

# How to build an IP strategy

## AUTHORS



Torys' Emerging Companies and VC Group

**Read this if:** you're not sure you own your startup's IP or if you're looking to revamp your IP strategy

**You might also like:** [Startup funding checklist: legal to-dos to make your investors happy](#).

**Go deeper:** [Operating your startup](#)

Intellectual property (IP) refers to the exclusive ownership rights that you can have over intangible assets (i.e., ideas, not things). However, not all ideas are patentable or protectable. For ideas that you can own the IP for, there are several tools to choose from as part of your IP strategy. Which tool you choose will depend on what you are trying to protect.

## Why you should protect your IP

A startup's IP is its crown jewel. Whether building a SaaS, life sciences, e-commerce, big data, AI or a social media company, the technology you are building, and monetizing, is the core of your offering. Your company—not you, your co-founder, advisors, consultants or employees—should own all the IP that it is developing, and this ownership should be fully documented.

Owning your IP is crucial to [avoid liability and litigation risk](#). If someone claims that part, or all, of your startup's IP belongs to them, then they can bring legal action against you for the exclusive right to use it and/or prevent you from participating in certain actions, such as developing, selling or licensing the software, product, etc. Investors will also want to ensure that the company they are putting funds into has full ownership of the IP it is building because, if you cannot show this, it can be a dealbreaker.

## Steps to ensure your startup owns all its IP

1. **Incorporate your startup:** Have a legal entity to which you can assign IP. This will help ensure that all the work is held in, and owned by, the company, reducing potential diligence issues later during funding rounds.

2. **Undergo an IP audit and assessment:** Determine what IP you already have, including any pre-incorporation IP.

- If you started working on your product as a side gig while being employed elsewhere, it is important that you review your employment contract to ensure that your previous employer doesn't have any claim over the IP you developed during that time.

3. **Legally assign the IP:** Everyone who works for, advises or consults with your startup should sign an appropriate confidentiality and IP assignment agreement.

- As a founder, you are not exempt from this requirement: you will need to assign all IP, including any pre-incorporation IP, to the company.

## IP protection strategies

Your IP strategy is a plan for how you will develop, protect and manage your intangible assets. It should dovetail with your business strategy, and the tools you employ should be based on the kind of product you are building. For example, if you have a SaaS business, you are likely hyper-focused on protecting your source code, so you may keep parts of the code a trade secret. If you are a biotechnology company, then you will want to file patents to protect your inventions. This differs significantly from what a D2C eCommerce business selling products through Shopify might consider, which would typically focus more on trademark protection of their brand and products.

The main tools you can employ for IP protection are:

### Trademark

- Trademarking protects the symbolic value of a word, name, symbol or device that a company uses to identify or distinguish its goods or services and is especially important for consumer-facing companies.
- The best practice to protect your trademark from counterfeiters is to file a trademark application to register your trademark.
- An example of a trademark is Apple's bitten apple logo.
- Keep in mind that getting a corporate name by incorporating doesn't mean you've satisfied the requirements for an official trademark/brand.

### Trade secrets

- Trade secrets protect confidential and proprietary information by, as the name suggests, keeping the information secret.
- No filings are necessary, but you need to keep the information a secret and ensure that the information has commercial value.
- An example of a trade secret is Google's algorithm.

### Copyright

- Copyright protects original works of authorship like software, graphics, the user interface, advertising copy, articles, etc.
- The best practice to evidence copyright ownership is to apply to register your copyright.
- An example of copyrighted work is the source code for TikTok.

### Patents

- Patents protect new innovations or processes by giving your company the right to prevent others from making, using or selling the patented subject matter for a set time.
- You must file a patent application to have exclusive rights over the innovation and to stop others from commercially exploiting the invention.
- Patent applications are time limited. In Canada, a patent is granted for a maximum of 20 years from the date the patent application is filed.
- An example of a patent is Amazon Alexa.

## Tying up your startup IP strategy

When navigating how best to protect your IP, there are several strategic, budget and operational considerations.

In addition to determining what aspect of the company's IP can be protected, and if there is commercial value, it is also important to decide if it is worthwhile to file a patent, copyright or trademark application, and what your budget for IP protection is. You should determine what your budget will be for this year and forecast what your approximate budget will be for the years to come. Your strategy must also consider what you are trying to achieve by filing—do you want to increase your leverage with customers and investors or do you want to create barriers for competitors?

Legal counsel can walk you through your IP audit and assessment as well as help you determine the best IP strategy for your startup.

*To discuss these issues, please contact the author(s).*

*This publication is a general discussion of certain legal and related developments and should not be relied upon as legal advice. If you require legal advice, we would be pleased to discuss the issues in this publication with you, in the context of your particular circumstances.*

*For permission to republish this or any other publication, contact [Janelle Weed](#).*

© 2025 by Torys LLP.

*All rights reserved.*

[← Back to Startup legal playbook home](#)

## Get to know our ECVC practice

---

→ [Learn more about our team](#)

We work closely with players across the startup ecosystem to advise founders on formation, scaling and exits, as well as connect investors to high-growth opportunities.

→ [\*\*View our Startup terms glossary.\*\*](#)

Learn the ins and outs of the commonly used terms in the startup and VC ecosystem.