



LET'S PROTECT  
(AND MAXIMIZE)  
YOUR  
INTELLECTUAL  
PROPERTY!

Unraveling Copyrights, Trademarks,  
Patents, & Trade Secrets.

*Legaffluence*





# DESTINY BOUNDS

FOUNDER OF  
BOUNDS LAW LLC

## HEY THERE, ENTREPRENEUR!

I'm **Destiny Bounds**. With almost a decade under my belt as an attorney and business consultant, I've walked the hallways of some of the world's top companies and defended a whopping 5.6 million dollar trial. Quite the journey, right? But the real eye-opener for me? The vast legal hurdles small businesses face, especially related to their Intellectual Property.

While my dad, a serial entrepreneur, soared in his ventures, I also saw him grapple with legal challenges—some that, honestly, went really south. Witnessing his highs and lows, I felt the urge to bridge the gap. So, I started my own venture to make legal help more affordable and accessible for the small business community. No more “big business” exclusivity!

We are so happy you are here!

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# Don't Ignore Your Magic – Intellectual Property!

Intellectual property can DRAMATICALLY increase the value of your business! In fact, IP assets typically represent a significant portion of a company's overall value. In certain industries, IP accounts for as much as 90% of a business's total worth. Unfortunately, many people don't fully understand the primary types of IP:

1. Copyrights
2. Trademarks
3. Trade secrets
4. Patents

Maybe this is you? Well, let's get you up to speed. This Guide will delve into each type of IP (short for intellectual property), how to get those IP rights you WANT, and other info to get you in the know.



READY TO DIVE IN? LET'S DO THIS!



# GUIDE

- ✓ Intellectual Property Brief Overview
- ✓ Copyrights
- ✓ Trademarks
- ✓ Patents
- ✓ Trade Secrets
- ✓ More Awesome IP Resources

## *Legal Disclaimer*

The E-Book provides general information and is not a substitute for legal advice. Prior to using the information in this ebook, it is advisable to consult with a lawyer regarding your specific circumstances. Selecting legal representation is a significant choice and should not be solely influenced by advertisements.

One:

# Intellectual Property Overview

## THE FOUR MAIN TYPES



### COPYRIGHTS

Copyrights safeguard creative works such as art and music. When secured, you have the ability to stop others from copying, distributing, or altering your work without your consent.



### TRADEMARKS

Trademarks protect brand names, logos, slogans, and other elements. Those who own trademarks hold the power to stop others from using their mark on products or services that are the same or substantially similar.



### PATENTS

Patents protect inventions, machines, processes, and other creations. Upon acquisition, they grant you the ability to prevent others from producing, selling, and using your innovation.



### TRADE SECRETS

Trade secrets are really just good contracts, but they safeguard your company's confidential data. By utilizing trade secret laws, you can block third parties from accessing, disclosing, or utilizing your private information.

# Two: Copyrights

## WHAT IS A COPYRIGHT?

A copyright simply implies the authorization to duplicate a specific piece of work.

A copyright is a type of intellectual property that provides the owner specific exclusive rights regarding original works of authorship. This empowers them to restrict others from utilizing those rights throughout the copyright's duration.

### "The Bundle of Rights"

Copyright holders possess the following exclusive rights:

- Reproducing the work
- Distributing the work
- Publicly displaying the work
- Publicly performing the work

Creating derivative works based on the original.

## WHAT CAN BE PROTECTED?

Your Creative Works!

Things such as:

- Music
- Art
- Short Stories
- Corporate Documents (even attorney contracts)
- Computer Codes
- So many things...

# Can you Copyright an “idea”?

Unfortunately, no. It is not possible to copyright an idea; you can only safeguard your unique expression of that idea.

Copyright safeguards the expression of an idea, not the idea itself.

## EXAMPLE:

Consider you have an idea for a new recipe management system where users can store and categorize their favorite dishes. The general concept of organizing recipes is not something you can protect. However, if you design the software, write the code, create a unique interface, and develop custom features like a smart ingredient shopping list that updates based on user preferences, you can protect those specific, original aspects. But even then, you wouldn't be able to protect common elements like the use of categories such as 'desserts' or 'main courses,' since those are standard and not original.



## HOW CAN YOU OBTAIN A COPYRIGHT?

### “Official” Registration isn't required

Copyrights are secured as soon as you (a) create an original work (as defined by the Copyright Act); and (b) put it into a tangible medium (such as written down, saved on your computer, recorded on tape, or stored in another physical form.)

### Although not required, You Should Register. Here's the Benefits!

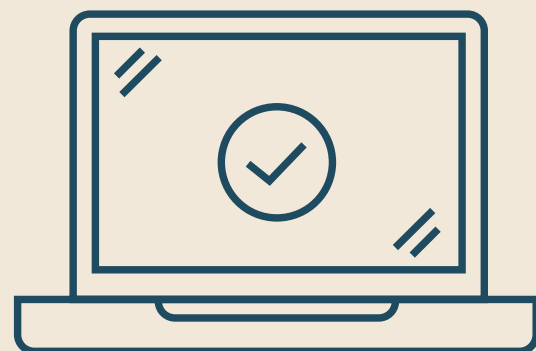
Even though registering your copyright with the U.S. Copyright Office is not required, here are just some of the numerous advantages:

- 1. Public Notice:** By registering, you are publicly declaring your ownership rights. This notification can help you protect against unintentional copyright infringement by others.

2. **Access to Federal Courts.** Without official registration, you can't actually file a lawsuit on any copycats for infringement. Registration allows you to actually file suit in federal court.
3. **Statutory Damages.** In some cases, you can seek additional damages such as statutory damages and attorneys fees in infringement lawsuits.
4. **Credibility.** Registration provides your work with stronger credibility in court.

## How Do You Register your Copyright?

Creating an account on the U.S. Copyright Office's website at [www.copyright.gov](http://www.copyright.gov) is a simple and cost-effective process. Once registered, you can easily draft and submit your applications online.



## How Long Does Your Copyright Last?

Once copyright is established, the rights typically endure for the life of the creator plus 70 years. While there can be exceptions, it is typically still a really, really long time.

## WHO OWNS THE COPYRIGHT?

Typically it is the person that creates the Original Work unless one of the below Exceptions applies.

Keep in mind that answering the question of who “owns” the Copyright can get very complicated. This is typically an area that you may want to double check with an attorney for your particular situation.

# When You (the original owner) would NOT own the Copyright



1. **Employee-Created Content:** Copyright ownership belongs to the employer when an employee creates original works within their job role.
2. **Independent Contractor Creations:** Copyright ownership goes to the client if an independent contractor's work is labeled as a "work made for hire" in a written contract and falls under specific categories in the Copyright Act.
3. **Written Copyright Transfer:** Ownership of a copyright can be transferred to a new owner through a written agreement.

FYI: YOU SHOULD CONSIDER REVIEWING & ADDING LANGUAGE TO ALL YOUR CONTRACTOR AGREEMENTS THAT ALL WORK CREATED IS "WORK MADE FOR HIRE" SO THAT YOU MAINTAIN THE RIGHTS!

# WHAT IS COPYRIGHT INFRINGEMENT?

Unauthorized copyright infringement happens when an individual exercises any of the exclusive rights mentioned earlier (reproduction, distribution, display, performance, derivative works) without permission.

## Practically speaking...

Copyright infringement may happen without directly copying the original content.

Absolutely, directly copying content is an obvious example of copyright infringement. However, even significant similarities can be considered as copyright infringement, known as "substantial similarity" in legal terms.



To determine if copyright infringement has taken place, you can ask:

- Did the alleged infringer replicate the unique expression of an idea, rather than just the idea itself? (Copyright protection extends to the expression, not the concept.)
- Did the alleged infringer reproduce the most significant or distinctive parts of the original work? (If the most crucial elements are duplicated, it suggests a higher chance of infringement.)
- Would the availability of the copy diminish the appeal or sales of the original work? (If the copy is likely to replace the original for consumers, it could indicate infringement.)

## Ensure you don't have copycats, but that you also are not copycating others!

- Offense: Monitor the market to prevent others from copying your original works.
- Defense: Ensure that you and your team do not unintentionally copy the original works of others.

### FYI: Just Simply Creating Something, Does not necessarily give you Copyright Rights

Copyright infringement requires some level of replication. In other words, if you have never come across the original work, it is unlikely that you have copied it.

Example:

If you write an original poem and keep it in a drawer without sharing it with anyone, and someone else independently writes a similar poem without knowledge of yours, they cannot be held responsible for copyright infringement, as they created their work independently without any exposure to your poem.

### Fair Use - Definition

In a very limited number of situations you may copy an original work without permission from the copyright owner.



Remember this important point – the fair use doctrine is quite restrictive, so it's best not to depend on it without consulting an attorney beforehand. Typically, it applies in specific scenarios such as criticism, comment, news reporting, teaching, scholarship, and research.

# Three: Trademarks

## WHAT IS A TRADEMARK?

A trademark is a word, phrase, symbol, or design, or a combination thereof, that sets your goods or services apart from those offered by others.

Most forms of intellectual property aim to safeguard the owner, whereas trademark law focuses on consumer protection. For instance, when purchasing a shoes with a Nike logo, consumers should rightfully expect it to be from Nike, Inc. based in Oregon.

*FYI:*

A service mark serves the same purpose as a trademark, but it distinguishes the service provider instead of the goods source. Here, we will consider them as interchangeable.

## WHAT TRADEMARK PROTECTION DO I HAVE?

Trademarks are linked (and must be linked) to particular goods or services.

Example:

Starbucks owns the name “Starbucks” for its coffee shops and can prevent other coffee shops from using the same name to avoid consumer confusion. However, they cannot prevent a company like Starbucks Furniture from using the name “Starbucks” for its furniture, as consumers are unlikely to confuse the two different types of businesses.

## Does my Mark need “Distinctiveness”?

Short Answer -- YES!

For your mark to operate as a trademark, it needs to act as a source identifier, meaning it must be unique -- distinctive from others. The goal is to avoid situations where competitors can stop others from describing their products or services with common terms (such as “pizza shop” or “flower shop”).

The more unique your mark, the higher the chance of protection. Conversely, the more generic it is, the less protection it is likely to receive.



If at all possible, stay away from Generic and Descriptive marks. Generally, it's simpler to secure suggestive marks compared to descriptive marks (and never generic marks), which are harder to protect. Although it's possible to protect descriptive marks, it's usually better to avoid them due to the additional challenges. The main difference is that suggestive marks require consumers to make a mental leap between the mark and the products or services, while descriptive marks directly describe the product or service.

# HOW DO I CONDUCT A TRADEMARK SEARCH?

## Importance of Running a Trademark Search

Trademark rights originate from commercial use (further details below), so it's advisable to conduct a trademark search before choosing a mark. There are different types to keep in mind.



### Running a Search - There are Different Types!

The aim of conducting a trademark search is to ensure that using a mark will not lead to trademark infringement (now or in the future).

Hence, you are conducting research to determine if others are utilizing your trademark or a similar one for goods or services resembling yours. If they are, and if your future use could potentially cause confusion among consumers, you may need to consider choosing a different trademark.

## Search Steps to Consider:

1. **USPTO DATABASE** - Always conduct a quick search of the USPTO Trademark Database. This is a free resource available at [www.USPTO.gov](http://www.USPTO.gov).

2. **COMMON LAW SOURCES** - Check common law sources - typically internet sources anymore - such as Google, Facebook (and every social site available. Yes-- even TikTok or Insta. All social handles can be TM's), magazines, and similar platforms.

3. **SECRETARY OF STATE DATABASES** - Review all (YES all) state-level business registration databases through the Secretary of State websites to identify any similar trademarks or business names registered in specific states.



4. **PROFESSIONAL TM SEARCH** - Consider running a professional trademark search. A professional/third party search company can search more sources than you (private & public databases), can search alternate spellings and phonetic equivalents, and more.

5. **TM ATTORNEY** - it's advisable to seek assistance from a trademark attorney. While you can research on your own, a reputable trademark attorney can provide insights on whether your mark could potentially lead to legal complications in the future.

## TRULY SECURING YOUR TRADEMARK RIGHTS

### Common Law Rights verse “Federal Registration

The first person to put a mark - name, logo, etc. - on a product or service will get trademark rights for that mark under common law. However, these rights will only apply to the geographic areas where the mark is actually used (and maybe nearby areas where the business might naturally grow)

You are not required to submit any paperwork to acquire common law rights. Simply being the first to use a mark in commerce is sufficient. You can place "TM" next to your mark then to inform others of your rights.

### **You Should Register with the USPTO!**

Not required, but you should always strongly consider seeking a Federal Trademark registration with the US Patent and Trademark Office (USPTO)

SO MANY BENEFITS...

- **NATIONWIDE PROTECTION** - No limitation on geographic rights in the U.S.
- **ENHANCED LEGAL PROTECTION** - Provide strong legal rights and protections in court, including presumptions of ownership.



- **REGISTERED SYMBOL** - You can use the ® symbol to provide notice of your rights.
- **EASIER USPTO DEFENSE:** The USPTO will typically reject applications for confusingly similar marks, protecting your brand without additional costs.
- **STRONGER ENFORCEMENT:** You can sue for infringement in federal court, where you may be awarded greater damages and legal fees.
- **INCREASED BUSINESS VALUE:** A registered trademark can boost your business's value, making it more attractive to buyers and investors.
- **IMPROVED FINANCING OPTIONS:** Registering your trademark can help secure loans or other financing by adding valuable assets to your business.

## HOW TO APPLY FOR USPTO REGISTRATION (by yourself)

Typically, it is advisable to collaborate with a trademark attorney when preparing and submitting an application to the USPTO. Nonetheless, it is possible to do it independently.

### Steps to Federally Register:

#### 1. Search

Perform a trademark search as stated above.



#### 2. International Classes

Each trademark application needs to be assigned to a particular international category. For example, clothing items are classified under class 25, while medical services fall into class 44. You can search classes [HERE](#).

#### 3. Goods/Services Description

Write a description of your products or services. Opting for an approved description is typically recommended for consistency.



## 4. Specimen of Use

Start a “Speciman” file that showcases your mark in commercial use if any issues arise. Your specimen serves as evidence of how your mark is applied in commerce. This could appear on things such as your website, product label, or clothing tag.

## 5. Date of First Use

This marks the initial day you used your trademark in commerce.

## 6. Draft your Application

It is typically best to submit your application online, which can be done at [USPTO website](#). Simply fill in the required information discussed earlier.

## 7. Pay the Application Fee

The fee will vary based on several factors. Typically, for online applications, the cost is \$250 per mark, per class (as of January 2024).



## 8. File your Application

Once everything is done, you can file your application online.

**Intent to Use (ITU) Applications - Yes, you can reserve your spot without using it yet!**

If you have not yet used your mark in commerce, you have the option to submit an Intent to Use Application. This serves to reserve your spot in line and to seek clarity from the USPTO regarding any potential conflicts with your mark.

If you are submitting an ITU Application, you will go through the same steps as mentioned earlier, but steps 4 and 5 will be omitted. Once your application is accepted, you will need to submit extra documents and make additional payments.

## AFTER YOU APPLY -- WHAT TO KNOW!

The USPTO will review your application. A response can take several months. As of August 2024, the wait was over 6 months!

### Office Action - Be Prepared



If there are any problems with your trademark, the USPTO can send an “Office Action”. They might ask for minor adjustments or point out that your mark is descriptive or resembles another registered mark. In the event of receiving an Office Action, you have the opportunity to respond and address the matter. \*FYI - this is VERY TIME SENSITIVE!!

### Official Gazette - This is a Good Sign :)

If your application is approved, it will be published in the Official Gazette for public review. Objections can be raised during this stage. If no objections are raised, the process will proceed through various stages, leading to the receipt of a Trademark Certificate by mail.

### Ongoing Trademark Filings - They are Required

If you successfully obtain a federal trademark registration, then you’ll have to file maintenance documents from time to time.



If accepted, you will need to submit a Declaration of Use to demonstrate ongoing use of the mark at about year 5. Typically, you also request “Incontestability Status” at this point. Subsequently, every 10 years from your registration date, you must file an Application for Renewal along with a Declaration of Use.

## HOW LONG DO TRADEMARKS LAST?

Generally speaking, you could potentially forever :) As long as you are using the mark in commerce (and any other requirements from the USPTO), you can protect your trademark (both common law & registered marks).

## DO I NEED TO MONITOR OR POLICE MY MARK?

Short answer -- YES!

Whether you have a common law trademark or a federal trademark registration, it is a **MUST** to monitor and protect your trademark.

You are really required to keep an eye on the market to ensure that no one is using your trademark in a manner that could confuse consumers (i.e., someone who is violating your rights).

If you come across an infringer, it's essential to take appropriate steps to avoid infringement further. Failure to do so could lead to losing the rights to your trademark, a legal concept known as "waiver" or "genericization".

## WHAT IS TRADEMARK INFRINGEMENT?

Trademark infringement happens when an individual uses another person's trademark or a similar mark without permission on similar goods or services.

If this occurs, the trademark owner has the option to sue the infringer in order to compel the junior user to cease using the trademark. Typically, the trademark owner will attempt non-judicial methods before resorting to legal action, such as sending a strongly worded "Cease and Desist" letter.

**JUST LIKE COPYRIGHTS - Ensure you don't have copycats, but that you also are not copycating others!**

- **Offense:** Continuously monitoring the market is crucial to prevent trademark infringement and maintain protection.
- **Defense:** Proactively ensuring that you are not infringing on the trademark rights of others is essential to avoid the challenges and costs associated with rebranding.

## “Substantially Similar”

**MARK DOES NOT HAVE TO BE IDENTICAL TO INFRINGE**

Trademark infringement can happen even if the junior user's mark is not exactly the same as the trademark owner's mark. The key factor is the likelihood of confusion among consumers.

### Example

For instance, a clothing brand named “Chic Couture” might still infringe on “Chic Couture Boutique” if the similarity could confuse consumers.

**Likelihood of Confusion - Do not have to prove “Actual” Confusion**

FYI - It's important to understand that the trademark owner is not required to demonstrate “actual” confusion. While evidence of actual confusion is beneficial, their main task is to show that consumers are “likely to be confused.”



# Four: Patents

## WHAT IS A PATENT?

A patent gives an individual or business the authority to stop others from making, using, selling, or offering to sell the patented invention.

## WHAT CAN YOU PROTECT?

Essentially "Inventions"...

The term "invention" encompasses a wide range of elements, such as industrial and technical processes, machinery, manufactured goods, compositions of matter, new and beneficial enhancements to these products, and the methods involved in producing them.

## The 3 Requirements for Patents

Your Invention Must Be:

1. Useful: Your invention should serve a specific purpose.
2. New: Your invention must be novel, meaning it was not publicly known before your application.
3. Not Obvious: Your invention should not be obvious to someone with ordinary skills in the relevant field. This can be very complicated.

**\*\*You should strongly consider consulting with a Patent attorney\*\***

# The 3 Types of Patents

1. **Utility Patents** are awarded for practical processes, machines, compositions of matter, etc.
2. **Design Patents** are given for decorative designs of products.
3. **Plant Patents** are provided for the identification of new plants that can be reproduced asexually.

## HOW DO I OBTAIN PATENT RIGHTS?

### PATENT PROCESS

To obtain patent rights you must file an application with the United States Patent and Trademark Office (USPTO), same office as Trademarks.



The application typically includes:

- A description of the invention and the problems it solves,
- Sketches of the invention with numbered references that connect to sections of the written description, and
- Most importantly, the Claims. These claims outline the precise components you intend to protect in your patent application.

It is crucial for every inventor to sign the application and to include all previously discovered prior art while researching other patents, including patents and inventions that are pertinent to their own patent.

## SENSITIVE DEADLINES!

FYI - Remember that the timeframe for obtaining a patent is quite limited (can be 1 year in some cases!). Once you create, especially if you share publicly, consult a patent attorney promptly.

### A Patent's Duration: How Long Does Protection Last?

After obtaining a patent, its validity usually extends for 20 years. For any unique cases or further details, seeking advice from a patent attorney is advisable.

## WHAT IS PATENT INFRINGEMENT?

Patent infringement occurs when someone exercises one of the rights stated above (making, using, selling, or offering to sell, the patented invention) without the owner's authorization.



Same as your Copyrights & Trademarks, make sure you are not just checking for copycats, but that you are not copying others

# Five: Trade Secrets

## WHAT IS A TRADE SECRET?

Very different than other IP - More created in contract rights (like an NDA!)

There is unfortunately not a singular definition for what qualifies as a trade secret as both Federal and State law wants to protect businesses confidential information.

Broadly speaking though, a "trade secret" refers to any information that:

- (a) you reasonably attempt to maintain as confidential; and
- (b) is valuable due to its confidential nature.



Almost all types of business information are eligible for protection under trade secret laws. This encompasses technical data, non-technical data, formulas, programs, methods, lists, presentations, and various other forms of information.

## HOW TO PROTECT YOUR BUSINESS TRADE SECRETS

You Must be Proactive with a Trade Secret!

## Proactive Approach

The key to protecting your trade secrets is to take reasonable actions to maintain the confidentiality of the information.

## Steps (just some) for a Trade Secret

- **Limit Disclosure.** Restrict disclosure by limiting the individuals who can access the information. This can be achieved through physical barriers like walls, doors, or safes. For digital data, utilize passwords, firewalls, and encryption.
- **Label your Documents “Confidential”.** Stamp hard copies, mark electronic files and emails as "CONFIDENTIAL" (even though this is not mandatory for protection it can help if something was ever disputed).
- **Implement NDAs.** Ensure that non-disclosure agreements are in place with all individuals who have access to your confidential information, such as employees, contractors, clients, and others.



### NDA Templates

If you'd like to create a Non-Disclosure Agreement, you can find a template in the [Legalfluence Contract Shop](#).

## There are NO Registration Requirements/Ability

Unlike other IP (copyrights, trademarks, and patents), as discussed above, you do not register a Trade Secret. It is more of a Contract created right. This is why an NDA is so important for maintaining your TS rights.

## How Long is Your Trade Secret Protected?

Once you acquire trade secret rights, the protection will endure as long as you uphold the confidentiality of the information.

## WHAT IS MISAPPROPRIATION??

Once you possess a trade secret, you can prevent others from “misappropriating” it, which involves stopping them from:

- Acquiring your trade secret without your permission.
- Using your trade secret without your consent.
- Disclosing your trade secret without your authorization.

If someone violates your rights, you may seek:

- (a) an injunction - a court order to stop further misappropriation,
- (b) actual damages - compensation for your financial losses from the other part, and
- (c) punitive damages - payment from the other party to penalize their wrongful behavior.



Six:

# Extra Resources

Explore these Extra Resources:

## LEGALFLUENCE CONTRACT SHOP

Did you know we sell contract templates? We drafted them specifically for freelancers, startups, and small businesses.

[Explore the Legalfluence Contract Shop »](#)



## THE LEGALFLUENCE REPORT: THE "GO-TO" MONTHLY LEGAL NEWSLETTER FOR SMALL BUSINESSES

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## FROM HUSTLER TO INVESTHER

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## BOUND FOR DESTINY CONSULTING

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## 5 MUST HAVE CONTRACT PROVISIONS TO PROTECT YOUR BUSINESS

We created this FREE GUIDE to share specific contract provisions that SHOULD be included in your contracts. Makes the Legal Ea-sy peasy!

[Download Now »](#)



Six:

# Extra Resources

NEED MORE INFORMATION?

## Questions?



WHERE TO FIND ME

EMAIL:

[HELLO@BOUNDSLAWLLC.COM](mailto:HELLO@BOUNDSLAWLLC.COM)

CONSULTING/BOOK:



[BOUNDFORDESTINY.COM](https://boundfordestiny.com)

[LEGAL-FLUENCE.COM](https://legal-fluence.com)



CONTRACT TEMPLATE  
STORE/ LEGAL  
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OPTIONS

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