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What you must know about Intellectual Property

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Intellectual Property

Key Findings:

- “Royalty-free” actually means you will have to pay for larger or higher resolution images
- Violation of Intellectual Property rights results in costly legal compensation
- Even advanced search filters cannot reliably produce “free for use” images online
- A solid IP strategy is necessary to protect your intellectual property

We Recommend:

- Understanding copyrights, trademarks and patents for an optimal IP strategy
- Checking IP rights of every creative work (such as a photograph) before using
- Using Digital Rights Management only for highly sophisticated and high-value property such as patented software
- Providing transparency on your approach towards IP on your website prominently

Business Impact:

A good understanding and disciplined approach to intellectual property protects your business profits from intellectual property violations on both sides – loss of revenues (when others infringe on your IP) and penalties (when you infringe on others’ rights).

What you must know about Intellectual Property

Every ecommerce business either creates or comes into contact with creative work such as written material (content), software, statistics/data, photo, music and video. Such creative work is eligible for copyright protection.

Your business logos, designs, including website layout/design, can be registered as trademarks and thus get protection against infringement.

Software, process or products can be registered and provided with a patent. Patents are protected under Patent Protection regulations.

Collectively, the trademarks, copyrights, patents, etc. are referred to as Intellectual Property and legal IP rights accrue.

Understanding the nature and implications of IP rights not only reduces the risks of legal hassles, but also helps protect your revenues.

Specifically, this paper covers the following topics:

1. What is intellectual property and its rights?
2. How is intellectual property protected?
3. What does IP mean for your ecommerce business?
4. How do you safely use online IP in your creative work?

What is intellectual property (IP) and its rights?

Intellectual property (IP) is an abstract term used to denote creative work such as computer software, designs, logos, writings, drawings, photographs, etc.

Protection of one's property is a fundamental right. By their very nature, physical properties such as jewelry, appliances, property, cars, paintings, collectibles, etc. cannot be "copied". This makes it easy to prevent access to such property. There are physical restrictions that can be imposed, such as locks and safe-storage.

For immovable property such as land and apartments, we also have government controlled registration of ownership and title regulations. Whoever has a legitimate title in government records is the owner, and this can be defended in a court of law. By way of registration, stamp-duty payments, the government undertakes to protect the owners' interests.

Such protection is important for safeguarding peoples' investment in such property and for ensuring that their revenue streams, if any, from such possession is safe-guarded.

With intellectual property it is difficult to stamp a unique serial number on the "copy" and it is almost impossible to have registration and title-deed types of security (just cannot scale). The ease with which such property can be downloaded, copied, shared and forwarded makes it impossible to prevent such activities.

Therefore, we have IP laws (also called copyright protection) which basically afford two areas of protection: one is to provide control from any alterations to the original work and the other is to help protect revenues that will accrue as a result of creating IP.

By their very nature when someone (other than the original creator) gets hold of any such work, it is very easy to pass this off as their own work. Since these cannot be locked, or would lose their business potential if not distributed, there is a need for protection and IP right is the protection afforded to such assets.

A note on Digital Rights Management:

There is a related concept called Digital Rights Management (DRM) that provides highly restrictive security around digital assets such as pdf documents, software and anything that has a copyright.

DRM helps provide “locks” against copyright infringement by making it almost impossible to copy such intellectual property.

If you tried to install any purchased software and you were asked to enter a product key that is a DRM “copy control”.

For example Norton Anti-Virus or MS-Office installation requires a product key for authenticating the purchase and limiting the number of installations by way of DRM.

While DRM is still evolving, it is not universally accepted for the main reason that it causes inconvenience to legitimate customers.

Consider CurationSoft, which is available for installation on 3 separate computers. This means that a legitimate customer can download and copy the software onto three separate devices. When one device is reset or crashes, the owner would need to reinstall the software to have continued use of the original purchase.

DRM would make it very difficult, almost impossible to copy the software, and then to reinstall it.

Most of my pdf purchases (and the resulting downloads) end up in a print version. I also copy my pdfs onto my kindle for reading “on the go”. I find that pdfs that have any form of DRM security make it extremely restrictive, urging me return the purchase and seek a refund.

While the original DRM software focused completely on preventing any form of copying (or printing or transferring), the later DRM versions are built to control “infringements”.

Wikipedia has a highly informative page on DRM which you can access at:

https://en.wikipedia.org/wiki/Digital_rights_management

How is your intellectual property protected?

As an original author, when you create your work, there is protection available in the following three ways:

1. Copyrights
2. Patents and
3. Trademarks

1. Copyrights

When someone creates an original work, in the areas of writing/literature, music, video or drawings, they can claim a copyright.

Simply by inserting a © on the body of the work or the cover, the author can claim copyright.

Such copyright can lawfully prevent others from copying, distorting, re-selling, translating or otherwise adapting the work as their own.

The author has the full liberty to assign, restrict or allow any type of rights to others.

For a copyright violation, the author or owner of the copyright can claim financial compensation.

The only consideration in assigning copyright is the originality of the work. As soon as an original work is published or recorded somewhere with an indisputable date/time stamp, copyright protection begins to accrue. There is no need to register any work for gaining a clear copyright.

You can freely use work that is “in the public domain” or “commons”. This means that the work either does not have a rightful owner or if it does, then the copyright has been released.

To ascertain whether a piece of work is truly in the public domain, you have to carefully examine the licensing or get in touch with the owner of the work.

NOTE: Work published on the internet is NOT in the public domain unless explicitly declared by the original author/owner of the work.

2. Patents

A patent is exclusively granted for any invention. Such invention could be a design, a product or even a process. The patent application has to indicate some element of novelty and innovation that would not be obvious to an ordinarily skilled person in that same field. One other condition is that the innovation should have commercial implications.

Patents grant exclusive rights to the inventor to prevent others from taking the creative work to market, i.e. gaining economic benefits from someone else's patent-protected work.

The US Patent and Trademark Office, www.uspto.gov, grants patents in the US.

Patents are designed to mainly protect commercial interests.

Patents are big business!

Google acquired Motorola Mobility in 2011 for US\$ 12.5 billion mainly for its Android patents.

<http://www.google.com/press/motorola/>

It is not uncommon to see patents registered even before the work is completed. Anytime you see the note "patent pending", this is exactly the case. Pending patents have led to a lot of "patent trolling" which actually prevents innovation.

Basically the person simply files for and acquires a patent without ever intending to bring the idea to life. Then when someone else comes up with a similar product, a patent infringement lawsuit is filed.

Mark Cuban, arguably, is the biggest speaker against this trend.

<http://techcrunch.com/2013/01/31/mark-cubans-awesome-justification-for-endowing-a-chair-for-eliminating-stupid-patents/>

In the pharmaceutical world, bringing a new drug to market costs more than a billion dollars. It is highly imperative that such drugs be patented. Drug patents, thus afford protection to the innovating company, and protect their rights to exclusive revenues for up to 15 years.

After 15 years, the drug goes “off-patent”, i.e. the patent expires, and other generic manufacturers can manufacture and market that drug.

In this way, patent help bring new drugs into the market by providing protection.

Patents are also a source of recognition indicating the owner’s creativity. It is not uncommon for patents to be listed in one’s resume.

A patent cannot be kept a secret. Patent office requires full disclosure on your invention before a patent can be granted. Once a patent is granted, the registry provides full details of the inventory and this is available for public consumption.

Even though the secret is out, the law provides protection.

A note on trade secrets

There is another intellectual property right called a trade secret.

This allows the owner of the invention to not only avail of some form of protection against intentional theft and commercial misappropriation of the invention, but also keep it a secret from the public domain.

The owner is expected to safeguard the trade secret by way of confidentially securing the formula, design or other key information related to the invention. By way of non-disclosure agreements, the owner must bind the other party from sharing the information with others.

The best example of safeguarding a trade secret is Coca Cola. Only two people know the formula and they are not allowed to travel in the same airplane!

Intentional theft of a trade secret and subsequent misappropriation is a criminal offence in most countries.

However, if a person or entity discovers the secret on their own, or by “reverse engineering” the product, they are legally entitled to take their product to market without infringing any trade secret provisions.

3. Trademarks

Trademarks work exactly like patents, but they cover words, drawings, symbols, and other distinguishing features of products and businesses.

Just like patents, trademarks need to be registered, they have a period of validity, infringements against trademarks can be decided in a court of law and penalties for violation can be levied.

The Apple logo, Nike's "swoosh" symbol and Mercedes' three pointed star are a great example of high-visibility trademarks. Customers recognize the company by the symbol and in most cases the company does not even have to write out its name.

What does all this IP mean for an ecommerce business?

As an ecommerce business, you must have an IP strategy.

This strategy works in two ways:

Firstly, it gives you a clear methodology by which you intend to protect all your intellectual property or creative work.

Secondly, it gives you an idea on how you plan to use the property that is available on the internet in your work. This second part is covered in the next section.

For the first part, you need to consider the following five areas related to IPs:

1. Understanding which IP right would be appropriate for your work

From the above section, you would have a good idea of which IP protection would fit the need for protecting your work.

Filing a patent requires a 30-day upfront search, and once filed, the “patent pending” status is a good protection as well.

Be aware though, that there is an increasing movement against people that “squat” on patents. i.e. they file and procure patents, but never intent to build the product.

Copyrights accrue automatically based on authenticity, timing and originality of work.

Trade secrets are an intentional way of protecting your work, while keeping it under covers.

2. Trade Secret protection, such as non-disclosure agreements

If you choose not to disclose your business idea, but still would like to avail of protection, then trade secret is the way to go. You must ensure that the way you go about engaging employees, contractors and other parties in your business reflects the intent to maintain secrecy. Usage of non-disclosure agreements and putting in place other prudent protection for your product, process or the formula, are important if you intend to avail of the protection under this law.

3. Creating “terms of use” for your creative work

If you create a lot of graphics, images or take photographs as part of your assets’ creation, then you may want to think of establishing a “terms of use” for those assets.

Sites such as freedigitalphotos.net, whose business model is based off revenues from sale of images, must restrict free usage of their assets. They may have a very limited “free use” (only to gain subscribers to their list, i.e. giveaway product), but for the most part they would have IP usage restrictions on their paid products. This is declared on their site, and also on each photograph.

Usually the free part is intended to attract subscribers, who have the potential to become customers. Just like the giveaway product, these image sites provide, for free, some or all of the following:

- a. Limited number of images to get the new subscriber to start off with.
- b. Free images with watermarks. Paid images would be clear of such watermarks.
- c. Low resolution free images. Higher resolution images would require payment.

In most books you see a copyright and a rights declaration right at the beginning, as in the following example:

NOTICE OF RIGHTS

All rights reserved. No part of this book may be reproduced, stored in a retrieval system or transmitted in any form or by any means, without the prior written permission of the publisher, except in the case of brief quotations embodied in critical articles or reviews.

4. Disclosing your policy with respect to IP

You must prominently and unambiguously declare your IP usage policy on your website. Check out <http://www.freedigitalphotos.net/images/terms.php> for a good example.

It is very interesting that this list is a “summarized” list of their terms and conditions related to licenses. They offer a link to their complete terms and conditions. Also interesting is the last sub-section on the above page, which is titled “Confused?” This goes to show that there is a lot to IP usage and rights, and one can very easily make a costly mistake.

5. Employee rights to be mentioned in employment contract

Usually if your employee builds creative work, such as a software program, a design or even takes images, you as the employer or the company is entitled to the full rights of that piece of work.

It is advisable to declare this in the employment contract unambiguously, if you are in the business of creating intellectual property.

If you hire someone on contract basis, then the position is not very clear, and the contractor may have full rights to the work.

How to safely use online IP in your content

Very often you will need to use or leverage others' work when you create your own work.

While the following is not all inclusive, some instances could be:

- Use data or research from another site
- Use information from another report
- Use an image or photograph that is available online
- Use designs, logos or templates in your own work

A site such as Alltop.com is successful based purely on others' content.

There is a way to safely use online content and images in your work without violating any IP rights. This is by **carefully examining licenses and only using 100% safe objects in your work**. However, this is very time-consuming and most of the time you will not find the right image or content that you need for your work.

Consequently you will need to use work where the license is not clearly stated or not available.

You need to have a checklist to ensure that you are not violating anyone else's IP rights when you use work available on the internet.

The following steps will help you steer clear of willful infringement of someone else's IP rights:

a. Use Google Advanced Image search

Google Advanced Image search gives you an option to find images based on their usage rights. For example you can search images that belong to a specific keyword that are "free to use, share or modify, even commercially".



However, please note that this search is not fool-proof. When the images are returned you need to examine the image's web-page and usage rights to confirm that you can use it without any violation.

For example some images returned by Flickr, even if you select the option “free to use, share or modify, even commercially” will have restrictions.

CAUTION: Ultimately you, as the user of someone else's image, are responsible for ensuring that you do not violate the original author's rights.

b. Don't pass off things as your own

This would amount to plagiarism and is illegal. Never, ever do this. Sometimes even if you did not intend to, your work may come across as claiming someone else's image or work as your own.

To avoid this, always provide a caption or background when you use another site's content or image. A simple way is to provide a footnote declaring the site where you picked the image from or to describe something about the site or the work that you are referring to. Such statements unambiguously declare your honest intention.

If you make this a habit, then the odd violation will not warrant a severe penalty. As opposed to this, if a pattern of consistent violation can be established, the penalty would be higher.

c. Provide proper attribution (credit) back to the original author/creator

This is the single-most important thing you can do to ensure you do not violate the original author's right over their property.

You can quote someone else's work, article, content or data, as long as you provide full, unambiguous and clearly visible credit to the original author.

Many times the author or site will indicate what attribution they would like to see. You can clearly see this in books and images, as in the following example:



SHARE [f](#) [t](#) [g+](#) [e](#) [+](#)

CREDIT LINE © Iggyphoto | [Dreamstime Stock Photos & Stock Free Images](#)

Use Copy&Paste. Alternative [HTML code](#)

KEYWORDS [sculpture](#) [arts](#) [shaping](#) [manufacturing](#) [worker](#) [joinery](#) [woodcarver](#) [carving](#) [timber](#) [adult](#) [equipment](#) [carpentry](#) [hammer](#) [handmade](#) [joiner](#) [old](#) [artisan](#) [handwork](#) [one](#) [craftsman](#) [wooden](#) [carpenter](#) [lumber](#) [craftsmanship](#) [wood](#) [tool](#) [chisel](#) [crafts](#) [male](#) [man](#) [process](#) [workshop](#) [work](#)

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You can go the extra mile and do more than provide attribution by doing some of the following:

- Provide a very brief write-up of the image or article that you are referring
- Never copy or duplicate the full text of their article. While this is a violation of IP rights, it is also bad from a SEO perspective.
- Provide a “read more” hyperlink that takes the reader (from your site) to the original author's site. This works in your favor because you are steering a genuine reader to the author's site. Everyone loves genuine traffic.
- If you discover that you are using more and more content from one specific site (or one specific author), think of including a general attribution in your “About Us” page. This could be something on the lines of how you are influenced by his/her

writings or thoughts. This also works well for building a relationship with the author for greater networking synergies and mentorship.

d. Don't copy and paste the exact content – word-for-word – into your own site

Search engines do not like to see duplicate content within a site. This is because indexing and subsequent ranking becomes confusing. They do not know which page is the original site that deserves higher rankings and traffic flow. From an SEO perspective, duplicate content is penalized.

Across different sites, assuming the content creators are different, duplicating content would constitute plagiarism – a legal offence.

Therefore you should never duplicate content.

Instead you can use a short description, also use a snippet (like what you see in Google search results). When you use a snippet in your work, you are providing more exposure to the original author and helping their SEO. If you can let them know that you are referring to their work in yours, they will appreciate the additional traffic.

e. Use hyperlinks to send traffic back to the original author's site

In addition to using a snippet, you should provide a hyperlink (with appropriate [anchor-text](#)). Now you are not only referencing the original author's work, but also providing them your traffic in one click.

Some sites, such as Business Insider have the “Read more” including a hyperlink back to their site built into the copy-paste algorithm. If you copy any text from their article, you will find that the “Read more” including hyperlink gets automatically copied. What's more, it also includes the hyperlink back to their site.

For example, when I copied the following paragraph from a post from [Business Insider](#), the last sentence was automatically pasted:

Schultz built an empire from scratch precisely because he wasn't as passionate about the product as he was about "creating a third place between work and home." Anyone can sell a cup of coffee. It takes a true innovator to create an experience.

Read more: <http://www.entrepreneur.com/article/248079#ixzz3ffxotiwM>

While this ensures that the hyperlink is accurately available, it also makes your job easier.

f. Clearly declare your IP usage policy on your site

In the extreme case, you may be dragged into a lawsuit for unlawful use of someone else's property. To irrefutably prove the case, the plaintiff (representing the original authors of the work) will have to establish repeated violations, lack of transparency and making money off of someone's work.

If you have a clearly stated IP usage policy on your site, and your actions (based on the information and content on your site and your creations) indicate an alignment with the stated policy, you will have a defensible case.

The stray violation notwithstanding, if a pattern of consistent violation and illegal usage of others' work cannot be proved, the case against you will not be solid.

Lastly, if you can show a pattern whereby you are driving traffic and customers to the other site, providing attributions to the original author and helping them gain publicity as a result of using their assets in your work, they won't even attempt to bring a lawsuit against you.

Conclusion:

Understanding of intellectual property and their rights is an important part of business. On the one hand you need to protect your own creative work from being plagiarized. On the other hand you need to be careful in how you use others' creative work in your own creations.

A clearly stated IP usage policy, habit of providing attribution to the original authors, complying with the stated license for the creative work and sending traffic, allowing publicity and enabling revenue to the original author all go towards establishing a strong case for IP rights' compliance on your part.

If there is a topic that you would like to see addressed in a Deep Insight Paper, please send it to deepinsight@blogsuccess.com.