

Top 10 Questions Nonprofit Boards Should Ask About IP

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Budgetary issues, fundraising, hiring and programmatic initiatives – these are all usual topics of discussion between nonprofit board members and their senior managers. The topic of intellectual property – or “IP” – however, often isn’t considered even though it may be vitally important to your organization.

Why not? Perhaps it’s because board members aren’t familiar with IP concepts. Maybe they don’t think IP is relevant to their organization’s activities. Possibly both reasons. In reality, these days it’s rarely the case that IP is irrelevant, so it’s important for boards to understand what IP is, whether their organization generates IP, how their organization manages and protects IP, and whether their organization properly uses others’ IP and follows funder requirements regarding IP. If you’re scratching your head right now, read on!

Intellectual Property 101

“Intellectual property” refers to the original creations of authors, designers, software developers and artists, and the original discoveries and inventions of scientists, which are protected in the United States by copyright, trademark and patent law. In contrast with tangible property such as buildings or cars, which have physical substance, intellectual property is intangible. It takes the form of rights granted by the government to the creators.

[Copyright law](#) grants the creator of a work such as a software program the exclusive right to control copying, distribution, sale and use of the program. A company that develops a brand name and logo relies on [trademark law](#) to control copying and use of the brand and logo. And [patent law](#) grants the inventor of a new technology the exclusive right to manufacture and sell the technology or to permit or exclude others from doing so.

[Intellectual property laws](#) are intended to encourage the development and disclosure of original creations, discoveries and inventions for the good of society by granting exclusive rights to the creators for a period of time so that they can generate a profit. In order to assure that the exclusive rights are protected, the laws impose penalties on anyone who uses the creations, discoveries or inventions without authorization.

And now to your organization. . .

Your organization probably owns IP that your employees have created. In addition, you probably use IP that others outside your organization (“third parties”) have created. Like any type of tangible property that you own or use, your organization’s [IP needs care and attention](#). While the natural assumption would be that your IP is a benefit, it can also become liability if it is not properly managed. To get a handle on what IP you’ve got and how you’re managing it, here are the questions you should ask your senior managers:

1. What types of IP has our organization created?
2. Have we adequately protected our IP—including our website?
3. What IP are we using that was created by third parties?
4. Do we have a policy that addresses the [disclosure and use of our IP and our third party IP](#) outside the organization by our employees, contractors and consultants?

5. Do we have a policy that addresses ownership and use of IP that is developed for us by our employees, consultants and contractors?
6. If we receive grants or contracts, do our funders impose any requirements on us relating to ownership and use of IP that we develop using their funds?
7. If we hire consultants or contractors to work with us on funded projects, do our agreements with them reflect our funders' requirements relating to ownership and use of IP?
8. Do we routinely request [permission for use of third party IP](#), and if so, is the permission we request sufficiently comprehensive to cover our organization's current and future needs?
9. Do we obtain releases for IP when required—for example, when we take photos of people or produce videos that include music?
10. Do we maintain and keep updated records to document our IP rights, permissions and releases?

Although intellectual property concepts and IP law relate to both for-profits and nonprofits, there are important differences in the way nonprofits need to manage their IP due to the regulatory environment in which nonprofits operate.

Admittedly, all this IP talk can be complicated and confusing. Your senior managers may be able to answer these questions, but if not, get assistance from an attorney who is familiar with both intellectual property and nonprofit law to make sure you're protected.

[Ellen Lubell](#) *advises individual and institutional clients on protecting and licensing intellectual property ranging from traditional print and photographic media to digital works, software, and multimedia.*