


INTELLECTUAL PROPERTY AUDITS

Why You Should Conduct One For Your Business



INTELLEQUITY[®]
Legal Services, LLC

A short, practical guide for business owners and professionals to help them understand what intellectual property is, how it is important to their business, and how conducting an intellectual property audit can help to protect and preserve it, while increasing its value to their business.



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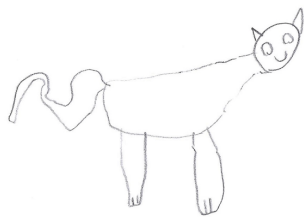
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What is Intellectual Property and Why Should I Care?

Intellectual Property, commonly shortened to IP, is any creation of the human intellect that produces a work, secret or invention, and for which, one may obtain protection. To provide an example that will help put substance to that vague definition, think of an original musical piece, a formula, a company or product name or a patent. All of these are items that derive from the power of the human mind and may be afforded protection, so that only the creator(s) (or those provided a license) can exploit it.

The value and strength of your IP derives from how you use your IP and from the protection it is afforded. If it is unused and afforded little protection, the IP will not be as valuable as if it is used appealingly and afforded total protection. Again, an example to clarify.

Suppose you make an original, but non-detailed drawing of a cat (See my children's example below). Would that picture qualify as intellectual property? Of course, it would. It is an original creation that was drawn on a piece of paper. It is more than an idea, it is the expression of an idea, and it has been put in a form that others can see. This is what the copyright law calls being fixed in a "tangible medium of expression".



Once the idea of the cat was taken out of their heads and drawn on paper, the work became an original work fixed in a tangible medium of expression. At the moment it was laid down, my children had a copyright in that work. But what is that copyright worth? Well, to them and to myself, it might be priceless (which I suppose means that it has all the value in the world to us, but no value in the world to others). Therefore, monetarily, without doing more with the drawing, it may not be worth much.

Now, let's say that my children decide to use that cat as a character in a moving animation series they will create and publish on social media. They give the cat a name, they create a few stories to go with the animations, create a YouTube® channel entitled "Trixie the Cat", and they post the animations to it. They have now transformed the drawing into an animated cat series that gets over ten thousand 'likes' and 'shares'. (And they also have several new copyrights!) In addition, they create a website at trixiethecat.com that sells copies of the original drawing of Trixie the Cat.

Have these animations and the creation of the website now increased the value of that original cat drawing? Likely, yes. But more importantly, the new copyright in the animations could potentially have more value than the first copyright in the drawing by reason of how the original copyright has been transformed and used.

Now, suppose that one of the channel's subscribers sees that the channel is gaining in popularity, sees a business opportunity to make some money, and decides to post (not link to) the animated videos on a website she creates to sell Trixie the Cat clothes for cats. She grabs a domain name called trixythecat.com and publishes a website to sell the clothes. She then markets her site and business starts booming!!

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Has this subscriber done anything wrong? Well, yes. She has potentially committed both copyright and trademark infringement. Will she face any consequences? That is another story entirely. If my children did not register their copyright or trademark, there may be nothing they can do. They might be afforded some state-level protections, but those protections will probably be minimal, if they work at all. And if there is nothing they can do, the actual monetary value of their IP will decrease significantly! (as will their market to sell other Trixie the Cat items.)

Now, if my children had federally registered their copyrights and trademark, we would be looking at a whole other story. Not only would they be allowed to file suit in federal court to stop the infringing use, but their case would be easier to prove and they might be entitled to obtain damages from the infringer's profit, significant, statutory damages and/or have their attorney's fees covered. These benefits would help to make the decision to file a suit against their infringer much easier. Not only that, but registration of their IP could have created an additional business opportunity for them to profit from their creations by way of license or otherwise.

As you can see from that simple example, it is important to understand what types of IP you have, how you should protect it, the benefits of protecting it, and the potential procedural and economic consequences of not protecting it. Your business' future may depend on it.

I Am Not Sure If I Have Any Intellectual Property Worth Protecting



Yes, you do! All businesses are different, but all have IP, that if exploited correctly, can provide a competitive advantage and lead to higher profits. For business, an obvious and important piece of IP is its' business name, product names or service names. This IP, which is known as a trademark or servicemark, could be your most valuable as well. Your trademark personifies the quality of your goods or services, your business value proposition, and your brand recognition. Not areas where you want your competitors to blur the lines of differentiation.

Beyond trademarks, all companies have created works and inventions that can and should be protected by copyright, trade secret or patents. See some ideas about each of these types of IP that follow below. Notice that some types of IP overlap and can be classified and protected as one or the other depending on your preferences and the steps taken to protect it. The below is not an all-inclusive list and there are many more items that can be considered intellectual property. Only a trained IP attorney would be able to provide further guidance.

I Am Not Sure If I Have Any Intellectual Property Worth Protecting

Copyright

- Marketing materials such as brochures, flyers and, websites.
- Internally prepared, unique compilations of company created or existing public data.
- Customer facing documents such as forms and printed explanatory information.
- Software and computer programs.
- Operating and technical manuals.
- Employee handbooks.

Patents

- Software and computer programs.
- Algorithms.
- Recipes and formulas for creating products.
- Methodologies and processes for creating products.
- Know-how.
- Marketing or Business Plans.

Trade Secrets

- Software and computer programs.
- Mechanical devices.
- Recipes and formulas, if novel and non-obvious. (Think of the R&D and money spent on pharmaceuticals).
- Genetic engineering.
- Processes.



Reasons For Conducting An IP Audit

As we learned in the opening section, there are several reasons why protecting your IP is important. In some cases, without taking the required steps, you may not even have any IP at all. Here are some important reasons and considerations for taking the initiative to conduct an IP audit to help preserve and protect your IP and your business.



It Can Help Keep You From Infringing Others' IP

In the course of running your business, certain activities are essential to the ongoing perpetuation of that business. One of these is the hiring of new employees. Especially in the tech industry, but certainly in any other, the employees you will hire have previously worked at a competing business. In this situation, you put yourself at risk, whether knowingly or negligently, of infringing that other companies' IP.

Many departing employees are required to sign non-compete and non-disclosure agreements when they leave their former company. This means that they are not allowed to bring the previous companies' IP, know-how or trade secrets with them to a new company. Without vetting for this information and ensuring that your company has procedures and policies in place to stop this transfer of information, you put your business at risk for an intellectual property lawsuit. Beyond the expense and wasted time of a lawsuit, you could also severely damage your companies' reputation and consequently, its' value.

It can identify assets that might get overlooked

Conducting an audit in a systematic and knowledgeable way can help you uncover IP assets that you did not think you had or needed to protect. Businesses create a multitude of documents that could contain valuable information that might create a competitive advantage. Identifying these potential key pieces of IP is important. You may identify gaps in your IP that could be incorporated into your future strategic business planning. Ignoring or forgetting about them can only create lost value for your business.

Reasons For Conducting An IP Audit

It Can Strengthen Your Own IP

By conducting an IP audit, you are more likely to spot gaps in your protection, and you increase the chances that your IP will be safe from others who would otherwise infringe, compete against you, and decrease the value of your IP. Again, the strength of your IP depends upon how you use and protect it. IP that is strong has several benefits, including:

Strong IP makes it easier, and less costly to bring a suit for infringement than if it were not protected. You will have more options for where to bring suit and more causes of actions to put in your suit, the difficulty of proving infringement is greatly lowered and you may be entitled to significant statutory damages, which negate the need to prove actual damages, which are sometimes difficult or impossible to quantify. In fact, by having strong IP, you may force an infringer to stop its infringing use without resort to the courts at all!

Strong IP is a deterrent to infringing actions by others. If competitors see that you take your IP seriously and are willing to do what it takes to protect it, they will be less likely to steal it from you.

Strong IP increases your brand awareness and the associated Goodwill of your company.

Protecting the distinct property, characteristics and value proposition of your business is crucial to setting your business apart from your competitors.

Strong IP will help your business obtain maximum value from any licensing agreements with other parties and can increase the value received from any sale of it and it can help with business financing. Most business owners do not think about this, but strong, registered IP can sometimes be used as collateral for necessary business funding!

How Can INTELLEQUITY® Help My Business Conduct An Audit And Protect My IP?

At INTELLEQUITY, we can help you identify, protect and exploit your IP by conducting a systematic review, including:

Conduct an inventory and categorize your important intellectual property

Suggest the best ways to protect your IP, and provide legal services to do so

Review company policies and procedures related to your IP and suggest improvements or additions to those policies and procedures.

Provide insight into ways you to use and leverage your IP such as proper use of copyright and trademark symbols, using your IP in marketing campaigns, procuring and negotiating licensing agreements for your IP, and using it as collateral to obtain business financing.

Call us at 503-877-0881 or email us at info@intellequityip.com to find out more!