

HOW TO PROTECT YOUR IP WITH AN NDA



WHAT DOES A NON-DISCLOSURE AGREEMENT (NDA) USUALLY INCLUDE?

1. IDENTIFICATION OF THE PARTIES WHO HAVE ACCESS TO THE CONFIDENTIAL INFORMATION



2. A DEFINITION OF WHAT CONFIDENTIAL INFORMATION IS

3. THE TERM OF THE RELATIONSHIP (TIME PERIOD) AND HOW LONG THE INFORMATION SHOULD REMAIN CONFIDENTIAL



4. EXAMPLES OF APPROPRIATE (AND INAPPROPRIATE) USES OF THE CONFIDENTIAL INFORMATION

WHEN SHOULD YOU USE AN NDA?

IP is the lifeblood of many businesses and companies should seek protection in a competitive market. Before you hire or work with anyone, you should have a solid NDA at the ready.



WHEN IS AN NDA NOT NECESSARY?

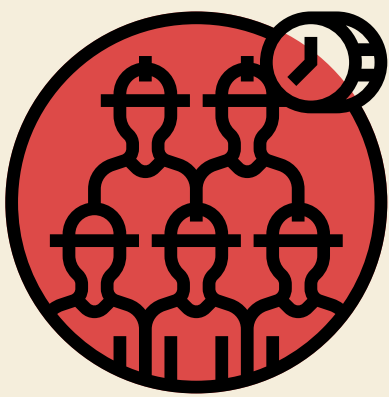
Requesting an NDA is overkill in some situations. It may also cause third parties to think twice about working with you. A general rule is that you don't need an NDA if you won't be revealing confidential information or trade secrets.

5 IP LEGAL AGREEMENTS YOU SHOULD KNOW ABOUT

Here are **5** legal intellectual property agreements that could prove useful in various scenarios.

NON-DISCLOSURE AGREEMENT

A non-disclosure agreement, or an “NDA,” is a signed agreement between parties that protects valuable and confidential information, and discourages theft of intellectual property.



WORK FOR HIRE AGREEMENT

When you hire a contractor to perform a task, a work for hire agreement is critical to ensuring there is a clear understanding of who owns the completed work.

CONFIDENTIALITY AGREEMENT

A confidentiality agreement will often include more than one party and will bind the parties to keep specific information confidential.



LICENSE AGREEMENT

People use license agreements to grant rights to another party to perform a task such as produce goods in exchange for compensation.

TECHNOLOGY TRANSFER AGREEMENT

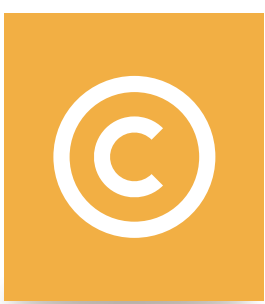
Individuals and organizations who wish to transfer technology to another party for a specific purpose usually make this type of agreement.



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Cost Effective Strategies for Launching an IP Portfolio

Coming up with fresh ideas that translate into products or services is the lifeblood for inventors and creators. However, it can be costly to protect one's intellectual property. Patents in particular have multiple stages, which translates into extensive costs. However, there are some alternative IP protection strategies that could be used.



Obtaining a Copyright Before a Patent

In some situations, a copyright may be obtained on its own. This is possible if the item being created also has an **“ornamental” element or unique aesthetic design**, and is recognized as a work of art.



Obtaining a Trade Secret Before a Patent

An inventor may want to think about **protecting an asset as a trade secret before a fully fledged patent**. A trade secret is, of course, secret. It costs less, but is also a riskier form of protection, with the nature of the protection found in “keeping the secret.”



Obtaining Trademarks

According to the USPTO, trademarks may be used in a design patent application in “limited circumstances.” There may be **components of an innovation that creators want to protect that don't involve disclosure** of how the product is made.



When to Make Patents Priority

Even with all these strategies, there may still be situations in which a patent is the best option. Creators should think about these questions:

- Is the invention something that will be useful beyond 20 years?
- Could another person or company reverse engineer the process?
- Will someone discover or invent the same process in the near future?
- Are aspects of the process or the product itself seen and/or observed in public settings?

FASHION AND INTELLECTUAL PROPERTY



TRADEMARKS IN FASHION

One example where trademarks are important in fashion is the “pret-a-porter,” or ready to wear market. Consumers usually identify these items by the name of the designer, such as Gucci or Dior. Designers seek trademarks for these names and products because consumers purchase them for the name and quality associated with them.



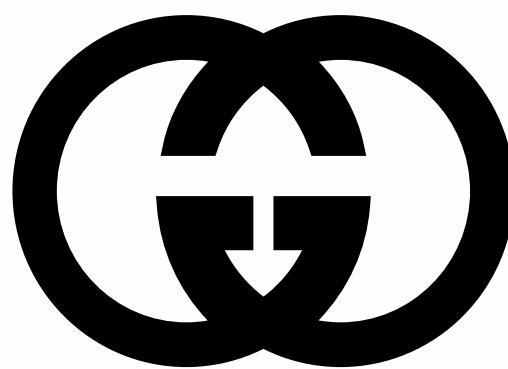
COPYRIGHT IN FASHION

A fashion designer who creates sketches obtains copyright protection for the sketch itself the moment it is created and “fixed in a tangible form.” However, this does not always equate to 100% protection, because the underlying idea is not protected. Copyrights can’t protect “intangible” thoughts.



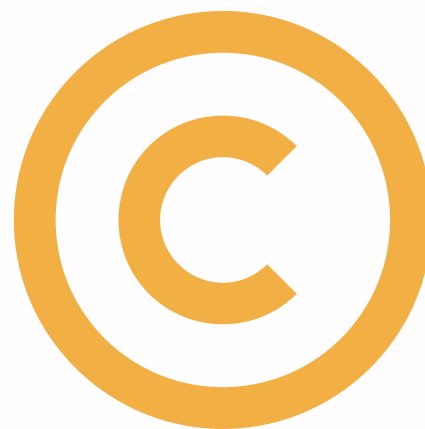
FASHION AND INTELLECTUAL PROPERTY

Creativity can lead to questions regarding protection of intellectual property rights, particularly designs and products. What options and legal avenues are available to individuals who seek to protect their creations?



LOUBOUTIN VS. YVES ST. LAURENT

Another case that reflects the power of trademarks is Louboutin vs. YSL. YSL had created shoes with red soles, much like the famous “red bottoms” of Louboutins. Here, the issue was whether Louboutin could trademark the red soles. This case went to the US Court of Appeals for the Second Circuit, which granted Louboutin the ability to do so.



FASHION AND INTELLECTUAL PROPERTY LOOPHOLES

Loopholes in copyright laws in the US allow for fast fashion brands, such as Forever 21, Fashion Nova, and Urban Outfitters to profit, legally, on garments that look identical to designs created by higher-end brands. Fast fashion business models rely on the ability to quickly recreate luxury trends and celebrity looks at an affordable price point, and often get away with copying other designers without facing legal consequences.

THE FUNDAMENTALS OF IP LICENSING



WHAT IS AN IP LICENSE & HOW DOES IT WORK?

Any form of intellectual property can be licensed to third parties. Through licensing, an IP owner grants third parties the right to use their IP, while retaining their ownership. Usually, the IP owner receives payment in the form of royalties for granting another person (the licensee) the right to use their IP.

DIFFERENT FORMS OF IP LICENSING

There are 3 primary forms of licensing agreements – each providing slightly different rights, advantages, and disadvantages.

1. **Exclusive Licenses:** Grants a third party the exclusive right to use the intellectual property.
2. **Sole Licenses:** Grants a third party the right to use intellectual property, while prohibiting the owner from allowing other third parties to use the IP.
3. **Non-exclusive Licenses:** Grant others the right to use intellectual property, without restricting the owner from using the IP themselves or granting licenses to other third parties.



WHAT ARE THE ADVANTAGES & DISADVANTAGES OF AN IP LICENSE?

On the positive side, licensing IP can:

- Create passive income
- Enable a licensor to tap into local markets
- Create new business opportunities
- Enable businesses to enter new markets or industries



On the other hand, some disadvantages are:

- The licensor may lose some control of their IP
- Abuse of licensing agreements which can lead to IP infringement
- May end up fully dependent on the licensee's ability to generate revenue with the IP
- Licensee's actions could damage the reputation of the brand or product



HOW DO I LICENSE MY INTELLECTUAL PROPERTY?

If you're interested in licensing your IP (or licensing someone else's IP) it will be important to work with a seasoned professional who can help you negotiate a licensing agreement that works for you.



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TYPES OF INTELLECTUAL PROPERTY FOR GRAPHIC DESIGNERS AND VISUAL ARTISTS



UNDERSTANDING YOUR IP PROTECTIONS

By understanding graphic design intellectual property protections, you can better enforce your rights and retain control over your own creations.

COPYRIGHTS

Copyright protections are automatic (whether a work is registered or not) and last for the **life of the creator plus 70 years**.

While designers and artists are afforded copyright protections automatically, there are some benefits in registering original works with the U.S. Copyright Office.



TRADEMARKS

A trademark distinguishes your brand, products, and services in the marketplace – enabling consumers to identify yours from others. Trademarks can apply to a wide range of designs, from **logos and taglines to commercial jingles**.

UNDERSTANDING FAIR USE

If you want to use someone else's intellectual property or someone wants to use yours, permission is required unless the use of IP qualifies as "fair use." Courts weigh four key factors when determining whether the use of another's copyrighted material is "fair":



- The purpose of the use
- The nature of the copyrighted work
- The amount of the work used
- The financial effect of the use

DID YOU KNOW?

NFTS OFFER A NEW WAY TO PROFIT FROM YOUR WORK

NFTs enable creators to collect royalties automatically and track sales through blockchain's verification system. As this form of currency grows, it may provide yet another way for visual artists to profit from their creativity.

IP for Writers of Blogs, Publications, and Social Content

In February 2020, Redditor Matt Query posted a short story, “My Wife and I Bought a Ranch” to Reddit’s r/NoSleep forum, drawing a lot of attention from horror enthusiasts. A bidding war ended with Netflix getting the story for 7 figures. For Query, posting his story on Reddit (for free) got him exposure, but it was the smart usage of writing rights (IP) that landed him a million-dollar deal.



Most Relevant Types of Digital Intellectual Property Writing Rights for Writers

Copyrights



Copyrights provide writers the exclusive right to publish, reproduce, adapt, and share their original works with the public. Copyright protections are automatic (whether a work is registered or not). They last for the life of the creator, plus 70 years thereafter.

Trademarks

A trademark distinguishes your brand, products, and services in the marketplace – enabling consumers to identify your creations from others. Trademarks can apply to a wide range of designs, from logos and taglines to your domain name.



How to Protect Your IP When Your Content Goes Viral

- One way to protect your work is by branding your content and embedding trademarks within the content itself (so you can always be identified as the source no matter how much it’s shared).
- Additionally, it is important to ensure you are respecting the IP rights of others in any content you create. If you use someone else’s creative works without permission, and the content goes viral, there’s a greater likelihood the creator will notice.



Commissioned Projects – Who Really Owns the Work?

Most IP rights are automatically conferred upon the content creator however the employer/employee relationship is one situation where the creator may not own the IP rights. If an employer pays you to write content for them, they will likely own the rights to the content – not you. IP ownership can be established by contract, though, so you should always ensure you are clear on who owns the copyright or trademark if you are writing content for a third party.

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IP FOR INFLUENCERS AND CONTENT CREATORS

Many intellectual property (IP) rights may be automatic but here's the top reasons why you should still protect your digital content:



- You can only **sue for monetary damages** if someone infringes on your registered copyright or trademarks
- Official registration **reduces the risk of others stealing your creative works** and marks
- Registered trademarks help **make your brand more recognizable**
- Trademark registration also **prevents others from using your name or logos** in an attempt to mislead or steal your audience
- Registering your intellectual property makes it **easier to get infringing content taken down**

Common Intellectual Property Owned by Influencers and Creators

Trademarks and copyrights are the most common.

You can trademark your **domain names, logos, hashtags, and online aliases**. You can secure copyright protection for **videos, photos, written text, artwork, and sound recordings**. Furthermore, you can also copyright images and visuals you create, as well as **dance moves, slogans, and phrases**.



Influencers Must Respect the IP Rights of Others

In a nutshell, remember to always seek permission before using any of the following content:



- **Brand names**
- **Logos**
- **Products and services of a brand**
- **Videos, photos, and visuals created by someone else**
- **Written text, artwork, sound recordings**
- **Another brand's slogan or phrases**