

“ Plain speaking legal advice ”

**Protect What you Create!**

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Martin Salt provides a simplified introduction to Intellectual Property Rights.

Most businesses would benefit from a basic understanding of Intellectual Property rights to help protect what they create and to avoid them infringing the rights of other people and businesses. This area of law is broader than just breach of copyright or patent law and this article introduces and tries to simplify the complex world of Intellectual Property.

### **Registered Rights or Unregistered?**

Registered Rights require some positive action usually a form of registration from the creator or owner and include:

- Patents
- Trademarks
- Registered Design.

Un-registered Rights arise automatically and include:

- Copyright
- Unregistered Design Rights
- Rights in unregistered trade marks
- Confidential Information

### **Patents: (a 20 Year legally protectable monopoly over an invention)**

These are a way of protecting new and inventive technical features of products and processes. To qualify for patent protection an invention must be:

- New
- Involve an inventive step
- Be capable of industrial application
- Not specifically excluded from protection (i.e. methods of medical treatment).

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To obtain a patent an application needs to be filed with the Patent Office. It is not an automatic right.

Patents can provide a high degree of protection especially useful to protect products that have undergone substantial and costly research and development but they can be expensive to obtain and maintain.

**Trade Marks (Passing Off): (a sign or symbol used to distinguish a product or service)**

To be registerable either in the UK or within Europe by a CTM (Community Trademark) a trademark must be:

- Capable of being represented graphically
- Distinctive
- Capable of distinguishing goods and services
- Not excluded by statute

A UK Registered trademark lasts for a period of 10 years but can be renewed for further 10 year periods.

Rights still exist to protect Trademarks that have not been registered but it can be more difficult to prove and more expensive requiring:

- Proof of a reputation in the mark
- A misrepresentation that could mislead the public
- Proof of damage i.e. financial loss or damage of goodwill

**Copyright (a 70 year automatic right that protects the expression of an idea)**

Copyright protects original:

- Artistic
- Dramatic and
- Literary works

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Including:

- Computer Programmes
- Sound recordings
- Films
- Broadcasts
- Typographical arrangements of published works.

It arises automatically on the creation of the work and lasts for 70 years **after** the death of the author except for sound recordings where it is only 50 years.

Ownership of copyright in a work will allow the owner to prevent unauthorised use of the work, such as the making of copies or placement of the work on the internet.

### **Design Rights (protects the appearance of the whole or part of a product)**

These rights can be registered or unregistered.

A registered design provides a legal monopoly. As with trade marks design owners can apply for a UK registered design or a Community Registered design. To be registered a design must be:

- Novel
- 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.

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For unregistered design protection is given both at UK and EC level. The EC right is broader in scope but only lasts for three years. In the UK protection lasts for ten years from first marketing.

### Confidential Information

It can be possible to protect information which is sensitive to a business through rights in confidential information (which covers knowhow and trade secrets). Whilst these are not strictly IP rights they can protect sensitive information, both technical and commercial and do not need to be registered.

The Information must be:

- Confidential in nature
- Been imparted in circumstances in which an obligation of confidence arises and
- Its unauthorised use would be to the detriment of the person imparting it.

As can be seen from this simple introduction, Intellectual Property rights are wide and complex and in most cases professional help should be sought.

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