If your company or organization uses a website, newsletter, blog or social media site, there are legal basics that you cannot afford to ignore. To understand the protections that are available under the law, it is important to have some knowledge about intellectual property (IP) law. IP is generally understood to consist of four key areas: copyright, trademark, patent and trade secret law.

**Copyright** protects original works of authorship including literary, dramatic, musical and artistic works, including but not limited to websites, computer software, novels, movies and songs. Copyright protection is secured automatically upon creation. However, there are advantages to proactively filing a copyright registration with the U.S. Copyright Office, including:

- Copyright registration establishes a public record of ownership of a copyright.
- To file a copyright infringement lawsuit for works of U.S. origin in a federal court, the copyright owner will be required to have registered the copyrighted material with the U.S. Copyright Office.
- If the copyright infringement lawsuit is successful, registration allows the copyright owner to recover actual damages or, where applicable, statutory damages and attorneys’ fees.
- Without having to prove any actual monetary harm, the copyright owner is entitled to statutory damages and attorney’s fees if registration was made prior to the infringement, or within three months of publication of the work.
- If an original work is registered within five years of publication, registration establishes *prima facie* evidence in court of the validity of the copyright.
- Copyright registration allows the copyright owner to record the registration with the U.S. Customs Service for protection against importation of infringing copies.

A **trademark** is a word, phrase, symbol or design used in commerce that identifies and distinguishes one party’s source of goods or services from those of others. Common law trademark rights accrue with use in commerce. However, as in the case of copyright, proactively filing a trademark registration with the U.S. Patent and Trademark Office (PTO) has numerous benefits, including:

- Trademark registration establishes a priority date of ownership of the mark in the U.S. and may be used as a basis to obtain registration in foreign countries.
- Trademark registration allows the trademark owner to bring a suit concerning the mark in federal court and recover statutory damages and attorneys’ fees where applicable.
- An application or registration results in being listed in the PTO’s online databases.
- The PTO will refuse to register any confusingly similar marks.
Trademark registration creates a legal presumption of ownership of the mark, establishes the owner’s exclusive right to use the mark nationwide on or in connection with the goods or services listed in the registration, and puts others in the U.S. on constructive notice of the owner’s rights.

Trademark registration creates the right to use the federal registration symbol ®. *Under no circumstances may this symbol be used unless and until the PTO has issued a trademark registration number.*

Trademark registration provides a tool for stopping cybersquatters from unlawfully registering a domain name that corresponds to a registered mark.

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A **patent** is a limited duration property right relating to an invention, granted by the PTO in exchange for public disclosure of the invention. Unless you seek to protect an invention, patent law is generally not applicable here.

Broadly speaking, a **trade secret** is any confidential business information that provides a business with a competitive edge. State law governs trade secrets, although most states have adopted some version of the Uniform Trade Secrets Act (UTSA), so there is considerable uniformity across states. Under the UTSA, a trade secret has three basic components: 1) it is secret; 2) it confers a competitive advantage to its owner; and 3) it is subject to reasonable efforts to maintain its secrecy. Trade secrets may encompass financial data, customer lists, personnel information, supplier lists, formulas, plans, designs and processes. The unauthorized use of such information by someone other than the holder is regarded as misappropriation and may be actionable.

There are three types of contracts or agreements that are widely used to help businesses protect trade secrets: non-disclosure agreements, non-compete agreements and confidentiality agreements. Often, these agreements are signed upon commencement of employment, prior to negotiating the purchase or sale of a company, or when two companies seek to collaborate on a product or idea. There are certain restrictions imposed on enforcing these agreements, particularly non-compete agreements signed by employees. A few jurisdictions have barred employee non-compete agreements entirely, while others require them to be reasonable.

With this context in mind, the following seven questions will help you identify the key action items you may want to take to protect your brand and business:

1. **Do you have a website?**
   - Register your website content with the U.S. Copyright Office.
   - Update the copyright registration periodically or when meaningful changes are made to the site.

2. **Do you circulate a newsletter or other content to subscribers?**
   - Consider filing copyright registrations for these materials to deter unauthorized use.
3. **Do you use a brand name or trademark?**
   - Register the trademark (word or design mark) with the PTO.
   - If you do business internationally or have a *bona fide* intent to do so, consider filing for trademark protection in all jurisdictions where you are offering goods or services for sale or intend to do so.
   - Monitor potentially infringing trademark use by third parties with Google alerts or other search engines.

4. **Have you taken steps to protect your domain name and deter cybersquatters?**
   - If you have a website, register the domain name to the business and not an individual employee.
   - Track the domain name expiration date and be sure to renew in advance.
   - Consider registering variations of your domain name in popular top level domains (TLDs). For example, if your domain name is already registered as a .com, register the same domain name with .org, .net and .biz.
   - Block your trademark from being registered on the new .xxx TLD. For information about the new .xxx TLD and other upcoming changes to the Internet landscape, please see www.griesinglaw.com/download/WelcomeLaw%207-7-11.pdf.
   - If you do business internationally or have a *bona fide* intent to do so, consider registering your trademark as a corresponding domain name in each jurisdiction where you are offering goods or services for sale or intend to do so.

5. **Did you hire someone to contribute content to your website?**
   - Obtain a signed “work for hire agreement” with any independent contractor for any text, photos, videos or illustrations created by the independent contractor that provides that the company, not the independent contractor, owns all created content.

6. **Does your website collect information about visitors or is it interactive in any way?**
   - If your website has any social media functionality, e.g., ability to “like” the content of the site through Facebook, or allows users to contribute their own content, this needs to be reflected in a privacy policy and terms of use policy.
   - If the site accepts any user generated content (e.g., comments, uploading video or images), consider designating a registered agent under the Digital Millennium Copyright Act (DMCA) in order to benefit from the DMCA safe harbor provision and reduce the likelihood of liability for copyright infringement.
   - Depending on the amount of user generated content, a user content submission agreement may be appropriate.
   - The terms of use policy should warn users against making defamatory remarks on the site among other illegal acts.

7. **Do your policies address permissible trademark and social media use by employees?**
   - In general, your employee handbook and agreements should define permissible trademark and social media use by employees, take steps to protect confidential information and draw a bright line between work-related and personal uses.
Employee policies and agreements should make clear who “owns” social media content, contacts and websites and whether employees are allowed to upload contacts from your contact management system into social media sites such as LinkedIn, Facebook, or Twitter, because this may call into question an employer’s ability to later claim that a company’s customer list is a confidential trade secret.

- If social media is an important part of your marketing efforts, consider obtaining consent from employees to continue critical work-related online activities on an employee’s behalf in the event the employee is unavailable.

- Create a policy review schedule to review your policies regularly and ensure that they reflect the rapid changes in technology and the law.

In sum, the key considerations for protecting your brand and business in the new media age are:

- File for copyright registrations to protect your original content.
- File for trademark registrations in the U.S. and potentially abroad to protect your brand.
- Register your primary domain name and popular variations of your domain for your business’s website, consider country code domain name registrations if relevant, and track domain name expiration dates.
- Review and update employee and independent contractor agreements.
- Review and update employee handbook.
- Review and update your website’s privacy policy, terms of use policy and user generated content agreement form.
- Designate a registered agent under the DMCA if your website accepts any user generated content.