



Copyright Infringement: Are You Stealing Intellectual Property?

<https://melandbudwick.com/2019/09/16/copyright-infringement-are-you-stealing-intellectual-property/>

Adam C. Uzialko

- Intellectual property includes copyrights, trademarks, patents and trade secrets.
- Violations could cost thousands of dollars and even lead to criminal charges and jail time.
- Avoiding intellectual property violations is a matter of due diligence and best practices around the use of third-party content.

Intellectual property (IP) rights are not always top of mind when you're trying to run a business. They are a serious matter, though, and failure to respect them could have financial consequences for your business, whether the violation was intentional or not. An IP violation could open your business up to lawsuits and potentially have a big price tag. Understanding what types of IP exist and how they are protected by the law is critical to avoid accidentally infringing upon someone else's rights.

Types of intellectual property protections

It can be difficult to avoid IP infringement if you don't know what protections apply. Identifying the types of IP is the first step to avoid using that material improperly.

"The first step in protecting intellectual property is determining what the intellectual property actually is," said MaryAnne Armstrong, partner at law firm [BSKB](#). "Is the intellectual property something that is best protected by a copyright, trademark, patent or trade secret?"

These are the major types of IP protections one might encounter, Armstrong said:

- **Copyrights:** Copyrights protect the rights to "original artistic works," including literature, drama, music, video, architecture and computer software.



- **Trademarks:** Trademarks protect aspects of branding like words, phrases, and symbols that identify goods, services, and companies.
- **Patents:** Patents cover inventions and protect the rights to that innovation for a predetermined amount of time. These include utility patents, design patents and plant patents.
- **Trade secrets:** Trade secrets protect information of a proprietary nature, including formulas, programs and data. Trade secrets grant one party an economic advantage over competing interests.

Understanding these types of IP, how they differ and the material they could apply to will help you recognize protected material more easily. You should never use content that could be protected under any of these classifications without explicit permission from the owner.

Avoiding intellectual property infringement

Unfortunately, avoiding IP infringement is not always cut-and-dry. Entrepreneurs run the risk of violating the legal limits of IP rights in many ways, so it's important to consider this in every decision you make regarding the use of graphics, slogans and even particular product components.

“There are many ways that entrepreneurs could unknowingly infringe upon someone else’s intellectual property, or leave themselves open,” said Mary E. Juetten, founder of IP protection service provider [Traklight](#).

One of the costliest IP mistakes entrepreneurs can make is using work they don't own the rights to, Juetten said. When you hire an outside source to create something for your business, ownership of the created work – graphics, written content, coding, websites, etc. – doesn't automatically transfer to your company. It needs to be explicitly stated in a contract that the creator gives their rights to that work to you.

Juetten gave the example of a web designer being hired to create a website for a company. If the work is done without a contract or with a contract that does not mention who owns the website files, IP issues can arise if the designer wants use the files they created for another purpose. IP theft can also occur with product development if the entrepreneur hasn't secured patents for the product.



“If patents are not all assigned to the company, there may be a risk that one can commercialize the product on their own,” Juetten told Business News Daily.

It’s not only graphics and other content that businesses have to worry about. Businesses can open themselves up to IP violations simply by hiring a new employee who relies on protected information in their work, said Eric Ostroff, partner at Miami-based law firm [Meland Budwick, P.A.](#)

“A new employee could bring trade secrets from his prior employer and use them for the benefit of his new company,” Ostroff said. “It is important for companies to use the employee onboarding process to inform new employees that they are not permitted to use any intellectual property from their old employer. In certain circumstances, it is worth getting the new employee to represent in writing –sometimes in an employment agreement – that they do not have any other company or individual’s intellectual property.”

Whether copyright, trademark, patent law or trade secrets apply, protected material must remain unused unless you have explicit consent and the appropriate licenses from the owners. Anything short of that could land your business in hot water for IP infringement, which can have serious consequences.

Consequences of intellectual property infringement

Failure to respect IP rights can have steep consequences for businesses, including reputational and financial damage. Left unchecked, IP rights violations could even lead to criminal charges and jail time.

“The potential consequences of intellectual property infringement can be serious,” said [Robert Freund](#), an attorney focused on advertising and business litigation.

“Depending on the nature of the violations, penalties may include civil damages in the dollar amount of damages and lost profits, an injunction to stop the infringement, payment of the attorneys’ fees by the infringer, and felony charges with prison time.”

Willful and repeated IP violations could result in the complete failure of a business



and imprisonment of the violators. Accidental violations are costly as well, opening up a business to lawsuits and reputation damage.

How to avoid intellectual property violations

Given the steep cost of violating IP rights, it's necessary to take the steps to verify that your business isn't improperly using protected content.

Freund said small businesses should begin by checking the [U.S. Patent and Trademark Office](#) database to ensure a brand or product name, logo, or design isn't already registered. Moreover, he suggested business owners take the following steps to avoid accidentally violating another person or business's IP rights:

Create original images or music in advertisements. Businesses can use in-house staff or freelancers to create original graphics, content, music and more for their marketing materials. When using freelancers, however, it's important to include a clause in the contract that states all rights to created material belong to the business. Otherwise, freelancers could conceivably register the material themselves and sue the business for IP infringement.

Obtain the appropriate licenses from copyright holders. If you do plan on using registered material, it's important to obtain the appropriate licenses and explicit, written consent from the owners of the content. Without license and consent, you should never consider using protected content.

Use royalty-free media. Royalty-free media is often available online and not subject to the same restrictions as other types of IP. Royalty-free media can generally be used freely without reprisal, though it is best practice to give credit to the creator wherever their content is used.

Finally, if you're in doubt about whether you're infringing on IP rights, it's wise to consult with a lawyer just to be safe. Never leave IP issues to chance; it's not worth the risk.

"Business owners who are unsure whether they are running afoul of intellectual property laws, or are facing the threat of litigation related to intellectual property, should speak with an attorney with expertise in this area," Freund said.



MELAND | BUDWICK