

# Intellectual Property in Startups

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# Types of Intellectual Property

## Patents

- Inventions that are novel, non-obvious, useful, and patentable subject matter

## Trade Secrets

- Secret information with commercial Value

## Trademarks

- Identifies source of a product or service

## Copyrights

- Expressions of ideas

# Patents

UPSIDES	DOWNSIDES
20 years of protection (after filing)	Can design around patent claims
Licensable	Expensive and lengthy process
Exclusive right	Policy considerations in innovation
	Complete disclosure of invention

# Trade Secrets

## Upsides

- Available as long as information remains confidential

## Downsides

- Could be reverse engineered or independently discovered

# Trademarks

- Source identifiers
- Must be distinctive and not confusingly similar
- Relatively inexpensive to obtain
- Protection lasts as long as mark is used in commerce
- Can extend to trade dress



# Copyrights

## Upsides

- Protects works of authorship (art, writing, music, movies, etc.)
- Owner has exclusive rights to copyrighted work (sell and distribute, creation of derivative works, licensing)
- Protected automatically (must file for *extra* protection)

## Downsides

- Eventually in public domain
- Bar for originality is very low

# How should a company look at IP?



# Intellectual Property Coverage

IP Right	Requirements	Term	Protection
Patents	<ul style="list-style-type: none"><li>• Patentable subject matter</li><li>• Novel</li><li>• Useful</li><li>• Non-obvious</li></ul>	20 years from the filing date	Must sue infringers to protect your patent
Trade Secrets	<ul style="list-style-type: none"><li>• It is a secret</li><li>• Secret has commercial value</li></ul>	As long as secret remains a secret	Usually enforced through unfair competition
Trademarks	<ul style="list-style-type: none"><li>• Word, name, symbol, device used in commerce</li><li>• Must be distinctive enough</li></ul>	As long as mark is used in commerce	<ul style="list-style-type: none"><li>• Protects first in use</li><li>• Filing prohibits later uses and later filing</li></ul>
Copyrights	<ul style="list-style-type: none"><li>• Expression</li><li>• Originality</li><li>• Fixed in tangible medium</li></ul>	Life of author + 70 years	<ul style="list-style-type: none"><li>• Substantial similarity + copying</li><li>• Document that assigns copyright to owner</li></ul>





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# Resources

- Intellectual property

- <https://www.entrepreneurship.org/learning-paths/intellectual-property>
- <http://www.kauffman.org/what-we-do/resources/entrepreneurship-policy-digest/how-intellectual-property-can-help-or-hinder-innovation>
- <https://www.nolo.com/legal-encyclopedia/what-trade-dress.html>
- <https://us.practicallaw.thomsonreuters.com/8-608-7253> - Startup Company Toolkit
- <https://us.practicallaw.thomsonreuters.com/2-500-4365> - IP Rights: Key Issues
- <https://us.practicallaw.thomsonreuters.com/8-383-4565> - IP: Overview
- [Rounding the Corner on Trade Dress](#)

- Legal Counsel

- <http://startuplegalshop.com>
- <https://www.law.uchicago.edu/clinics/innovation>
- <http://www.law.northwestern.edu/legalclinic/elc/>
- <https://www.luc.edu/law/centers/business/clinic/index.html>

