

## **Assessing Your Company's Intellectual Property Assets**

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When asked to identify company assets, many business people will rattle off a listing of real estate, equipment, supplies, inventory, and other tangible property.

In today's economic climate, however, it is more important than ever to be vigilant in securing and protecting valuable intellectual property assets such as patents, trademarks, copyrights, and trade secrets.

Like other types of property, intellectual assets can be bought, sold, traded, appraised, and used as collateral for a loan. How do you determine if your business owns valuable intellectual property? Let's go through a short checklist:

Do you own a website or have sales brochures? How about written product descriptions, advertising, solicitation letters and emails, instruction manuals, architectural and engineering drawings, pictures, photographs, paintings, graphical images, web-site designs, or computer software? If any of these items sound familiar, you have valuable rights protected under copyright law.

Copyright law protects the creative expression of ideas in original works of authorship. Although registration is advisable, copyright protection attaches to a work whether or not the owner registers the work with the U.S. Copyright Office under current law. What many companies don't realize, however, is that unless the work qualifies as a "work for hire", ownership of copyright vests with the author or creator. Whether an employee or contractor's creations constitute a work for hire depends upon the circumstances of each case and it is advisable to have a properly drafted agreement signed in advance.

Assuming that the company automatically owns what an employee produces may be reasonable where employees are assembling widgets in a factory, but the rules covering intellectual property are different.

For trademark protection, you need to look at how your customers identify your products or services. If you use a logo, slogan, business name, domain name, sound, scent, color or product design to identify your product or service, you may have valuable legal rights under trademark law.

The value of your brand, or its brand equity, continuously increases as your products or services gain recognition and consumer loyalty. Over 90% of Yahoo!'s market capitalization is based on their brand equity. Other companies including BMW®, Nike®, Apple®, and Ikea® all have brand equity valuations that exceed 70% of the company's market value. Not surprisingly, the trademark rights to Coca-Cola® have been valued at over \$80 billion dollars.

Before launching a new business, product, or service in the marketplace, it is important to undertake a comprehensive trademark search and obtain a clearance for your mark. It is not uncommon for inexperienced entrepreneurs to invest a considerable sum of time and money promoting a new product or business only to have their marketing efforts made useless because their mark was already in use by another company.

Think about all the knowledge you have that you would not want your competitors to know. Some of this information may be amenable to patent protection and, if so, may provide you with a 20 year monopoly permitting you to fence out your competitors from entering the field. For years, Xerox® enjoyed monopoly rights to the copy machine and leveraged their patent rights to create an entire new industry.

Not all knowledge developed by a business is amenable to patent protection as the standard for having a patent issued is relatively high. Businesses must often maintain their competitive advantages through trade secret law. Trade secrets include any formulas, customer or supplier lists, marketing plans, compositions, manufacturing processes, or other information that provides an advantage over your competitors. If confidentiality of such information is important, it is imperative that a trade secret protection program be implemented. Employees should sign confidentiality agreements, sensitive documents should be kept under lock and key, and access to valuable information should be restricted.

The bottom line is that every business owns a considerable inventory of intellectual property assets. Businesses routinely conduct a physical inventory of company property. In today's idea-based competitive business environment, however, it is even more important to conduct an audit of the intellectual property assets developed by your business.

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