

SelfInformed

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Guide to Protecting Intellectual Property



All small business owners and entrepreneurs have one thing in common: they had a great idea and the passion to pursue the challenge of starting a business. There are many hurdles to overcome when building a business to ensure its success. What keeps someone else from stealing your idea, and capitalizing on it? Are you aware of the new law, passed in 2011, that grants a patent to the first person that creates an invention, rather than the person with the idea? There are many misconceptions about protecting intellectual property, and this guide will help you move in the right direction toward protecting your intellectual assets.



Intellectual property includes nearly anything you've created, whether it be a design, idea or physical product. Protecting intellectual property is the foundation of promoting innovation in business. Unfortunately, many small business owners haven't educated themselves on the relevance of intellectual property protection, potentially leading to theft of ideas and possible business failure.

Why Protecting Intellectual Property Matters

Copying or mimicking ideas occurs constantly in the business world. As a consumer there is no doubt that you've seen products on store shelves or in commercials that look nearly identical to another brand. Thinking about this from behind the perspective of a business owner, it is quite unsettling. Imagine the idea you worked so hard to create, being copied, and producing profit for someone else.

Aside from the obvious theft prevention benefit of protecting your ideas and products, other advantages include:

- Giving your small business a long-term competitive advantage
- Increasing your business's appeal to potential investors
- Boosting your reputation as a business
- Allowing you to expand your business through a franchise

Unfortunately, small business owners and micro business owners are often at a disadvantage when it comes to protecting intellectual property. Most of these businesses don't have the knowledge and resources to adequately protect their intellectual property, leaving them with few options if theft or piracy does occur.

Trademark, Copyright or Patent?

The most common methods of protecting intellectual property involve copyrights, trademarks and patents. All 3 of these are often confused with one another or are erroneously believed to have more power than they really do.

Copyrights: Copyrights apply to intellectual property that has an author. For example, anything that is literary, artistic or musical in nature. If your small business provides published or unpublished works of this nature, you will need a copyright to protect your material. Copyrights can be effective for up to 120 years, depending on the type of work.

Trademarks: A trademark protects anything that distinguishes your intellectual property from other

manufacturers. This includes logos, symbols, words and sounds. Similar to trademarks, trade dress protects the design and appearance of a product. For example, a trade dress would prevent a competitor from using your product's packaging color scheme or design. Servicemarks also fall under the trademark category. A servicemark is a trademark that protects service rather than a product. Trademarks are effective for as long as the business owner wishes it to be.

Patents: Patents apply to small business owners that have created a new invention or discovered something of importance. There are 2 main types of patents that apply to most small businesses, utility patents and design patents. Utility patents protect inventions involving a process, machine or other form of composition to create. Design patents protect any form of original appearance.

Simply put, if you need to protect how your product works, get a utility patent. If you want to protect how something looks, get a design patent. You can acquire both if it's applicable to your small business. Utility patents are effective for 20 years while design patents are effective for 14 years.





Protecting Your Business Overseas

Patents, trademarks and copyrights, as well as other forms of intellectual property protection, are only effective within the country they are granted. Your small business might be heavily protected within the United States but that doesn't mean this will carry over to overseas countries.

One country that has proven to be a major threat is China. Many American businesses have unknowingly had their ideas stolen by these overseas manufacturers and upon the discovery, weren't able to do much of anything about it. It is crucial to apply for the proper protection if you plan to do business abroad since small businesses are already at a potential disadvantage.

You can apply for patents and trademarks in other countries just as you would here in the United States. If you plan to do business in many different countries it would be wise to work with an organization like WIPO (World Intellectual Property Organization) that will allow you to file one form to cover all countries.

Protecting Online Assets

There is a growing number of online businesses or small businesses that have an online presence. The digital world has so many advantages but also allows theft to become easier than ever.

First and foremost, even if you only own an online business you still need to apply for the proper protection in the form of trademarks, patents and/or copyrights. To further protect your business you will want to place copyrights within your website's footers and have a dedicated page that explains what people can and can't do with the information on your website.

One final aspect of protecting your small business online involves your URL. If you're just starting your business then check to see if your ideal website domain is available. It isn't unheard of for a small business to begin as a brick-and-mortar and upon starting a website, find out someone else is already using their name.

Intellectual Property Law

Intellectual property laws are outlined in the American Inventor's Protection Act which was enacted in 1999. This act was later amended in 2002 by the Intellectual Property and High Technology Technical Amendments Act.

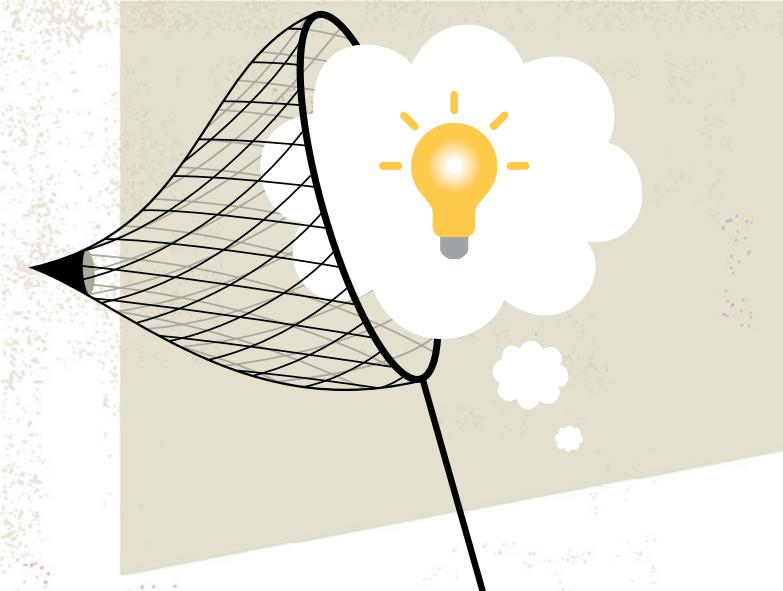
Information about these acts can be found [here](#) on the USPTO website.

More recently President Obama signed the Leahy-Smith America Invents act in late 2011. This act completely changed patent laws. This new act will grant a patent to the first person that creates an invention over the first person to create the idea. The benefits to this are obvious but there are a few skeptics who believe this new system is unfair. You can read more about this act [here](#).

Intellectual property laws can be complex and it is strongly advised to consult with a patents or other intellectual property attorney.

When Your Intellectual Property is Stolen

If you've discovered that your intellectual property has been stolen it's important to take action quickly. First and foremost, contact the offender and send them a cease and desist letter. This letter doesn't need to be confrontational but rather be polite but firm in your demands to remove your stolen content.



Generally people aren't aware of intellectual property laws and have no idea when they are breaking them. However, for those who are unwilling to stop what they are doing, it is important to get in contact with an attorney. There are pros and cons to hiring an attorney but if your business is being severely hurt financially, they will be your best bet in finding a solution.

What You Can Do Now

You can begin protecting your small business right now by:

- Assessing your small business to decide what is worth patenting, copyrighting and/or trademarking.
- Going to [Google Patents](#) to see if any ideas have already been patented.
- Contacting [The United States Patent and Trademark Office](#) to find more information and applicable forms to fill out.
- Investing in an attorney to write a thorough NDA (non-disclosure agreement) to be used whenever you share intellectual property with others

Intellectual property is the lifeblood of your business. Protecting it will ensure your small business is as successful as possible. For more information on growing a small business, please visit the [NASE Business Learning Center](#).



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Featured NASE Member Benefits

SMALL BUSINESS HEALTH INSURANCE

The NASE offers access to small business health, life and dental insurance through USHealth Group Insurance Subsidiaries, Renaissance Dental, MetLife and others. These respected companies offer a variety of health plans, which can be customized to meet the special needs of small business owners just like you. Request a quote today!

The NASE is excited to welcome Renaissance Dental as the newest member benefit. Renaissance Dental has over 55 years of experience in the dental benefits industry, making them one of the top choices for all your dental benefit needs. You'll have exclusive access to dental plans that are designed to help you save money while maintaining a healthy lifestyle.

<http://www.nase.org/request-insurance-quote>

METLIFE TERM LIFE INSURANCE - \$10K

\$10,000 included Term Life Insurance for NASE members. Your NASE Membership provides you and your family with Principle Member Group Term Life Insurance Coverage from MetLife for no additional cost. No additional contribution is required from the member in order for this insurance protection to be provided.

http://www.nase.org/Membership/Benefits/Term_Life_-_MetLife_-_10K.aspx

CVS CAREMARK PRESCRIPTION DRUG CARD

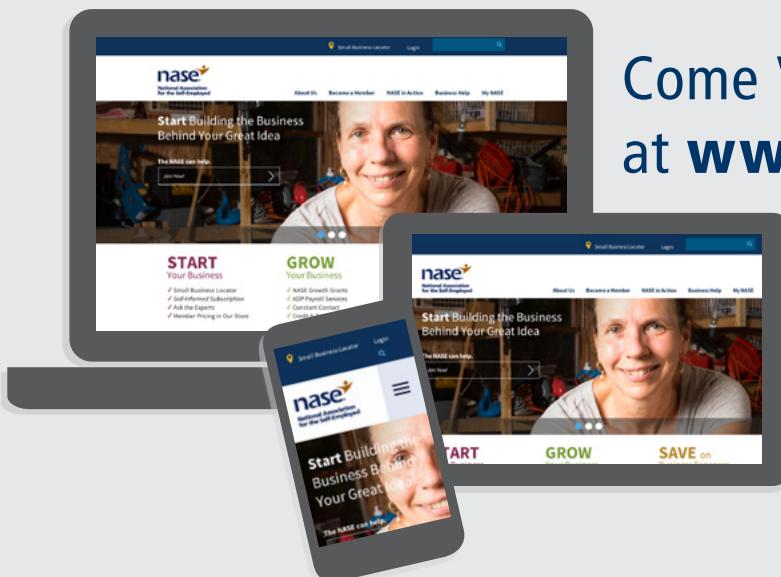
The prescription discount program card is free – you get it just for being an NASE Member! The back of your NASE Membership card is also your prescription discount card. Print extra cards for you, your family and your employees at http://www.nase.org/Membership/Benefits/CVS_Caremark_Prescription_Drug_Card.aspx

HEALTH RESOURCE GUIDE

Running your own business requires many hats – CEO, CFO, marketing director, office manager, janitor and more. Trouble understanding the details of health coverage might make your role as micro-business benefits administrator difficult. The search for affordable, quality health coverage is an overwhelming task and making sense of your plan options can be challenging.

Manage your health care decisions with A Guide to Understanding Health Coverage for Micro-Businesses. Designed for businesses with fewer than 10 employees, this workbook can help you make the best health care decisions for yourself, your family and your employees.

http://www.nase.org/Membership/Benefits/Health_Resource_Guide.aspx



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at www.nase.org



You Can Be a Better Client:

Getting the Most from Your Attorney for Better Results



As a business owner, dealing with legal issues is often a distraction from your mission. It can be expensive in both dollar costs and time away from what you do best. While you must continue to run your business, it is essential that you remain involved in the legal process. Sending the file to the attorney and then forgetting about it (or emotionally refusing to deal with it) will often lead to more expense and stress later down the road. Perhaps these general thoughts will help you become the effective client your lawyer and your business

need. Every matter is different, so discuss these thoughts with your attorney to determine if they are helpful. Based upon many years of experience, I believe they will be.

People tend to wait too long to hire counsel. Some common but ultimately bad thoughts small business owners have are:

- Maybe the situation will pass.
- Maybe we can work something out before we spend money.
- Who knows what all this contractual gibberish means but I trust these people.

Waiting often makes things more expensive. Spend a little money early and perhaps save a big problem. Even if the matter still escalates, at least you are not running around looking for a lawyer at the last minute.

Another danger that small business owners run into that could help be avoided by a strong relationship with legal counsel: a small business has insurance coverage to pay or defend a matter. It is possible that you can lose that coverage by taking actions which prejudice your carrier. Many a business has unknowingly prejudiced their carrier and dealt with the consequences of fighting to obtain coverage already purchased. By keeping a close working relationship with your lawyer and not waiting till last minute can save you money and allow your business to bloom.



Regarding the actual attorney-client relationship, getting started correctly is crucial. There is a natural tension between the need for the attorney to learn the case and your costs for the time that takes. Also competing is your desire to be the most important client versus your attorney's other clients and commitments. The last thing you want is to be in a situation where you are the full time client of the attorney. So what are some things that can effectively deal with these tensions? Again, get the relationship started correctly. Start by addressing these tensions openly and honestly. You should expect to be kept up to date on the case and not surprised with last minute requests. You also should have a good understanding of the strategy and reasons for the attorney's actions. I think it is particularly helpful to understand the best way for communicating with your attorney. You should ask, "What is helpful versus what is over the top? How long does it take to return phone calls?" Frequent phone calls can be distracting and expensive and are often the result from the attorney and client not getting on the same page from day one. So do yourself and your business a favor and ask these upfront and ensure both sides are on the same page.

Turning to your role as an effective teacher of the facts, you are often the person who knows the most about the situation. After finding out from your attorney if it would be helpful, preparing a good timeline and package of key documents can be crucial. Have some patience while your attorney learns the facts. However, be careful to only talk to people and prepare documents that your attorney requests. You can make the mistake of waiving the attorney-client privilege. Talk to no one about your communications with your attorney unless the attorney specifically approves. The point: be involved early and consider yourself a partner in getting the attorney up to speed. Be available for your attorney.

Another matter deserving separate treatment is the hidden thing that worries you. Perhaps it is an arrest from years ago. Perhaps it is a medical issue, a bankruptcy or prior lawsuit. Perhaps it is a contract you feel stupid about signing or a letter you want back. Tell your attorney now. Most matters will be non-issues if you timely disclose them. And if they are crucial, better to deal with them now. These things do not get better with time, are usually irrelevant and are almost always discovered. Surprises damage cases and throw lawyers into tailspins. You don't want your own lawyer in a tailspin.

An issue to deal with up front is billing. You should pay your bills, but you should also have basic understanding of both what and why you will be incurring the expense. Discuss this up front. Understand what to expect as well as what descriptions you will get on the bill. Consider setting an amount that will require prior approval from you. However, like most issues there is a balance between being an intelligent consumer of legal services and being a client who questions everything. Early discussion and communication is much better than monthly bills that surprise and distract. You can expect and demand communication and fairness, but avoid the temptation to blame your lawyer for the lawsuit or situation.



Let me leave you with a final thought: It is my experience you are best served by a prepared, communicative lawyer but not one who is emotionally attached to your case. Don't demand that the lawyer be as angry as you. Don't fault him for talking to the other lawyer. An angry lawyer often ends up costing you more in discovery fights and childish banter. You are better served by calm professional advice, even when it is not what you want to see or hear.

Member Spotlight



Growing Success

David Mostue, President of Dunbar Farms, based in Medford, Oregon and has been a NASE member since 2013. He joined the NASE during a Research and Development phase of the business and has taken advantage of numerous NASE benefits. Dunbar Farms began as a peach farm and after four generations with the family farm, now serves as the brand for the farms produce, bread, grains, flour, dry beans, polenta, flowers and much more.

What inspired you to enter the field you are in?

The inspiration was both personal and philosophical. On a personal level our farm was a nearly 100 year old family farm just beginning to have our wine grapes made and bottled into our own estate wine. A hundred years of resources were sitting about the farm in various states of use, disuse and disrepair. My grandfather, Dunbar Carpenter, had been running the farm since the 50s and was slowing with age. My father, who had helped my grandfather transition the farm from pears to hay and had helped to develop the wine business, had been diagnosed with prostate

cancer. The farm needed someone who could continue the development and I was in an ideal place in life to plug in.

On a bigger, philosophical level I was finishing college and was figuring out how to balance a career with a life of meaningful work. College had taught me that the food and energy systems of the modern world had many issues that were going to develop over the coming years. The farm's state at the time offered an opportunity to explore these issues and the solution with a vision and business structure that I could define. If it worked I could continue down the path of farming and if it didn't I felt at the time that I would've acquired resources, experience and a skill set that could be taken elsewhere.

When did you begin farming and why?

I came back and started farming full time in the spring of 2007 after graduating from college. I grew up around the farm but didn't participate heavily nor was expected to. Before deciding to return to the farm I had spent a couple of summers building barns and helping with tasks on the farm while working other summer jobs.

At the time of returning to the farm I was trying to figure out how to blend a wide ranging set of interests fostered during college and was disappointed with the expectation of specialization asked of most career paths. Farming requires a blend of skill sets ranging from biology and chemistry to marketing and business administration not to mention construction, fabrication and mechanics. The skill set has proven itself to be engrossing and captivating with unlimited experimentation, discovery and invention allowed.

There is also the importance of the work. Our food system has migrated to the extreme of maximizing the cost effectiveness of production. While impressive in its own right it ignores the other factors in food, namely nutrition, soil and farm health and energy efficiency. It has also placed itself poorly for the food economy of the future which is one of greater decentralization.

Take me through a week at the farm, how often are you in the fields, in the office, on the road selling etc.

I have organized the business so as to maximize my time in the fields and in the shop doing real, tangible work. Office work is done first thing, every day for an hour or two and then the rest of the day is usually directed towards farming. Virtually all sales are done online, save a smattering of phone sales, which allows for as much uninterrupted time to get work done as possible. Over the course of a farming year I try to spend at least 50% of my time building and developing new systems and infrastructure or acquiring, repairing and implementing new tools on the farm. All of the development is focused upon putting well maintained, user-friendly and efficient tools and systems into the hands of our employees.



Farming requires a blend of skill sets ranging from biology and chemistry to marketing and business administration not to mention construction, fabrication and mechanics.

What challenges have you faced in your business? How have you overcome them?

The first challenge was figuring out how to grow food efficiently, consistently and cost effectively, which was a combination of acquiring tools and learning the art of farming. Now the biggest challenge is continuing to do that while also moving relatively large amounts of low value product efficiently, consistently and cost effectively to our own markets.

How do you market your business?

We currently market our business online and via word of mouth. We operate an online sales and farming newsletter email weekly in the summer months and biweekly through the winter that goes out to 1,000 subscribers. Subscribers order online and then come to the farm to pick up their orders. This is coupled

with wine tastings, music, tours and other events. We are in the last steps of working with the city to open the Tasting Room for regular hours, public tastings. At this point we can't publicly market via standard print advertising or signs on the road.

We also operate a wine club. Folks sign up to receive either 6 or 12 bottles of our wine each year.

How many employees do you currently have? Are you planning to expand the staff?

We have two full-time employees over the course of the farming season, a part-time bookkeeper and a part-time employee to help with harvest days, wine pourings and retail sales days. In the winter we drop to one part-time employee to help with continued sales and my time goes to the big, overarching infrastructure projects as



well as repairing tools and equipment. We don't plan for any new staff in the next year but as the Farm Stand/Tasting Room develops and our crop production expands we expect new field and order fulfillment staff.

What does Dunbar Farms look like in a few years?

Where to begin? Dunbar Farms overarching goal is to cultivate fewer markets and supply them with more products. This incentivizes diversification and learning to produce the full gamut of food. We have focused to date on learning to farm and acquiring the tools needed to produce the entire realm of raw farm products including produce, grains, wine grapes, fruit, grass hay and feed grain. Now that most of those systems are in place we can begin to play with processing and translating those raw products into saleable products. For instance, grains and grass hay can get turned into chicken, beef, lamb or pork, which can then be smoked or cured or sold as a myriad of different cuts. Grass hay and grain can also yield many types of milk which can then be translated into cheese, yogurt, etc.



Grains can be milled and baked in many different ways or turned into distilled spirits or beer so the possibilities are virtually endless. We have barely started into the realm of processing yet we already have the barn and storage systems to move in that direction. It will be an exciting next few years of exploration and development at Dunbar Farms.

What's the best thing about being self-employed?

Self-direction. Small business is self-directed because it is first and foremost about being creative. Without the infrastructure and resources of a large business, it is about being agile and adaptive and layering the work and responsibilities of your employees to achieve efficiency while also providing diverse work tasks and a greater understanding of the business operation. At the most basic level self-employment can be a lot more fun than big business.

Which NASE member benefit is most important to you?

The growth grant has been a big boon to us. It has filled in a gap in our farm equipment quiver that

allows for much greater production and efficiency. The business tax form tutorials have also proven useful in navigating the IRS quagmire.

Tell me more about what the growth grant will go towards and how it will help.

The growth grant is going towards a larger combine that has all of attachments needed to harvest dry corn, popcorn, dry beans, wheat as well as virtually any other seed crop that we decide to grow. Though outdated by today's commodity standards the new combine is more efficient than we need given our price point in the market. Any money left over will go towards seed drying capacity and other seed handling and processing equipment in the barn.

What's the most important piece of advice you would give to someone starting their own business?

Find your passion and balance it with diligence and calculation. Small business is one part inspiration and one part practical prioritization. There is never a shortage of things to do and so one needs to prioritize and chip away.



Learn More in the NASE Small Business Locator

Learn more about David Mostue, Dunbar Farms and other Self Employed businesses in the **NASE Small Business Locator directory**. You can add your own company to the NASE Small Business Locator in up to three categories at no charge – it is a free benefit to NASE members.



Supporting Women Entrepreneurs:

Women's Small Business Ownership Act of 2014

"...women-owned businesses are a \$3 trillion economic force and support 23 million jobs but still face significant barriers compared to their male-owned counterparts when it comes to obtaining loans and growing their businesses."

United States Senate
Small Business and
Entrepreneurship
Committee report

The National Association for the Self-Employed enthusiastically supports legislation introduced by U.S. Senate Small Business and Entrepreneurship chair, Senator Maria Cantwell (D-WA), that moves to remove barriers that limit access to tools and information crucial for a micro-business to flourish into a small business. From access to capital and securing contracts to simply getting sound advice, these barriers prevent women small business owners from starting, growing and saving. Everyone knows without the startup funds or the ability to get extra help with a loan, a small business owner risks failure.

Women are a growing and dominant group among the self-employed, something we should all applaud, but encounter increased challenges in opening and growing their own small business. The NASE remains committed to ensuring the path to self-employment is made easier for all of our members.

This legislation introduced last month in the U.S. Senate is a measure that seeks to close the gender gap by "improving access to lending and increasing business counseling and training services for women entrepreneurs, and giving women-owned businesses the same level of access to federal contracts as other disadvantaged groups." In conjunction with the legislation's introduction, Senator Cantwell hosted a Congressional hearing focused on women entrepreneurship and how to address these challenges and identify new opportunities.

As more women move towards self-employment, the NASE will continue to be an influential voice in supporting their hard work in realizing the dream of self-employment and economic freedom.

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