

Start-up guide | IP

7 key points to protecting your start-up and its intellectual property rights,
and avoiding infringing the rights of others



Read our other start-up guides

If you're also interested in getting ready for investments in your start-up, be sure to request a copy of Vol. 1 of our start-up guide entitled "7 key points from a legal perspective for getting ready for investments".



Hi there!

We know that you would probably rather spend your time working on your new idea, so we won't take up much of your time. But we really want to see you succeed, and it is our experience that many start-ups struggle with their intellectual property rights, which is why we've added this second chapter to our start-up guide.

Protecting your rights and avoiding infringing the rights of others are a crucial part of many start-ups – especially in this tech-filled age, where intangible assets like patents, source codes and domain-names often form the cornerstones of businesses, and where the risk of unknowingly violating the rights of others seems almost inevitable, e.g. in terms of open source code/freeware and personal data. We don't want to sound too dramatic, but your ability to navigate safely in these challenging environments can make or break your business.

Some of the pitfalls are easy and/or free to fix, while others will be somewhat more complex and/or expensive. The most important thing, however, is to be aware of them and be able to accurately assess their impact on your start-up. This is also relevant in relation to obtaining funding and investments: While you yourself may be fine with trusting your old-time friend to code your new

ground-breaking piece of software without a formal contract in place, the investors you may later need to take on may not be so pleased about the prospect of your company potentially not owning its single-most important asset. Deterring investors or accepting a lower valuation may ultimately be the result. Hence it cannot be overstated: It is always easier and less costly to have these matters sorted early on than having to fix them when the problems arise.

To help you get a quick overview of the most important aspects to consider when protecting your start-up and its rights, while also avoiding violating the rights of others, we have drawn up 7 key points that we hope you will consider and keep in mind as you accelerate your start-up.

We love working with start-ups and would be happy to meet with you for an informal discussion (free of charge, no strings attached) on your thoughts, concerns, hopes and wishes, and to advise you on how to best prepare you and your start-up from a legal point of view. Feel free to contact any of us – you'll find our contact details in the back of this leaflet.

#1

Your business name. An asset of genuine value?

Your business name could end up being your brand and the true value of your start-up!

A strong brand can be an asset of great significance and value, and therefore it's important that you protect your brand, e.g. by trademarking your business name and business logos. A trademark helps distinguish your business from competitors and reduces the risk of confusion with similar brands.

Remember to maintain and uphold your trademark by paying relevant registration fees and enforcing your rights against infringers – you should be the only one profiting from your brand; you've worked hard to build and develop it!

#2

Benefit from your development costs. Protect your inventions!

If your business is working on new, original inventions, e.g. a product or a process, you should consider patenting it. A patent can protect you from copycats and ensure that your business is the only one exploiting the invention and benefiting from all your development costs. Also, a patent allows you to easily license your invention, thereby profiting from other businesses selling your product or incorporating your product or processes into their products or business. On the negative side, a patent can be very expensive to obtain and maintain, so you'll need sufficient funds. If you don't have the necessary funds (which is often the case for start-ups), then until you do, your best protection is to keep the details of your invention secret!

Remember that to get a patent you must be the first to file the invention in question and the invention may not have been published before the filing date. If another business develops a similar invention and files for a patent before you do, you could be prevented from using your invention.

#3

Domain names are today's prime retail shop location

In the old days, a company's primary display windows were in brick-and-mortar shops and busy and/or fashionable locations were in high demand. Today, the display windows of the physical shop have largely moved to the internet, and domain names rank among the most valuable assets of a company. Indeed, for many start-ups, the webpage may be the only gateway to the product. Therefore, it is very important that you protect the rights to your domain name, just as you would your right to lease or own a prime retail shop location.

We recommend that you consider (i) ensuring that the domain names are registered to the company itself and that no individual employee is listed as the registrant, (ii) registering similar domain names to prevent phishing attempts, and (iii) for your .com domains, asking your domain registrar to enable the status codes "clientDeleteProhibited", "clientTransferProhibited" and "clientUpdateProhibited" in your registration to prevent unauthorized domain deletions, transfers or updates.

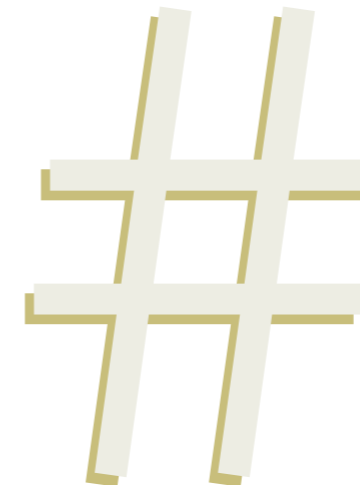
#4

Who actually owns your software?

Today, many start-ups build their own software, which sits at the core of their product. If the software has a sufficient level of originality, it'll be protected by copyright, restricting others from copying the code and using it for their own benefit. Copyright basically equals ownership.

You needn't worry too much about whether your start-up's software has a sufficient level of originality. Just note and remember that the main starting point is that the copyright protection vests with the person or persons actually creating the work protected by copyright (e.g. writing the software), not necessarily your start-up. Local laws may help you out in certain cases: Danish law, for example, provides an exception under which copyright to software (but only software) created by an employee automatically vests with the employer. This, however, only applies if an actual employment relationship exists. In other cases, the copyright will vest with the creator, even if, for example, you paid a consultant/freelancer to develop the software.

Therefore, make sure you always contractually agree that the copyright in software and other creative works vests with the start-up, not any individual employee, founder, consultant, intern, etc.



#5

Watch out for viral open source licensing terms

Open source software, and especially free open source software (FOSS), has become increasingly popular in the past 10 years. Using open source software is in many ways an incredible way to build new products as it allows you to bootstrap a product much faster, cheaper and easier than if you had to build all the elements from scratch. However, some open source software is licensed under so-called restrictive licensing terms (e.g. the so-called "GPL" terms – v2 and v3). While there may be good reasons behind an open source project choosing a restrictive license, you should exercise caution when using software that is licensed on such terms.

If you're using software subject to certain restrictive licensing terms as a part of your own proprietary software and then distribute a combined version, such licensing terms may require that you also make available a source code copy of your own proprietary software (sometimes referred to as a "viral license" or "strong copyleft"). This, in most cases, will not be to your advantage.

Therefore, whenever you use open source software, make sure to (i) pay attention to the licensing terms and (ii) only use open source software licensed subject to restrictive licensing terms in a way that does not expose your start-up to unnecessary risks.

#6

Data what?

We're not going to bore you with all the details of this highly regulatory matter, but the fact is: personal data protection requirements affect all businesses and increasingly so. "Personal data", in short, is any form of information which relates to an identifiable person and can be anything from a name to health information to even your customers' shoe sizes. Any storing/processing of such information may be subject to certain restrictions and/or requirements. In this regard, it is worth noting that it's often more expedient and cheaper to incorporate/build in personal data protection in your business concept, software and/or platform from the start than achieving compliance at a later time.

#7

My precious...

Some entrepreneurs worry about other people stealing their great start-up idea and therefore avoid sharing and sparring with people they come across, which is really a shame as this could provide priceless feedback and good advice. Our experience is that if you're dealing with serious people, they're not likely to steal your idea, and confidentiality agreements are seldom necessary in the earliest stages of a business.

That being said, you should safeguard your most confidential information, and it is often a good idea to release confidential information in phases on a continuous basis as the relationship with the recipient materialises, avoiding, for instance, granting access to your source code or the full terms of your key customer agreement at a first meeting with someone who could turn out to be a potential competitor. In this regard, it is also worth remembering to not publicize e.g. technical information/drawings that you're seeking to patent or may want to patent later on (as described in advice #2), which may necessitate a confidentiality agreement before disclosure.



Contact

Do you have any questions or need help?
Feel free to write or call us for an informal talk or meeting
– free of charge and with no strings attached.



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