



## Introduction to Intellectual Property

DACCS fact sheets aim to introduce the key rights that govern transactions involving intellectual property.

This fact sheet will be particularly useful to those readers with little or no experience of intellectual property, who may be looking for a place to start.

### What is intellectual property?

Intellectual property (you may hear it referred to as IP) is a particular type of property consisting in the expression, form, or documentation of an idea. Although IP differs from 'real' property – the physical things around us it is important not to assume that IP is its opposite, i.e. intangible or ethereal. It is anything but. A common misconception about IP is that it creates property in pure ideas. It does not. The law is unable to recognise something as property unless it exists in some tangible form. In the case of copyright, for example, the law requires that an original idea be 'fixed' in some way – in writing, in a visual medium, in musical notation, as a recording or in other tangible expression of the idea.

### Why do we need intellectual property?

IP law addresses a pressing social need – the need for creators to retain control over their ideas and to reap some financial reward when their ideas are exploited by others. As information becomes more widely available, and the technology for reproducing things becomes more advanced, the need for rights to protect creators becomes greater.

### How are rights attached to ideas?

The only way the law knows of creating concrete rights in something is to recognise it as property. We are all familiar with the notion of physical or 'real' property. And we know that ownership or 'title' to property gives us a big say in what happens to it. For example, if we own a piece of land, this will give us the right to occupy it and to determine who can enter. It also gives us the right to sell or lease the property, or charge others for the privilege of using it. If somebody occupies our land, or uses it without our permission, we would describe them as a 'trespasser'.

Lawyers have developed IP law out of property laws that traditionally applied to things like land, goods and livestock. Admittedly this is a rather imprecise solution because we cannot (yet) physically ring-fence an idea to keep out trespassers in the same way that we would a piece of land. But it has given us a similar rights structure for ideas as we would have for other kinds of property. For example, we have different IP rights that give us exclusive rights to use our ideas, or rights that enable us to sell and lease our ideas to others. If somebody uses our idea without our permission, we refer to this not as 'trespass' but as 'infringement'.

### How long do rights last?

It is important that creators are able to profit from their ideas. But most people would agree that if ideas remained forever within private hands, this would be of limited benefit to society as a whole. The law seeks to strike a balance between private and public interests by limiting the number of years that IP rights can remain in private hands. At some point IP rights will 'expire' and we say at this point the ideas have 'entered the public domain'. Other works, for example 'old masters' may have never been covered by rights if they pre-dated copyright laws.

The length of protection depends upon which specific rights we are talking about. You will find this information detailed on our fact sheets. Copyright, for example, lasts for the lifetime of the artist plus seventy years.

### The importance of knowing when something was made

Since IP rights only last for a fixed period it is important to know when something was made or written down. This helps people to know whether something is protected by rights or whether it is within the public domain. Intellectual property law has also changed over the years, and older works and documents need to be considered in the light of the laws that existed at the time they were created.

### How do I get intellectual property rights?

People often assume that all intellectual property rights need to be registered and that they will need to fill in a lot of forms. This may be the case in some countries but not so in the UK. For example, in the UK, it is not necessary to register copyright, but it is necessary to register a patent. The various IP rights available are categorised either as registerable or non-registerable rights. Registered rights need to be applied for through the UK Patent Office. Unregistered rights arise automatically whenever someone creates something original.

An unregistered right provides a level of protection against things like unlawful copying. They also protect the owner from other unlawful activities. The law creates a 'bundle' of rights. Our ability to enforce those rights will depend upon the particular facts in each case. A registered right will give the holder a near monopoly over the use of an idea, regardless of whether somebody has copied it or has simply had the same idea independently of the rights holder. Registered rights have been developed to protect commercial property like a company's research and development rather than works of art or simple designs. The periods of protection are generally more restricted than those covering unregistered rights.

### **Do my IP rights cover me in other countries?**

Intellectual property laws do vary from country to country. Most countries subscribe to conventions and treaties that seek to extend the network of reciprocal arrangements across the world. Within the EU a great deal of time and effort is spent on 'harmonisation'. This aims to reduce discrepancies in the IP laws between member states and to ensure that members receive as near a consistent level of protection as possible throughout the EU.

### **Key Points**

- You cannot own an idea, only its expression or documentation.
- Intellectual property rights do not last forever.
- Intellectual property can be bought, sold and licensed to others.
- Not all intellectual property needs to be registered e.g. copyright.
- See our other fact sheets for more information on copyright and other intellectual property rights.

The content of this fact sheet is of benefit interest only and is not an exhaustive explanation of copyright protection and remedies for infringement. This fact sheet is not intended to apply to specific circumstances. The contents of this fact sheet should not therefore be regarded as constituting legal or other advice and should not be relied upon as such. In relation to any particular problem that you may have, you are advised to seek specific and specialist advice.