

# 7 Things Startups Should Know About Intellectual Property Law

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## **1. Your primary asset is your intellectual property. Protect it before you do anything else.**

Talk to an intellectual property attorney, a specialist who'll be able to tell you what you have and how best to protect it (e.g., with patent, copyright, or trade secret law). If you can't afford an intellectual property attorney, look for firms that give seminars at university incubators, or those with startup-oriented practices. Find a law school with an intellectual property clinic. Learn about and understand the various types of IP you have. Have an attorney search the patent office and trademark office records to determine whether you have the right to use your IP, and most importantly, protect it before you start engaging with third-parties. File your patent, trademark, and copyright applications; and establish an internal trade secret/confidential information protection program.

*...the first things a potential investor wants to know is what IP you have and how is it protected.*

Don't make the mistake of failing to protect your IP because "the company" doesn't have the money. Put your own money into it if you have to. But get those applications filed. You'll regret it if you don't, because the first things a potential investor wants to know is what IP you have and how is it protected. **2. Decide who owns the IP.**

Presumably one or more of the members/shareholders developed the IP. The IP is originally owned by the inventor(s)/creator(s). If the company is going to own it, the inventor(s)/creator(s) need(s) to assign it to the company. If the inventor(s)/creator(s) will continue to own it, they need to grant a license (preferably exclusive) to the company. Your IP attorney can help you with this. Just remember, you'll have a better chance of attracting investors if ownership is clearly addressed. **3. Make sure you have a good non-disclosure/confidentiality agreement in place...**

...before you discuss your products with anyone outside your company, including prototype manufacturers, designers, independent contractor programmers, potential customers, interested investors, etc. Without one, you may unwittingly give away your intellectual property and confidential information. And there may be nothing you can do about it. See No. 1.

*GET IN WRITING. GET IN WRITING. GET IT IN WRITING...*

## **4. Make sure you own what you think you own.**

Maintain your chain of title and ownership. If you hire independent contractors, get a written assignment. “Work for hire” is a term of art that does not equate to an assignment, and generally has no application to the tech industry (no pun intended). Whatever you do, GET IT IN WRITING. In fact, make that your mantra: GET IT IN WRITING. Make sure your employees sign intellectual property assignment agreements, or have such provisions in written employment agreements. **5. Don’t give away your IP.**

Make sure you have good license agreements in place if you’re going to allow others to use your IP. Make sure you understand what the agreement says, and what you’re actually allowing the other guy to do. Make sure you retain control over the IP. GET IT IN WRITING. **6. Don’t forget about international IP protection.**

If you’re going to be manufacturing overseas, or if your customers or licensees are located internationally, think about protecting your IP in those countries as well. Intellectual property protection is territorially limited and you’ll need to protect yourself on a country-by-country basis. There are exceptions to the rule, so again, be sure to retain a good IP lawyer who can help you with all of the nuances of foreign protection. **7. Have an exit strategy.**

Plan upfront for the disposition of the IP in the event the company doesn’t work out. Will one person own it? Will more than one share ownership? With intellectual property ownership comes obligations and responsibilities, so again, see Rule No. 1. Good Luck! *This article originally appeared as a [JD Supra Perspective](#) on September 22, 2015.*

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