade secret, and patent protection must be sought to protect your rights.

**Q: *Can I legally enforce the rights in my trade secrets?***

**A:** The owner of a trade secret may obtain an injunction in court to prevent the wrongful use of his or her trade secret. Damages may also be awarded. It may also be a crime to steal someone else's trade secret, and criminal charges may be brought against the wrongdoer.

**Q: *How can I be sure that my trade secrets are protected?***

**A:** The best way to make sure your trade secrets are protected is to have an intellectual property audit. This usually involves working with an attorney who can identify your trade secrets and determine the steps that can be taken to better protect them. The audit also may uncover ways to better protect the business's other intellectual property. It is a good practice to have an audit conducted every few years to ensure that your trade secret protection continues as personnel and business practices change.

*—by Ralph E. Jocke, an attorney and principal with the Medina firm, Walker & Jocke.*