

# INTELLECTUAL PROPERTY

## AN OVERVIEW:

As your business grows you will continue to develop your brand and/or the intellectual property you hold in your product or idea that makes it unique. It is therefore vital to understand the key protections available to you as the owner of intellectual property rights as this will help you grow your business by protecting against infringement from market competition. This article gives you an introduction into some of the different intellectual property rights available to you and an explanation of the rights they give you.

## Copyright

Copyright exists and protects various types of original works automatically (there is no registration or application process involved). It's a right you hold to stop others from using your work without your permission.

The types of work that can be protected by copyright include writing, art, photography, films, music, web content and sound recordings (so long as you haven't copied someone else's original work).

Copyright prevents people from copying your work, distributing copies of it, performing or adapting your work. Your work may even be protected abroad by virtue of international agreements. You can also mark your work with the © logo to denote it is copyright material and therefore protected (although this is not mandatory and will not of itself be conclusive as to whether copyright does in fact subsist in a particular piece of work).

Copyright protection starts as soon as the work is created and lasts for varying amounts of time, as below:

Type of Work Created	Duration of Protection
Written, dramatic, musical or artistic work	70 years from the date of the creator's death
Sound/music recording	70 years from the date of first publication
Films	70 years after the death of the director, screenplay author and composer
Broadcasts	50 years from the date of the first broadcast
Layout of published editions of written, dramatic or musical works	25 years from when it's first published

Copyright is commonly commercialised either through licensing of the work to a third party (for example, licensing a photograph in exchange for a royalty/licence fee) or by assigning ownership of the copyright for a one-off sum. It is not uncommon for some companies to work solely in ideas and designs but never actually manufacture or distribute their products but just licence them, which keeps overheads low and cash flow consistent if you can expect a monthly licence fee.

## Copyright - Moral Rights

These exist in order to credit the personal contribution of the creator of the work in question, as opposed merely to their economic rights. There are four moral rights recognised in UK law:

- **The Right of Attribution** – the right to be recognised as the creator of a work.
- **The Right to Object to Derogatory Treatment** – this includes any addition, deletion, alteration or adaptation of your work that distorts it or is otherwise prejudicial to the reputation of the creator.
- **The Right to Object to False Attribution** – this is the right not to be named as the creator of a work which you did not create. For example, someone may wish to ride on your coat tails to add credibility to their work.
- **The Right to Privacy (for certain photographs or films)** – this is the right to prevent photographs or film, commissioned for domestic use, being exhibited to the public. For example, if you had some family photos taken by a professional photographer, this right would allow you to prevent the photos being published on the company's website without your permission.

Moral rights cannot be transferred or sold; however, they can be waived. You may want to give particular consideration to your moral rights when assigning or licencing your work or when engaging a third party to help develop that work to grow your business. If you are asked to waive your moral rights by a third party then this should be approached with some caution. You need to consider the way in which the third party will have access to your intellectual property and the way it will be used. Is this open to abuse or distortion which you want to retain control of? For example, as an author of a book engaging with a publishing company you may want to rely on the right to object to derogatory treatment if you felt your work was being moved too far from your original idea.

## Trade Marks

Broadly speaking, a trade mark is a word, sign, or logo that enables members of the public to distinguish your goods or services from those offered by other businesses. Trade marks can be both registered (by applying for registration with either the UK or the EU Intellectual Property Office) and unregistered (by virtue of the law of passing off, which requires no registration in order to apply). Businesses can often succeed or fail by how they protect and exploit their brand. Protecting your brand is therefore fundamental in determining whether you succeed or fail in the commercial world.

### Registered Trade Marks

A UK trade mark applies in the UK only, whereas an EU Trade Mark can apply throughout the EU. In both instances, basic requirements for registration are that the mark/logo/word in question:

- must be distinctive;
- must be capable of being represented graphically (i.e. as a drawing/writing/other form of notation); and
- must not describe the goods/services to which it is applied.

Things that can be registered as a trade mark include: words; sounds; logos; colours; or a combination of the above.

A registered trade mark can, in theory, last forever provided that it is renewed every 10 years. The costs of obtaining protection are relatively low, especially considering the value that can be added to a business by a catchy or memorable name or logo (think of the Apple logo, which comprises a substantial part of Apple's worth as a company).

### Unregistered Trade Marks

Sometimes a business will be using a name, logo, or some form of distinctive get-up that has not been registered as a trade mark. Provided that sufficient goodwill is attached to the name or logo in question, a third party using a similar name or logo can sometimes be compelled to stop using such a similar name via the law of passing off. However, this is more difficult to prove than a claim for registered trade mark infringement. Therefore, it is always advisable to obtain registered trade mark protection for your business's trading name or logo where possible.

It's important to note that when setting up a new company name, unless a search of the trade mark register is made before your company starts trading, you may find that you are inadvertently infringing someone else's registered trade mark. Although there are some costs involved in making such a search, those costs pale into insignificance when compared to the costs of defending a trade mark infringement claim later down the line!

## Design Rights

Design rights apply to the physical appearance of products and can be registered or unregistered, depending on the type of product or design you are seeking to protect.

### Registered Designs

The creator/owner of a product can apply to have (for example) the shape of the product or the ornamentation applied to that product registered as a UK or Community Registered Design, provided that the design in question is:

- novel (that is, it is sufficiently different from existing designs); and
- possesses "individual character" (meaning that it must create a "different overall impression on the informed user" from previous designs out there).

The owner of a UK or Community registered design has the exclusive right to stop anyone else using the registered design. If granted, a UK or Community registered design lasts for a maximum of 25 years (provided that the design registration is renewed every 5 years).

### Unregistered Design Rights

As with Registered Designs, this is available at both UK and EU-level. However, there is no need to apply for registration of these rights: they attach automatically to a design provided that the relevant requirements are met.

- **UK Unregistered Design Right** – this gives the owner the right to stop unauthorised copying of the design in the UK (note that copying, unlike with registered designs, must be proved). Provided that the design in question is original and “not commonplace in the design field in question”, in principal it will automatically benefit from UK Unregistered Design Right, which lasts for 10 years from the date on which a product made to that design is first put on sale.
- **Unregistered Community Design** – this also gives the owner of the design in question the right to stop unauthorised copying of the design in question throughout the EU. In order to qualify for this protection, the design in question must be “novel” and have “individual character” (see above under Registered Designs). If Unregistered Community Design Right applies, it lasts for only three years from the date on which the design is made available to the public within the Community.

## Patents

Patents are used to protect inventions. They give you the right to take legal action against anyone that makes or is using your invention without your prior permission.

In order to gain a patent, your invention must satisfy all of the following criteria:

- be new;
- inventive; and
- something that can be made or used.

Patents can be an expensive proposition to register and also quite time consuming. The Intellectual Property Office estimate the usual cost of application to be c.£4,000 and the process can take 5 years to complete. However, where a genuine invention has been created they can be crucial. Sir Tim Berners-Lee invented the world wide web. However, he did not patent his creation and so the world was free to use his invention without having to pay him any money to do so. Luckily for us, Sir Tim chose not to patent his invention because he wanted it to be freely available.

Patent protection lasts for 20 years from the date of filing. However, as a part of the filing process you must provide the IP Office with details of the invention that you require protection for. In this way, you put that information into the public domain where it can be viewed. The intention is to prevent information that could benefit other aspects of advancement being hidden behind confidentiality and non-disclosure agreements. In exchange for disclosing your invention in the patent, the patent owner is given up to a 20-year exclusive right to exploit the patented invention.

## Summary

There are multiple protections available to a business to protect its IP. It’s vital for any company, but specifically start-ups, to consider what IP applies to its business and to take the necessary steps to apply for appropriate protection. Failure to do so could be detrimental.

In addition, once you have applied for, and obtained, any of the above rights, this will not automatically stop other people from infringing them (we have all seen those ‘designer’ sunglasses being sold on holiday for €5). As a business it’s important to monitor others actions for infringement of your IP and, where necessary, to enforce the protections afforded to you.

If you’re a start-up looking to grow and you’re unsure how to protect your IP, let us help you get it right, please contact Felix Dodd whose details are below.



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