



Intellectual property rights in software in Canada

For many companies, valued assets include computer software. In fact, software is helping to make many everyday products safer and more efficient. Software is more than “apps” and personal computer programs; many of the newest products and services use software to properly function. Here, you will learn how intellectual property (IP) rights can provide protection for your software innovations. To learn more about each type of IP (patents, copyright, trademarks, industrial design, and trade secrets), visit cipo.gc.ca.

PATENTS

A patent can protect some new, non-obvious, and useful creations in the field of computing.

Patents are often best suited for inventions expected to have **long-term business value** and not ideal for creations that may be obsolete in a few years.

Computer-implemented inventions may be patentable. However, computer-implemented methods of applying skill or judgment aren't patentable, neither are mental processes or methods of evaluating math formulas. These exclusions prevent the grant of patents for abstract ideas. But if your invention isn't one of these, it might be patentable.

The patent application process is complex, time-consuming and expensive. Before applying for a patent, verify that your invention is new (not public).

Patent applications are disclosed to the public after an 18-month period of confidentiality: competitors will be able to see what you have filed, even if the patent application never becomes a patent.

Every country has its own laws and practices when it comes to whether software can be patented, and these criteria can change over time. Consult the Canadian Patent Office's practice notices to keep up to date on these criteria. To help you understand these criteria and assess whether your invention could be patentable, we recommend speaking to a licensed patent agent.

COPYRIGHT

Copyright can protect original literary and artistic works, including software programs, certain data collections, website text and web pages, and photographs or graphics.

Computer software is considered a literary work which is subject to copyright. Copyright can stop others from making copies of your programs, but others could still write and protect their own programs that will do the same thing as yours through different underlying code. Note that data that isn't part of an “original” collection may be regarded as mere facts, and you cannot copyright facts.

To help protect your work, include a copyright notice (©, year of first publication, owner) on your work, including your source code, and on product packaging. Where possible, have contracts signed that set out the terms of use and access when you share works with others. This is preferable to relying on copyright alone. For example, if your company offers Software as a Service (SaaS), use a subscription agreement. Have users acknowledge that your company retains all IP rights in the software.

Note that “Open source” software can be subject to copyright, despite the name. Study the licensing terms for the relevant licence to determine what limits apply to its use.

A lawyer specializing in IP and/or software can help you protect your valuable computer software.

INDUSTRIAL DESIGN

Industrial designs such as icons or graphical user interfaces, can be protected provided that they are applied to a finished article like a display screen.

Industrial design is about how something looks. It protects the unique appearance of a product, including icons or other graphical symbols, graphic user interfaces, and screen layouts that may be applied to it. This form of IP protects visual features applied to a product that “appeal to the eye.” Any associated functional aspects are not protected.

To protect a novel industrial design, you must apply to register it. Keep the details of your design secret while you consider whether you will apply. This will help ensure your design remains registrable.

A lawyer specializing on IP and/or software can give advice on whether this type of protection will suit your needs and assist you with obtaining and maintaining an industrial design registration.

TRADE SECRETS

Trade secrets can be almost anything not in the public domain, including data collections, algorithms, machine learning processes and models, product specifications, and project management plans.

Trade secrets may be best suited for software that cannot be reverse-engineered or used as an alternative to patenting. Trade secrets are also a way to ensure that an invention or a design is not disclosed to the public before applying for a patent or an industrial design. Trade secret protection cannot stop a third party from learning the secret on their own. Also, once the secret becomes public, trade secret protection for it ceases.

Take adequate steps to protect your trade secret. Consider how you can document your trade secrets and the processes put in place to guard them. Safeguards may include contractual, physical, and electronic means.

Contracts are often used to set out the confidentiality obligations. Trade secret theft can also be a criminal offence. When you take adequate steps to protect a secret, you may, among other measures, be able to sue someone who steals or misuses it. This might apply to an employee, partner, contractor, etc., who breaks a promise to keep it a secret.

TRADEMARK

A trademark can be a word, phrase, symbol, design, sound, or other sign for things like apps, computer programs, electronic or digital products, and online services.

Trademarks are a powerful tool to create a unique identity to help consumers identify the source of goods and services. Trademarks only protect the branding, not the product’s function. Others can make or sell similar products by using dissimilar branding.

Although it is not a requirement, you can use symbols to signal that your goods or services are the subject of a trademark: the ™ symbol is used for trademarks that have not yet been registered and the ® symbol, once a registered trademark has been obtained.

Maintaining a registered trademark comes with responsibilities. For example, your trademark should be used and continue to be distinctive. You must look out for competitors who are using trademarks that might cause confusion and you may need to take action to maintain your rights and protect your brand.

In many countries, trademarks are registered on a first-to-file basis. You can apply to register a trademark before using it. Applying for a trademark as early as possible is recommended. You can apply even if you have been using an unregistered trademark for some time.

A licensed trademark agent can assist you with obtaining and maintaining a trademark registration.

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To view examples of computer-enabled inventions, icons, and graphical user interfaces, go to **Canada.ca/ip-toolbox** and open the HTML version of this factsheet.