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# INTELLECTUAL PROPERTY & PROPRIETARY RIGHTS

*“Property has it’s duties as well as it’s rights.”*

–Benjamin Disraeli (1804-81)

## OVERVIEW

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Businesses compete with one another in the marketplace. They battle for customers, distribution, people, capital, favorable treatment, and advantage in general. Assets often make a difference in which enterprises prevail. More assets are usually better than fewer, and they need to be actively managed and protected as they are accumulated in the life of a company.

Assets exist in two forms, tangible and intangible. Tangible assets are things you can put your hands on such as inventory, accounts receivable, money in the bank, furniture, fixtures, buildings, and equipment. Intangible assets, on the other hand, are more illusory. They include information like customer and vendor lists, pro-

duction processes or know-how, technical drawings, and business plans for the future. Intangible assets also include a business's intellectual property. A company or product name, unique logos or layouts, formulas, software designs—these are examples of **intellectual property**. Companies own their intangible assets, including information and intellectual properties, in the same way they own their buildings and inventory. Such ownership is called having **proprietary rights**, i.e., ownership rights. People in business often fail to do an adequate job of protecting the proprietary rights they have in their intangible assets, in part because they may not know what needs to be protected, and in part because they may not know the means at hand. Protecting such rights is good business and the subject of this chapter.

What does it take to protect rights and to avoid infringing on the rights of others? It takes knowledge about **what is protectable** and **how to do it**. And vigilance. In general, it is far more cost effective to take preventive measures than it is to end up in court either as an initiator of a lawsuit (plaintiff) or a defendant. But it is important to keep in mind that the primary reason to protect intangible assets, including information and intellectual properties, is that they are often the key to a competitive advantage. Tangible assets can often be purchased and are typically easily duplicable. Intangible assets, on the other hand, exist as a consequence of many hours of trial and error, are not obvious to competitors, and are difficult to reproduce independently. As with other aspects of business life, litigation about proprietary rights has increased exponentially. The actions outlined below can help business builders prevail as the importance of intangible assets continues to increase in the years ahead.

*Fortune magazine writer Thomas Stewart was quoted on this subject. He gives the example of two companies, Microsoft and IBM. In 1996, he figured, every \$100 invested in IBM bought \$23 of fixed*

*(tangible) assets. By contrast, the same \$100 invested in Microsoft bought about \$1 in hard assets. Clearly, investors are valuing something at Microsoft that is not captured by conventional accounting techniques. That something is a somewhat amorphous asset, intellectual capital.*

—*International Herald Tribune, Cashing in On Trends in Advance, Steven Pearlstein, 12/30/96. ©1996, The Washington Post. Reprinted with permission.*

## THE LAW OF THE LAND

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Our courts and legislatures across the country have historically sought to balance several competing interests when enacting and enforcing laws having to do with intangible assets, including information and intellectual properties. The competing interests are three in number. Owners, such as companies, seek to protect their investments in developing information, ideas, and competitive advantage. Former employees or competing business owners have a right to make a living and capitalize on their skills. And our society in general has an interest in competitive markets and the promotion of innovation. Because of these three, on-going, competing interests, our laws as written provide only a starting place. To balance competing interests, *courts tend to review each dispute on a case-by-case basis.*

The laws that exist tend to fall into one of five categories:

- Trade Secrets & Confidential Information
- Trademarks and Trade Names
- Copyrights
- Patents
- Corporate Goodwill

In general, trade secret laws encourage the development of products and processes by protecting commercially valuable information which owners wish to protect from disclosure. Trademark laws focus on connecting a product with its producer so that consumer confusion is avoided. Copyright and patent laws are aimed at promoting writings and inventions through delivering exclusive rights for a certain period of time to the owners, while providing disclosure of the works to the public. Laws relating to goodwill, which may be the most intangible of the intangible assets, generally protect a company against unfair or deceptive trade practices of a competitor. Internally, goodwill as well as other intellectual or intangible rights are often protected through the implementation of company policies and agreements with employees. See Chapter 8.

## **PROPRIETARY RIGHTS**

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As indicated earlier, there are five basic categories that fall under proprietary rights.

### **Trade Secrets & Confidential Information**

Laws in this area offer far-reaching intangible property protection to developers of ideas and information. For owners to gain trade secret protection from the courts, the material must be secret, valuable, and, in some jurisdictions, new or novel. While the “valuable” and “novel” elements may face little court scrutiny, an understanding of the secrecy requirement is crucial. Nearly 75 percent of our states have adopted some form of the federal Uniform Trade Secrets Act. It defines a trade secret as information that derives independent economic value from being secret, i.e., it is not generally

known or readily ascertainable by proper means. **The act requires owners to take reasonable precautions to keep their secrets secret.** Some examples of protected trade secrets include customer and vendor lists, information on a manufacturer's production methods, formulas, technical drawings and mathematical algorithms, and in some cases, records of computer programmers' trial-and-error efforts during software development, and even portions of software source code.

Overall, the secrecy requirement has two attributes. First, the information or process must not be publicly known or ascertainable, and the owner must work at keeping it a secret. Whether or not a given subject is secret can depend upon what is "generally" known or "readily" ascertainable by "proper" means. For example, while one cannot properly seek protection of a vendor list lifted directly from the Yellow Pages, a list *derived* from the Yellow Pages is protectable after the owner has spent time and money selecting certain vendors who provide the most valuable pricing and service.

The second attribute is that **owners must treat their secrets appropriately.** Most often trade secret disputes arise because an owner has taken insufficient precautions to protect his or her material. For example, court protection can be precluded if an owner allows public disclosure through displays, trade journal articles, advertising, random use by current or former employees, unguarded transfer on the Internet, or other carelessness. Once again, vigilance is required.

### **Trademark and Trade Name Protection**

A trademark refers to a specific good or service and is linked to the source or quality of that product or service. A trade name, however, identifies a business entity and its goodwill. Thus a trademark is a word, phrase, symbol or design, or combination thereof which identifies a company's goods and distinguishes them from goods produced or sold by others.

“Service marks” are basically a kind of trademark. They identify a specific service provided by a business and distinguish the named service from the services of other providers. Trademarks or service marks may include the use of numbers, logos, symbols, sounds, and nonfunctional product shapes. Some examples of well-known trademarks are those used by Snapple® for teas; Campbell’s® for soups; Pepsi® for soft drinks; L’eggs® Panty Hose (egg-shape packaging) for hose; and COCA-COLA® (logo plus shape of bottle) for cola drinks. On the other hand, Merrill Lynch and The Boeing Company are illustrative of trade names.

Trademarks are protected by registration under the federal Lanham Act as well as through registration in the states and countries in which the mark will be used. Registration at the state level without federal registration, however, provides only marginal protection. Prior to statutory protection, trademarks were safeguarded under common (court-made) law, which still applies today. Whether by statute or common law, trademark protection can best be summarized as “use it or lose it.” Such protection is limited in time and geographic scope to the period and area in which the goods are distributed or the services are provided, as well as the natural area of expansion of the business. Federal registration does, however, give you a nationwide right of priority.

If a trademark owner simply relies upon common law protection, he or she is neglecting the presumptions and remedies afforded by statute. The owner risks losing the mark in the “natural area of expansion” to someone else using the same mark who has already expanded there. Additionally, the owner must prove ownership of the mark or name, must prove the ownership is prior to that of the infringer, and that the infringement caused confusion in the mind

of the consumer to the damage of the owner. Last, the owner must prove the amount of damages suffered by virtue of the infringement.

Under both statute and common law, a greater degree of protection is available for a “strong” trademark. Strong trademarks are unique and can be arbitrary with no logical connection between the mark and the goods or services—like Apple® for computers. Strong marks can also be suggestive, conjuring up an image or impression. A strong mark is rarely descriptive of the product and is not generally a surname or geographic name.

Trade *name* protection is also limited under common law to the time period and geographic area of its use, together with the business’s natural area of expansion. Contrary to statutory trademark protection, registration of a trade name under federal or state statutes accomplishes little more than the protection obtained under common law.

What about the **Internet**? Recent cases suggest that the use of domain names will be analyzed according to traditional principles of trademark and trade name law. There is more on this later in this chapter in the section on how to minimize legal troubles.

## Copyright Protection

As stated by the U.S. Supreme Court, the federal Copyright Act is *intended to motivate the creative activity of authors and inventors by the provision of a special reward, and to allow the public access to the products of their genius after the limited period of exclusive control has expired*. For at least as long as an author’s lifetime, copyright law protects the author’s profits arising from his or her original expression of a creative idea through some sort of fixed medium such as an article, book, or video or audio tape. It also protects sculptures and three-dimensional works.

The first element of a copyrightable work is **originality**. The work must be independently generated by the author with at least a minimal degree of creativity. Utilitarian articles such as bookkeeping forms, mechanical devices, and typeface designs are not copyrightable. Unlike patent law, however, originality does not mean the copyrighted work must be novel or unique. Thus, for example, the telephone company's organization of names, telephone numbers and addresses, while not novel, is copyrightable in part as a result of the creativity required to organize the information in a certain fashion.

Second, contrary to trade secret protection, a copyright cannot protect ideas; it can protect only **an *expression of those ideas*** that is "fixed" in a tangible medium. As defined by the Copyright Act, "*a work is 'fixed' in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration.*" For example, while transitory events such as a speech or an image on a computer screen are not tangible or copyrightable, a speech recorded on an audio tape or a computer program carrying the image for a computer screen *are* copyrightable. **If an idea, process, concept, method of operation, or discovery cannot be reduced to a fixed tangible medium, it cannot be copyrighted.** Copyright law protects only actual fixed expression and not the underlying content (idea) behind that expression.

An example of an uncopyrightable idea or method of operation is Microsoft's use of a window-like interface similar to Apple Computer's operating system. In *Apple Computer v. Microsoft Corp.*, the Court of Appeals held Microsoft's Windows program did not infringe upon the appearance of Apple's operating system since there was virtually no other practical means of designing a user-friendly,

mouse-operated system. The system approached the fundamentals of a method of operation rather than an expression of an idea.

Finally, to be copyrightable, the item must consist of a **work of authorship**. Works of authorship include literary works (including computer programs), musical works, dramatic works, choreographic works, pictorial, graphic and sculptural works, audiovisual works including movies and multimedia productions, sound recordings, and architectural works.

A copyright lasts the life of the author plus fifty years. If the work was authored by someone on a work-for-hire basis, the copyright lasts 75 years from publication or 100 years from creation, whichever occurs first. Generally an author owns a copyright. When more than one person participated in the authorship, each has an undivided interest in the copyrighted product. When the author creates the product under the employ of another and within the scope of her or his employment, the employer automatically holds the copyright even though the employee was the author. This is called the **work-for-hire** doctrine.

Absent actually employing a person, another way a business can retain a copyright is to have an independent contractor/author sign a contract assigning ownership to the business of all interests associated with the work done by the contractor/author.

A copyright owner owns a bundle of rights rather than just one. For example, a copyright owner may grant the right to reproduce and distribute a computer program or book in Canada to one party, in Great Britain to another party, and in Scandinavia to yet a third party. He or she could retain the rights to distribute the material in the United States, as well as to develop, produce and distribute any derivatives of the material anywhere. In short, all rights not granted by the copyright owner are retained by that owner.

As in trademark protection, an author has common law copyright protection without the need to register. A copyright arises automatically at the moment of fixation, whether or not the work is published and whether or not it is registered with the United States Copyright Office. As soon as words are typed onto a page or music is recorded onto tape, the material is copyrighted.

However, just as with trademark protection, an owner enjoys substantial advantages if she or he **registers the copyright in a timely manner**. To protect against infringement the author is wise to register the copyright as soon as a work is published. With some exceptions, infringements which occur before a work is registered are not protected by the federal Act.

Copyrights are registered only with the United States Copyright Office; individual states have no registration capabilities. Normally, an author must submit one copy of the finished product, a completed application, the computer program (for computer software) and an application fee. If the material includes trade secrets, the author can block out certain portions of what is submitted.

Once registration is complete, the author need do nothing more to protect the copyright. Contrary to trademark protection, copyrighted material is not required to contain a copyright notice (as was the case prior to March 1, 1989). Nonetheless, a copyright notice reading © **All rights reserved**, including the name of the claimant and year of publication, should be prominently affixed to the work to provide protection in some foreign countries, to deter infringement, and to defeat an infringer's claim that the infringement was innocent.

## **Patent Protection**

Under federal patent law, any person who *“invents or discovers any new and useful process, machine, manufacture, or composition of*

*matter, or any new and useful improvements thereof, may obtain a patent.*” A patent gives you the right to exclude others from making, using, or selling your invention.

There are three types of patents: utility, design, and (organic) plant patents.

**Utility patents** cover articles of manufacture, machines, compositions of matter, and industrial processes. Examples of this type of patent include an engine, machine-crafted products such as hand held tools, mechanical devices with moving parts, a genetically engineered biological product, and a chemical treatment process.

**Design patents** apply to new, original and ornamental designs of manufactured articles. The shape of a boat or car could be the subject of a design patent.

**Plant patents** are granted to new plant varieties that are asexually reproducible. Examples of plant patents include those for fruit-bearing trees and ornamental plants like roses.

To be patentable, an invention must be new and useful. It can not be identical to something that already exists. It can not be patented if it is known or used by others in the United States, or if it is patented or described in a printed publication here or in a foreign country within a year of the date the patent application is filed. The application must be filed within one year of the date the invention is first sold, offered for sale, published or committed to public use (not including experimental use), or the patent is barred. This one-year grace period is not provided by most foreign countries.

Only one patent will be granted for any single invention. However, a single patent can be granted to several inventors. Disputes over who is entitled to a patent (in the case of simultaneous filings) is determined after a hearing by the federal Patent and Trademark Office.

Prior to 1995 a utility patent generally lasted 17 years from the date of issuance. In 1995 utility patents were increased to 20 years. Patents in effect at the time were given the benefit of the extended term. Utility patents generally require periodic maintenance fees after issuance. Plant patents generally last 17 years and require no maintenance fees. Design patents generally last 14 years and have no maintenance fees.

### **Goodwill Protection**

After a period of advertising and operating, many companies develop a niche in consumers' minds; people recognize the company and what it represents. People feel "goodwill" toward the enterprise. It costs money to develop such goodwill. It is a business investment just like a new facility, and goodwill has value to the companies that developed it. Goodwill, therefore, is property, an intangible asset, worthy of protection.

The most common trespasser upon such property is the former employee who has left to start his or her own competing business elsewhere or a former business owner who has sold his or her business to new owners. Often such former employees or owners attempt to take some goodwill with them. The most common form of protection against this risk is a signed contract. Laws governing non-competition agreements, non-disclosure agreements, and employee invention agreements vary greatly from state to state.

Non-competition agreements are generally intended to prevent a former employee or owner from either beginning a competing business or working for a competitor within a specific geographic area and within a specific period of time. New owners should normally have sellers sign non-competition agreements as a condition precedent to a purchase. In addition, employees should be required to execute non-competition agreements either at the outset of em-

ployment or at such time as they receive an increase in job responsibilities and more salary. Although non-competition agreements are clearly a restraint of trade, most states will enforce such agreements if they are reasonable and supported by adequate consideration (see Chapter 7 on Contracts).

## HOW TO MINIMIZE YOUR LEGAL TROUBLES

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Proprietary (ownership) rights are of increasing interest as our society moves toward the formation of more and more intellectual capital. The world of business is becoming increasingly dependent upon knowledge and less dependent on, for example, manual labor. There are specific steps that builders of businesses can take to protect their intangible assets, including intellectual properties. There are also steps for preventing infringements on the assets of others.

### TRADE SECRETS AND CONFIDENTIAL INFORMATION



**1. Identify trade secrets and confidential information vital to your business.**

Everything you do does not fall into this category. Decide what you need to protect as part of your competitive advantage.



**2. Establish policies, procedures and guidelines for protecting your property.**

Employees should be provided with designated, vital information only on a *need-to-know* basis, and all employees should be subject to a company non-disclosure policy and/or a signed, non-disclosure agreement.



**3. Mark all confidential documents, computer files, or other forms of information with appropriate non-disclosure warnings.**

In some cases it may be necessary to post signs indicating security areas and to maintain locks, guards, alarms or closed circuit television or other appropriate measures to ensure security.



**4. Have key employees, vendors, customers, shareholders or selling shareholders (of a closely held corporation), board members, potential buyers, or other parties in contact with confidential information sign a non-disclosure agreement.**

The agreement can be independent of or a part of some larger agreement such as an employment agreement. The key ingredient of a non-disclosure agreement is its definition of the confidential information. Define it broadly. While the courts generally inflict fewer restrictions on non-disclosure agreements than non-competition agreements, enforcement varies from state to state.



**5. Require all new employees and independent contractors to sign an agreement warranting that his or her position with your company will not violate any confidentiality requirements of any prior organization or business, and agreeing that he or she will not use or disclose confidential information from an outside work place while associated with your company.**

One of the most common ways to become embroiled in misappropriation litigation is by hiring an employee or independent contractor who violates the trade secrets or confidential information of his or her prior employer or other clients (in the case of an independent contractor).

## TRADEMARKS AND TRADE NAMES



### **6. Complete searches prior to adopting a particular mark or name.**

Seek to avoid infringing on the rights of existing users. Use a search firm or a qualified attorney to search for prior, conflicting uses.



### **7. Register trademarks federally if you anticipate that your product or service will be used in more than one state.**

Doing this will provide your company with protection that extends beyond what can be achieved via common law or state registration. Companies can register a mark under the Lanham Act if the mark is or may be used in more than one state. Companies may file a registration based upon actual use, or contrary to common law protection, based upon the owner's bona fide intent to use the mark. Once registered, businesses must include a notice (such as ®) with the mark to ensure application of all remedies and benefits available through federal registration. **Trade names are not registerable with any federal office.**

*A certificate of registration from the United States Patent and Trade-mark Office is initial evidence of a valid registration, the owner's ownership of the registered mark, and the owner's exclusive right to use the mark nationwide in connection with the class of goods or*

*services with which the mark is associated. All other providers of that class of goods or services are deemed to know (whether they actually know or not) about the owner's protected, exclusive rights to the mark. A trademark owner can block imported goods bearing a confusingly similar mark for the same type of good. If an owner must sue to enforce trademark rights and is successful against an infringer, the owner is entitled to injunctive relief (forcing the infringer to stop infringing), three times damages and the infringer's profits, together with legal expenses, in some circumstances.*



**8. Register trademarks in your state if your product or service is limited to that state.**

State registration may be sufficient if a product or service is not being offered or transported outside state boundaries. State registration provides benefits under that state's laws for use of the trademark only in that state. However, the protection provided by state registration may be weak or lost when another company with a similar mark, which is operating in multiple states (including your own), has a federal registration for its mark. Some states also provide for registration of a trade *name*, but many do not.



**9. Register trademarks early in foreign countries.**

In many foreign countries, the right to exclusive use of a mark is based upon the first to file rather than the first to use, as in the United States. Thus if a trademark owner wishes to distribute its goods in another country, it should register the mark at the earliest possible moment, e.g., long before the goods are shipped. Some countries, such as Japan, do not provide service mark protection.



**10. Re the Internet: Perform a URL search to verify that a trademark is not already being used on the Web.**

Many businesses are present on the World Wide Web by virtue

of a domain name or Uniform Resource Locator (URL). The domain name is both an address and a name, e.g., <http://www.coke.com>. Users placing a domain name on the Web which is confusingly similar to some company's registered mark have been prohibited from using the domain name. Recent court cases suggest that the use of domain names will be analyzed according to traditional principles of trademark and trade name law.

## COPYRIGHTS



### **11. Register your copyrighted material promptly with the United States Copyright Office.**

Registration is required as a condition to bringing a lawsuit against an infringer in federal court under the federal Copyright Act. As with trademark protection, an owner is entitled to statutory damages and attorney fees if successful. Note: International copyright protection is a complex, specialized field that is outside the scope of this book.



### **12. Require your employees to acknowledge in writing your company's copyright ownership and to assign to the company whatever interests the employee may have in any work being done.**

Even in the traditional employer/employee relationship, a manager or owner is well served to deal with copyright ownership matters proactively. A contractor (who is not an employee) *must assign his or her copyright ownership and interests in their work*. Proceed with care when using assignments with non-employees. Some states require employers to notify contractors of certain rights provided under state statute.



**13. Always state in writing who will own a copyright when more than one person or entity outside the typical employer/employee relationship contributes to a copyrighted work.**

When non-employees get involved in the development of material there is great potential for misunderstanding that can result in litigation. Once again, the best prevention is to cover such matters early in a relationship. Independent contractors should be asked to provide written warranties stating that their work does not infringe upon the rights of others and agreeing to indemnify you against any damages which may occur as a result of a breach of the warranties.



**14. Establish and enforce policies that prohibit copying of materials which have a valid copyright by another person or entity.**

Copying that is infringement is not limited to physical copying; it includes public distribution, display, use in a performance, and the preparation of derivative works. Copying is generally shown by proof of access to the materials and a fact of substantial similarity between the copyrighted work and the infringer's material.

*Under the federal Copyright Act, fair use of copyrighted material is excepted from infringement. Fair use includes certain uses of copyrighted work for purposes like criticism, comment, news reporting, teaching, scholarship and research, and computer program back-up. The largest factor in determining whether use is "fair use" is whether the amount of material being used is disproportionately large and whether the fact of the borrowing is likely to have an adverse effect on sales of the original. If important to the whole, use of even a small amount of material can constitute infringement. When used in a for-profit (rather than a scholastic or personal) context, unauthorized use is likely to be infringing and not fair use.*



**15. Obtain permission before using any portion of a work copyrighted by others.**

If there is any doubt about whether certain material is indeed copyrighted or whether the intended use meets the fair use exception to infringement, contact the author.

## PATENTS



**16. Prepare in advance to file for a patent.**

Inventors should document the development of their inventions in writing as they go along. It is also often useful to do a patentability search as early as possible in the process of invention. Employers should have in hand signed proprietary agreements with employees or others working with the company. Such agreements should confirm the signers' duty to assign the ownership of inventions to the company.



**17. File for a patent with the federal Patent and Trademark Office when you wish a patent and feel you have something new and useful that will qualify for a utility, design, or (organic) plant patent.**

Obtaining a valid patent can be a time consuming and costly effort. However, it is the primary method to protect your invention. Any investment in such an effort should fit with the overall plans for building your company. Patent holders have a bundle of rights which they may transfer outright or by selling limited licenses. A patent license normally allows a non-exclusive or exclusive licensee to make, use and/or sell the invention in exchange for a lump sum payment, royalty payments, or both. Note: International patent protection is a complex and specialized subject that is outside the scope of this book. However, because most foreign countries do not

have a one-year grace period for filing, you should file for a U.S. patent before any use, sale, or publication is made if you intend to seek foreign patents.



**18. When issued, place the patent number on the invention.**

As with copyrighted material, a proper notice tells people in general that the invention is protected. This may avert innocent infringement defenses. If the notice is not used, the inventor may be prohibited from collecting damages from an infringer by a federal court.

## GOODWILL



**19. Enter into a non-competition agreement (also known as a covenant not to compete) with key employees.**

Although non-competition agreements are clearly a restraint of trade, most states will enforce such agreements if they are reasonable and supported by adequate consideration. Whether or not a non-competition agreement is reasonable usually depends on three factors. First, the **geographic area** in which the employee must not compete must be reasonable. For example, if your company distributes electronic marine supplies over a five-county area, it would be reasonable to prohibit an employee from competing in that area, but not the whole state. Nor would it be reasonable to prohibit an employee from competing twenty-five miles away in the suburbs if you have a dry-cleaning business that attracts customers in a downtown area.

Second, the time period in which an employee will not compete must be reasonable. While enforceable time periods vary from state to state and the particular circumstances, employers should

generally not seek to restrict employment for more than three years. A particular employee's job responsibilities and access to information may determine the length of restriction. If the proprietary information known by the employee may change from year to year, such as pricing information, then a one-year restriction may be adequate and reasonable. If the employee has confidential information relating to a business's long-term goals, this fact might reasonably support a three-year limitation. Thus, a food manufacturer may be able to prohibit a managerial or supervisory employee who had access to a secret process or confidential business plan from competing for three years. But a production employee with limited knowledge of the process and no knowledge of the business plan might reasonably be prohibited for no more than three months, if at all.

Third, the type or **scope of activity** restricted must be reasonable. For example, a communications software development company may prohibit its employee (a software technician) from competing in the communications field with software he or she developed for the company, but the employee cannot be prohibited from working in a software company right next door that designs video games using a different technology.



### **20. Implement policies regarding non-disclosure of confidential information and have key employees enter into non-disclosure agreements.**

As goodwill includes confidential information and trade secrets developed by a company, it must be protected proactively. To keep secrets secret, mark materials appropriately, regulate access to them, and limit disclosure to third parties.

## CONCLUSION

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Intangible assets such as intellectual property (e.g., trademarks, patents) and proprietary information (e.g., customer lists) often constitute a significant part of the total value of a business. Protection of such assets is a continuing task. To stay out of court, owners and managers need to recognize relevant issues early even as they enact and enforce policies to maintain the legal integrity of their own organizations.

