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# Top Ten Urban Legends of Intellectual Property

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**1. Poor Man's patent/copyright: mail yourself a copy of what you want protected and don't open it. The sealed information can then be used to prove ownership of the intellectual property contained in it.**

While this may provide some evidence of the date of creation, it is not reliable proof that could be used in court and is unlikely to provide any protection for your intellectual property. At most, it might enable you to prove you did not copy someone else's later design.

**2. If it is on the internet, then it is in the public domain or free to use.**

This is just not true. Many of the things available online are protected and use of them constitutes infringement. Even a simple copy and paste of an unauthorized image to social media can be an infringement and cause significant legal issues.

**3. If you make 7 changes or change something by 10% or only use 4 bars of music or choose a color that is two Pantone® shades away, you are not infringing.**

There are several variations of these myths and all of them are simply not true. There is no magic number or formula for making sure a use or copy is not an infringement. There is no bright line test. Copyright infringement analysis is based on "copying," pure and simple. Without direct proof of copying, copying can be presumed by showing access and substantial similarity. Trademark infringement analysis is based on likelihood of confusion.

**4. If you cite the source you have copied, you are not infringing.**

While citing to sources is the right thing to do, it does not transform an infringement into a non-infringement.

**5. If you just put a trademark or copyright symbol beside your brand or work, you are protected or, in the alternative, if there is no symbol, it is not protected.**

Copyright exists immediately upon creation of the work in a tangible medium. No symbol is necessary to protect a copyright. A ® symbol indicates the trademark is federally registered and the ™ symbol can be used on any mark that is being used as a trademark without the need for a registration. While it is a good idea to mark protected works, it is not necessary for protection and does not itself confer any protection.

**6. Trademarks, patents, copyrights and trade secrets are interchangeable.**

Each of the different types of intellectual property protect different things and have different rights associated with it.

- Patents protect original inventions.
- Copyrights protect creative works such as books, movies, paintings and music.
- Trademarks can be words, phrases, logos, or symbols that indicate a brand or indicate a source of goods or services.
- Trade Secrets can be any information that is unique and not publicly known such as customer lists, source code, formulas and other proprietary information.

**7. If you register your business name or a domain name, you automatically have trademark rights.**

Registration of your business name when forming your business with the secretary of state's office is completely separate from and has no bearing on trademark rights in that business name. The search process in registration of a business name is only looking for identically-named businesses in that particular state. Registration of your business name with the secretary of state's office does not grant any trademark rights and provides no trademark protection. The same is true for registration of domain names. Domain name ownership provides no trademark rights or protection of the domain name that is owned.

**8. Businesses automatically own all intellectual property created by employees or contractors.**

Many people mistakenly believe that businesses own all of the intellectual property of its employees or contractors. However, ownership of intellectual property can be a complicated issue that varies by the type of intellectual property. The best way to ensure proper ownership between businesses and their employees or contractors is with a written agreement and advice of an intellectual property attorney.

**9. If you are not selling anything or making a profit, then it is not infringement.**

While not selling something or making a profit can factor into whether something is considered "fair use" under copyright law, it doesn't automatically make it fair use. For example, you can't make unlimited copies of your favorite book or movie and then give it away for free to your friends to avoid any legal liability. This myth also extends to non-profit organizations who sometimes don't think they need to protect their intellectual property simply because they are not for profit. Non-profit organizations often have very valuable intellectual property that should be protected.

**10. If you own the physical artwork, you own the copyright in that artwork. If you commissioned the artwork, you own the copyright.**

Copyright law is complicated and transfer of the copyright from the artist or creator must be in writing and contain specific language. Don't assume that you own the copyright to a creative work just because you own the physical work, such as a painting hanging in your home. Further, don't assume you own the copyright in a commissioned piece of artwork unless there is a written agreement regarding transfer of the copyright.

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