

“ Plain speaking legal advice ”

Who owns your Website?

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Who does own your website? (Or trade mark, logo and branding)

A common source of dispute in day to day business that we see, and particularly on a transfer / sale of a business, is ownership of the intellectual property rights (IPR) that exist in designs, software, processes and systems.

IPR are a business asset, and like many other rights you need to assert and protect your ownership of them. For example, if you have instructed a third party to build your website or design your logo then you need to ensure that contractually you have clear terms setting out that you have reserved ownership to that website or logo; if not then the law states that, 'The author of a work is the first owner of any copyright in it'¹.

- If you have contracted with a business or a consultant to create a logo for your business, you want to be sure that the consultant is not able to reuse the logo for another project. Your contract must specify that ownership of the logo belongs to you.
- If you have contracted with someone to write an article for you or create your website the contract will determine the position. In the absence of an assignment of the copyright, any IPR created by the consultant would normally remain with them.

You are slightly better protected with employees if the work is carried out during their normal course of employment. A simple way to deal with IPR protection and employees is to have the 'who owns what' section set out in the terms of employment. For firms that create IPR (software, design etc) it is essential to ensure that a non-disclosure agreement is also agreed and signed by their employees.

¹ Copyright, Designs and Patents Act 1988

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- If an employee creates something at work as part of their job, the IPR probably belongs to their employer, unless there is a specific agreement to the contrary.
- If an employee creates something at work, but not as part of their job (i.e. something which is not work related or which is done in their own time using their employer's equipment), the ownership is more complex. Strictly, the IPR probably belongs to the employee, although the employer may have a claim against them for using the firm's equipment, breach of their employment contract (working on their own projects in the firm's time) or if they have incorporated any of the employer's IP in their own creation.

In a recent case, *Kelly v GE Healthcare* the first ever successful claim was made by employees for compensation for their contribution to an invention. The court said that where the benefit to the employer is found to be 'outstanding', the employee inventor is then entitled to a "fair share" of that benefit.

IPR is a complex area and it cannot be overstated that having a clear and binding agreement can really help to avoid future problems arising.

If you would like to discuss any of the points raised in this article or require assistance with contracts or IP licences then, please contact a member of the Company Commercial team on 0118 977 4045 or e-mail corporate@herrington-carmichael.com

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