

Who owns your IP?

When a company's intellectual property is core to its business, investors and prospective acquirers want to know that the company owns all the rights to that intellectual property. In most cases, owning intellectual property is preferable to licensing it.

Throughout a company's life cycle, there are times when the company's ownership of intellectual property may not be a given (for an overview of intellectual property rights, please see our articles on [copyrights](#), [patents](#), [trade secrets](#) and [trademarks](#)). This article describes some of those situations and the steps a company can take to ensure that it secures ownership of its intellectual property.

Formation

Often, prior to a company's formation, one or more of the founders may have developed technology that is protectable as intellectual property. In order for the company to own that intellectual property, the founders will need to assign ownership of the intellectual property to the company. This is typically done as part of the formation process and often in full or partial payment for the founders' stock. Ensuring that each founder has signed a written assignment that documents the transfer of ownership of any developments created prior to the company's formation is a critical step in the formation process.

It is also important to confirm that any entanglements each founder may have with prior employers have been addressed. For more about potential issues that may arise when you are leaving a company to start your own, [please see our article](#).

Employee and contractor onboarding

In the US, companies can rely on the work for hire doctrine to own any copyrights in developments made by employees in the scope of their employment, but, as we discuss in our article on [assignment agreements for employee inventions](#), the work for hire doctrine does not apply to inventions that could be protected by patents. Additionally, the concept of "work for hire" is not consistently applied in other countries outside the US; in many countries, work for hire principles are applicable based on the type of work involved. Furthermore, as we note in our [article on contractor agreements](#), absent a written agreement with an assignment of intellectual property rights, the contractor will own all developments created under the agreement, whether the contractor is an individual or a company. Therefore, as part of the onboarding process for all employees and consultants and contractors, a company should ensure that it has each employee sign an appropriate form of employee intellectual property assignment agreement and a contractor agreement with the requisite assignment language, and where necessary, have that agreement reviewed for compliance with the laws of the applicable country.

Commercial relationships

A company may find itself involved in one or more commercial relationships in which a third party may be developing something for the company, or where the company is developing something for a third party that may be a customer or supplier. Contrary to popular belief, cash is not king. Payment has nothing to do with intellectual property ownership (though it may provide negotiating leverage). The general principle described above for contractors also applies to commercial relationships: that is, unless there is a written assignment, the party doing the development retains ownership of the development. If a company hires another company as a developer, the developer, not the company, will own the work unless it assigns ownership to the company in writing. Similarly, if the company develops something for one of its customers or one



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of its suppliers, the company will retain ownership unless the commercial agreement includes a written assignment to the other party.

The customer scenario can often result in a difficult negotiation; joint ownership or exclusive licenses may become a way to bridge the gap. However, each of those alternatives can result in other issues if not carefully addressed in consultation with experienced legal counsel. At a high level, a company should avoid agreeing to anything that could restrict its ability to use developments in its own business or provide similar or identical developments to another customer.

Being able to confirm that there is no ambiguity in ownership of intellectual property is essential to any company responding to diligence inquiries by an investor or prospective acquirer. Being proactive before storm clouds appear on the horizon will help to ensure that your company enjoys sunny skies and a prosperous voyage.

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