

# What is Intellectual Property?

Intellectual property provides legal protection for many different forms of human creativity and innovation, ranging from books and films, to new inventions, to brands, to new varieties of plants. Intellectual property grants property rights to people and companies for subject matter that is protected under different intellectual property laws. These rights allow the owner to control the uses of the protected subject matter for a limited time, and to be rewarded when others use it. Intellectual property is a type of property that can be bought, sold, traded or given away.

It is important to distinguish between intellectual property and the physical object(s) to which it relates. For instance, a new plant may contain several types of intellectual property. These may include a patent claiming a method of producing the plant variety; plant breeder's rights for the variety itself; and a trade mark for the name of the plant.

Intellectual property is territorial in nature, which means that rights are granted and enforced on a country-by-country basis. This also means that the specific parameters of intellectual property laws may vary from one country to the next. However, it is also true that many forms of intellectual property have been harmonised internationally, including through a series of treaties administered by the World Intellectual Property Organization and the World Trade Organization, which oversees implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Traditionally, intellectual property is thought to encourage innovation and creativity. This is because exclusive intellectual property rights may enable creators or inventors to receive a return on the intellectual and economic investments that they make to create the protected subject matter. However, intellectual property also involves certain trade-offs. Specifically, it is important to balance the need to promote and reward creation and innovation with the need to ensure freedom of expression, the flow of information, and access to technology.

## What is intellectual property?

Intellectual property is a general term for various legal regimes including: Patents, Plant Breeder's Rights, Geographical Indications, Trade Marks/Passing off, Designs, Breach of Confidence/Trade Secrets, and Copyright.

### Patents

A patent is a set of exclusive rights granted for any device, substance, method, process, or system that is new, inventive, and useful. Patent protection is not automatic, and an application for registration must be made with the national patent office in every country in which protection is sought. To obtain protection, the inventor is required to disclose the invention.

Some countries specifically exclude certain types of inventions from patentability, such as software or computer programmes. Categories of inventions that may be excluded from

patentability under international law include plants and animals other than microorganisms.

A patent enables its owner to commercialise the protected invention in the country in which the patent is held for a specified period of time, which is usually 20 years. These commercial rights include the ability to exclude others from making, using, or selling the protected invention.

### Plant breeder's rights

Plant breeder's rights (sometimes known as plant variety rights) were developed as an alternative to patent protection for plants. Plant breeder's rights allow plant breeders to control the commercial uses of the plant varieties that they develop for a limited period. Plant breeder's rights protection is not automatic, and an application for registration must be made with the national plant breeder's rights office in every country in which protection is sought.

To be registered, a plant variety must be distinct from similar varieties based on at least one characteristic. The variety must also be genetically uniform (consistent from one plant to another) and stable (consistent across generations). Furthermore, the variety cannot have been previously commercially exploited (i.e., it has to be ‘new’).

The owner of plant breeder’s rights has the exclusive right to produce or reproduce, offer for sale, sell, import, and export the propagating material of the protected variety. In most countries, plant varieties from species of trees and vines may be protected for up to 25 years, while all other varieties may be protected for up to 20 years.

### **Geographical indications of origin**

A geographical indication (GI) is a sign that is used on products that have a specific geographical origin and possess qualities or a reputation that are attributable to that origin. To function as a GI, a sign must identify a product as originating in a specific place. Furthermore, the product should possess a quality, reputation, or other characteristic that essentially may be attributed to its place of origin. Well-known examples of GIs are ‘champagne’ and ‘tequila’.

Different countries offer different forms of protection for GIs. For example, in Australia, GIs may only be obtained for wines and spirits, while in European Union countries GIs may be obtained for a range of agricultural products.

### **Trade marks**

Trade marks are ‘signs’ that distinguish the goods and services of one trader from the goods and services of another. A trade mark acts as a shortcut to allow consumers to efficiently identify the nature, quality, and source of a product or service. The trade marked sign commonly consists of a name and/or logo, but also may be a letter, number, phrase, sound, smell, shape, picture, movement, aspect of packaging, or a combination of these.

A trade mark that is registered under the relevant national law is denoted with ®. Unregistered trade marks are denoted with ™. Protection for registered trade marks is sourced from the relevant national intellectual property legislation. Unregistered trade marks are protected through other laws, such as the common law tort of

‘passing off’ or unfair competition legislation. Trade mark protection can last forever if renewal fee payments are kept up to date and provided that the mark is actively used in the course of trade.

### **Designs**

Designs law provides protection for the ornamental or aesthetic aspects of a commercial good. A design is what makes a product look the way that it does, and may include the product’s shape, configuration, pattern, and ornamentation. Examples include the shape of a rake or the tread pattern on a tyre. Design protection is not automatic, and an application for registration must be made with the national IP office in every country in which protection is sought.

To be registrable, the design must be new and distinctive. Once registered, the design receives protection for a limited period of time. For example, in Australia registration protects a design for five years, and it can be renewed for an additional five years.

### **Confidential information**

Confidential information is information that is not publicly available, that the law protects from misuse or improper disclosure by a person who is under an obligation to keep it confidential (or secret). Registration is not required to receive protection for confidential information. Confidential information is not property, but you can control access to it, and license its use or transfer it to another person.

Confidential information is protected through the law of breach of confidence. To maintain an action for breach of confidence, it is necessary to show that the information is confidential; that it was disclosed in circumstances in which there was an explicit or implied obligation of confidence; and that there has been an unauthorised use of the information.

### **Copyright**

Copyright is a set of exclusive rights granted by the government to protect the particular form, way, or manner in which information or concepts are expressed. This means that copyright does not protect ideas, concepts, styles, techniques, or information, but rather the form in which these things are expressed. Other

subject matter that is not able to be protected with copyright includes names, titles, and slogans, people, and people's images.

Copyright protects different types of expressive creations, including literary, musical, artistic, dramatic, film, and broadcasting works. Copyright protection arises automatically when an original work is created. To be eligible for copyright protection, a work must be original and be reduced to a material form.

Copyright allows the owner to exclude others from reproducing, adapting, distributing, performing, or displaying the work in public. The term of protection varies from country to country, but it generally lasts for the life of the creator plus 70 years.

This fact sheet is only for information purposes, and to assist you in understanding your legal rights and obligations in a general sense. It is not tailored to any particular fact, situation or specific requirements, and must not be relied on as legal advice.

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