

Think You Don't Have IP?

The Top Intellectual Property (IP) Question:

Does every business have IP?

Ever been asked if your business has IP and you respond with “I don’t know” or “I doubt it?” You are definitely not alone. Most startups assume that if they’re not creating a mobile application or working on an invention then there’s no IP associated with their business. On the contrary, 100% of businesses have some IP; it just may not be a patent.

Most startups initially focus on creation and inception tasks: forming an entity (e.g., LLC or corporation), reserving a domain name, signing up for online accounting services or hiring an accountant, and in some cases, consulting with a business lawyer. Solo inventors or creators generally wear all the hats and adopt the do-it-yourself mode of operation without consulting anyone.

LEGAL SPEAK

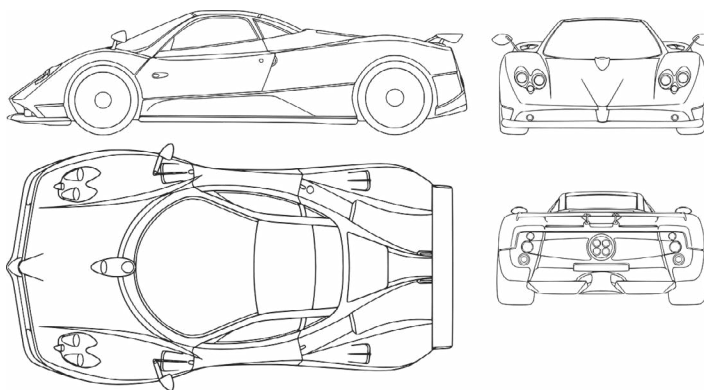
Intellectual Property (IP):

This is your genius. IP is the result of the human intellect or the product of the creative mind. IP includes inventions, creative works, designs, brands, knowledge, products, and services.

LEGAL SPEAK

Intangible: An item that does not exist in a physical form and is connected with something tangible. The most common example is business goodwill.

Patent: The right, granted by the federal government, for the owner of an invention to have a complete monopoly over the use of said invention for a period of time determined by the federal government. This right is the right to exclude others from making the invention, and this protection is in exchange for disclosing the invention when filing.



“It’s impossible to be in a business situation completely devoid of IP.”

If you are aware you have IP but lack an IP strategy or an inventory of your existing IP, then both your IP and your valuable intangible assets are at risk. It’s impossible to be in a business situation completely devoid of IP worth identifying and protecting.

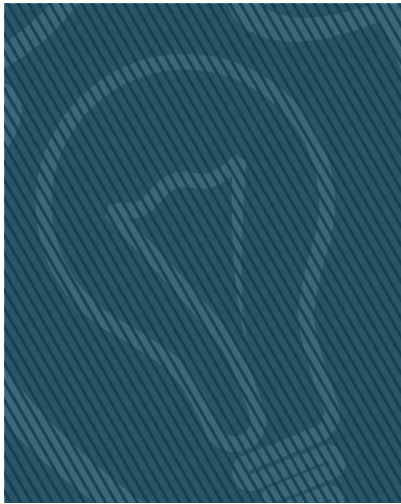
How many times have you heard someone use the terms “IP,” “ideas,” and “patents” interchangeably? Many technology startups are aware of IP issues but focus on patents. It’s important to understand that IP falls into four distinct categories:

- copyrights
- trademarks or servicemarks
- patents
- trade secrets

In the area of IP, startups or small businesses tend to gravitate into two groups:

- those who focus exclusively on patent protection, or
- those who view patents as too expensive and pointless without the month to defend infringement.

For more information on patents, check out our whitepaper [“To Patent or Not To Patent”](#)



Case Study: Traklight®

As a startup, Traklight took an inventory of its intellectual property early on. We trademarked our name and the names of our products and taglines. That way others cannot provide the same service and use the same names. We did have a challenge with the IP Cloud trademark because the words were too general. Also, there is a band named Traklight; however, it's rare that anyone will confuse our software-as-a-service products with the band, thus we can both use the same name.

When we launched our new website, we filed copyright on the words that we put on our website and blog as well as in our questionnaire and resulting report. Therefore we stop others from copying our work.

Our approach to the collection and interpretation of information that allows us to create our reports, which includes potential IP and strategic recommendations, is novel and apparently not obvious because no one else has created such a tool. Thus, we filed a provisional patent and filed the utility patents in 2013.

Our trade secrets are something we are not going to disclose because then it would no longer be a secret and we could not protect it!

LEGAL SPEAK

Trademark: A mark that both identifies the source of the product and distinguishes that product from competitors' products. Protects the public because trademarks symbolize the level of quality one can expect.

Copyright: The right to stop others from using your creative work without your permission. The use includes the right to copy, distribute, or change your work.

Trade Secret: Information that is of commercial value that is kept secret and therefore is unknown to competitors.

As a startup, Traklight took an inventory of its IP early on because more than 90% of a startup's value is IP.



What is IP?

The United States Patent and Trademark Office (USPTO) defines a trademark as:

“... a **brand** name. A trademark or service mark includes any word, name, symbol, device, or any combination, used or intended to be used to **identify** and **distinguish** the goods/services of one seller or provider from those of others, and to indicate the **source** of the goods/services.” (**emphasis added**)

The goal of the trademark is to protect consumers from brand confusion. In other words, the product is tied to a particular brand. When you buy a Pepsi® product, you are guaranteed it is Pepsi brand, not a generic store-brand cola or Coke® product.

The USPTO defines copyright as:

...a form of protection grounded in the US Constitution and granted by law for original works of authorship fixed in a tangible medium of expression.²

Once you type, draw, write, text, or otherwise create something so that someone can see it (e.g., video), you have “fixed in a tangible medium of expression” and have copyright protection. For example, the words in this article are protected by copyright as they are typed and appear on the computer screen. It can be confusing because a slogan, when typed or displayed in an advertisement, is protected by copyright but can also be trademarked. However, one is not a substitute for the other.

Identifying and protecting your IP is not just a legal issue; it’s a business strategy. As such, ignoring IP can place a business at risk, impede growth, and even kill investment and business deals.

Identifying and protecting your IP is not just a legal issue, it’s a business strategy.

LEGAL SPEAK

Tangible: An item that exists in a physical form and can be touched.

90% of startups' value is missing from the balance sheet.

Most IP is an intangible asset. Some famous examples include the Nike® logo, the Coke® bottle, patents held by Apple® or Exxon®, and Kentucky Fried Chicken's trade secret recipe. Without delving too far into the mechanics of accounting, when a company creates a brand or invents a product, the value of that IP does not normally appear as an asset on the balance sheet. Instead, the cost of the associated IP, namely filing and attorney fees, may appear. Generally speaking, companies display only the purchased assets—such as computers, buildings, or equipment—on the balance sheet.

The difference between the total market value of a company and the company's balance sheet total of purchased net assets is the intangible assets. That intrinsic value is not necessarily tied to any particular asset. For the valuation of a private company, the market value is what an independent person is willing to pay for the company. Alternatively, in the case of a public company, the value of all the outstanding shares on a public share exchange is the market value. Often this intangible difference between market value and balance sheet amount is thought of as goodwill that investors would be willing to pay for the company. However, that market value includes IP.

An excellent illustration is Coca-Cola®, considered to be the world's most valuable brand. The balance sheet value of the Coca-Cola corporation net assets is approximately 10% of the company's market value. The Coca-Cola New York Stock Exchange (NYSE) value was slightly over \$100 billion when the reported net assets were approximately \$12 billion.³ Studies show that almost 40% of US companies' values are made up of intangibles absent from the balance sheet. European Union companies have more than 50% of similar intangibles unrecorded on the balance sheet.⁴ Thus, for small private entities not listed and valued on any stock exchange, if those entities don't identify and protect their IP, they run the real risk of being undervalued.

Don't risk being stumped by potential investors.

Identifying your IP is good business practice. When starting up and applying to various incubators or accelerators, you need to identify your IP and develop the strategy to protect and leverage it. Investors and purchasers want to know that you understand your IP and have a protection and monetization strategy. Investors tend to fund sustainable, scalable ventures with solid, proven management teams. If simple IP questions are unanswered or bungled, the management team test may not be met, and investors in turn may question the sustainability and scalability of the venture.

When preparing an executive summary or an investor presentation, ensure there is a clear identification of IP and ownership, plus a plan for exploiting that IP. Describe the stage of each type of IP and remember to consider any international implications if you plan to go global.

At a recent entrepreneurship panel, an angel investor told a story of a round of financing that closed and the checks were written before it was discovered that the CEO did not own the rights to the IP. Cease and desist letters were issued and the company was forced into bankruptcy.

A rather embarrassing public example from 1998 shows that even big companies make IP errors. Volkswagen® (VW®) outbid BMW for the Rolls Royce® (RR) assets; however, VW did not purchase the RR trademark. Not only did VW have to spend over £500 million re-doing the factory and removing all RR logos, but the lack of trademark also stopped them from creating and selling a single vehicle with the RR name.⁵

In conclusion, it's important to recognize that all companies have intellectual property. Because most IP is an intangible asset, it can be difficult to identify at first. However, this process of identification should be one of the first steps a business takes in protecting and leveraging its IP. Whatever your business plans—whether it's growing your business through investments, going global with your products, or simply staying profitable—it all starts with the identification process.

Now that you know you have IP, take Traklight's free Business Risk Assessment—get a GPS for your business.

Start Now



Mary Juetten, Founder and CEO of Traklight.com, created Traklight while earning her Juris Doctorate and launched the software company in 2011.

Traklight offers the only self-guided software platform to create a custom intellectual property (IP) strategy with an integrated storage and file-sharing solution. Our mission is to educate and empower entrepreneurs and small businesses to be proactive in identifying, protecting, and leveraging ideas.

Mary Juetten has dedicated her more-than-25-year career to helping businesses achieve and protect their success. A self-described “recovering accountant,” she has conducted financial auditing, provided consulting, and held executive positions with public and private organizations. Mary has a Bachelor of Commerce degree from McGill and a Juris Doctorate from Arizona State as well as her US and Canadian accounting and public accountant certifications.

Mary is an international writer, speaker, Forbes contributor, and mentor, and she co-chairs the Arizona Technology Council’s Law and Technology committee. Mary also represents entrepreneurs on the Board of the Crowdfunding Investment Regulatory Advocates and the Emerging Enterprise Committee of the Licensing Executives Society.

Resources

- 1 <http://www.uspto.gov/trademarks/index.jsp>
- 2 <http://www.copyright.gov/help/faq/faq-general.html#what>
- 3 http://www.buildingipvalue.com/06intro/008_011.htm, 2005 data.
- 4 <http://www.piperpat.com/IPManagement/IPAuditFactSheet/tabid/260/Default.aspx>
- 5 <http://www.telegraph.co.uk/motoring/2719772/What-a-carve-up.html>

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