

Protect what you create!

Most businesses 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 summarises the sorts of rights that a business may encounter.

Registered rights or unregistered?

Some intellectual property is protected automatically where others need to be registered. Our commercial team can assist you in protecting rights that need to be registered, such as trademarks and design rights.

Un-registered rights arise automatically and include:

- Copyright
- Unregistered design rights
- Rights in unregistered trade marks
- Confidential information

Copyright - A 70 year old automatic right that protects the expression of an idea

Copyright is probably the intellectual property which is most commonly infringed. The law protects original artistic, dramatic and literary works. Some examples include:

- Computer programmes
- Sound recordings
- Films
- Broadcasts

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 the protection varied depending on whether or not the recording has been published or made available to the public.

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. The internet has created some challenges for the law of copyright as technically when you open a website, a copy of the work will be made on your computer (albeit it is usually temporary). However, there is an implied licence

granted to those reading information as a result of it being placed on the website, but this does not permit the user to then post the work on their own website without an express licence being granted.

Trademarks - A sign or symbol used to distinguish a product or service

Trademarks can have protection both in an unregistered and a registered format. 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 a statute

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

Rights still exist for trademarks that have not been registered but can be more difficult to prove and therefore more expensive to defend.

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 trademarks, design owners can apply for a UK registered design or a Community Registered design. To be registered a design must be:

- Novel
- Off individual character
- 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 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.



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Patents

Patents give the inventor of a technical device or process an absolute monopoly over it for a fixed period of time. The process of obtaining a patent is strict and a formal application process needs to be undertaken.

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
- Its unauthorised use would be to the detriment of the person that the information belongs to

Intellectual property can be hugely valuable to a business and as such it is important to both ensure you have the necessary protection in place but also to take action to stop infringement. However, care should be taken as if you make unjustified threats to a third party then you could find injunction proceedings are brought against you.

For further information or to discuss the issues raised by this update, please contact our Dispute Resolution team on drteam@herrington-carmichael.com or 01276 686 222.



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