

Intellectual property

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This guidance is for England, Scotland and Wales

Intellectual property (IP) can be a valuable asset to any business, be it large or small, a new or a long-established business.

IP consists of four key elements: trade marks, copyright, designs and patents. The different forms of IP exist for different lengths of time, or 'term'.

Business confidentiality, or trade secrets, are often called IP's 'fifth element'.

Copyright is an automatic, or unregistered right.

Designs and trade marks are initially automatic or unregistered rights, which can be registered for greater protection.

Patents must be registered to exist (see right-specific explanations below).

Trade marks, copyright, designs and patents are property rights owned by the original creator, or subsequent owner, of the particular IP right; the rights owner can prevent others from unfairly using their

rights for trade purposes without permission. Unauthorised use of another's IP is known as infringement.

A rights owner or business can grant licences to third parties, which allow those third parties to use the business's protected IP in exchange for a fee. Licensing is a controlled and effective way for rights owners and businesses to generate wealth from their IP.

If a business uses another's IP without permission it is an infringement of those rights, which could result in the business being taken to court. In addition, copyright, registered designs and registered trade marks are also protected by the criminal law and infringement may constitute a criminal offence.

Intellectual property framework

Intellectual property rights (IPRs) are territorial in nature, and UK rights have effect in the UK; however, these territorial rights sit within the wider European Union (EU) and international IP frameworks. For businesses trading in Europe or globally, it is important to be aware of the international framework in order to maximise IP rights protection and for the ability to prosper in the global marketplace.

The international framework is administered by three bodies:

- World Intellectual Property Organisation (WIPO)
- European Union Intellectual Property Office (EUIPO)
- Intellectual Property Office (IPO - the UK IP Office)

The international framework is derived from a series of international treaties and agreements. The UK is an individual signatory to each of these treaties and the UK is a member of the frameworks. The relevant treaties are:

- trade marks: Madrid Agreement and Protocol
- copyright: Berne Convention
- designs: Hague Agreement
- patents: Patent Cooperation Treaty (PCT)

Since 1 January 2021, existing 'EU registered trade marks' (EUTMs) and 'registered Community designs' (RCDs) only provide protection in the remaining 27 EU Member States; they no longer include protection within the UK.

This does not prevent UK businesses applying to register new EUTMs and RCDs at the EUIPO; in fact UK businesses will have to make applications to EUIPO in order to protect any new rights in the EU from 2021 onwards.

Alternatively, a UK business could make an application to WIPO for an international registered trade mark, or registered design, designating the EU as a protected territory (a 'Hague designation'), which also protects the right within the EU.

Under the Withdrawal Agreement there is no loss of protection for existing EU-derived IP rights and the IPO has automatically created new comparable or equivalent IP rights to ensure continued protection in the UK.

The IPO has not notified individual rights owners of this automatic transfer process and businesses should carry out their own IP audits in order to ensure the successful transfer of rights and no loss of protection.

Trade marks

Trade marks protect brand identity, trade names and distinctive logos; a trade mark is a badge of origin.

If a business uses its own trade mark or trade name, and establishes a trade reputation and goodwill, then the business will own an unregistered trade mark, which can be protected in civil law against unauthorised third party use, also known as 'passing off'.

UK rights

Trade marks can also be registered at the Intellectual Property Office (IPO). Registration is proof of ownership and strengthens a business's trade mark rights with enhanced protection against infringement.

A (registered) 'trade mark' is defined as follows:

"... any sign which is capable:

- a) of being represented in the register in a manner which enables the registrar and other competent authorities and the public to determine the clear and precise subject matter of the protection afforded to the proprietor, and
- b) capable of distinguishing goods or services of one undertaking from those of other undertakings.

"A trade mark may, in particular, consist of words (including personal names), designs, letters, numerals, colours, sounds or the shape of goods or their packaging."

If you wish to register a trade mark you can apply online to the IPO.

Trade mark registration protects a trade mark for 10 years from the date of registration and is renewable every subsequent 10 years, so a registered trade mark may be protected in perpetuity.

Trade marks must be registered in at least one classification category. There are a number of classification categories: 1 to 34 for goods and 35 to 45 for services. On 4 January 2021, the UK IPO launched a new UK classification system for goods and/or services.

The UK's classification system is based upon WIPO's Nice Classification system (NCL) and the classes are similar.

It is an infringement to use someone else's registered trade mark without permission and unauthorised use could result in civil action in a court.

It is also a criminal offence to use someone else's registered trade mark for business purposes without permission.

If you wish to use someone else's trade mark you should contact the rights owner and seek permission or a licence to use the protected trade mark.

You can search the trade mark register on the GOV.UK website to find out if a mark is already registered.

EU rights

EUIPO administers the EU registration system for trade marks.

UK businesses seeking to protect their trade marks in the EU can apply for an EUTM by applying to the EUIPO.

Since 1 January 2021, EUTMs only provide protection within the remaining 27 EU Member States; they no longer provide protection within the UK.

To ensure no loss of protection for existing EUTMs, the UK has created comparable UK trade mark rights, which have been granted automatically and free of charge.

The new comparable trade marks have been allocated a new number, which is the last eight digits of the EUTM number, prefixed with 'UK009'.

Further advice on comparable UK trade marks is available on the GOV.UK website.

International rights

WIPO administers the international registration system for trade marks.

UK businesses seeking to protect their trade marks internationally can apply for an international registered trade mark by applying to WIPO.

By making one single application a business can apply for protection in up to 122 countries.

The 122 countries include both the UK and those in the EU, so one single application could provide protection in both territories. The system operates on a 'pick and mix' basis and businesses can choose protection in the territories where they intend to carry on business. The application fees are charged on a pro rata basis.

You can apply for an international trade mark on the WIPO website.

The IPO has published advice on registering a trade mark abroad.

Since 1 January 2021, international registered trade marks designating the EU as a protected territory only provide protection within the remaining 27 EU Member States; they no longer provide protection within the UK.

To avoid any loss of rights the UK has created comparable UK trade mark rights, which have been granted automatically and free of charge; similarly for pending applications there is a nine-month 'recognition period'.

The new comparable 'international' trade marks have been allocated new numbers, which are the last eight digits of the international trade mark number, prefixed with 'UK008'.

The GOV.UK website also covers trade mark licensing and has further information on trade marks generally.

Copyright

Copyright protects original creative works, protecting literary, dramatic, musical and artistic works such as books, plays, songs, photographs, films, broadcasts, and computer software and programs.

Copyright is an automatic right that protects original works from the moment of first creation when the work is fixed in a material form. There is no copyright registration system in the UK. Any original works created by a business are automatically protected as copyright works and become the property of the business. For example, a business that creates written material, photographs or makes its own website has created its own copyright material, which is protected against copying.

Copyright exists (the legal term is 'subsists') for a limited period of time, known as 'the term' of protection (also known as the duration of copyright protection); therefore copyright lives and dies. Literary, dramatic, musical and artistic works are protected for the author's lifetime plus 70 years. The period of 70 years runs from the end of the calendar year of the death of the author. Other classes of copyright work have shorter terms of protection (see sections 12 to 15 of the Copyright, Designs and Patents Act 1988 via the link in **'Key legislation'** below).

It is an infringement to copy someone else's copyright material without permission and unauthorised use could result in civil action in a court.

It is also a criminal offence to copy or knowingly deal in infringing copies of copyright works.

If you wish to use someone else's copyright work for business purposes you should seek permission and obtain a licence from the copyright owner.

Licensing bodies and collective management organisations (CMOs, also known as collecting societies) can agree licences with users on behalf of owners and collect any royalties the owners are owed. More information on collective management organisations is available on the GOV.UK website.

See also copyright and copyright licensing on GOV.UK.

Copyright is largely harmonised internationally by a number of treaties, primarily by the Berne Convention. For that reason, most UK and EU copyright works will continue to be reciprocally protected in the UK and the EU.

The IPO provide detailed guidance on the areas of copyright where there are changes since 1 January 2021; the guidance relates to:

- copyright clearance in satellite broadcasting
- *sui generis* database rights
- portability of online content services
- orphan works copyright exception
- accessible format copies of copyright works
- collective rights management
- artist's resale right
- cable re-transmissions of works
- qualification for copyright
- copyright duration
- use of EU satellite decoders

The IPO guidance on protecting copyright in the UK and EU is available on the GOV.UK website.

Designs

Designs protect the appearance of an article, protecting the unique look of parts or whole articles. Designs can be 2D, such as prints or patterns applied to items, or 3D articles, such as furniture, household items or clothing, or component parts of larger items.

Design rights are automatic rights that protect the article from first creation, like copyright. A 2D design is automatically protected for three years, while a 3D design is automatically protected for 15 years in the UK.

UK rights

Designs can also be registered at the IPO for greater protection. Design registration is available for both 2D and 3D designs and can last for up to 25 years. An initial registration lasts for five years and can be subsequently renewed in multiples of five years for a second, third, fourth and fifth time, giving a maximum of 25 years' protection.

The principle of 'first marketing' applies to applications to register a design. This principle has the effect of creating a 12-month 'grace period' for an application. A business can choose between applying to register a design prior to going to market or to coincide with a product launch, or go to market and register the design at a later date if a product becomes popular. This means a business can market a product and still apply to register the design within the first 12 months after first marketing. This 'grace period' allows a business to launch a product and test the market before seeking to make an application to register a design.

Note: this 'grace period' for design registration should be contrasted to patent registration where any 'prior disclosure' is fatal to an application to register a patent.

If you wish to apply to register a design you can apply to the IPO online.

Like copyright, an unregistered design is automatically protected and unauthorised use of someone else's unregistered design could result in civil action in a court.

It is a criminal offence to deliberately copy or deal in infringing copies of registered designs.

If you wish to use someone else's registered design you should contact the rights owner and seek permission or a licence to use the protected design.

You can search the designs register online to find out if a design is already registered.

Information on design licensing is available on the GOV.UK website, as is more information about designs generally.

EU rights

EUIPO administers the EU registration system for designs.

UK businesses seeking to protect their designs in the EU can apply for an RCD to the EUIPO.

Since 1 January 2021, RCDs only provide protection within the remaining 27 EU Member States; they no longer provide protection within the UK.

To ensure no loss of protection for existing EU registered designs, the UK continues to recognise all existing RCDs by creating equivalent UK design rights, which have been granted automatically and free of charge. The equivalent UK registered designs have been allocated a number, which is the existing number of the RCD, prefixed with a number '9'.

Further advice on UK-equivalent design rights is available on the GOV.UK website.

International rights

WIPO administers the international registration system for designs.

UK businesses seeking to protect their designs internationally can apply for an international registration by applying to WIPO.

A business can apply for protection of up to 100 designs, in up to 91 countries, by making a single application.

The 91 countries include both the UK and the EU, so a single application could provide protection in both the UK and the EU. The system operates on a 'pick and mix' basis and businesses can choose protection in the territories where they intend to carry on business, the application fees are charged on a pro rata basis.

Applications for international design registrations can be made on the WIPO website.

Since 1 January 2021, international registered designs, designating the EU as a protected territory, only provide protection within the remaining 27 EU Member States; they no longer provide protection within the UK.

To ensure no loss of protection for existing international UK designations, the UK has created equivalent UK design rights, which have been granted automatically and free of charge. These new equivalent UK registered designs have been allocated a new number which is the existing design number prefixed with a number '8'.

On 24 February 2021, the IPO issued further guidance on the changes for businesses and holders of international EU protected designs.

Unregistered design rights

The EU-derived 'unregistered Community design right' (UCD) is no longer valid in the UK; these rights have been immediately and automatically replaced by new UK rights. Businesses will not have to act and there is no loss of protection.

Existing UCDs have been replaced by a new 'continuing unregistered design right' (CUDR), which subsist for the balance of the right's term. The maximum term of protection for UCDs is three years, so the new CUDR is a temporary form of protection that subsists for a maximum term of three years from 31 December 2020; this means CUDRs will finally expire by 31 December 2023, if not before.

Since 1 January 2021 the UK created, in UK law, a new 'supplementary unregistered design right' (SUDR), which protects 2D and 3D designs; it is an automatic right and subsists for three years from manufacture, disclosure or first marketing.

The IPO has issued further guidance on the changes to unregistered designs from 2021.

Patents

Patents protect inventions; they protect the function of new products and industrial processes.

Patents are territorial in nature and must be registered in the individual country or region of use - in other words, they must be registered where protection is sought.

UK patent protection subsists in England, Wales, Scotland and Northern Ireland. A UK business seeking patent protection outside the UK must apply to the relevant national or regional body.

UK rights

Patents must be registered at the IPO to obtain protection. To qualify for patent protection a product or process must be new, have an inventive step and be capable of industrial application. The idea must be new and must have been kept secret prior to the application for registration; if it wasn't, the application will be invalid and the patent will not be protectable.

You can apply to register a UK patent online.

Patent registration lasts for up to a maximum of 20 years. Initial registration protects the product or process for four years from the application date; the registration can then be renewed on an annual basis up to the 19th year.

It is an infringement to use someone else's patent without permission, and unauthorised use could result in civil action in a court.

If you wish to use someone else's patent you should contact the rights owner and seek permission or a licence to use the patent.

EU rights and European patents

The EU is working towards a unitary patent system, which will make it possible to get patent protection in up to 25 EU Member States by submitting one application. It is currently expected that the unitary patent system will be operational for the beginning of 2022.

UK businesses can apply for European patent protection through the European Patent Organisation (EPOrg). The EPOrg is the umbrella organisation that oversees the European Patent Office (EPO) and the European Patent Council (EPC). The EPOrg is an international organisation established under the European Patent Convention (EPC). It is an independent, non-EU body and the UK's membership of the EPO is not affected by it leaving the European Union. One application to the EPO attracts protection in the 38 EPOrg member states.

You can search for patents using the EPO Espacenet system.

You can apply to register a European patent on the EPO website.

International rights

WIPO administers the international registration system for patents, under the Patent Cooperation Treaty (PCT). There are 153 'contracting states' to the PCT, including the UK.

By filing one international patent application, UK businesses seeking patent protection outside the UK can obtain protection in those 153 contracting states.

The IPO has published advice on registering a patent abroad on the GOV.UK website.

You can search the patent register online to find out if a patent is already registered and in protection. If a patent has expired the information in the patent is in the public domain.

For further information about patent licensing and patents generally visit the GOV.UK website.

Business confidentiality, trade secrets and non-disclosure

A business can protect secret or confidential information by the use of legally binding agreements that define the nature of the particular rights and restrict third-party use. These types of agreements are vital when developing patents, but can also be used to protect any form of IP and enable businesses to share commercially sensitive information in a controlled way. A breach of such an agreement could result in civil action for breach of contract and damages.

Article 39 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) requires World Trade Organisation (WTO) member countries to provide protection and remedies for undisclosed information, trade secrets or business know-how. In the UK, the Trade Secrets (Enforcement, etc) Regulations 2018 states: "the acquisition, use or disclosure of a trade secret is unlawful where the acquisition, use or disclosure constitutes a breach of confidence in confidential information"; the Regulations create a right of action and remedies for breaches of confidence.

The GOV.UK website has guidance on how to protect your intellectual property.

Business assistance

The IPO's IP for business tools "can help you create value from your ideas, turning inspiration into sustainable business success". The free online tools include an IP 'health check' for business.

Trading standards

For more information on the work of trading standards services - and the possible consequences of not abiding by the law - please see 'Trading standards: powers, enforcement and penalties'.

Key legislation

Registered Designs Act 1949

Patents Act 1977

Copyright, Designs and Patents Act 1988

Trade Marks Act 1994

Trade Marks Regulations 2018

Trade Secrets (Enforcement, etc) Regulations 2018

Last reviewed / updated: April 2022

In this update

A few minor changes have been made, including the removal of some post-Brexit 'recognition periods', which have now expired.

Please note

This information is intended for guidance; only the courts can give an authoritative interpretation of the law.

The guide's 'Key legislation' links may only show the original version of the legislation, although some amending legislation is linked to separately where it is directly related to the content of a guide. Information on amendments to legislation can be found on each link's 'More Resources' tab.

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