

Find, Protect and Make Money Off Your Big Idea

“In real life, unlike in Shakespeare, the sweetness of the rose depends upon the name it bears. Things are not only what they are. They are, in very important respects, what they seem to be.”

HUBERT H. HUMPHREY (1911 - 1978)

“Your most precious possession is not your financial assets. Your most precious possession is the people you have working there, and what they carry around in their heads, and their ability to work together”

ROBERT REICH

What are the most important assets of your business?

The most important assets are the stuff in your brain, the brains of your employees and contractors, and what those brains create. The Big Ideas of your business. This is the secret to making money without having money; create value based upon stuff that just comes out of your brain. Knowledge costs (almost) nothing, but is worth everything.

These intellectual assets may be worth more than any land, building, product, or cash held by your business. The challenge is to find your Big Ideas, protect them, and learn how to make the most money off your resource.

What Will You Learn in This Chapter?

- Where to find your business's Big Ideas.
- The difference between trademarks, copyrights, trade secrets, and patents, and how they are valuable to your business.
- How you can protect valuable business assets using simple and inexpensive Do It Yourself tricks.
- When you need formal protection for your intellectual property, such as government registrations and contracts.
- How to enforce your intellectual property rights to protect their value from wasting away.
- What to do if you are accused of taking someone else's intellectual property.
- How to make money off your intellectual property and Big Ideas.

I. Big Ideas and Intellectual Property

The Big Ideas of your business are the reasons clients and customers choose you and keep coming back. It's what sets you apart from everyone else. They may or may not be formally protected under Intellectual Property law, but regardless, you should identify those Big Ideas so you can protect and effectively utilize them for your profit.

A. How Do I Find My Big Ideas?

Your Big Ideas can be found in the:

- Name of your business, products, service, methods, system, or tag line.
- Domain names.
- Symbols, charts, and graphics you use in conjunction with your products and services.

- Written work, audio, and video you have created that includes your method, systems, and teachings. Also include work that could be recorded, like a speech or class.
- Services you provide for clients that could be written or recorded to be taught to others.
- Products you have created, whether they are hard-copy products or electronic.
- Methods or systems you use to provide your service or create your products.
- Methods or systems you use to obtain or service your clients and customers.
- List(s) of contacts, leads, prospects, clients, customers, vendors, contractors, and referrals.
- Testimonials, case studies, and recommendations from clients, customers, and other professionals.
- Business plan, marketing plan, business vision, and business mission statement.

Your Big Ideas are what you are teaching to the world, how clients and customers differentiate you from the competition and locate you, and what makes you special. These Big Ideas are your business's intellectual property.

Get a free checklist of where you can find your Big Ideas at www.GrowUpBonus.com

B. Why Are Intellectual Property Rights Important to Me?

Your business has value and makes money primarily due to its intellectual property. I don't care if you cut hair, write copy, manage money, clean houses, create websites, sell insurance, sell t-shirts, coach executives, or manufacture computers; what you actually are selling are ideas.

You are selling the idea that you will solve your client's or customer's problem. You are selling the idea that you can do it better than the other guy. You are selling the idea that you are unique. The only reason you are unique, the only reason the customer should choose you over the other guy, the only reason anyone should pay you big bucks, is because of that Big Idea.

To be able to charge more money than your competitors and to build value in your business, you must protect your Big Ideas. You protect your Big Ideas by using the various methods of Intellectual Property protections as outlined below.

If your service or product is protected by intellectual property rights, then you are exclusive. Unique. The Original. There are no substitutes.

You can charge more money. You don't have to sell as hard, because clients and customers are attracted to you. The press wants to write about you because you are the expert. Everything is easier and makes you more money when what you are selling is a Big Idea.

II. Categories of Intellectual Property

What are the different categories of protection for my Big Ideas and/or Intellectual Property?

A. Trademark.

A trademark is a word, symbol, sound, smell, or logo used in commerce to identify the source of a product or service in the eyes of the public. A service mark is when you are using the mark in conjunction with the sale of a service. Most people use trademark to describe a mark used in either the sale of products or services.

Trademarks are used by companies to make products or services more distinctive and memorable in the eyes of the consumer. But to understand how trademark law works, it is important to

understand who trademark law is designed to protect. The purpose is to protect customers from being confused as to the source of a product or service. If I want to buy a lawn mower from a certain company, I should be able to know that the lawn mower with the name and logo on the front is actually made by that company.

In the U.S., when you use a mark in commerce in conjunction with the sale of your product or service, you automatically have the right to sue to stop others who are using your mark. But to protect your mark in other countries, you may have to register your trademark. Examples of famous trademarks include Pepsi™, the Nike™ swash logo, and tag lines like McDonald's "I'm lovin' it™." Trademarks have protection as long as they are enforced, do not become generic, and are used in commerce.

Trade Dress is a similar form of protection for the overall image of a product; the customer's impression of a product. For example, if you pick up a box from Tiffany's, you know it from the color and overall look of the box, you don't even need to see the business name. You also know that a fast food restaurant is a Taco Bell, without reading the sign, just from the shape and style of the building.

Almost anything can be protected, including smells, sounds, and the overall feel of the product. However, just a color, or a purely functional sound (the sound of a Harley Davidson motorcycle) or purely functional design is not something that can be protected.

B. Copyrights

A copyright is an original creative work that has been memorialized in a tangible format. Examples include an article, book, website, software code, music recording, sculpture, or painting.

Once a work is created and is put in a tangible format, it is copyrighted under U.S. law. The creative work must be fixed in some tangible format to obtain protection. If you just play live music, or give a speech, what you have created is not copyrightable, until you record it or write it down.

The purpose of copyright law is to encourage creativity and the public release of creative works by giving the author the right to prevent others from making copies. Currently, in the U.S., the author has exclusive rights to prevent copying of the work for his or her lifetime, plus 75 years after death. This right happens automatically, no registration is required (but registration is required before the author can file a lawsuit). But while the copyright is in force, the public does have the right to fair use of the creative work; generally, for uses such as criticism, comment, parody, news, teaching, or research.

C. Patents

A patent protects a new, non-obvious invention that could be in the form of a product, a method of making something, or a method of doing business. In exchange for disclosing the invention to the world, the inventor is given the right to sue to prevent others from using it without permission. The purpose of patent law is to encourage invention and disclosure of new inventions to the public.

Common examples of patents include prescription drugs, manufacturing techniques, computer hardware and software, and many innovative consumer products.

Currently, in the U.S., the inventor with an issued patent generally has rights to prevent anyone copying, making, selling, or using the invention for 20 years from the date it files the patent application. After that time, the patent expires and anyone can make or use the invention.

D. Trade Secrets

A trade secret is information, a process, or a product that is valuable to a person or business due to the fact that it is secret from everyone else. This includes customer lists and manufacturing processes. The classic example is the recipe for Coca-Cola, which is

more than 100 years old, and derives its value from the fact that it is secret.

If the person or business who has the trade secret wants to be able to protect the secret, it must use methods to keep it secret, such as non-disclosure agreements with anyone who may come in contact with the information and practical methods, such as locks on cabinets and doors, computer firewalls and passwords, and other security measures.

As long as the trade secrets are kept secret and are enforced, they have protection potentially forever. Hence, the reason companies (like Coca-Cola) use trade secret protection, instead of patent protection. If Coca-Cola had patented the recipe for Coke it would have lost protection (and anyone could use the Coke recipe) over 80 years ago.

III. Do It Yourself Method of Protection

What do-it-yourself methods can you use to protect your intellectual property?

- I. **Choose Valuable Names.** When you are choosing the name of your business, products, or service, you want to choose names that are distinctive to the public, easy to protect, and have inherent value. The more unique and less descriptive the name, the more distinctive and easy it will be to protect. For example, Amazon.com is a random word to use to describe a bookstore, and is memorable simply because it is so random. When you are choosing a name, brainstorm some names and check their availability by performing Google searches, checking the “who is” database of domain names, and the trademark registry at uspto.gov. You want something that is not already in use, would be easy to remember and spell, and is distinctive in the mind of the consumer.

Protect Your Big Ideas, Not Every Name

The first name of my financial planning business was Potts Weinstein Financial Consulting. I didn't even bother filing a trademark application for that name, since it was descriptive of my business (my name and what I do), and not very valuable.

My new financial planning business name, The Wealth Spa™ is easy to remember and spell, distinctive, and much more valuable. As such, I protect that name by using the ™ symbol, police it using Google Alerts, and have filed an application to obtain a trademark registration.

- 2. Register Domain Names.** It costs \$10/year or less to register a domain name. If you have a short list of business, product, and service names, go ahead and register the .com names for all of them. For your main business name, and any valuable Big Idea names, register misspellings and other top level domains (.net, .org, .biz). If you are out of the U.S., or plan to do much of your business in other countries, register both the top level domain for that country (such as .uk) and the .com domain. Also, register your full name (elizabethpottsweinstein.com), if it is available.
- 3. Label Your Property.** For the words or symbols you are using in conjunction with your product or service, label them with a ™ symbol to let the world know you are claiming common law (state law) trademark protection. For your creative works (writings, recordings, video), label them with the copyright symbol, the date, and your name—© 2008 Elizabeth Potts Weinstein. On confidential documents (like your client list or internal process descriptions), label them with Confidential, Not for Distribution, or a similar warning. Just these simple acts will let the world know you are planning to police your

property, and will keep casual and uninformed people away (similar to locking your car doors).

In some countries, copyright and trademark rights only apply to the first person who officially registers. If you are located outside the U.S., you must review the rules for your country to learn if you need to register ASAP so you don't lose your rights.

4. **Keep Stuff Secret.** You may have valuable information that is valuable simply because you keep it confidential, like your client list, your marketing system, or your internal process for creating your products or services. Take simple measures to keep these items secret, by using locked file cabinets, firewalls on your computer, only using secure wireless internet, and not leaving documents on your desk for the cleaning people to read.
5. **Police Your Assets.** Set up Google Alerts (www.google.com/alerts) for any words or phrases that are part of your Big Ideas. Google Alerts will automatically perform a web search for those words each day and will notify you when someone uses the words on the web. This includes the name of your business, products, and services, your tag line, the titles of your articles, E-books, and programs, and distinctive phrases you use in your teachings. Whenever someone uses your words on the internet (and the site is indexed by Google), you will know.
6. **Don't Make Your Word a Verb.** Don't use your trademark as a verb or to describe the class of product or service. For example, instead of Xerox-ing a document, say "make a Xerox copy." You don't want your trademark to become a generic term for performing that task, or for that class of products. For example, the trademark over the word aspirin in the United States died because the company who owned it (Bayer, then Sterling Drug) used it as a replacement word for acetylsalicylic

acid. Tylenol however is careful to use the trademark Tylenol to be their brand, and not another word for acetaminophen (n-acetyl-p-aminophenol). They sell Tylenol brand acetaminophen. The companies who owned Pilates and Montessori both lost their trademarks under similar circumstances. Other examples of brands that came dangerously close to becoming generic and losing trademark protection include Kleenex and Band-Aid. That's why the kids in Band-Aid commercials now sing "I am stuck on Band-Aid brand" instead of "I'm stuck on Band-Aids."

IV. Formal Protection for Your Intellectual Property

When and how should you formally protect your intellectual property?

For the Big Ideas that are most important to your business, you should be willing to spend some money obtaining higher levels of protection. This includes the name of your business, the name(s) of your flagship products and services, the content of your highest value creative works, and your trade secrets. Obtaining additional protection includes registering trademarks and copyrights, requiring Non-Disclosure and Non-Complete Agreements, and filing patent applications.

Filing a patent application is beyond the scope of this book, since it does not apply to many small businesses. For more information about filing a patent application, go to www.uspto.gov

A. Registration

Copyright Registration: To protect your creative works, writings, recordings, and video, you can register the work with the United States Copyright Office or the copyright office in your

country. The U.S. application process to protect written works is simple, requiring you to file out a few forms, pay a \$45 fee for online filing, and file a copy of the creative work. You usually do not need an attorney, unless the work is in a unique form.

Why would you want to register a Copyright?

- You cannot sue someone for infringement until you have registered the Copyright on your work. If it is likely you will need to sue, file the application now.
- Registering shifts the burden of proof. The person who is infringing you has to prove that you should not have a copyright, instead of the other way around.
- You may obtain statutory damages and attorney's fees if you prevail in a lawsuit.
- Your date of creation is recorded with the government. Now, if you are challenged, your date of creation is not just your word; you have a government document as evidence.
- If you want international protection, you should register in the U.S. and not just rely upon using the © symbol. Some countries do not have automatic right—you only get protection if you have registered. The U.S. has various treaties with most other countries to honor each other's copyrights, but in some cases, it only applies to registered copyrights.

Copyright applications should be filed, if possible, within 3 months of the date of creation to get the protection of a host of default rules.

Generally, you want to register a copyright for only your important works. Not every article or blog post—that would become expensive and an administrative nightmare. Frankly, much of what you write is not worth that much by itself; you are not likely to go to Europe and start suing website owners just for copying one blog post.

You want to register your high-value works, such as books, E-books, viral articles, and home study courses. The more important it is and the easier to copy (electronic), then the more likely you will want the protection of registration. If even a short article contains the very core ideas of your business, you may want to protect it via registering the copyright.

Get forms and additional instructions at the U.S. Copyright Office at www.copyright.gov

Trademark Registration: To protect words and symbols you use to identify the source of a product or service, you can file an application to obtain a U.S. federal trademark (or a substantially similar process in your country). Trademark applications cost hundreds of dollars to file even without an attorney, so you don't necessarily want to file an application for every word or phrase that you use. Also, these applications are not automatically approved. They are examined by the U.S. Patent and Trademark Office and you may have to respond to more than one Office Action arguing whether you have a valid trademark. You may want to see the assistance of an attorney to help you navigate this process.

Get forms and additional instructions at the U.S. Patent and Trademark Office at www.uspto.gov

Why would you want to register your trademark?

Similar to copyright registration, when you register your trademark you are staking your claim over the date you started using this mark in commerce. This shifts the burden to the other side that must prove you don't have a valid trademark, if they want to defend themselves in a lawsuit. Five years after your trademark issues you are presumed to have a valid trademark and it becomes even more difficult for someone else to challenge the validity of your trademark.

By registering, you are also notifying the world that you are using your mark in commerce. Someone local may know about your unregistered trademark just by seeing your building or advertisement, but you are also notifying people on the other side of the country and world whom have never heard of you. This means that you can obtain more damages in a lawsuit and it is easier to stop someone from using your mark.

Registering your trademark also offers international protections. The U.S. has treaties with other countries, such that each other's trademarks are enforceable in each other's countries. But in some of those countries, it only applies if the trademark is registered in that country or a country with which they have signed a treaty. If you are doing business over the web and/or internationally, then you want to register your most important trademarks.

B. Contracts

When do you need a Non-Disclosure or Non-Compete Agreement?

If you have information that you use in the course of your business that is secret and derives value for you because it is secret, then you may have a trade secret. You protect your confidential information and trade secrets by entering into agreements with people who will have access to that secret information, so they are required to keep it secret.

People who may have access to your information include employees, partners, joint venture partners, consultants, independent contractors, and vendors. You will want to enter into a Non-Disclosure Agreement with employees, independent contractors, and businesses so they are not allowed to disclose or use your confidential information, except as provided in the contract.

This Agreement may just be part of the contract you are already using or may be a separate agreement. Either way, if you do

not use such an agreement, you will probably lose the ability to protect your trade secrets—because someone has access to the information but is under no duty to keep it secret. They could put it up on the internet and there may be nothing you could do.

If you want to protect your client list from your employees, contractors, and partners, you may want to enter into a Non-Compete Agreement with them. This Agreement states that they are not allowed to compete with you in a certain place, for a certain time, effectively meaning that even if they have your client list and service methods, they can't use them. These Non-Compete Agreements are not valid in some places (such as California), and in many jurisdictions must be limited to a reasonable place and time, such as limited to 100 miles from your location and 1 year in duration.

V. Making Money Off Your Big Ideas

How do you make money off of your intellectual property rights?

You must decide the purpose of protecting your rights and your end game. Do you want to prevent anyone and everyone from using your stuff? What will help you make more money in the long term?

Licensing your copyrighted works can be a way to get new leads and to generate additional revenue. Consider licensing copyrighted material in return for a link-back to your website and/or a 25-50 word byline describing your business. This is a great way to drive more traffic to your website using your articles and special reports.

Also consider licensing re-sale rights to your copyrighted works. This can be done where your name is still used (with link backs to your other products and services), or, you can re-sell the entire rights to the work for someone else to brand as their own (for more money). You can create these arrangements by selling

the electronic version or by having versions of your book or booklet printed using the purchaser's branding on the cover.

You can simplify this process by licensing your copyrighted works using a Creative Commons standard license. To learn more, go to www.creativecommons.org

Usually, you will not license the use of your trademarks and trade secrets since you want the public to only think of your services and products in conjunction with that name, and you want to keep your trade secrets, secret. But, you could license the trademarks and trade secrets in conjunction with a membership association or a franchise. If you are perceived as an expert in your field, others may want to copy your method of doing business and you can capitalize on that by charging them a monthly or annual licensing fee.

VI. Enforcing Your Intellectual Property Rights

How do you enforce your intellectual property rights?

Now, let's assume someone is using your stuff without your permission, and you don't want them to use it (i.e., you don't want them to just pay you royalties under a license). What do you do?

Before you do anything, calm down. Don't send a nasty email right off. Don't tell everyone you know or send an email to your list bad-mouthing this person (that may come back to bite you in future negotiations, in the press, or in litigation). The copying could be a mistake, and even if it is intentional, freaking out is not going to help you and will just put them on the defensive.

The first step is to determine your end game.

- Do you want to stop them from using it, or are you fine with

them taking a license and paying you money?

- Do you want them to stop and disgorge all the profits they have made from their copying?
- Do you want to teach them a lesson (by the way, teaching a lesson rarely if ever works, so get over this idea now)?
- Are they judgment proof—in other words, are they impossible to find or have no money, such that filing a lawsuit is probably not going to be worth the effort? (You may still want to file a lawsuit, but you should know ahead of time if you are not going to get any money out of it.)
- What kind of money can you spend on this?
- Do you have time to deal with a lawsuit?
- Do you have the money to pay an attorney?
- How vital is this intellectual property to your business?

Some Things are Worth More Than Money

I have a few articles that I've submitted to article databases on the web, where the article is licensed to be used freely, as long as the website owner also contains my bio and web link at the end of the article.

I have a GoogleAlert set up to monitor the title of each article. Once I received an Alert and upon checking the website, realized that an article database owner was not using my bio or web link at the end of my article. I sent an email, citing the terms of the license, and that I would seek legal remedies unless the owner added my bio and a live link to my website. The link went live in a few hours—a win-win result.

A. Cease & Desist Letter

Next is usually to send a Cease & Desist letter (or fax, or email) to the infringer, to notify them that they are infringing and ask (or

demand) them to stop. The tone of this first contact depends upon whether you think they have made a mistake or the infringement was intentional, whether they are tiny (and may fold easily) or if they probably have their own lawyers, and whether you have a relationship with them.

Be careful what you send. A blogger or eZine publisher with a big following may post your email for the world to see and ruin your reputation, even though the other person is in the wrong, legally. I have a general rule of thumb—don't send a message you would be embarrassed for your grandmother to read. Besides, you may want to do business with this person someday (even if you can't imagine that now), so be careful what bridges you burn.

Should you send the letter yourself, or have your attorney draft the letter? Attorneys are more scary, forceful, and serious. If you think the infringement is accidental, you may want to start with a message from you (but only if you are going to write the message in a non-nasty tone). This especially works if you believe you can negotiate a license or joint venture and want to keep the tone non-confrontational and the other side from going on the defensive.

And, emails feel less serious than faxes, which feel less serious than a real letter, which feel less serious than a Fed Ex or certified letter. What method you use depends upon the effect you want to create on the receiver.

You Never Know Where Infringement May Lead.

This infringement could turn into a great relationship. When I was a volunteer mediator for small claims court, I had a lawsuit I was mediating turn into not only an amicable settlement, but the two parties decided to enter into another contract for a new project! You never know.

If you don't think the other side is going to be win-win or you are not capable of being objective, hire an attorney to write the letter. If you want to save money, write a first draft of the letter yourself. But make sure the attorney understands your end game (i.e., get them to stop versus licensing).

If a Cease and Desist letter does not get them to stop, more letters may be exchanged depending up on the response. You may have some meetings to negotiate a settlement or license agreement. Occasionally, you may skip letters and go straight to the next step, filing a lawsuit.

B. Lawsuits

The extent of lawsuits is beyond the scope of this book—litigation is a book in and of itself. But generally, litigation comes in four flavors. Sometimes the very act of filing a lawsuit makes the other side fold; you just file a complaint, serve the other side, and they freak out and settle. Sometimes the other side is judgment proof, so they don't even try to defend themselves; you get a default judgment and attempt to enforce the judgment. These circumstances are pretty low cost, but still will be a few thousand dollars of attorney's fees and hundreds of dollars in court costs.

The next two types of lawsuits involve some litigation. In one type, the litigation goes on for months or a few years, until both sides really understand what is being disputed and decide to settle the dispute. One party may get a preliminary injunction against the other, temporarily stopping them from infringing (selling the product or service, or using the mark) until the lawsuit is decided, which usually forces them to settle. These types of litigation will cost thousands of dollars.

The other type goes for years, until summary judgment or trial phase, where the court or jury makes a decision about who wins or loses. Usually (unless one party goes bankrupt) one or both sides appeal the decision, for another few years. Businesses typi-

cally spend five to seven figures to take a case all the way through trial and appeal.

C. Contact Their Internet Service Provider (ISP)

If the party is using your copyrights, trade secrets, or trademarks on a website, you have another remedy—you can contact the Internet Service Provider (ISP) for their website and attempt to shut down the website for displaying illegally copied content. This is because ISPs may have liability if they know that their customers are infringing someone's intellectual property rights.

Some ISPs don't want to take a risk, and will shut down their website. Most ISPs will contact their user and ask them to defend themselves. If they have a good counter-argument, some ISPs will do nothing, and some will still shut them down. ISPs do have a "safe harbor" protection against being liable for copyright infringement, so they are less likely to shut down users who are allegedly violating copyrights. If the ISP refuses to do anything after it has been notified, you may be able to add it as a defendant to your lawsuit.

VII. Defending Yourself From Being Accused of Taking Other Intellectual Property

What if you are accused of using someone else's alleged intellectual property?

There are three ways you may find out you are violating someone else's intellectual property: by finding it on your own, by receiving a Cease and Desist notice, or by being served with a lawsuit complaint. Whichever happens, don't freak out. But also don't hide your head in the sand because you have some decisions to make under strict deadlines.

First, you need to decide (I) did you do the action that is alleg-

edly infringing, (2) do you think they actually own the intellectual property they claim they have, (3) do you have a defense (license agreement, generic trademark, fair use of copyright), (4) how important is what you did to your business, and (5) how much money can you spend on this issue?

You have some options for how to respond to a Cease and Desist notice:

- **Do nothing.** If you think they will not take another step, or they don't have a good claim, you may choose to do nothing. But, the danger is that they may file a lawsuit or contact your ISP ask it to shut down your website.
- **Give In.** If what you have done is not important to you and is not worth fighting over, then don't waste your time and money. Also, if you are being accused by someone who has a lot of money and lawyers, you may not be able to afford to fight.
- **Open the Debate.** Send back a response (using an attorney if they use an attorney) stating why you think you didn't infringe or what you propose should be done about the dispute.
- **Contact Your Insurance Provider.** An accusation of trademark or copyright infringement may fall under the "false advertising, slander, and libel" portion of your business liability policy. If so, your insurance provider has a duty to defend you against claims of infringement.
- **File a Declaratory Relief Action.** You can file a lawsuit against them asking the court to decide that they don't have a lawsuit against you. Sounds backwards, I know. This can be useful if the allegation is hanging over your business (i.e., bad press) and you need the issue resolved. This may be a viable option if you know their action has no merit but they are unlikely to sue and may continue to cause you trouble. This especially works well if you have money for lawyers and they don't. For more details, contact your attorney.

- **Challenge patents and trademarks at the United States Patent and Trademark Office.** You can challenge patents and trademarks in the USPTO, with certain restrictions and date requirements. You will need to contact an attorney.

VIII. Grow Up! First Steps

- Audit your marketing materials, written work, products and services for Big Ideas. What are some of your Big Ideas?

- Take at least one Do It Yourself step to protect your ideas, such as registering your domains, labeling with TM or ©, protecting your secrets, or setting up Google Alerts.

- Evaluate your most important Big Ideas to determine what level of protection and enforcement you need for each.
