

## **Disclaimer**

Intellectual property protection can involve complex legal issues. Consulting with a specialized IP attorney is recommended as you take steps to protect your work. This brochure is not a substitute for legal advice and should not be taken as legal advice. The brochure contains only U.S. IP information.

## **WHERE TO START**

### **Indian Arts and Crafts Board**

The Indian Arts and Crafts Board is an agency within the United States Department of the Interior that promotes the economic development of American Indians and Alaska Natives through the expansion of the Indian arts and crafts market. For more information, visit our website at [www.iacb.doi.gov](http://www.iacb.doi.gov) or call 1-888-ART-FAKE (toll free).

### **Reporting Piracy and Counterfeiting**

Report piracy and counterfeiting of Native American art and craftwork to the Indian Arts and Crafts Board, which can help handle your report. Learn more about piracy and counterfeiting at the Strategy for Targeting Organized Piracy (STOP) website at [www.stopfakes.gov](http://www.stopfakes.gov) or call 1-866-999-HALT (toll-free).

## **WHERE TO LEARN MORE**

For Trademark Information, visit [www.uspto.gov/trademarks/](http://www.uspto.gov/trademarks/)

For Copyright Information, visit [www.copyright.gov](http://www.copyright.gov)

For Patent Information, visit [www.uspto.gov/inventors/index.jsp](http://www.uspto.gov/inventors/index.jsp)

For an IP overview, visit [www.stopfakes.gov](http://www.stopfakes.gov)

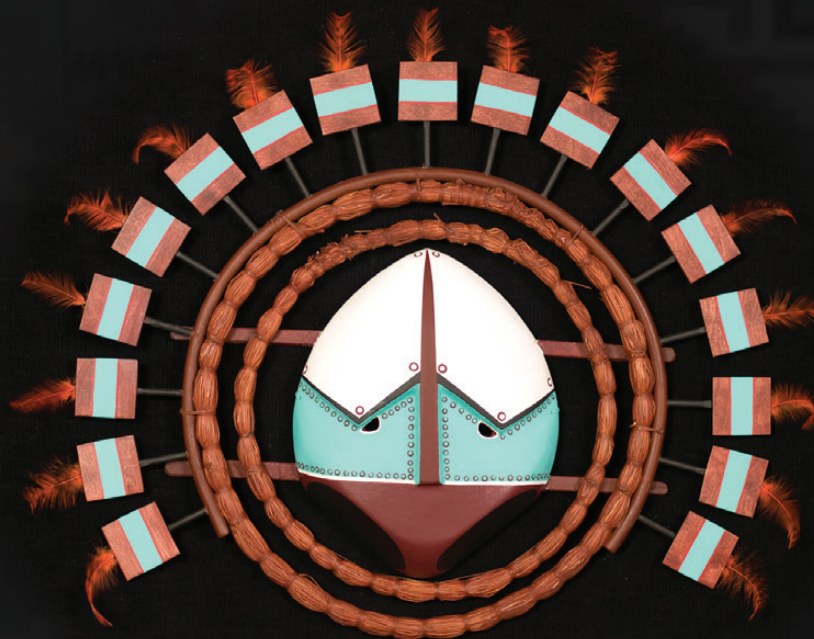
To record registered trademarks and copyrights with the U.S. Customs and Border Protection (CBP), visit the CBP website at [www.cbp.gov/xp/cgov/trade/priority\\_trade/ipr/](http://www.cbp.gov/xp/cgov/trade/priority_trade/ipr/), or call 1-877-CBP-5511.

### **World Intellectual Property Organization (WIPO)**

WIPO has useful information about Arts and Crafts and IP protection on their website at [www.wipo.int/export/sites/www/sme/en/documents/pdf/marketing\\_crafts.pdf](http://www.wipo.int/export/sites/www/sme/en/documents/pdf/marketing_crafts.pdf) and [www.wipo.int/sme/en/multimedia/](http://www.wipo.int/sme/en/multimedia/)



# Introduction to Intellectual Property *(trademarks, copyrights, patents & trade secrets)* for **American Indian and Alaskan Native Artists**



Jerry Laktonen, Sandpiper Mask, 2009



Indian Arts and Crafts Board  
U.S. Department of the Interior



UNITED STATES PATENT AND TRADEMARK OFFICE

### **What is Intellectual Property (IP)?**

“Intellectual Property,” or “IP,” is a catch-all term that refers collectively to trademarks, copyrights, patents, trade secrets – anything that you create. It is distinguished from other things you might own, such as a house or car, which are called “real property.” IP is generally protected on a country-by-country basis.

### **Can IP Generate Income?**

Intellectual property is a valuable business asset because it can provide market exclusivity, build brand reputation and goodwill, and can create income for you through licensing. Licensing involves a business arrangement where the IP owner allows another to use the rights for an agreed payment (i.e., a fee or royalty).

### **What is a Trademark?**

A trademark helps customers identify and distinguish your goods and services from those of others. Trademarks can be letters, words, slogans, symbols, designs, colors, product/packaging configurations, sounds, or scents. Trademarks can inspire customer loyalty and promote sales. Trademarks can exist forever as long as they are being used in business.

### **How Can a Trademark Protect My Work?**

Trademark rights may be used to prevent others from using a confusingly similar mark. Registration is not required for marks used in the United States, but it provides significant legal advantages to the rights holder. Registering your trademark with the United States Patent and Trademark Office (USPTO) allows you to file suit in federal court against infringers (unauthorized users). It is legal proof to show the court that you own the mark. Registering your mark alerts others to your trademark rights and bars them from registering confusingly similar marks

for products or services related to your product. Registration allows you to use the ® symbol with your trademark. While you are not required to use any symbol with your mark, most trademark holders use TM or SM before a mark is registered. The ® can only be used after the mark is registered with the USPTO.

### **What is a Copyright?**

A copyright is the legal right to use original literary and artistic creations, which can include sculptures, fabric designs, paintings, baskets, and music. Copyrights give the owner the exclusive legal right to reproduce, publish, sell, or distribute artwork. A copyright allows you to control how your creations are used by others. A copyright lasts for the life of the author plus seventy years.

### **How Can a Copyright Protect My Work?**

A copyright gives you the right to stop unauthorized copying, adapting, displaying, distributing, or selling of your work without your permission. Copyrights can also stop others from making new works created from the original artwork without your permission. Copyright protection begins from the moment you create your work and does not require an official registration to use the © symbol. While not required, using the © symbol along with the year and name of the owner on copyrighted works is recommended to put others on notice of your rights. Similarly, registration of your copyright with the Copyright Office provides important advantages, for instance, the ability to sue for infringement, as well as making it easier to license works, collect royalties, and enforce rights outside of court.

### **What Is a Design Patent?**

A design patent protects the way an article looks. It gives you the exclusive use of a

new and original ornamental design on your products, including jewelry, pottery, or textile designs. The subject matter of a design patent must be decorative and therefore does not include utilitarian or structural characteristics of the product. Patentable designs range from three-dimensional configurations or shapes of products to ornamental patterns, lines, and colors applied to the surface of a product. Design patents last for fourteen years.

### **How Can a Design Patent Protect My Work?**

Design patents give you the exclusive right to use your patented design and prevent others from producing, importing, selling, or distributing products that infringe your design. You must hold a patent from the USPTO to sue for infringement. A patent application must be filed within one year from public disclosure of a patentable design.

### **What Is a Trade Secret?**

A trade secret is confidential business information that gives you a competitive advantage. Trade secrets include methods or techniques for producing products, such as special techniques for firing pottery or blowing glass. Trade secrets are valuable because they allow you to maintain your competitive edge over others. Trade secret protection lasts as long as the information is secret.

### **How Can Trade Secrets Protect My Work?**

Keeping information a trade secret prevents others from using your special methods and techniques. It prevents your employees, consultants, and other business associates from revealing your secret business information. You must take reasonable steps to maintain the secret because once the secret is disclosed publicly, you lose your legal

protection. Non-disclosure agreements and confidentiality agreements, as well as limiting access to the proprietary information, are common methods used to protect trade secrets.

### **IP on the Internet**

The design and content of your website, including your domain name, may implicate a variety of IP issues. Consultation with an IP attorney early in the website design process can help you identify and address these issues.

### **Does Registering My IP Protect Me From Piracy and Counterfeiting?**

Yes. You can file a copy of the registered copyright or trademark with the U.S. Customs and Border Protection (CBP), which can help prevent importation of counterfeit goods. It is also possible to obtain an “exclusion order” to prevent entry into the United States of goods that infringe your patent, trademark, or copyright.

### **What Can I Do If Someone Uses My IP Without My Permission?**

IP rights are private rights. That means you – not the government – must take steps to enforce your rights. If someone illegally copies your artwork, uses your trademark or design patent, or reveals your trade secret, enforcement options include a lawsuit for infringement, obtaining a court order to stop the sale or importation of infringing goods, and money damages. American Indian and Alaskan Native artists have additional legal protections for the art and craftwork they produce. The Indian Arts and Crafts Act of 1990 (P.L. 101-644) is a truth-in-advertising law that prohibits misrepresentation in the marketing of Indian art and craft products within the United States. If you believe your work has been used in an unauthorized manner, you should consult an IP attorney.