

Intellectual property basics for startups: copyrights

The crown jewel of a typical technology company is its intellectual property portfolio. Having a good basic understanding of intellectual property protection is essential for entrepreneurs to extract value out of their company's key assets and manage opportunities and risk arising from them. Copyright is one of these assets.

What is a copyright?

Copyrights protect "original" works of authorship that are "fixed" in a tangible medium of expression. Examples of works that can be protected by copyright are website content, manuals, firmware and computer software as well as more traditional works such as songs, novels and motion pictures. Unlike patents, a copyright exists as soon as a work is created; no registration or application to the government is required. However, copyrights need to be registered in the US before a court action for infringement can be filed in the US. Although the term of copyright has varied over time, currently a copyright developed by a company has a term equal to the longer of ninety-five years after the date of first publication or one hundred and twenty years after creation (copyrights created by individuals have a different term). Copyright law gives the owner the exclusive right to reproduce, distribute, modify, publicly perform and publicly display the work. However, unlike a patent, a copyright does not protect the idea behind a work: thus, while a patent may protect a method of creating a multi-threaded computer operating system, copyright law would permit multiple implementations of that idea so long as a company's implementation is not "substantially similar" to the implementation of another company.

When do you need a copyright?

Most products and services can be protected by a combination of intellectual property rights. For example, computer software can be protected by patents, copyrights, trademarks and trade secrets. Microsoft protects certain functions of its Windows software with patents; it uses copyright to protect the actual code of the Windows software from copying; it uses trademark law to protect the "Microsoft" and "Windows" trademarks which identify the product; and it uses trade secret law to protect the structure and methodology of its source code. However, once a patent is issued, trade secrets in the part of the computer software protected by the patent will be disclosed and will no longer be protected by trade secret law.

Copyrights can be particularly useful in preventing counterfeiting or exact copying by competitors: most major consumer software vendors have active anti-piracy efforts.

Copyrights can be very powerful: the record companies and music publishers shut down MP3.com's My.MP3.com service and were reported to have received over \$160,000,000 in confidential settlements from MP3.com for copyright infringement. The record companies' enforcement of their copyrights enabled them to shut down Napster.

What happens if my company does not own the copyright to technology created by one of its founders?

The most common mistake by startups is failing to obtain proper written assignments or licenses of intellectual property rights that are developed by the founders prior to the startup's incorporation or rights developed either by employees or consultants after the startup's incorporation. If a startup does not actually own or have a license to the intellectual property in

its products, a disgruntled founder or employee can hold the startup hostage until the company either revises the product to remove his contributions or makes a deal to obtain assignment or license of the rights. A very common form of this problem is the failure to obtain the assignment of the intellectual property rights to the product developed by the founders either prior to incorporation of the startup or prior to the founders becoming employees of the startup. This mistake can be very expensive to resolve; in some situations, it can be fatal to the startup when it's seeking investment or about to be acquired.

What are alternatives to an assignment of a copyright?

Sometimes an outright assignment of a copyright may not be possible. Short of getting an assignment, it may be sufficient for some startups to obtain a broad exclusive, perpetual and irrevocable license. Such licenses may be royalty-bearing or royalty-free.

What do I do if I have a question?

If you have questions about ensuring that your company has all the intellectual property rights it needs to get started we're here to help. Reach out to our [Technology Sourcing and Commercial](#) practice. In the meantime, feel free to review our starter kit for forms of employee inventions and proprietary information agreement, independent contractor services agreement and founder stock purchase agreement with intellectual property assignment.

Also, if you're interested in learning more about copyright protection in other key jurisdictions around the world, see the IPT volume in our "[Guide to Going Global](#)" series. The current version provides an overview of intellectual property protections and key commercial terms in over 35 countries.

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