

## 5.1 Defining the Product/Service

### 5.1.1 Description of Product/Service

An important building block of the business plan is the description of the product/service, including both its functional and operational attributes. Entrepreneurs must be able to clearly and concisely communicate key aspects of the product/service. Readers of the business plan need to understand the exact nature of the product/service being offered to comprehend the entire plan.

### from real entrepreneurs

Entrepreneurs succeed when they redefine what they are selling to their customers in terms of the benefits customers are purchasing. A carpet company does not simply sell material that covers the floor. It sells an attractively decorated interior. A garment maker doesn't sell clothes. It sells self-esteem, image, social acceptance, and career advancement. Domino's Pizza is not in the pizza business, it's in the home-delivery business. Drive-by Grooming is not in the mobile dog grooming business, it's in the convenience business.

This section of the plan starts out with a description of the product/service, one of the most important aspects of this section. It is best to describe the product/service in terms of the problems it will solve from the customer's standpoint. Then the description should focus on the benefits or value the product/service creates. The product/service description is not the place to detail technical specifications; they belong in the appendix.

#### Tip

Before going any further with your business concept, you must know if the product/service is feasible. Will it work? Has the product/service been tested? You must either own a workable product/service or be able to license it.

The product/service section should be written after any problems associated with the product/service have been worked out. If a product/service is not workable, the business concept is not feasible.

### from real entrepreneurs

In 1995 Sergey Brin and Larry Page, two Stanford University computer science doctoral students, began focusing on the problem of which web pages linked to a given page (backlinks). They nicknamed their project "BackRub." The rest is history, as the saying goes. Their brainchild, Google, now dominates the Internet search industry with over 70% market share.

#### Reality

Investors will be wary of any venture in which all possible problems have not been solved or solutions to possible future problems have not been devised.



## 5.1.2 Features and Benefits

Features are what the product/service does or has. Benefits are the reasons customers buy the product/service.

Unique features of a product/service are what set it apart from the competition. Unique features highly valued by customers result in increased marketability. And marketability leads to profitability.

Each feature should be described in terms of the benefit the customer receives or as a solution to the customer's needs. For instance, the only dry cleaning business in the area offering home pick-up and delivery would describe its service in terms of the benefit to the customer: convenience.

### Tip

Features tell. Benefits sell!

Remember, the features of a product/service tell what it does or has. The benefits are the motivating factors that sell the product/service.

### Reality

Successful businesses differ in meaningful ways from their competitors. Entrepreneurs will not succeed just by copying the competitors' products/services. Some significant differentiation must exist to create built-in motivation for customers to buy.

### More Info

Marketing Features Vs. Benefits, Benefits Are Results—When selling features of a product/service, the customer has to do all the work. It benefits the seller to draw the connection to the benefits, or results, the customer can expect. Laura Clampitt Douglas, Entrepreneur Magazine. [entrepreneur.com/article/34942-2](http://entrepreneur.com/article/34942-2)

Features and Benefits—One of the basic rules of selling is to sell on benefits that customers will gain from using the product rather than the list of features that it has. [changingminds.org/disciplines/sales/articles/features\\_benefits.htm](http://changingminds.org/disciplines/sales/articles/features_benefits.htm)

Copywriting Tip: Explain the Benefits of Your Features—How to write a webpage that encourages customers to buy your products. Larisa Thomason. [netmechanic.com/news/vol8/copywriting\\_no3.htm](http://netmechanic.com/news/vol8/copywriting_no3.htm)

## Exercise 5.1.2 Understanding Features and Benefits

### Learning Objective

- List the features and benefits of a given product/service.

### Overview

Features tell and benefits sell! Remember, Features tell what a product or service does or has. Benefits are the motivating factors that sell the product or service... the "what's in it for me".

### Step 1

The exhibit shown below is based on an automotive repair shop called J & B's Automotive. The majority of the description focuses on Features rather than Benefits. Identify the features mentioned and write each in the Feature column in the chart on the next page. Then for each Feature, ask yourself "So what...why is this important to the customer?" Write the corresponding Benefit in the column labeled Benefits.

**J & B's Automotive is a full-service automotive center offering repair and maintenance as well as auto body repair. The center services all makes and models of domestic and foreign automobiles as well as light trucks. J & B's houses fifteen bays equipped with the latest diagnostic equipment and staffed by ASE-certified technicians. This enables the center to provide a guarantee that all vehicles are repaired to the customer's satisfaction in a timely manner. In addition, certified maintenance protects the factory warranty.**

**Located in Worcester, Massachusetts, J & B's has been independently owned and operated by the Baker family since 1968. Seamless customer service is achieved through their on-site management staff and an electronic shop management system which is used to document each vehicle's service history. The auto center is open Monday through Friday from 7 am – 6 pm and Saturday from 7 am – 3 pm. J & B's also offers towing services, loaner vehicles and 24/7 after-hours drop off.**

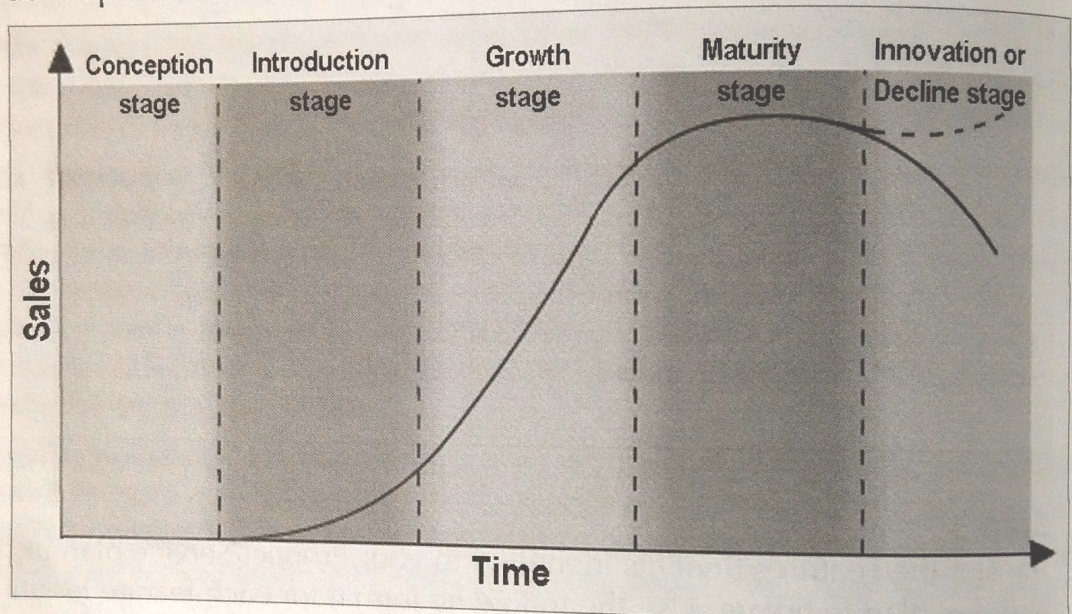
Identify features and benefits.

Features	Benefits
1.	
2.	
3.	
4.	
5.	
6.	

### 5.1.3 Stage of Development

Just as businesses go through stages, so do products/services and industries. Entrepreneurs should be able to identify the stage of development of their business as well as the industry and/or their specific product/service. The product/service life cycle is determined by how long the product/service is marketable. The common stages that a product/service may go through during its life are introduction, growth, maturity, and decline:

- **Introduction stage**—Profits are low in this stage because research and development, production, and marketing costs are high. Prices on products/services are typically set high during this stage to recoup some of the development and introduction costs.



## from real entrepreneurs

A bonding agent that performed well in extreme temperatures was the basis for founding a manufacturer's supply company. When first released, the company priced the commercial grade glue at premium prices. Initially, the glue was demonstrated and sold by knowledgeable sales representatives. After recouping the costs of developing the bonding agent, the company lowered prices to be more competitive. Then the glue was sold through more traditional marketing strategies.

- **Growth stage**—Increased customer demand results in greater sales. Cash flow improves and profits are at their peak. The iPhone is an example of a growth industry.
- **Maturity stage**—Sales may continue to increase or level off. Profits decrease since prices are continually lowered to compete. Still, a great amount of cash flow is generated through sales in this stage. The fast food industry is an example of a mature industry.
- **Decline stage**—Sales drop rapidly even though prices continue to fall. Profits are extremely low at this stage. It is time for the company to redevelop, remarket, or discontinue the product/service. If efforts to redevelop or remarket the product/service are successful, a new stage—rebirth—may emerge. 35 mm cameras and film are examples of products in the decline stage as digital cameras become more sophisticated. Landline telephones are also declining in numbers.

## Reality






Instead of eliminating every product/service once it hits the decline stage, many entrepreneurs reintroduce the product/service with a new feature or create a new benefit. Even the simplest change, such as increasing the size of a candy bar by 33 percent, can start the life cycle of a product/service over again.

This section of the product/service plan should include a history of the product/service development for the industry as a whole, as well as the status of your specific product/service within that industry. It should also identify the current stage of development of the business, projected dates for achieving the next stage of development, and how the product/service can be regularly improved to remain competitive.

### 5.1.4 Product/Service Limitations

If limitations of a product/service cannot be overcome, they must be openly discussed in the business plan. Factors such as rapidly changing consumer-driven trends, new innovations, and technological advances limit the amount of time the product/service is marketable. The ideal product/service will not suffer these limitations. Its demand will go on and on. High-tech ventures often face the difficulty of having a short marketable life. The economic life of the product/service is sometimes so short the company cannot make enough money on the product/service to be profitable. A product with a long shelf life can be stored until a profitable market can be found for it.

Some product/services have limitations that affect their current marketability. Maybe the product's functions are limited or a service may be limited by

COMMON TYPES OF PRODUCT/SERVICE LIMITATION				
				
<b>Fashionable products</b>	<b>Technical products</b>	<b>Perishable products</b>	<b>Products needing setup</b>	<b>Products with legal restrictions</b>
Cars	Cell phones	Pet fish	Hot tubs	Commercial fishing
Clothes	Computers	Flowers	Wireless networks	Firearms
Music	Software	Food	Office partitions	Health care

No product/service is free of all limitations; it's a matter of degree. The businesses represented here require considerable strategy to contend with their natural limitations.

## Tip

The following businesses have considerable product/service limitations:

- Fashionable products—Cars, clothes, music
- Technical products—Software applications, computer hardware
- Perishable products—Food, flowers
- Products that need to be assembled or installed—Satellite TV, water purifiers
- Products/services that have legal restrictions—Prescription drugs, building contractors



## Exercise 5.1.5 Product/Service Liabilities

### Learning Objective

- To recognize potential liabilities associated with doing business and to identify ways to address these potential liabilities.

### Overview

Legal liability refers to “an individual’s or company’s obligation to act responsibly or face compensatory penalties.” It is important to clearly define any potential liability and identify plans to address these liabilities. Liability issues are not limited to just product-centered companies. Any company, whether it is a service provider, manufacturer, wholesaler, distributor, or retailer has liabilities.

Outlining plans to protect the business and personal assets of the entrepreneur is equally as important as identifying the potential liabilities. In addition to insurance, entrepreneurs should take proactive steps to reduce or avoid liability risks through contracts, polices and rules, legal structure, product labeling and instilling high quality control measures.

### Step 1

Read through the information on the Insurance Information Institute website at [iii.org](http://iii.org) to determine how to protect your business and yourself from liabilities.

From the home page for [iii.org](http://iii.org), click on Insurance Topics or go directly to Insurance Topics at: [iii.org/insurance\\_topics/](http://iii.org/insurance_topics/)

Review the information under the heading – Business. Be sure to visit the sub-heading “Insurance for Specific Businesses.” In that sub-heading, click on the business that most closely resembles the type of business you plan to open. There you will find information on more specific risks and types of insurance.

There is also valuable general insurance information at: [iii.org/business-insurance-general/](http://iii.org/business-insurance-general/) and a very informative video that you are encouraged to view at: [iii.org/video/business-owners-policy-quiz.html](http://iii.org/video/business-owners-policy-quiz.html), “Test Your Business IQ, Business Owners’ Policies.”

Be aware that in addition to insurance, you can minimize the likelihood of things going wrong in your business by taking proactive steps to prevent adverse events. These steps might include identifying ways to avoid or reduce risks such as contracts, policies, product label warnings, safety precautions, and employee training.



## Scenario 5.1.5



## Run KC—Identifying Liabilities

**Learning Objective**

- To recognize potential liabilities associated with doing business and to identify ways to address these potential liabilities.

**Overview**

Legal liability refers to “an individual’s or company’s obligation to act responsibly or face compensatory penalties.” It is important to clearly define any product/service liabilities associated with a business and to develop plans to address these liabilities. One proactive step is to act responsibly by putting measures in place to avoid problems. This might include identifying ways to avoid or reduce risks such as the use of warning labels or signage, policies, contracts and employee training. But, not every adverse event can be avoided and therefore, measures such as insurance and legal structure which can help protect both business and personal assets should also be considered.

**Step 1**

Following is a description of the products and services offered by Run KC:

**Run KC is a retail running shoe store offering footwear, apparel and accessories to serious and aspiring runners. The product line offered by Run KC has been carefully screened to ensure that customers find satisfaction on the first try. Products are of a high quality in the mid to high price range.**

**Run KC differentiates itself from other running shoes stores by the level of service provided during and after the sale. During the sale, Run KC provides gait analysis, individual fit assistance and well-trained staff to help runners select the best shoes and accessories from a carefully selected inventory to enhance their running experience. In addition, a customer file is kept on customers. The atmosphere of Run KC is welcoming and offers runners a place to hang out with one another and connect even after the sale. The store offers training programs, boot camps and a running club. Involvement in local running events by staff and sponsorship of these events also strengthens relationships with runners.**

**Step 2**

1. Based on the products and services offered by Run KC and the activities in which the business participates, what liability issues could the business face?

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## 5.1.6 Production and Facilities

When writing the production and facilities portion of the product/service plan, the writer should describe the production process, the need for facilities, as well as how much of the product/service will be produced internally and how much will be subcontracted out. Production capacity and the need for future capital to build facilities should be projected.

Many entrepreneurs select a competitor with superior performance as a benchmark when designing their production processes. The entrepreneurs look at the competitors' production processes to identify areas where they can match or surpass superior performance. These processes are outlined in the business plan.

Production performance can be rated on the basis of:

- Production capacity.
- Absence of errors or reworks.
- On-time processes and delivery.
- Inventory reduction.
- Cost reduction.
- Other criteria relevant to the product/service.

## from real entrepreneurs

In his business plan, Charles wanted to identify his production process in detail. It seemed logical to begin his research within the industry, as others in the industry regularly shared information through articles in trade journals and at trade shows. His industry association also provided literature to new members that included basic information about the industry. Through his industry research, Charles was able to identify key suppliers for the materials he needed as well as the names of vendors to which he could outsource the production of some components used in the production process. Based on this information, Charles identified the core manufacturing processes his business would retain and those that he could subcontract out. He incorporated this information into the production process described in the Product/Service section of his business plan.

When discussing facilities within the business plan, the entrepreneur needs to describe the type of facilities required, such as manufacturing, office, or retail facilities. A description of the facility including layout, capacity, and future expansion needs should be provided. A diagram of the facilities can also be very helpful.

### More Info

Choosing a Location for Your Business—Deciding where to set up shop is a crucial business decision.

[entrepreneur.com/startingabusiness/startupbasics/location/article21830.html](http://entrepreneur.com/startingabusiness/startupbasics/location/article21830.html)

## Reality

Too often, entrepreneurs of service companies skip this portion of the product/service plan. They don't realize that the production and facilities portion of the product/service plan applies to them also. Service companies must produce or administer their services as well. It is just as important to clearly define the process and people involved in providing a service. For example, the careful planning of processes to recruit, screen, train and place nannies, in-home child-care workers, in clients' homes insured that Mary Poppins Nannies had both the supply and quality of workers needed.





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### 5.1.7 Suppliers

This portion of the product/service section of the business plan describes the function of suppliers in the business. Entrepreneurs spend a lot of time planning their businesses and working toward success. Therefore, they should not be willing to risk their success on the performance of unknown or unproven suppliers. Sometimes business owners do not put much effort into checking out their suppliers, which can be a costly mistake. Before signing on a supplier, entrepreneurs need to know if the supplier operates with the same basic values as they do, if the supplier makes good on its promises, and if the supplier will be available when needed.

One way entrepreneurs improve their chances of finding good suppliers is to plan a supplier selection process. Successful entrepreneurs ask and answer the following questions before they set up any long-term relationship with a supplier:

- Who else does this supplier do business with?
- What is the strategic plan of the supplier?
- How is the company doing financially?

#### Tip

If companies want to do business with you, they may be willing to provide basic financial information to help you evaluate their long-term viability. If they are not willing to provide this information, you can check on their credit ratings or obtain information from the Better Business Bureau or commercial rating agencies such as Dun & Bradstreet. Don't ignore what you find out. It may mean the difference between success and failure for your business.

Suppliers may provide business services as well as products. More and more companies are contracting non-core functions, such as payroll, bookkeeping, and customer service, to outside organizations—outsourcing. On the flip side, many entrepreneurs have launched successful companies supplying these services to businesses.

In this portion of the plan, entrepreneurs should list major raw materials, inventory, and service suppliers. For suppliers, it is helpful to describe the expected relationship. How often will they supply goods and services? What is the contractual agreement with them? Every business plan also needs to build in contingencies. Who are the backup suppliers and how will they be used?

#### More Info

**Build a Good Relationship With Suppliers**—They're your hidden growth assets. Follow these four tips to become a valued customer. Bob Reiss.  
[entrepreneur.com/growyourbusiness/businessstrategies/article206530.html](http://entrepreneur.com/growyourbusiness/businessstrategies/article206530.html)

**Dun and Bradstreet Million Dollar Directory**—Subscription database with information on over one million U.S. public and private companies with sales greater than \$1 million. Even though it is subscription based, many local libraries subscribe to this database. Resource is usually available in business libraries.  
[dnb.com/](http://dnb.com/)

**Vendor Management Tips: Building Relationships**—Highly informative and practical, this article provides tips from IT managers on managing vendor relationships but can be useful to any manager. [computerworld.com/managementtopics/management/story/0,10801,99816,00.html](http://computerworld.com/managementtopics/management/story/0,10801,99816,00.html)

## 5.2 Protecting the Product/Service

### 5.2.1 Importance of Protecting Intellectual Property

Protecting intellectual property is critical to the growth, value, and stability of a company. Intellectual property gives a company a competitive edge in the marketplace and builds value. Intellectual property takes three forms:

- **Legal**—Patents, trademarks, copyrights, and trade secrets
- **People**—The knowledge and skills of employees
- **Relationships**—Customers, suppliers, independent contractors, and consultants

Entrepreneurs must explain their plans to protect these proprietary assets in the business plan.

Once intellectual property is properly protected, a company must guard and maintain its rights zealously. If a company does not defend its rights, they will be lost. If a company allows others to use its trademarks or copyrights without legal challenge, its intellectual property rights may slip into the public domain and become public property. Success alone can eliminate intellectual property. A name can become so dominant it takes on a generic meaning. For example Kleenex, Xerox, and Ketchup, although brand names, have become synonymous with a type of product rather than differentiating one brand from another.

#### Reality



The biggest mistake entrepreneurs make is not recognizing their intellectual property. The business name, logo, brochures, product, service procedures and much more are proprietary and can be legally protected from competitors. Every entrepreneur should strive to build proprietary assets for the future success of the company.

Unfortunately, protecting intellectual property rights takes time and money, but defending those rights is what maintains their value for the company.

#### More Info

Intellectual Property: The Practical and Legal Fundamentals, Thomas Field—This site also contains an impressive listing of related online resources.  
[piercelaw.edu/tfield/pLfiip.htm](http://piercelaw.edu/tfield/pLfiip.htm)

Intellectual Property Checklist—This tool guides entrepreneurs through a simple checklist to help identify intellectual property and to develop action steps to begin protecting it. View this resource using the More Info link in the online course.

United States Patent and Trademark Office, an agency of the Department of Commerce. [uspto.gov](http://uspto.gov)



## from real entrepreneurs

Coca-Cola is an excellent example of a company that has protected its intellectual property.

- The artwork on the can/bottle is copyrighted.
- The brand name and logo are trademarked.
- The formula for Coca-Cola is a trade secret.
- The shape of the bottle is trade dress.

The formula for Coca-Cola could have been patented, but that would make it a matter of public record and without protection after the patent expired. Keeping it a trade secret has helped Coca-Cola preserve its domination of the market.



### 5.2.2 Patents

A patent is a grant of a legal right to certain property by the United States for a term of 20 years. What is granted is the right to exclude others from making, using, selling, or importing the product. Any person who invents or discovers a new and useful process, machine, product, or compound can apply for a patent. When a patent expires, anyone is able to use the knowledge that was once protected. All of the patent holder's rights are gone.

Patent law is an exceedingly complex field that requires the assistance of a patent lawyer. Not all patent lawyers have the same expertise. They specialize in various fields. Most patent attorneys have very specific product/service experience, which is reflected in their fields of specialization.

Getting a patent is a very long and expensive process. The process includes a search of existing patents, the application, probably at least one rejection, and defending it even after it is issued. It is not unusual for a patent to cost \$10,000 to \$20,000 and take 18 months to obtain, and then, the entrepreneur only has the right to defend it against claims of others. Many companies hire engineers and patent attorneys to do nothing more than design around existing valuable patents so the core of the invention can be used and the original patent holder can do nothing about it.

## Reality

Avoid the patent trap. Spending money to obtain a patent for an unmarketable product is foolish. The patent itself is worth nothing unless it protects a product/service that people want. Consider a patent as an investment that should pay off over time.

## from real entrepreneurs

An inventor worked for two years in his basement developing a 3-D television. He was afraid that someone might steal his invention, so he would not discuss his product idea with anyone. When he decided that his working drawings and prototype were perfected, he contacted a patent attorney to start the patent search. During the patent search, the inventor found out the concept had been developed and tried four years previously and would not work. He wasted his time and money because he did not seek advice from the appropriate people early in the process.

Spending the money to acquire patent protection for a product/service is not always appropriate. An entrepreneur should retain the services of a patent attorney to determine if an idea should be patented. Before hiring an expensive patent attorney, entrepreneurs should be aware of these patent realities. The product/service may not be patented if:

- Another party already has patented the product/service. Preliminary patent searches can help to identify similar patents that have already been issued.
- The product/service is not useful. Patent law says that the patent will only be granted for a useful product/service.
- The product/service was in the public use or offered to the public before the application.
- The product/service is just an idea without a workable device or process.
- The inventor disclosed it to another person more than a year before applying for the patent.

### Tip

It is unlawful to put "Patent Pending" or an abbreviation to that effect on a product unless you have in fact applied for a patent.

### Tip

Before investing in an intellectual property attorney's advice, run an online search for prior patents at [uspto.gov](http://uspto.gov), [delphion.com](http://delphion.com), or more traditionally, at the Search Room of the Scientific Library of the Patent and Trademark Office, which is located at 2021 Jefferson Davis Highway, Arlington, VA 22202-3513. An attorney can make this search on your behalf for a fee.

### More Info

Understanding the Patent Process from Soup to Nuts—This article provides an expert explanation of the various kinds of patents, including utility patents and design patents, along with a practical description of the complete patenting process. [entrepreneurship.org/en/resource-center/understanding-the-patent-process-from-soup-to-nuts.aspx](http://entrepreneurship.org/en/resource-center/understanding-the-patent-process-from-soup-to-nuts.aspx)

U.S. Patent and Trademark website—Searchable database of U.S. patents and trademarks, some patent images available for free online. [uspto.gov](http://uspto.gov)

Delphion—Searchable database of U.S. patents and trademarks. [delphion.com](http://delphion.com)

Patent It Yourself, David Pressman (Book)—Includes information on intellectual property, why you should have it and how you can get it, patent laws and legislation, etc.

## 5.2.3 Trademarks and Service Marks

Trademarks (TM, ®) or service marks (SM, ®) are important marketing tools that help distinguish the goods or services of a venture from those of its competitors. They add value to a company as intellectual property. Trademarks apply to goods, and service marks apply to services.

A trademark is any word, name, device, symbol, or combination of those used by a business to identify its products and distinguish the products from those offered by others. Brand names are one form of trademark. Distinctive packaging, unique color schemes, unique designs, and slogans can also be trademarked.



Service marks are often slogans or phrases used in the sale or advertising of services as opposed to products. A service mark is used in advertising while trademarks appear on packaging.

Trademarks and service marks are an affordable way to obtain protection for intellectual property. They may be used to prevent others from using a confusingly similar mark, but not to prevent others from making the same goods or from selling the same goods or services under a clearly different mark.

With the widespread use of the Internet in business today, trademark issues related to domain names have become increasingly common. A company's domain name is its address on the Internet, and as such, has considerable value to the company. Congress passed the Anticybersquatting Consumer Protection Act in 1999 to strengthen trademarks laws as they relate to bad-faith registering of domain names. A cybersquatter registers a domain name without the intention of creating a website, rather they intend to later sell the name for profit to its rightful owners.

An entrepreneur may choose to protect intellectual property with trademarks and service marks in a specific state or at the federal level. It is much more advantageous to register federally as it gives nationwide protection and permits greater damage recovery. A search can be done to identify marks which are already registered. Until the mark has in fact been registered, one cannot legally use the ® symbol.

#### More Info

U.S. Patent and Trademark website—Searchable database of U.S. patents and trademarks. [uspto.gov](http://uspto.gov)

## Reality

In the eyes of many business experts, trademarks can be much more valuable than patents in protecting the market share of a business.

## from real entrepreneurs

Registering your trademark with the U. S. Patent and Trademark office provides some protections against trademark infringement. Such was the case for Red Bull, a registered trademark of UAE, which won a lawsuit to prevent a large importer from selling Bullfighter—which was found guilty of trademark infringement. In this case, it was argued that Bullfighter was purposely misleading customers into thinking its product was a Red Bull product or endorsed by Red Bull.

### 5.2.4 Copyrights

Copyrights protect the property of the author who created the work. Copyrights protect original works of authorship from unauthorized copying or use. Copyright protection is automatic but should be registered with the Register of Copyrights at the Library of Congress in order to prove when the material was created and its contents. Protection is good for the life of the creator plus 70 years. Literary, musical, dramatic, choreographic, pictorial, graphic, sculptural, audiovisual and architectural works can all be protected through copyrights. Many music enthusiasts may recall February 12, 2001, as “the day the music died.” It was the day that the federal court of appeals found that Napster, a software program that facilitated exchanging music files over the Internet, encouraged and assisted its users in the infringement of copyrighted music. The ruling in this landmark intellectual property case, *A&M Records, Inc. v. Napster, Inc.*, resulted in Napster shutting down its file swapping service.

Copyrights do allow limited use of the material by others for criticism, comment, news reporting, teaching, scholarship, and research.

## Reality

When employees produce work for a company, the company owns the copyright on the materials. Work produced by an independent contractor belongs to the contractor unless the contract specifies that it is "work made for hire" and belongs to the company. Entrepreneurs must develop clearly written agreements with employees and sub-contractors concerning who owns the copyright on the materials produced.

Every company owns copyrightable material developed within the scope of business. Many businesses include copyright notices on all such materials as a matter of routine practice. Copyright notices should contain all of the following three elements:

- The symbol ©, the word "Copyright," or the abbreviation "Corp."
- The first year of publication
- The name of the owner or company

For example: © 2011 John Doe

### Tip

It should be standard procedure to have the copyright symbol with the date and company name printed on all materials distributed on behalf of the company. Most word processing programs will allow this copyright information to be printed as a default on all documents created.

### More Info

10 Big Myths about Copyright Explained— This article, while not legal advice, is an excellent, readable guide to today's changing copyright laws.

[templetons.com/brad/copymyths.html](http://templetons.com/brad/copymyths.html)

## 5.2.5 Licenses and Royalties

Another strategy some businesses use is to license their intellectual property to other companies. It might limit the licensed usage to a particular category of product/service or geographic area or permit its use without such limits. When intellectual property is licensed, ownership is retained but another may use it in accordance with the contract. Generally a license fee is paid up front or over time, and royalties are the periodic payments based on use or sales. A license may be issued for a specific period of time or keyed to performance quotas. Many times the licensor, or the owner, will insist upon minimum royalties regardless of sales or use. A license can be exclusive for the intellectual property, or exclusive or non-exclusive for a particular market or territory. The variations are limited only by the imaginations of those involved.

Entrepreneurs can profit from licensing products/services to others (licensor) or from licensing the rights to use or sell other companies' products/services (licensee).



### 5.2.6 Trade Secrets

A trade secret is something that an entrepreneur or firm knows that others do not know. Trade secrets include techniques, designs, materials, processes and formulas that are not known by the public and can be licensed in the same way as a patent. Trade secrets can also be a supplier or customer list, manufacturing process or technique, or merchandising or promotional system. Such trade secrets can be very valuable.

#### Tip

The entrepreneur should obtain a confidentiality agreement before disclosing information that may be protected under trade secret or patent law.

#### Tip

For many entrepreneurs, the most valuable trade secret they have is their customer list. Consider ways to protect this valuable asset.

Entrepreneurs must be particularly careful that their employees do not divulge trade secrets. Employees should sign a non-disclosure agreement that legally prohibits them from disclosing the secret information during or after their employment. Further, the secret must be zealously guarded and disseminated only on a need-to-know basis. If the business leaves the information lying around, available to anyone in the business, courts are not likely to enforce confidentiality agreements. Sometimes, only portions of a formula or process are shared with individuals so no one person can disclose the entire thing.

Employees at all levels of a business may have specific skills or knowledge that are immensely valuable to that business. Perhaps it's a salesperson who knows the customers, whom to meet with, when and where to call on them, and their internal procedures. Suppose one day this same salesperson decides to start a business? What about the plant manager who knows every detail of how to produce the product? These are both examples of intellectual property that needs to be protected. The employees in these examples cannot be forced to continue to work for a business unless an employment contract requires it, and even then, when the contract expires, they are gone. Non-compete clauses in their employment contracts, with reasonable duration and scope, can provide the company protection for a period of time.

#### Reality

Trade secrets often are the most valuable asset of a business. Just as with patents, the protection of trade secrets needs the attention of an experienced attorney.

#### More Info

Martindale-Hubbell Law Directory—Comprehensive listing of individual lawyers and law firms by specialty and geographic location. [martindale.com](http://martindale.com)





## Exercise 5.2.6 Identify Intellectual Property

### Learning Objective

- Identify various types of intellectual property a business may possess and the means to protect it.

### Overview

Many people think that the only intellectual property a business might have is a patent or trademark. Every business has some form of intellectual property. It is a great way to build value in a business. You have something more to sell than simply the hard assets. Sometimes the most valuable asset a business possesses is its customer list. That's a form of intellectual property. In other cases, a key employee may be a form of intellectual property. Obviously, an employee cannot be possessed but the business may be protected against the loss of that employee, especially a loss to a direct competitor.

The most common types of intellectual property are below. For more information, refer to Chapter 5.

A **patent** is issued to new and useful inventions, discoveries and designs. To be entitled to a patent, a work must be completely new, useful and not obvious.

A **copyright** is given to "original works of authorship" such as written works, musical works, visual works or performance works.

A **trademark/service mark** protects a name or symbol, which is used to distinguish one person's goods or services from those of others.

A **trade secret** is some information or process that provides a commercial advantage, which is protected by keeping it secret.