



A SIMPLE GUIDE TO UNDERSTANDING INTELLECTUAL PROPERTY

An overview of what constitutes
intellectual property



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01 Introduction

Intellectual Property (IP) is becoming increasingly important and valuable asset that can add significant value to a business. Furthermore, the current economic climate and lack of funding is forcing management to exploit their intellectual property assets through licensing or joint ventures.

Licensing a product rather than marketing it yourself has its advantages. It requires less investment, carries lower risk and is more flexible, with revenues being received through royalties. Companies expanding into emerging marketing often prefer licensing rather than joint ventures because it minimises risk and investment in an unfamiliar area.

However, registering and protecting IP can be a complicated and expensive process, one that a lot of people are unfamiliar with. This Business Guide will hopefully provide a simple understanding of the key elements constituting IP.

To further help you, Acumenology has produced a series of Business Guides on a range of relevant topics. You can find these at: www.acumenology.co.uk/business-guides

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What is Intellectual property?

Intellectual Property is created when an idea develops into a tangible form such as a brand, invention, design, artistic work and it can be legally owned.

IP is divided into two categories:

Industrial Property: Includes inventions (patents), trademarks, industrial designs, and geographic indications of source; and

Copyright: Includes literary and artistic works such as novels, films, artistic works paintings and architectural designs.

Rights related to copyright include those of performing artists in their performances, producers in their recordings, and broadcasters in their radio and television programs.



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Types of IP

There are four main types of IP rights which you can use to protect your inventions or creations though IP can also be protected in other ways, for example, by using a Confidentiality Agreement.

Patents – Trademarks – Designs – Copyrights

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Patents

A patent protects a new invention which is a product or a process that provides a new way of doing something or offers a new technical solution to a problem. It provides protection for the invention to the owner granted for a limited period of 20 years.

'What are the benefits of a patent?

A patent gives you the right to stop others from copying, manufacturing, selling, and importing your invention without your permission.

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

The patent also allows you to:

- Sell the invention and all the intellectual property (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

How is a patent granted?

The first step in securing a patent is the filing of a patent application.

The application contains the title of the invention, as well as an indication of its technical field; it must include the background and a description of the invention.

Such descriptions are accompanied by visual materials such as drawings or plans to better describe the invention.

The application also contains various "claims", that is, information which determines the extent of protection granted by the patent.



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Trademarks

A trademark is a distinctive sign (like logo and brand name), which identifies certain goods or services as those produced or provided by a specific person or enterprise.

A trademark helps consumers identify and purchase a product or service because its nature and quality, indicated by its unique trademark, meets their needs.

A registered trademark must be renewed every 10 years to keep it in force.

You can use your trademark as a marketing tool so that customers can recognise your products or services.

Examples of Logos as Trademarks:



What does a trademark do?

A trademark provides protection to the owner of the mark by ensuring the exclusive right to use it to identify goods or services, or to authorise another to use it in return for payment.

The period of protection varies, but a trademark can be renewed indefinitely on payment of corresponding fees.

Trademark protection is enforced by the courts, which in most systems have the authority to block trademark infringement.

What can of trademark be registered?

Trademarks may be one or a combination of words, letters, and numerals.

They may consist of drawings, symbols, three dimensional signs such as the shape and packaging of goods, audible signs such as music or vocal sounds, fragrances, or colours used as distinguishing features.

A registered trademark will use the ® symbol. However, using this symbol for a trademark that is not registered is an offence.

How is a trademark registered?

An application for registration of a trademark must be filed with the appropriate national or trademark office.

It must contain a clear reproduction of the sign filed for including any colours, forms, or three-dimensional features.

The application must also contain a list of goods or services to which the sign would apply.

The trademark must be distinctive, must neither mislead nor deceive customers.

Finally, the rights applied for cannot be the same as, or similar to, rights already granted to another trademark owner.

This may be determined through a search.



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Design

Design is all about the way an object looks: its shape, its visual appeal.

A registered design protects the overall visual appearance of a product in the geographical area you register it.

The visual features that form the design include such things as the lines, contours, colours, shape, texture, materials and the ornamentation of the product which, when applied to the product, give it a unique appearance.

You can also register a design showing the ornamentation alone e.g. a pattern to go on a product or a stylised logo.

A registered design can be a valuable asset, allowing you to stop others from creating designs which are too similar to yours within the same geographical area you have protected your design.

Registration gives you protection for the visual appearance of the product but not for what it is made from or how it works.

To be registrable, a design must be new and have individual character.

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Copyright

Copyright protects 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.

A person must not reproduce copyright protected work in another medium without permission. Copyright does not protect ideas for a work.

When work is 'fixed', for example in writing, copyright **automatically** protects it.

Copyright relates to the following works:

Literary works - dramatic works - musical works - artistic works - layouts or typographical arrangements - broadcasts

Copyrighted work should only be used with the owner's permission.

Related Rights as similar to copyright although sometimes more limited and of shorter duration.

Examples of related rights are:

Performers in their performances – **sound producers** in their recordings and **broadcasters** in their radio and programmes.



What protection do copyright and related rights provide?

Works protected by copyright hold the exclusive right to use or authorise others to use the works on agreed terms.

Many works protected under copyright or related rights require the transfer of rights to the work to companies best able to commercialise the work in return for royalties.

In general, copyright last for not less than 50 years after the creator's death whilst related rights normally last for 50 years after the performance.

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Confidentiality agreements

It is essential that you do not tell anyone about your invention before you apply to patent it, because this may make your patent invalid.

If you need to discuss your invention or idea with someone a confidentiality disclosure agreement (CDA) or nondisclosure agreements (NDA) can help.

You can download information on "**Confidentiality and Confidential Disclosure Agreement**" (CDA) by The Intellectual Property Office by clicking on the title above.



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Conclusion

Businesses looking to get equity investment will need to show investors they have protected key elements of their IP if relevant.

Failure to demonstrate adequate protection may lead to nervousness amongst investors.

Acumenology has produced a series of Business Guides on a variety of topics relevant to starting and running a business.

These can be found at:

acumenology.co.uk/business-guides