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Intellectual Property

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Legacy Intellectual Property

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Creatives, entrepreneurs, and startups (CES) create intangible assets. Many people and too many national media confusedly intermix trademarks, copyrights, patents, and trade secrets. Each is quite different, with different requirements, different ease of creating, different registration requirements, different costs, different durations, and different rules for transfer. Each has a menu of choices with differing strengths, time to acquire, cost, and ease of obtaining and defending.

Consider the Exits. No one lives forever, even established corporations seldom outlast a century or two. Consider possible desirable, and undesirable, exit strategies. Reconsider them as your endeavor develops, grows, and changes. Even a closed business typically has some salvage assets of value. Government certificates for intellectual property may increase the business' perceived value to potential buyers: trademark, copyright, patent have government certificates; trade secrets can be confidentially documented, know-how can be inventoried.

Separate the Baby from the Bathwater. People tend to become fond of their creations. creators may wish their creations continue past the creator's active worklife. Knowing attention to intellectual property options may facilitate this. For a commercially successful business, standard sales negotiations might accomplish this goal. For nonprofits and developments born before their general recognition special attention may be needed.

Lifespans Differ. US utility patents last for 4 to 20 years, depending on whether periodic maintenance fees have been paid. US Design patents, on applications filed after 12 May 2015, last for 15 years from the grant date. US Plant patents last for 20 years. Copyright for works created after 1977 last for the life of the individual author plus 70 years, or for a corporate author the shorter of 95 years from publication or 120 years from creation. A trademark may endure as long as it distinctively identifies the source of the goods and services. As with most general legal rules, there are exceptions and exceptions to the exceptions.

Legacy Beneficiary. Consider who you want to nurture and benefit from your creations. A particular person, a family relative, an organization, the general public. Consider their expected lifespan, their willingness to expend time, and perhaps funds, for your creations. Consider possible successors to your initial proposed beneficiaries. Prudence suggests discussing the possibilities with your prospects.

Institutional Archive. If your documents, and perhaps things, are likely to be of sufficient interest, consider donation to an institutional archive. Museums, colleges and universities, and special interest organizations may wish to accept, or sometimes buy, your historical documents. We have a wide variety of special collections, ranging from The Antique Ice Too Museum, West Chester PA, <https://www.antiqueicetoolmuseum.org> to the Charles Babbage Institute at the University of Minnesota for computing, information and culture, <cse.umn.edu> and the Peace Collection at Swarthmore College, www.swarthmore.edu/peace-collection.

Issues to consider and perhaps negotiate include: the institutional life expectation, the institution's duties, succession ownership if the institution merges or dissolves, a public or private institution. Your donation will be more useful if you prepare at least a listing of contents, better still is a simple subject index with location, if you have more than a single small box of documents. You may be eligible for a federal tax deduction for the fair market value of your donation, if not sold.

Avoid Legal Defaults. If you, the owner of intellectual property, don't properly define who should control your intellectual property after you, the default provisions of federal and state law will control. Technically, abandoned property escheats to the state. < <https://en.wikipedia.org/wiki/Escheat>>. In practice, most intellectual property is overlooked in estate evaluations and more casual sales, especially if the property does not regularly generate royalties or other income.

Avoid Legal Disputes. Copyright transfers must be in writing, signed by the assignor, or by operation of law, such as probate of a will or intestate. General contract principles often recognize as a binding contract a signed written document, an oral agreement, the transactions between the parties, and the custom and practice of a trade. If your intended successors are not clearly and unambiguously identified in a proper written document, others might intervene to claim your creations. Legal disputes are to be avoided. They are costly, take time, cause distractions, and may rupture otherwise reasonable relationships.

You are not Louis XIV. The 17th Century King of France is rumored to have said "L'État, c'est moi" ("I am the state"). Keep your business sufficiently separate from you personally. Especially if your business is an entity (partnership, corporation, LLC, etc), you increase your potential liability and risk when you commingle personal and business funds, don't maintain periodic business records, or otherwise invite an adverse party (perhaps a current friendly business associate or employee) to "pierce your corporate veil," which provides some personal liability protection."

Neatly Wind-down. If you have been operating as a for-profit entity and you plan to wind-down the organization, consider having the organization board or managers explicitly decide to grant you or your designated successor the organization's intellectual property, likely as recognition for your years of dedication. Include the decision in the official organization minutes, including a reasonable present market value of the intellectual property. If you have been operating as a non-for-profit (NFP) organization, your

state may require on a dissolution that assets be assigned to a similar and continuing NFP. The organization may, before dissolution, sell its intellectual property for its "fair market value" to anyone, unless prohibited by the organization's bylaws. Confer with tax counsel.

Copyright Transfer to the Public Domain. If you expressly abandon your copyright to a copyrightable work, anyone can do just about anything with it. They can use it to promote positions opposite to your desires, they may not credit you as the author. Plagiarism may be unethical but is rarely illegal.

Creative Commons. A Creative Commons (CC) license is one of several public domain copyright that enable the free distribution of an otherwise copyrighted "work".

<https://en.wikipedia.org/wiki/Public_copyright_license>. CC offers six variants of public license, the copyright licensor chooses what restrictions to include. <

<https://creativecommons.org/about/ccllicenses/>>.

Sample Copyright License Terms. Copyright consists of a "bundle of rights," each grant of a right may be as narrow as the copyright owner wishes. To generally permit one's copyrighted works to be broadly used while maintaining recognition for your creativity, consider licensing your work with such terms as:

- May be used for non-commercial purposes with no royalty.
- Provided credit is prominently given "*Developed by Good Works, LLC, founded by Abigail Adams.*"
- Please send a copy of your reprint or derivative to *Abigail Adams, PO Box 123, Arcadia ME 00001.*
- For commercial uses, that is any charge for the use, send your proposal to *Abigail Adams, above.*

Inventory the IP. Most organizations create a lot of intellectual property, much is not registered. Especially copyrights and trademarks. When considering winding down the organization, if not recently updated, a review of copyrightable works and unregistered trademarks would be prudent. Then evaluate which might be worth applying for registration. Copyright infringements in the USA require an issued registration. Both copyrights and trademarks are easier to enforce with issued registrations.

Learn from Others.

- The San Francisco Art Institute, founded 1861, declared bankruptcy and permanently closed July 2022, <en.wikipedia.org/wiki/San_Francisco_Art_Institute#:~:text=0degree%20programs,2022%2C%20the%20school%20closed%20permanently.>.
- Merging Wisely, David La Piana, Stanford Social Innovation Review Spring 2010, <https://ssir.org/articles/entry/merging_wisely>.
- Success Factors in Nonprofit Mergers, Wilder Foundation, July 2012, <<https://propelnonprofits.org/wp-content/uploads/2017/10/SuccessFactorsFullReport.pdf>  >.
- Mergers and Acquisitions Between Nonprofit Organizations, Kelly Koepsell, Nonprofit Association of the Midlands, 26Aug2020, <<https://www.nonprofitam.org/blogpost/1124272/354559/Mergers-and->

Acquisitions-Between-Nonprofit-Organizations>.

- Trends in Nonprofit Mergers, Part 1, Lara Jakubowski, 14Oct2022, < <https://www.lapiana.org/trends-in-nonprofit-mergers-part-1/>>.
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