



## Chapter 5

# Intellectual Property

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### CHAPTER OUTLINE

1. Intellectual property defined
    - A. Trademarks
    - B. Copyright
    - C. Patents
    - D. Trade Secret
  2. Ownership
  3. Respect
  4. Privacy policy
  5. Website & online usage
    - A. Use of non-original content
    - B. Photo release
    - C. Terms of use
  6. Legal Checklist: Intellectual Property
- Chapter 5 Summary: Intellectual Property
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### INTRODUCTION

Every car manufacturer works to create an automobile brand and models of cars that have unique design features and attributes that communicate their cars are special. Nonprofits use a name, logo, website, and special materials that communicate who the organization is and share ideas that are intangible. Whether shared on websites, used in print materials, or captured through unique research on the issues the organization addresses, protecting the ideas and products of a nonprofit is vital. Likewise, it is important that nonprofits are careful about how the ideas of others are used in their activities.

### 1. INTELLECTUAL PROPERTY DEFINED

Unlike real property or personal (material) property, intellectual property are assets of an individual or organization that are intangible. Intellectual property is the ownership interest a person or company may have in creations of the mind. Intellectual property law grants the creator of intellectual property

exclusive rights for exploiting and benefiting from their creation. There are four main types of intellectual property protections – trademarks, copyright, patents, and trade secrets.

### A. Trademarks

Trademarks protect words, symbols, and other “marks” that are capable of identifying its owner. A trademark is a name or symbol or other indicator that identifies your enterprise to the public. With continuous use, rights can last forever. Trademark rights are acquired by using the trademark. Use the **TM** mark in connection with an unregistered trademark and the ® to indicate a registered trademark. Examples of trademarks include Netflix, Nike, Google, Apple logo, etc.

Trademarks do not create monopoly rights. They are acquired in connection with particular goods and services. For this reason, there could be more than one party with the same mark for different, unrelated services. Trademarks are also not all created equally. Some are stronger than others with stronger rights attaching to arbitrary or made-up words than to words that are highly suggestive of the goods or services covered or even descriptive of such goods or services. Generic trademarks are not protectable at all.

- **Registration:** Registration is available at the state and federal level. (Note: your corporate name registered with the state is not the same as a trademark and does not give you proprietary rights to a name.) The owner of a federally registered mark acquires additional statutory rights and enforcements by the courts. A federal registration grants nationwide rights even though the trademark may only be used in as few as two states.
- **Corporate name:** Your corporate name is not automatically a trademark. Your corporate name can be a trademark if you register it. The first to use a trademark in connection with particular goods and/or services has prior rights.
- **Domain name:** A domain name is also not a trademark, though domain names arguably serve an identifying function. Domain names are not acquired in the same way as a trademark nor are treated as a trademark. However, it is possible that a portion of a trademark may be incorporated into a domain name and the domain name itself may be used or registered as a trademark.
- **Use:** A trademark should be used consistently throughout the organization. Improper use of a trademark could lead to erosion or weakening of the mark and sometimes loss.

### B. Copyright

A copyright protects rights in the expression of an idea or “artistic works.” Once the copyright term ends, works fall to the public domain and may be used by anyone. Although, confirming what is in the public domain is sometimes difficult.

Copyright holders have the exclusive rights to reproduce, create derivative works based on the work, distribute copies, perform, or display the work. The rights attach at the time of creation but in order to have standing to sue in court, the owner will need to register the work with the U.S. Copyright Office. The

symbol © is used in connection with copyrighted material. Examples of copyright protectable works include instructional or educational materials, movies, musical works, software code, and website content (e.g., pictures and articles). Copyright does not protect names, titles, slogans, or short phrases such as business or product names.

If your organization produces materials, it owns the copyright to those materials. If your nonprofit plans to market and use the materials, registering the copyright in the name of the organization is worthwhile. The fee for registering a copyright is inexpensive, and the Copyright Registration Certificate is a powerful attachment to a cease-and-desist letter should the need arise. Also, it is a good idea to obtain a written assignment from individuals involved in creating the materials if there is any uncertainty regarding ownership.

### **C. Patents**

Patents protect new, non-obvious useful inventions. Utility patents last 20 years. Patents must be registered for rights to attach. A patent attorney should be consulted if you believe you have an invention that qualifies for protection.

### **D. Trade secrets**

A “trade secret” is information that is confidential to the business and held in secret. There is no registration process, and trade secrets remain protected so long as the information is held in confidence. Intellectual property counsel should be consulted regarding best practices to ensure information is protected as a trade secret.

## **2. OWNERSHIP**

Intellectual property is generally owned by its creator. If created by an employee, the works are generally assigned to the employer either by law or by contractual agreement. If the work is created by independent contractors or other external collaborators, the nonprofit should obtain a written assignment from those individuals or entities if the nonprofit intends to outrightly own the intellectual property. In the absence of a written assignment, independent contractors may in some circumstances still retain intellectual property ownership even though they were properly compensated by the nonprofit to create such works. Like any other corporate assets, a nonprofit should hold its intellectual property in its own name or the name of some other entity it fully controls. Holding intellectual property in the name of an individual puts the company at risk that the individual might abscond with the intellectual property or use it for their own benefit.

**Important note:** Though not technically intellectual property, your domain name should also be retained by your corporation – in the name of the corporation. Do not allow a webmaster to register or maintain your domain name – it is a corporate asset.

### 3. RESPECT

Respecting the intellectual property rights of others is important. Before you use a symbol or image in your nonprofit's marketing materials or on your website, search for the symbol or image online. Someone with a similar trademark could challenge your nonprofit's use, even if your use is not considered trademark use.

Before adopting a name determine if someone else owns the rights to that name by searching for the name on:

1. The United States Patent and Trademark Office website
2. The corporate database with the Washington Office of the Secretary of State, Corporations & Charities Division
3. The internet in general

While these searches will not provide a legal analysis of your rights, the searches may alert you to some possible issues you may encounter. Requesting a search by a trademark professional will give the best results, and even then, common law rights may be missed. The cost to defend unauthorized use of a trademark held by someone else or to compensate the owner for your unauthorized use can be high.

Ideally, any material used by the organization on its website or otherwise should be original material created by the organization. Other material should only be used with permission of the owner and credit should be given to the owner. (Additional information is provided in Section 5 below on **Website & Online Usage**.) Just because a "work" is older or the creator is deceased, do not assume the work is in the public domain and freely available for use. Rights may be retained by the creator's estate.

### 4. PRIVACY POLICY

A website that collects personal information should have a privacy policy. A privacy policy tells your website visitors what your nonprofit will do with information gathered, how information is gathered, and how the information is stored.

Once you have a privacy policy in place, be sure you adhere to what is in your policy regarding collection, storage, and use of information.

Some special considerations related to privacy policies:

- **Links to other sites:** If your nonprofit's website provides links to websites of others, you may need to include third party privacy requirements into your policy.
- **Use by children:** If your nonprofit's website will be used or visited by those under the age of 13, there are specific requirements under the Children's Online Privacy Protection Act of 1998 (COPPA). The state of California has the "California Office of Privacy Protection" with certain Privacy Policy provisions that apply to any website collecting data from California residents.

- **E-commerce:** If you operate an e-commerce site, there are certain provisions you should include.

Sample privacy policies are provided in the resources accompanying this guide. Do not just copy and paste a privacy policy onto your website. The privacy policy must factually state your actual practices, and having the final policy reviewed by counsel is a good idea.

## 5. WEBSITE & ONLINE USAGE

Your website is the organization's front door to your community and the world beyond. A nonprofit's website can be easily viewed—and content easily taken—thus it is important to pay attention to how you use others' content and how you protect your own content.

### A. Use of non-original content

You should obtain permission for any non-original content used on your website and always give credit to the owner. When creating your website, remember you cannot clip information from another website and post to your own without risking infringing that third party content. Even if you pay for stock art or clipart, commercial use may be excluded in the fine print associated with your license to use. While there are some exceptions for use by nonprofits that could qualify as "fair use" under the Copyright Act, use by a nonprofit corporation is often considered commercial use. Additional details on fair use are available on the [U.S. Copyright Office webpage – More Information on Fair Use](#).

### B. Photo release

Having a signed release for any photograph of a person used on your nonprofit's website as well as for any description or story associated with a particular individual is considered best practice. If your organization ever receives a complaint from someone regarding use of their image or likeness, remove the image or likeness immediately with your apology.

### C. Terms of use

If you accept third party posts or content, consider a "terms of use" page in addition to a privacy policy. Including a copyright notice at the bottom of your website's homepage is a good idea. While including a copyright notice is not a legal requirement, this step might act as a deterrent against copying your nonprofit's website and content contained thereon. The copyright notice can be in most any form, and the general format is as follows: "© Name, date. All rights reserved."

Whether on the "terms of use" page or at the bottom of the homepage, another good practice is to include a trademark attribution line somewhere on your nonprofit's website. You should list unregistered trademarks as "\_\_\_\_\_ is a trademark of Company A." Federally registered trademarks are listed as "\_\_\_\_\_ is a registered trademark of Company A." If your nonprofit anticipates your marks will be used by others, you may consider including guidelines for proper, acceptable usage of your trademarks.

## 6. LEGAL CHECKLIST: INTELLECTUAL PROPERTY

If YES, date sent or reviewed	NO	ITEM
<b>OWNERSHIP</b>		
		Our organization has proper licenses or permission to use all photos and written information created by other persons or organizations.
		Our organization has considered whether it should register or obtain other protection for any of its unique logos, designs, trademarks, or services.
		We are confident that our organization's name does not infringe on the rights of any other organization.
		Our organization has considered whether it would be appropriate to license any written materials, photographs, recordings, art, policy manuals, seminar materials, etc., which may be available for use by others.
		When contracting with third parties to perform services, our organization uses an employment or independent contractor agreement that assigns ownership to the organization of intellectual property created by the employee or independent contractor within the scope of their work for the organization.
<b>PRIVACY POLICY</b>		
		Our organization has considered implementing a written privacy policy that describes how the organization uses and discloses personal information.
		If a privacy policy has been adopted, the organization periodically confirms that the organization is in compliance with the commitments made in the policy.
<b>WEBSITE</b>		
		If our organization operates a website, the organization has posted written terms of use or terms of service that limits the organization's liability and disclaims warranties. These terms of service are prominently located on the organization's website.
		If our organization allows third parties to post information on the organization's website, the organization has implemented a Digital Millennium Copyright Act (DMCA) compliant notice and takedown provision as part of its terms of use or terms of service. The organization has also registered an agent with the U.S. Copyright Office to receive notices of copyright infringement under the DMCA.



1. Intellectual property are assets of an individual or enterprise that are intangible. There are four kinds of intellectual property protections: trademarks, copyright, patents, and trade secrets.
2. In the process of protecting your nonprofit’s intellectual property rights, a good place to start is knowing who owns the intellectual property of your organization’s key elements.
3. Nonprofits need to respect the intellectual property rights of others, just as you want others to honor the intellectual property rights of your organization. Intellectual property litigation is expensive. Adopt a policy that respects the intellectual property rights of others, which includes searching to see if others have adopted intellectual property similar to your organization’s prior to your adoption.
4. The general public wants to know how you are going to use the information given to your organization, particularly if gathered through a website. A privacy policy keeps web communication honest by telling visitors about the collection, storage, and use of their information.
5. Your nonprofit’s online presence opens the door for intellectual property challenges, both in how you use the information from others and how others make use of your information.



**Here are some questions to think about:**

- How are you protecting your nonprofit’s ideas and products, which may include websites, print materials, or unique research on the issues your organization addresses?
  
- How is your nonprofit respecting the intellectual property rights of others? What specific actions do board members, volunteers, and/or staff take?

**Reflections**



**Next steps:**

- Determine what assets your organization owns by completing the asset audit activity on the following page.
- Review Public Counsel Law Center’s [Intellectual Property Licensing Basics for Nonprofits](#) resource to gain a deeper understanding on the topic.



**Asset Audit: Sorting what you use and who owns it**

Reflect on your organization’s assets. From your website to your logo to photos used in print materials, do you know who owns these assets? Use the following qualifications table to help you determine if your organization owns an asset. After reviewing the qualifications, move to the activity table that lists different types of assets (use the blank asset spaces to add your own). Check yes or no for each asset and be sure to capture any notes or next steps to take.

Qualifications		
<p><b>WE OWN THE ASSET</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> We have proof of ownership</li> <li><input type="checkbox"/> We protect our assets</li> <li><input type="checkbox"/> We respect others’ assets</li> <li><input type="checkbox"/> We communicate how we use private information</li> </ul>	<p><b>WE DO NOT OWN THE ASSET</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> We ask permission to use assets</li> <li><input type="checkbox"/> We give credit to the owner</li> <li><input type="checkbox"/> We stop using assets we do not have permission to use</li> </ul>	
Activity		
Types of Assets	Do we own the asset?	Notes & Next Steps
Organization name	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Logo	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Recordings, art, or any materials your organization developed	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Photos on your print materials	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Website	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Domain name	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Photos on your website	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Clipart used on print materials or website	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Names of people gathered from your website	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Asset:	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Asset:	<input type="checkbox"/> Yes <input type="checkbox"/> No	





# Additional Resources

After reviewing the *Let's Go Legal* guide and completing the activities, you may want to learn more about specific items mentioned. This section provides direct links to additional resources to help your nonprofit stay compliant.



## ***Local, State, and Federal Resources***

### **City of Seattle**

- City of Seattle Office of Labor Standards:  
<https://www.seattle.gov/laborstandards/ordinances/minimum-wage>

### **City of SeaTac**

- City of SeaTac Employment Standards Ordinance:  
<https://www.seatacwa.gov/our-city/employment-standards-ordinance>

### **Washington State Office of the Secretary of State, Corporations & Charities Division**

- Information for charitable organizations: <https://www.sos.wa.gov/charities/charitable-organizations.aspx>
- Information for nonprofits and charities:  
<https://www.sos.wa.gov/corps/nonprofitinformation.aspx>

### **Washington State Senate Committee Services: Senate Ways and Means Committee**

- The Taxation of Nonprofit Organizations in Washington State:  
<https://leg.wa.gov/Senate/Committees/WM/documents/Publications/2006/NonprofitsMay2006.pdf>

### **Washington State Department of Revenue**

- Business and Occupation (B&O) Tax:  
<https://dor.wa.gov/education/industry-guides/private-mailing-business-tax-guide/business-and-occupation-bo-tax>

## ADDITIONAL RESOURCES

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### Washington State Gambling Commission

- Nonprofit Organization Training: <https://www.wsgc.wa.gov/licensing/training-requirements/nonprofit-organization-training>

### U.S. Internal Revenue Service

- Form 1023 Application for Recognition of Exemption Under Section 501(c)(3): <https://www.irs.gov/pub/irs-pdf/f1023.pdf>
- Form 1023-EZ, Streamlined Application for Recognition of Exemption Under Section 501(c)(3): <https://www.irs.gov/forms-pubs/about-form-1023-ez>
- Compliance Guide for 501(c)(3) Public Charities: <https://www.irs.gov/pub/irs-pdf/p4221pc.pdf>

### United States Patent and Trademark Office

- Website homepage: <https://www.uspto.gov/>

### U.S. Copyright Office

- Website homepage: <https://www.copyright.gov/>



### ***Other Nonprofit Resources***

#### Nonprofit Association of Washington

- Nonprofit Fundamentals: <https://nonprofitwa.org/learn/nonprofit-fundamentals/>

#### Communities Rise

- Resources for Nonprofit and Community-Based Organizations: <https://communities-rise.org/resources/nonprofit-cbo/>

#### 501 Commons

- Nonprofit Legal Resources: <https://www.501commons.org/resources/tools-and-best-practices/legal-resources>

#### National Council of Nonprofits

- Tools and Resources for Nonprofits: <https://www.councilofnonprofits.org/tools-resources>



# Key Documents

There are key documents related to each chapter of the guide that you should review for your nonprofit. If your organization does not have all the following items in place, the resources accompanying this guide include sample documents.

## CHAPTER 1 STATE LAW

- Articles of Incorporation
- Bylaws
- Annual filing (Washington State Office of the Secretary of State)
- Conflict of Interest Policy
- Document Retention Policy
- Gift Acceptance Policy
- Minutes

## CHAPTER 2 FEDERAL LAW

- Form 1023
- Form 990-N, Form 990-EZ, or Form 990 (form type depends on annual gross receipts and assets)

## CHAPTER 3 FUNDRAISING & DONATIONS

- Quid Pro Quo Letter (that meets federal requirements)
- Thank You Letter (that meets federal requirements)

## CHAPTER 4 EMPLOYMENT LAW

- Anti-discrimination Policy/Equal Employment Opportunity (EEO) Policy
- At-will Employment Policy
- Confidentiality Policy
- I-9 Form(s) (for all employees hired)
- Whistleblower Policy
- Reference Document: L&I Independent Contractor Guide (<https://lni.wa.gov/forms-publications/F101-063-000.pdf>)

## CHAPTER 5 INTELLECTUAL PROPERTY

- Photo Releases/Story Releases
- Privacy Policy
- Take-down Request (that meets the Digital Millennium Copyright Act)
- Terms of Use

## NEXT STEPS

### After you work through *Let's Go Legal...*

Take a moment to capture items you want to remember and action steps you want to take. For action steps, think about specifics related to the task (who, when, where, and how).



STATE LAW	
Items to remember	Action steps

  

FEDERAL LAW	
Items to remember	Action steps

  

FUNDRAISING	
Items to remember	Action steps

  

EMPLOYMENT	
Items to remember	Action steps

  

INTELLECTUAL PROPERTY	
Items to remember	Action steps