

# Intellectual Property



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***“Intellectual Property lies at the centre of the modern company's economic success or failure”***

Lester Thurow : Economist

Trade marks & Brands

Patents & Inventions

Copyright

Designs

Database rights

Data Protection

Licensing and Franchising

Intellectual Property agreements

New Media Agreements such as directors and authors rights

Transactional Intellectual Property

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# What Is IP?

Intellectual property rights include: patents, trade marks, designs and copyright. The law of confidentiality, trade secrets, database rights, so called passing off or trade dress and moral rights (such as the rights of authors and directors) are also forms of intellectual property. Often more than one type of IP may apply to the same creation.

This section aims to provide you with a brief explanation of each term. If you would like to read further into each of the individual sections then please look at our articles in the news section.

## PATENT

Novel inventions which involve an inventive step can be protected by patents for up to 20 years (subject to annual renewal), throughout the UK.

Patent protection gives the inventor the right to prevent others from making, using, importing or selling an invention without permission.

Strict rules apply that determine what can and can't be patented. For instance, you must not have publicly revealed your invention before you apply for your patent. Software per se can't be patented and the invention must be capable of industrial application so new surgical techniques can't normally be patented.

## TRADE MARK

Trade marks protect brand identity. These include words, logos, shapes, sounds and other signs and they can be registered or unregistered.

It is easier to enforce your rights when others use your trade mark without your permission if the trade mark is already registered. An unregistered mark will rely on the common law of passing off. Passing off is known as "trade dress" in some countries.

To obtain a registration, the trade mark must be distinctive for the goods and services you provide and not deceptive, or contrary to law or morality. A trade mark can be registered in different classes of goods or services. A registered trade mark must be reviewed every 10 years and can last indefinitely. Consideration should also be given as to whether International / European protection is needed. A Community Trade Mark gives protection in all European Union countries. If it is important to have International protection, you can often apply for protection in countries using the so called "Madrid Protocol."

## DESIGNS

### REGISTERED DESIGN

In order to protect how a product looks as opposed to how it works it is necessary to register the design. A registered design will protect the lines, contours, colours, shape, texture and materials of the product or its ornamentation.

In order to be validly registered, the design must be new and have individual character so that it would not remind an informed person of an existing design.



A registered design has protection throughout the UK for 5 years and it can then be renewed every five years for up to 25 years. In order to protect the design in other countries there are two options. Firstly, you can apply for a Registered Community Design with the Office for Harmonisation in the Internal Market (OHIM), once registered the design then has protection in all countries of the EU. Alternatively, you can apply for registration of the design in the individual countries in which you want protection.

## DESIGN RIGHT

### UNREGISTERED DESIGN RIGHT

An unregistered design right protects any aspect of the shape or configuration of a purely functional 3D product (whether internal or external). The protection lasts for either 10 or 15 years, depending on when the product is first made available for sale or hire.

The advantage of an unregistered design right over a registered design right is that it is free and is created automatically when you create an original design. However, the 2-dimensional aspects (for example patterns) of the design are not protected and these would need to be registered.

A design right will only give you protection in the United Kingdom. There is, however, a Community unregistered design right which, like UK and Community registered design right, protects new designs which have individual character. Its protection lasts for 3 years from disclosure of a product incorporating the design to the public in the EU.

## COPYRIGHT

Copyright is a property right which subsists in original literary, dramatic, musical and artistic works, published editions of works, sound recordings (including CDs), films (including videos and DVDs) and broadcasts. Copyright protection is available throughout the UK and much of the world. In the UK, copyright is created automatically and no registration is required in order to obtain copyright protection.

How long does it last? For literary, dramatic, musical or artistic works – life of the author plus 70 years. Sound recordings – 50 years. Typographical arrangements last 25 years. Copyright laws also covers the moral rights of authors, directors, film makers and software developers.