

Q&A with Patent Attorney Mackenzie Rodriguez: How to Identify and Protect Intellectual Property

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In this Q&A with *New Orleans CityBusiness*, patent attorney and Special Counsel Mackenzie Rodriguez explains how companies can identify the IP they own and how they can protect it. The article can be found on the *CityBusiness* website [here](#) or the full article is [below](#).

Every business has intellectual property (IP) and should take steps to protect it. In the United States alone, IP is worth more than \$6.6 trillion, according to the U.S. Chamber of Commerce Global Innovation Policy Center. Companies' inventions and innovations contribute heavily to the nation's merchandise exports and overall economic growth.

However, many companies are not fully aware of all of their IP assets and many are unsure of how to protect their IP rights.

What is intellectual property?

Intellectual Property, or "IP", generally refers to rights granted to people or companies for a set period of time for inventions or creations that they use their knowledge and intellect to develop.

What are the types of intellectual property?

There are usually four categories of IP: copyright, patents, trademarks and trade secrets.

- **Copyrights** – In general, copyrights attach automatically to creative works, which can include website designs and text, brochures, instruction booklets, operating manuals, employee manuals, and any other company works. However, copyrights are generally presumed to be held by the creator of the work. Having agreements in place before creation of a work can help to prevent loss of copyrights. Alternatively, an assignment of copyrights can be obtained from the creator of a work that has already been created. While registration is not required for copyrights, there are advantages from perspectives of enforcement and remedies if a copyright is registered.
- **Patents** – Patents protect novel methods, systems, and devices. Valuable patent rights can be lost if patent applications are not filed before inventions are disclosed non-confidentially. Under current US law, inventions are presumed to be owned by the inventor or inventors. Businesses can protect those inventions conceived during the course of an employee's or independent contractor's employment with agreements before work begins.
- **Trademarks** – Trademarks help consumers identify the source of goods and services. They can be company names, logos, symbols, and even colors or styles of packaging. Registering trademarks is recommended to help maximize their protection. In general, there is no deadline to register a trademark, but rights can be lost if a confusingly similar mark is

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registered before yours.

- **Trade Secrets** – Trade secrets can include formulas for chemicals, procedures for testing, customer or client lists, methods, or even the fact that a company is engaging in certain research or purchasing certain products. Often trade secrets can be lost if employees are not informed of the importance of keeping them secret, or if they are not properly documented.

How do you determine who owns intellectual property?

It depends.

- U.S. laws generally presume that IP is owned by the creator of the property.
- However, agreements requiring inventions, trademarks, or copyrights that are developed in an employee's or contractor's course of employment to be automatically assigned to the company can help prevent the company from losing IP rights.

What happens when there's a dispute over IP ownership?

- The holder of the IP rights is primarily responsible for recognizing when their intellectual property is being used or infringed upon.
- Resolving IP disputes can be lengthy and costly, so it behooves companies and individuals to seek help from an attorney to determine the best course of action – whether it's issuing a cease-and-desist letter, embarking on arbitration and mediation, litigation or something else.

Companies and individuals should work to recognize and inventory their IP and seek advice on best practices for registering trademarks and copyrights to protect their interests.

Mackenzie D. Rodriguez is Special Counsel at Stone Pigman Walther Wittmann L.L.C. and advises companies on identifying and protecting their intellectual property, including patents, trademarks, copyrights, and trade secrets.