

*“Intellectual property is the oil of the 21st century.
Look at the richest men a hundred years ago:
they all made their money extracting natural resources
or moving them around.
All today’s richest men have made their money
out of intellectual property.”*

Mark Getty

*(grandson of the world-famous American billionaire J. Paul Getty)
from the Economist, March 4th, 2000.*

Expert advice by the lawyer

Putting the *Intellectual Passport CB* to the test

*"There is no protection
other than the inventor's
financial means for his
defense in court."*

Dominique Daguet

"What does protection mean?"

If one believes that his patent is infringed,
one *"may sue for damages in the appropriate court."*

Excerpt from the Guide to patents
page 12, ISBN 0-662-84233-2
Canadian Intellectual Property Office

With all due respect...

A definition recognized by the two international conventions on copyright sums up the legal basis of the *Intellectual Passport CB*

"All Works of the Mind is the property of its author."

Two articles of the Universal Declaration of Human Rights sum up the the legal basis of the *Intellectual Passport CB*

Article 17 of the Universal Declaration of Human Rights

"Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property."

Article 27 of the Universal Declaration of Human Rights

"Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author."

Given these articles and principles of law, the expert advice of a lawyer concerning the validity of our texts is more than welcome. Thus the lawyer in question can provide his own professional views on the matter, by answering the ten fundamental questions and answers exposed hereafter.

SECTION INTENDED FOR LAWYERS

Notice: The following 10 questions are intended exclusively for lawyers. Here, they are given the opportunity to provide alternative answers to the ones given. There is a *sine qua non* for this opportunity: following their answers, **lawyers must sign their name, thus committing themselves professionally to their opinions.** Given the commercial implications of providing contradictory answers to these ten questions, **mere verbal objections are insufficient and should not be considered by any as a professional opinion.**

Testing the *Intellectual Passport CB*

1st question: Is the act of putting an original idea ~ *whether product or service* ~ into tangible form, creative or inventive in nature?

USD's answer: *In so far as an individual person has brought something new into existence (i.e. by putting his original idea into a tangible form), the resulting work is creative in nature.*

Lawyer's comments:
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.....

2nd question: If it is creative, is it a Work of the Mind?

USD's answer: *If the original idea was put into tangible form, and if its description is intrinsic to a literary and/or artistic work, the author of such an idea is the author of a Work of the Mind, which is a natural property. Such property is therefore inalienable (i.e. universal and permanent).*

Lawyer's comments:
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.....

3rd question: In such a case, does the author have specific rights?

USD's answer: *He enjoys copyright, which results rightfully from his natural property (i.e. the work). Copyright is universal and valid for the author's lifetime and for fifty to seventy years after his death.*

Lawyer's comments:
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4th question: Can the author acquire monopolistic titles to commercially exploit products resulting from his work?

USD's answer: Yes, as long as he has not published nor publicly disclosed his work, he has the right to acquire monopolistic titles to commercially exploit any product resulting from his work or to assign the right to acquire such titles to one or more third parties.

Lawyer's comments:

5th question: What monopolistic titles can be acquired?

USD's answer: Such titles are called: trademark, patent, industrial designs (design patent), plant patent, and integrated circuit topographies.

Lawyer's comments:

6th question: How long do such monopolistic titles remain valid; what are the associated costs?

USD's answer: Their duration varies according to the internal laws of each country: as a rule, ten to twenty years for trademark (renewable indefinitely), five to fifteen years for design patent and on average twenty years for utility patent. Depending a number of factors including the **level of international coverage being sought and on which title**, their true cost can vary significantly: from hundreds of dollars to hundreds of thousands of dollars. Such titles must be renewed periodically by payments throughout their term.

Lawyer's comment:

7th question: Do trade secrets alone serve the interests of the author of an invention?

USD's answer: A priori no. A trade secret (know-how) is not a literary and/or artistic seizable personal property and therefore cannot be used as unquestionable proof of prior art (anteriority) against third parties who copy the product. Trade secrets alone are therefore a risky proposition for the author of an invention. As a strategy, they are more suitable for large entities like "Coca-Cola" or a State's National Defence.

Lawyer's comment:

8th question: Are trade secrets and copyright mutually exclusive? What are the implications?

USD's answer: *No, copyright does not imply disclosure. Indeed, the original work need not be divulged nor published. Logically, it is in the best interest of the author to benefit from copyright while maintaining secrecy. Copyright as applied to an unpublished work, while maintaining secrecy, provides an unquestionable proof of anteriority based on a seizable literary and/or artistic personal property, which otherwise is missing from the general strategy of secrecy (i.e. trade secrets). This combination of secrecy and copyright is an efficient, effective and affordable way to establish and defend one's intellectual property rights.*

Lawyer's comment:

9th question: Does copyright registration in any way hinder the subsequent use of trademarks, utility patents or industrial designs (design patents)?

USD's answer: *Copyright registration in no way hinders the use of such titles, since the work from which the copyright originates does not have to be disclosed or published. However, in the United States of America, copyright registration implies publication, and is therefore not recommended. Copyright registration in no case prevents the author from using a trademark. Furthermore, third parties can register such titles, provided the author specifically authorizes them through license or assignment of rights.*

Lawyer's comment:

10th question: Does the author have the social, professional and financial status required to commercially exploit his concept worldwide?

USD's answer: *In most cases, he is certainly not the most qualified person to undertake such an ambitious project. This is the reason why the author (inventor or designer) must first of all obtain his copyright, by creating a property (i.e. his original work) namely, a Work of the Mind. Moreover, in order to ensure adequate damages in court for cases of unauthorized copying, the author must establish his intention to commercially exploit his original concept (service or product). He must therefore promptly plan the commercial exploitation of his concept (i.e. innovation). With this in view, USD-System editions provide a unique consortium-oriented business plan as well as a matching set of contracts that allows the author to license or assign his commercial rights to producers, distributors, investors, financiers, and other such qualified collaborators.*

Lawyer's comment:

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The authors of the present publication aim first and foremost to liberalize access to intellectual property by making it affordable to the general public and to distribute its benefits equitably among people, in consideration of their material or moral interests, in accordance with articles 1, 17, 22 and 27 of the Universal Declaration of Human Rights.

This published work is the result of its authors' research and analysis as well as a logical and philosophical approach used to formulate the criteria for validating a Work of the Mind, based on principles established by the Berne Convention and the Universal Convention on Copyright.

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