

SaaS Founder's IP Due Diligence Checklist

A Complete 47-Point Audit for Pre-Series A Founders

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How to Use This Checklist

This checklist covers the IP due diligence items that venture capital investors typically review before closing a Series A round. Work through each section systematically, marking items as complete, in-progress, or not applicable.

Timeline: Plan to complete this audit 90 days before you start fundraising conversations.

What you'll need:

- Access to all corporate documents and agreements
- List of all contributors to your technology (employees, contractors, advisors)
- List of all markets where you operate or plan to operate
- Your company's formation documents

Color coding for this checklist:

-  **Critical** - Must be addressed before Series A
 -  **Important** - Strongly recommended, may affect valuation
 -  **Strategic** - Demonstrates sophistication, competitive advantage
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SECTION 1: OWNERSHIP & ASSIGNMENTS

Employee IP Assignments

-  **1.1** All current employees have signed written employment agreements
-  **1.2** Employment agreements include explicit IP assignment clauses
-  **1.3** IP assignment clauses cover inventions made during employment
-  **1.4** Agreements were signed BEFORE employees started work
-  **1.5** Agreements include confidentiality provisions
-  **1.6** Company maintains master spreadsheet of all employee agreements

Contractor & Consultant IP Assignments

-  **2.1** All contractors who contributed code/IP have signed agreements
-  **2.2** Contractor agreements include "work for hire" language
-  **2.3** Agreements specify ALL deliverables assigned to company
-  **2.4** No contractors retain ownership or license rights
-  **2.5** Company can produce signed agreements for ALL code contributors
-  **2.6** Contractor agreements prohibit reuse of company IP

Founder IP Assignments

-  **3.1** All founders have signed IP assignment agreements

- 3.2 Agreements assign ALL relevant IP to the company
 - 3.3 Agreements cover pre-incorporation work related to business
 - 3.4 Departed founders signed separation agreements
 - 3.5 No founder disputes exist regarding IP ownership
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SECTION 2: TRADEMARK PROTECTION

U.S. Trademark Protection

- 4.1 Company name is registered as U.S. trademark
- 4.2 Primary product/service brands are registered
- 4.3 Logo is registered as U.S. trademark (if distinctive)
- 4.4 Trademark search conducted before filing
- 4.5 Registrations cover all relevant goods/services classes

International Trademark Protection

- 5.1 Trademarks filed in ALL countries with revenue
- 5.2 Trademarks filed in countries targeted for 12-month expansion
- 5.3 European Union trademark filed (if operating in EU)
- 5.4 UK trademark filed separately (post-Brexit)
- 5.5 Key Asian markets covered (China, Japan, Singapore, India)
- 5.6 Madrid Protocol used for cost-effective multi-country filings
- 5.7 Documented trademark strategy with priority markets

Trademark Maintenance & Monitoring

- 6.1 All trademark renewal deadlines tracked and calendared
 - 6.2 Company monitors for potential infringement
 - 6.3 Domain names matching trademarks registered and secured
 - 6.4 Social media handles matching brand names secured
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SECTION 3: PATENT STRATEGY

Patent Portfolio Assessment

- 7.1 Company evaluated whether core technology is patentable
- 7.2 Decision to patent (or not) documented with rationale
- 7.3 If patents filed: applications cover core differentiating technology
- 7.4 If patents filed: strategy aligns with product roadmap
- 7.5 Patent prosecution is active and maintained

Patent vs. Trade Secret Decision

- 8.1 Company identified innovations best protected as trade secrets vs patents
 - 8.2 Trade secrets documented and access restricted
 - 8.3 Public disclosures reviewed to ensure no loss of trade secret status
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SECTION 4: OPEN SOURCE COMPLIANCE

Open Source Inventory & Compliance

-  **9.1** Complete inventory of all open source components exists
 -  **9.2** License for each open source component documented
 -  **9.3** No GPL, AGPL, or viral licenses requiring code release
 -  **9.4** Permissive licenses (MIT, Apache, BSD) documented and compliant
 -  **9.5** Ongoing process to review new dependencies
 -  **9.6** Automated scanning tool used to monitor dependencies
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SECTION 5: FREEDOM TO OPERATE

FTO Analysis & Risk Assessment

-  **10.1** Freedom-to-operate analysis conducted for core technology
 -  **10.2** FTO analysis covers primary markets (US, EU, key Asia markets)
 -  **10.3** Identified risks evaluated with counsel
 -  **10.4** Design-around strategies documented for concerning patents
 -  **10.5** No outstanding cease-and-desist letters or infringement claims
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SECTION 6: TRADE SECRETS & CONFIDENTIALITY

Trade Secret Protection Measures

-  **11.1** Company identified what constitutes trade secrets
 -  **11.2** Access to trade secrets restricted to need-to-know basis
 -  **11.3** NDAs in place with all employees, contractors, partners
 -  **11.4** Confidential information clearly marked as "Confidential"
 -  **11.5** Technical measures protect trade secrets (access controls, encryption)
 -  **11.6** Trade secret policy documented and communicated
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SCORING YOUR AUDIT

Count your checkmarks in each category:

Critical Items (26 total)

- **26/26 complete** = Excellent. You're investor-ready.
- **22-25 complete** = Good. Address remaining gaps immediately.
- **18-21 complete** = Concerning. Significant work needed.
- **Below 18** = High risk. Do not start fundraising until gaps closed.

Important Items (17 total)

- **15-17 complete** = Strong position.
- **12-14 complete** = Adequate.
- **Below 12** = Weak. Investors will note gaps.

● Strategic Items (4 total)

- **3-4 complete** = Exceptional. Demonstrates sophistication.
 - **1-2 complete** = Standard.
 - **0 complete** = Opportunity to differentiate.
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WHAT TO DO WITH YOUR RESULTS

If You Have Critical Gaps:

Fix immediately (30-60 days):

1. **Missing contractor IP assignments** → Track down ALL contributors
2. **No international trademarks** → File applications in revenue markets
3. **No open source inventory** → Run dependency scan this week

Budget: Expect \$15K-\$50K to clean up typical critical gaps.

Common Critical Fixes:

Contractor IP Cleanup:

- Create master spreadsheet of all contributors
- Email them with friendly request
- Offer nominal fee (\$500-\$2,000) if needed
- Get signatures before fundraising

International Trademark Filings:

- List top 5 revenue markets outside U.S.
- Get cost estimates (\$1,500-\$3,000 per country)
- File in priority order (highest revenue first)
- Use Madrid Protocol when applicable
- Budget 4-6 months for processing

Open Source Compliance:

- Run dependency scan (FOSSA, Snyk, Black Duck)
 - Generate report of all components
 - Flag any GPL/AGPL licenses immediately
 - Document everything
 - Budget: \$0-\$5,000
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RED FLAGS THAT KILL DEALS

Deal-Killer #1: Co-Founder IP Disputes

The problem: Departed co-founder claims they own core technology.

Why it kills deals: Creates existential legal risk.

The fix: Get signed IP assignments from ALL founders BEFORE fundraising.

Deal-Killer #2: Viral Open Source License

The problem: GPL or AGPL in codebase requiring open-sourcing proprietary code.

Why it kills deals: Could destroy competitive advantage.

The fix: Remove GPL/AGPL components immediately. Rewrite if necessary.

Deal-Killer #3: Zero IP Protection in Key Markets

The problem: 40% revenue from Europe, zero EU trademark protection.

Why it kills deals: High risk of being blocked by squatters.

The fix: File trademark applications NOW.

Deal-Killer #4: Missing Contractor Agreements

The problem: MVP built by Upwork contractors with no IP assignment.

Why it kills deals: Contractors technically own their contributions.

The fix: Track down EVERY contributor, get retroactive assignments.

PREPARING YOUR DATA ROOM

Folder Structure for IP Due Diligence:

1. IP Assignments & Agreements

- All employee IP assignments
- All contractor IP assignments
- All founder IP assignments
- Consulting agreements with IP clauses

2. Trademark Filings

- U.S. trademark registration certificates
- International applications and registrations
- Trademark search reports
- Correspondence with trademark offices

3. Patents (if applicable)

- Patent applications
- Office action responses
- Patent prosecution history
- Patent strategy memo

4. Open Source Compliance

- Dependency scan reports

- License inventory
- Compliance documentation
- Remediation plans

5. Freedom to Operate

- FTO analysis reports
- Opinion letters from counsel
- Design-around documentation

6. Corporate Governance

- Board resolutions approving IP filings
- IP committee minutes
- Stock option agreements with IP provisions

7. IP Strategy

- 1-2 page IP strategy memo
- Filing roadmap
- Budget and timeline

8. Trade Secrets

- List of trade secrets
 - Access control policies
 - NDA templates
 - Protection protocols
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COMMON QUESTIONS

Q: How long does IP cleanup take?

A: Depends on severity:

- Minor gaps: 30-60 days
- Major gaps: 90-180 days
- Existential issues: 6-12 months

Q: How much does IP cleanup cost?

A: Typical ranges:

- Light cleanup: \$10K-\$25K
- Medium cleanup: \$25K-\$75K
- Heavy cleanup: \$75K-\$200K+

Q: Can I raise with IP gaps?

A: Yes, IF:

- You disclose them upfront
- You have clear remediation plan
- Cost and timeline are reasonable
- They're not existential risks

VCs may reduce valuation or require escrow until resolved.

Q: Should I file patents before Series A?

A: Only if:

- You have truly novel technology
- Your industry expects patents
- Competitors can't easily design around
- You have budget (\$20K-\$50K per patent)

For most SaaS: trademarks + trade secrets > patents.

RECOMMENDED TOOLS

Open Source Scanning:

- FOSSA (fossa.com)
- Snyk (snyk.io)
- Black Duck (synopsys.com)

Trademark Searching:

- USPTO TESS (U.S.)
- WIPO Global Brand Database (international)

IP Management:

- Alt Legal (trademark docketing)
 - Anaqua (patent portfolio management)
 - Spreadsheets (budget option)
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FINAL PRE-FUNDRAISING CHECKLIST

Before you start fundraising:

- Run through all 47 items
- Calculate your score
- Identify top 3-5 gaps
- Get cost estimates for fixes
- Create remediation timeline
- Build IP data room
- Draft IP strategy memo
- Budget for cleanup costs

- Allow 90 days minimum for critical issues
 - Disclose remaining gaps proactively
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NEED HELP?

Cameron Reid and CrossBorderIP specialize in helping SaaS founders prepare for IP due diligence.

We can help you:

- Conduct rapid IP audit (2-week turnaround)
- Develop international trademark strategy
- Clean up contractor IP assignments
- Prepare IP data room
- Draft IP strategy memo for investors

Free 15-minute IP strategy call for pre-Series A founders:

Book a call: <https://crossborderip.com/contact/>

ABOUT THE AUTHOR

Cameron Reid is the founder of CrossBorderIP, where he advises SaaS companies, tech startups, and emerging technology innovators on international IP strategy. With over 20 years of experience spanning Big Law, in-house counsel roles, and startup advisory, Cameron specializes in helping technology companies protect and scale their IP globally—particularly across US and Asia-Pacific markets.

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This checklist is for informational purposes only and does not constitute legal advice. For specific guidance on your IP needs, consult with a qualified IP attorney in your jurisdiction.

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