

Intellectual Property Is Key To The Success Of Startups. Here Are Five Ip Mistakes Startups Make And How To Avoid Them.

When you think of an idea for a new business, you might believe the first step to launching the new venture is to choose your business model, register your company, secure funding, or decide on a name. While all these actions are essential, you should first consider how to protect your intellectual property (IP).

The World Intellectual Property Organization (WIPO) defines intellectual property as “the creation of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.” To shield your IP, you need to follow specific steps and processes to ensure your ideas are protected before launching your new business.

To help you successfully navigate the world of IP, we’ve compiled a list of mistakes to avoid, along with tips to keep in mind as you tackle this first step to starting your business. Read on to learn more.

Mistake 1: Underestimating the importance of intellectual property

Most entrepreneurs don’t spend much time focusing on IP. Instead, you probably spend your day working on creating (or perfecting) your product and executing business and marketing plans.

You likely have some sense that your business has intangible assets and that those assets have value, but you might think of intellectual property as a legal issue to be dealt with by lawyers. This thought process is fundamentally flawed. The most successful businesses understand that intellectual property is a crucial business tool that must be protected and secured.

Valuation experts estimate that intangible assets, such as intellectual property, account for 70% of company assets and more than 70% of equity value in the United States alone. In addition, intellectual property assets represent a significantly larger percentage of the value of the most successful companies, such as those in the S&P 500. By some estimates, IP represents up to 90% of the value of these companies.

Since intellectual property represents such a large asset class, you can’t afford to think of intellectual property as a legal matter. Consider the increased value your business can create by making the intellectual property an integral part of your business plan.

Mistake 2: Not creating an IP plan

Most entrepreneurs must devise business plans, product development plans and marketing plans before launching their businesses.

But all too often, entrepreneurs don't take the time to create a plan to harness their intangible assets or to ensure that they are not infringing the rights owned by third parties. This is a critical mistake that can doom your startup.

Not taking the time to devise an intellectual property plan can create unnecessary hurdles and roadblocks along your path to success.

An IP plan serves as a roadmap for your business to harvest the most value from the innovations you create. In addition, the plan will help you prioritize tasks to ensure that you are not missing opportunities to build additional value.

The plan will also map out how to minimize your legal risk. The last thing any startup needs is to face a costly IP lawsuit that can become a drain on your precious time, funding and resources. If you want to increase your startup's chance of succeeding over the long haul, take the time to develop an IP plan at the outset. Think of this as an investment that will compound over time.

Mistake 3: Not setting up communications

Once your company has grown past a handful of employees, you will reach a point when the team that creates your intangible assets is no longer responsible for deciding how best to protect those assets. In the haze of growth, many companies fail to adapt their processes to ensure the creators and deciders communicate regularly.

Communication between creators and deciders is essential for a few reasons. First, decision-makers can't protect assets they don't know about. Without communication, you won't be able to harness your innovations to the fullest extent. Second, decision-makers need to be informed of all new creations to take prudent steps to minimize the risks and protect you from a costly lawsuit.

To avoid this mistake in your business, develop a plan to ensure the decision-makers and creators communicate routinely.

Mistake 4: Failing to run a trademark search

Many entrepreneurs spend unimaginable time coming up with the perfect name for their company, but don't take the step to run a trademark search for the name. This mistake could cost you dearly.

The best time to discover a trademark issue for your name of choice is at the outset. Even if you've spent time brainstorming the perfect name for your business, you haven't yet invested any of your funding. If you discover a trademark issue for your potential company name early on, you can pivot and find a new name.

Entrepreneurs who don't take the time to run a trademark search for their company name are taking the serious risk of spending time and money to build their brand,

reputation and recognition around that name without verifying that the name is available for them to use.

If a trademark issue emerges a year (or more) after the business was founded, the company will have little choice but to rebrand – and in the process, lose its brand awareness and reputation.

Failing to run a trademark search is a critical mistake. There are plenty of attorneys and search firms who will perform this task for a reasonable fee. If you can't afford to enlist the help of an attorney or firm, you should at least run a search through the Federal registry and an internet search to see if the name you're interested in is available.

Assuming the name is available; consider filing a trademark application to ensure no obvious conflicting trademarks exist.

Mistake 5: Not setting up confidentiality protections

The fifth mistake that startups often make is failing to establish adequate confidentiality protections. Trade secret law – which has been used in the past to protect some of the most valuable business secrets in the world, including the recipes for Coca-Cola and Kentucky Fried Chicken – allows companies to protect confidential business information that has value.

The key to obtaining and preserving trade secret protection is that the company must take reasonable steps to ensure the confidentiality of the information. The Coca-Cola recipe, for example, is known by only two employees, and the written version is kept in the vault of an Atlanta-based bank.

While most confidential information does not require that level of protection, too few startups establish data loss prevention (DLP) procedures to maintain the confidentiality of their sensitive business information.

A company should have the following protections in place:

- Written agreements with employees that require them to maintain business confidences, and policies that limit the number of people who have access to trade secret information.
- Policies that regulate the extent to which employees may transfer sensitive material to personal devices (e.g., rules against sending material to a personal email address).
- Written agreements with outside contractors that require them to maintain business confidence.
- Proper security protocols (e.g., password-protected computer access) to limit access to your company's information.



Tip: If you're meeting with people outside your organization to discuss your business, consider asking them to sign a non-disclosure agreement (NDA) or a non-compete agreement (NCA). These legal documents are separate, but are often filed at the same time.

If you don't have these minimum protections, you risk losing the right to protect your confidential information and trade secrets.

INTELLECTUAL PROPERTY TIPS

To start your business right, make protecting your intellectual property a priority from the beginning. Here are a few guidelines:

Do your paperwork.

If you want to protect your intellectual property, consider filing for a registered trademark or patent. Here's what you'll need to do:

- Research to ensure your business and idea are original and unique.

Educate yourself on IP rights.

As with all laws and regulations, IP rules are subject to change over time. Stay current on rights and regulations regarding intellectual property and the protection you established for your business. The best place to start is to understand the different types of intellectual property protection:

- Trademarks protect the words, symbols and slogans that identify your business, such as your company name, logo and tagline.
- Patents protect new inventions, processes and methods.
- Copyrights protect tangible and intangible creative works, such as written works, motion pictures, art and more. You can file for a copyright online.

Hire an auditor or IP attorney.

Navigating the intellectual property waters on your own can be a daunting prospect. Consider hiring an auditor or IP attorney to ensure your bases are covered from the outset of starting your business. These professionals can also help if you've been accused of IP infringement or your intellectual property has been compromised.

Protect trade secrets.

While there are measures you can take to protect most of your intellectual property, trade secrets fall outside of the IP scope. Here are the steps to take to protect your trade secrets:

- Know which business trade secrets you need to protect.
- Establish stringent NDAs that clearly state the confidentiality terms regarding your trade secrets.
- Institute data loss prevention (DLP) and security protocols across your organization.
- Provide ongoing training for all staff members who have access to the company's trade secrets to educate them on the IP resources available to the company and to ensure they don't accidentally breach the IP regulations you have in place.
- Educate employees to ensure they don't accidentally breach regulations or share IP.

This list could have included many more mistakes startups make concerning their intellectual property. However, most mistakes stem from their failure to recognize the importance of protecting intellectual property and not taking the time to create an intellectual property plan before launching their business.

Startups that recognize the importance of IP from the outset and spend the time and money to develop a comprehensive IP strategy have a significant leg up in the market.

