

9. Assets

9.6 Intellectual property

Intellectual property, often known as IP, allows people to own their creativity and innovation in the same way that they can own physical property. The owner of IP can control and be rewarded for its use, and this encourages further innovation and creativity to the benefit of us all.

In some cases IP gives rise to protection for ideas, but in other areas there will have to be more elaboration of an idea before protection can arise. It will often not be possible to protect IP and gain IP rights (or IPRs) unless they have been applied for and granted, but some IP protection such as copyright arises automatically, without any registration, as soon as there is a record in some form of what has been created.

The four main types of IP are:

- **Patents** for inventions - new and improved products and processes that are capable of industrial application.
- **Trade marks** for brand identity - of goods and services, allowing distinctions to be made between different traders.
- **Design rights** for product appearance - of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture or materials of the product itself or its ornamentation.
- **Copyright** for material - literary and artistic material, music, films, sound recordings and broadcasts, including software and multimedia.

What is a patent?

A patent gives an inventor the right for a limited period (up to 20 years in the UK) to stop others from making, using or selling their invention without the permission of the inventor.

To get patent protection an invention must be:

- new and not known anywhere in the world prior to filing an application
- have an inventive step, not just an obvious or a simple adaptation or combination of existing products
- be capable of industrial application, having a technical effect.

The existence of a patent may be enough on its own to stop others from trying to exploit an invention. If it is not enough, however, it gives the inventor the right to take legal action to stop them exploiting the invention and the right to claim damages.

Having a patent also allows the inventor to:

- sell the invention and all the IP rights
- license the invention to someone else but retain all the IP rights
- discuss the invention with others in order to set up a business based around the invention.

The application process for obtaining a patent can be rather complex and lengthy, but full details of what is involved can be found on the Intellectual Property Office's [website](#).

What is a trade mark?

A trade mark is any sign which can distinguish the goods and services of one trader from those of another. It can include words, logos, colours, slogans, three-dimensional shapes and sometimes sounds and gestures.

A trade mark is therefore a 'badge' of trade origin that is used as a marketing tool so that customers can recognise the product of a particular trader. To be registrable in the UK a trade mark must meet a specific set of criteria, including being capable of being represented graphically (i.e. in words and/or pictures), being distinctive, and not being deceptive. The application process is fairly straightforward, and the relevant form can be obtained from the Intellectual Property Office's [website](#).

A registered trade mark must be renewed every 10 years to keep it in force. If you have a registered trade mark you can put the ® symbol next to it to warn others against using it. However, using this symbol for a trade mark that is not registered is an offence.

What are design rights?

A design refers to the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture or materials of the product or its ornamentation. Design rights protect the appearance of the whole or part of a product, and can be registered or unregistered:

- Registered design – This is a legal right which protects the overall appearance of a product/part of a product in the country it is registered in. A registered design must be new, of individual character, and not excluded by statute. Protection lasts a maximum of 25 years, with registrations renewed every five years. Design registration is relatively low-cost and is particularly appropriate for industries such as fashion, where design is instrumental in selling the product.

- Unregistered designs – The term ‘Design Right’ refers to the specific legal protection available to unregistered designs in the UK. A Design Right allows the owner of the design to stop anyone from copying the shape or configuration of the article, but does not give them protection for any of the 2-dimensional aspects, e.g. surface patterns. Protection is limited to the UK, and lasts either 10 years after the first marketing of articles that use the design, or 15 years after creation of the design - whichever is earlier. For the last 5 years of that period the design is subject to a Licence of Right. This means that anyone is entitled to a licence to make and sell products copying the design.

Owners of a design can apply to the Intellectual Property Office’s Designs Registry to register their design: full details are available on the Intellectual Property Office’s [website](#). With unregistered Design Rights, the owner is protected automatically when they create the design, but they are advised to keep a note of when they first recorded the design and when articles made to the design were first made available for sale or hire. This is in case the owner is challenged over their rights in the design, or if they believe someone is using the design without their permission.

What is copyright?

Copyright applies to any medium, protecting written, theatrical, musical and artistic works as well as film, book layouts, sound recordings, and broadcasts. Copyright is an automatic right, which means you don't have to apply for it – it arises as soon as the work is written down, recorded or stored in a computer memory (it does not protect ideas for work though).

Copyright allows an owner to protect their original material and stop others from using their work without permission. The existence of copyright may be enough on its own to stop others from trying to exploit an owner’s material, but if it is not enough it gives the owner the right to take legal action to stop them exploiting the copyright and to claim damages.

To help protect any copyright work, it is advisable to mark it with the © symbol, the name of the copyright owner and the year in which the work was created. Although this is not essential, it will let others know when the term of protection started and it should then be possible to calculate whether it has ended or not. It will also indicate who the owner was at that time in case it is then necessary to approach them should you need to ask permission to use the work.

There is no official copyright register because copyright is automatic. There are a number of companies that offer unofficial copyright registers, but it is advised that you think carefully whether this is a useful service for you before choosing this route.

Other IP rights

Although copyright, designs, patents and trade marks provide a range of IP protection, there are a number of other forms of IP and subjects related to IP:

- Rights in performances for performers and those making recordings of performances.
- Protection for trade secrets under confidentiality agreements.
- Database rights for some types of database (other types may be protected by copyright).
- Protection for semi-conductor topographies.
- Plant breeders' rights in plant varieties.
- Protection for geographical indications of origin.
- Protection of conditional access technology for broadcasts and other transmission.
- Protection against unfair competition under 'passing off' law.
- Publication rights for the first publication of material in which copyright has expired.
- Protection against circumvention of copy protection devices.

In some countries, the rights of the producers of sound recordings and broadcasters are known as neighbouring or related rights. In the UK producers and broadcasters get copyright protection in their material.

Further information

Intellectual Property Office
www.intellectual-property.gov.uk

World Intellectual Property Organisation
www.wipo.int

[How to protect your intellectual property
www.gov.uk](http://www.gov.uk)

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Interlink



Tel: 0300 111 0124
www.wcva.org.uk