

Intellectual Property (IP)

What is it?

IP is something unique which you physically create. An idea on its own does not count as IP.

Having the right IP protection helps prevent people stealing/copying:

- Names of products/brands
- Inventions
- Design or look of products
- Written words or items made/produced

You own IP if you:

- Created it
- Bought it from the creator or previous owner
- Have a brand that could be a trade mark i.e. a well-known product name

IP can have:

- More than one owner
- Belong to individuals or businesses
- Be sold or transferred

How do you protect it?

Protecting IP makes it easier to take legal action against someone who tries to steal or copy your IP. The type of protection depends on how the IP was created. Some protection is automatic and others have to be applied for.

Automatic:

Copyright – Written and literary works, art, photography, web content and sound recordings etc.

Design right – Shapes of objects

Protection for which you must apply:

Trade marks – product names, logos, jingles (Application can take up to 4 months)

Registered designs – appearance of product including: shape, packaging, patterns, colours, decoration (Application can take up to 1 month)

Patents – inventions and products, e.g. machine and machine parts, tools, medicines and software (Applications can take up to 5 years)

Insurance

The investment in building an IP base is significant, even before official registration. Organisations spend millions of pounds on developing products, services and software which are often protected by Patents, Trade Secrets and Copyrights. They also spend hundreds and thousands of pounds on building the brands under which these products, services and software are sold which are protected by Trademarks, Copyrights and Designs.

Following the substantial investment in the development and registration of IP, the battle is still not over. Organisations must be willing to make the additional financial investments needed to enforce these rights against competitors, utilising complex legal systems to do so where necessary. Businesses that manufacture, market or offer goods or services for sale, are also exposed to IP risk, be they competitors or just chancers, extending the scope of their IP rights so that they can either obtain an injunction, preventing the products being made/sold, or obtain financial compensation.

If all fields were equal, every company would have the necessary funding to support such enforcement actions or defend their businesses from competitors' suits. This is not however how the business world works. Let's take one such recent case as an example:

'Company A is a London-based start-up in the process of securing second-round funding for an innovative App which operates as a personal assistant for busy professionals. One of the most interesting features of the App is the means by which it facilitates navigation to and from meetings. The App is tipped for big things and has not gone unnoticed by Company B, a global mapping service company. Company B issued a 104 page cease and desist letter alleging the use of named functions on Company A's App would cause confusion with its own mapping service App, in which they had invested millions of dollars promoting. In this case, Company A had no other option than to back down and change the name of its App, as it could not afford to fight the case.'

David v Goliath cases like this one are becoming more common as industry leaders attempt to stifle innovative fledgling companies before the start-up has even considered itself as a 'competitor'. It doesn't stop there: the media is dominated by competitor versus competitor IP lawsuits, as demonstrated in the ongoing titanic battle between Apple and Samsung. Making the situation ever more perilous, IP lawsuits do not come cheap. The World Intellectual Property Office (WIPO) estimates the average cost of an IP lawsuit in the US to be between US\$3m and US\$10m. The question then arises - how can companies, be they large or small, fend off such attacks on their IP, while protecting their balance sheet from sizeable representative fees and the considerable liabilities awarded by the courts? One option is Intellectual Property Insurance.

IHN Insurance Brokers offer IP insurance cover which can be tailored to clients of all sizes from all industries. IP Infringement Liability Insurance provides representative's fees and expenses, and the liability where damages or settlements are incurred, in defending claims against alleged IP infringement. This coverage can also be extended to defend against proceedings brought against a third party licensing the insured's IP, and with whom a contractual indemnity exists. Additionally, Small and Medium Enterprise clients may be interested in Enforcement (Pursuit) coverage, which can fund representative's fees and expenses, assisting an organisation in enforcing their IP rights against those they perceive to be infringing. These new instruments are just a snapshot of the extensive IP offering from specialist insurers. Other options for coverage include claims against the ownership, validity or title of an organisation's IP or contractual disputes including non-payment of royalties and breach of contract.

Whatever the chosen strategic option, as the world continues to become increasingly focused on the intangible, it is important that there is a strategy in place to meet the ever growing exposure. If an organisation loses its ability to produce its products or supply its services due to a competitor's IP challenge via legal proceedings, they are unlikely to survive without the funding to fight back.

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