

Intellectual Property (IP) is the most valuable thing a musician can own, so it is very important that you know how to protect your IP rights. IP can consist of copyrights, trademarks, patents, domain names, trade secrets, right of publicity, and name & likeness.

## **COPYRIGHTS**

A copyright protects a specific "work of art" in a fixed form. A work of art could be a song, score, lyric, sound recording, photo, painting, artwork, book, newspaper, web page, blog, film, TV episode, music video, etc. Fixed form means it has to exist in tangible media, such as a CD or DVD, or even on a piece of paper. You cannot copyright ideas or abstract thoughts until they are set in a physical media. If you write a lyric, set it to music, record it, put the final mix onto CD, make a music video for it, create artwork for the CD cover, and create a web page, then those each are elements protectable by copyright. You own the exclusive rights to license, copy, distribute, or sell any or all of these.

You automatically own the copyright as soon as you create the work and set it in fixed form (i.e. writing a lyric on a piece of paper). That means you own it, regardless of whether or not you actually register it. Why register then? It is a purely legal decision- if there is a dispute one day and you take someone to court (or vice versa) over copyright infringement, then you can claim statutory damages (3 times your actual damages) and attorneys' fees; without a registration you cannot do this. Also, a registration serves as prima facie evidence that you own the copyright. Otherwise, to succeed only on common law rights, you have the burden of a) proving that you created the work and b) proving that the infringer had access to it (they can't copy your song if they've never heard it). Having a registration makes your case much easier to prove.

Copyright registrations cost \$45 and last until 50 years after your death. They are registered with the Library of Congress, [www.copyright.gov](http://www.copyright.gov). Every work of art should bear a copyright notice (i.e. © 2007 John Doe. All rights reserved.), although there are no legal ramifications in the US if you do not do so.

## **TRADEMARKS**

A trademark protects a brand or logo. Your band's name could be a trademark. The Aerosmith logo or the Warner Bros. brand, for example, are trademarks. You can establish common-law trademark rights through use of the mark, but registering a band's name (for example) can be very valuable and can ensure you have exclusive rights to use or license that name. Trademark rights are country specific, so if you use your band's name to put out a CD or play live shows throughout the US, that does not mean you have any rights to the name in Japan. Also, trademark rights are specific to the goods or services that you provide. So you may own the name for CDs, live performances, and t-shirts, but someone else could use the name to sell cosmetics, for example. So you'll need to specify the country(ies) you wish to exert your rights in, and the goods and/or services that you use your mark in connection with. In order to register a trademark, you must have use of the mark for ALL of the goods and/or services specified, or you must have a bona fide intent to provide such use within the next 3 years (the trademark will not actually register until you can provide proof of use).

Trademarks can last forever but must be renewed every 10 years. An application costs \$275 provided that you file it online and meet certain requirements, but I strongly recommend having an atty file it for you, as trademark law can be very specific in certain regards. Trademarks are registered with the United States Patent and Trademark Office, [www.uspto.gov](http://www.uspto.gov). Use of your mark should include the ™ symbol (do NOT use the ® symbol unless you actually have a trademark registration certificate- there are severe legal penalties for doing so).

## **PATENTS**

A patent protects an invention or a new way of doing something. Patents are much more complicated and more expensive than copyrights or trademarks, and are usually dealt with separate from other forms of IP.

## **DOMAIN NAMES**

Trademark rights can protect your band's name (or other mark) from being used online, but the law in this area is still fairly new. A domain name dispute will cost thousands and you will only win if you can prove "bad faith" on the part of the registrant, so it is much better to think ahead and be proactive in this area. Make a list of possible domain names- your name, your band or label's name, song titles, etc. as well as common mis-spellings and variants. For example, if your band's name is Rum Cake Rock, then you should register rumcakerock, rumcakerockonline, rumcakerockmusic, rcr, rum-cake-rock, rumcakrock, etc. Each of these should be registered as a .com, .net, .org, .biz, .us, .mobi, and any other extensions or country codes (.co.uk for example) you think you might want. Go to any registrar (godaddy.com, register.com, etc.) and make sure all variations are available...many will not be.

Domain names generally cost \$10-20 per year, but again registering 5 or 6 variations is much cheaper than getting into even one domain name dispute.

## **TRADE SECRETS**

Trade secrets normally apply to large corporations and the way they do things, so that their competitors cannot simply copy their techniques or procedures. However, trade secrets can also apply to proprietary information such as your mailing list, or a rolodex of industry contacts that you've spent years developing...these are databases of information that are of value to you.

## **RIGHT OF PUBLICITY**

Regardless of what is or is not registered, you always have the right to control how your persona (or your band's persona) is used by others. The more successful you become, the more others will want to trade on the goodwill that you have developed. If someone takes a photo of you at one of your shows (the photographer would own the copyright to the photo, not you) and then licenses that photo for some company to use in their advertising materials or on their website, you would still have a right of publicity claim. For example, a strip club recently used a photo of Catherine Zeta-Jones on their website (relax guys- just her face) and she sued the club over the improper use of her image. Only you have the right to decide how your image is used and whether your persona is used to sponsor or market a product.

## **NAME & LIKENESS**

Similar to Right of Publicity, you have exclusive rights to the use of your name and any likeness to you. Most record contracts and most TV & film agreements contain a name & likeness clause whereby you agree to let the studio use your name & likeness to promote the album, show, movie, etc...but this is only permissible because you are signing an agreement that authorizes it. A few years back, a company hired a Dolly Parton look-a-like to record a sound-a-like of a song. They then used the Dolly Parton look-a-like and the song to promote their company. Although they technically did not use any actual photos or sound recording of Dolly's and the song they used was an original composition, nonetheless Dolly Parton sued for misappropriation of her name & likeness, and she won.

So as you can see there are various forms of IP which can be of value to you, and it is important that you know how to adequately protect your rights and derive the most value from them. This document, of course, is not meant to be an all-inclusive guide for everything that you will need to know, but hopefully it will be a good starting point for you to understand the basic concepts.

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