

---

## Intellectual Property Rights (IPR)

---

Businesses may be interested in a number of recently-launched intellectual property (IP) initiatives.

The government has announced that it will be introducing a new small-claims service for IP cases in the Patents County Court. The new process will limit fixed costs and allow damages of up to £5,000 for each case. The Intellectual Property Office (IPO) estimates that around 150 firms will benefit from the service every year.

The IP Crime Group has published a supply chain toolkit, aimed primarily at small and medium-sized businesses, to raise awareness of counterfeit goods in the supply chain. It includes a step-by-step guide on how a business should react if they find counterfeit goods in the supply chain.

The IPO has published a guide for businesses on dealing with infringement of IP rights in the workplace. The guide is designed to help businesses assess the risks infringement poses, including legal and security risks, and to develop an appropriate response.

This checklist highlights the different types of intellectual property (IP) rights that your business needs to be aware of to ensure that you:

- Protect what you create.
- Maximise your competitive position.
- Avoid infringing the IP rights of other people and businesses.

### What is intellectual property?

Intellectual property (IP) is an umbrella term used to describe a range of legal rights that attach to certain types of information and ideas and to their particular forms of expression.

### Types of intellectual property rights

IP rights fall into two general categories:

- **Registered rights.**

These rights are granted on application to an official body, such as the UK Intellectual Property Office. Registered rights are monopoly rights. This means that, once registered, the owner can stop others from using the right without permission.

They include:

- patents;
- trade marks; and
- registered designs.

- **Unregistered rights.**

These arise automatically, give protection against copying or using the right, and include:

- copyright;
- unregistered design rights; and
- confidential information.

### Patents

- Patents provide inventors with a legally protectable monopoly over their inventions and protect new and inventive technical features of products and processes.
- They last for a limited period (20 years in most countries).
- To qualify for patent protection, an invention must:
  - be new;
  - involve an inventive step;
  - be capable of industrial application; and

---

## Intellectual Property Rights (IPR)

---

- not be specifically excluded from protection (for example, methods of doing business).
- To obtain a patent, it is necessary to file an application for one, normally with the Patent Office of the country where the inventor works.
- Patents can provide a high level of protection and are essential for some industries (for example, pharmaceuticals, where years of research and development are necessary to commercialise a new product).
- However, patents are expensive to obtain and maintain. They also involve public disclosure of technology, which could enable a competitor to develop a competing product without infringing the patent.
- A UK-registered trade mark is only enforceable in the UK, while a CTM is enforceable throughout the EU. Both registrations last for ten years, but are renewable for further ten-year periods.
- To be registrable, a trade mark must be:
  - capable of being represented graphically;
  - distinctive;
  - capable of distinguishing goods or services; and
  - not excluded by law.
- Goodwill in an unregistered trade mark can be protected in an action for passing off. However, an action for passing off can be both difficult to prove and expensive. It requires:

### Trade marks and passing off

- A trade mark is a sign or symbol used by a trader to distinguish its products or services from those of other traders.

For example:

- a brand name;
- a company logo; or
- packaging.
- A trade mark can also consist of the shapes of products or their packaging (for example, the Coca Cola bottle), and colours associated with a trading style (such as the BP green petrol stations), as well as sounds, smells and slogans. However, it is more difficult to register these marks.
- Trade mark owners can apply for a UK or a Community trade mark (CTM).

- proof of a reputation in the mark;
- a misrepresentation that could mislead the public; and
- proof of damage (for example, financial loss or damage to goodwill).

### Copyright

- Copyright protects original artistic, musical, dramatic and literary works, including computer programs, sound recordings, films, broadcasts and typographical arrangements of published works.
- It arises automatically on the creation of the work and lasts for 70 years after the death of the author for artistic, musical, dramatic and literary works. Sound recordings and broadcasts are protected for 50 years from the date of publication (this limit is set to rise to 70 years within the next two years).

---

## Intellectual Property Rights (IPR)

---

- Copyright does not protect against independent development of the same idea(s), only against the actual copying of another's work.
- Ownership of copyright in a work will allow the owner to prevent unauthorised use of the work, such as:
  - the making of copies; or
  - placement of the work on the internet.

### Design rights

Design rights protect the appearance of the whole or part of a product.

- **Registered designs**

A registered design provides a legal monopoly. As with trade marks, design owners can apply for a UK registered design or a Community Registered Design.

A registered design must be:

- Novel.
- Of individual character.
- Not excluded by law.

Protection lasts a maximum of 25 years, with registrations renewed every five years.

Design registration is relatively low-cost and is particularly appropriate for industries where design is instrumental in selling the product (for example, fashion).

- **Unregistered designs**

An unregistered design gives a right against copying. Protection is given at both the UK and EU level. The EU right is broader in scope but only lasts for three years.

Under the UK right, protection lasts for ten years from first marketing.

### Confidential information

It is possible to protect sensitive business information through rights in confidential information (which covers know-how and trade secrets).

Although not strictly IP rights, they can protect sensitive information (both technical and commercial) and do not need to be registered.

To be enforceable, the information must satisfy three tests:

- It must be confidential in nature.
- It must have been imparted in circumstances in which an obligation of confidence arises.
- Its unauthorised use would be to the detriment of the person imparting it.

### More information

If you have any questions, please visit our website at [www.conybeare.com](http://www.conybeare.com) or feel free to contact Steven Conybeare via email [steven@conybeare.com](mailto:steven@conybeare.com) or call him on +44 (0) 870 753 0925.

## Intellectual Property Rights (IPR)

### About Conybeare Solicitors

*Conybeare Solicitors is a boutique international law firm, built upon a solid foundation of business experience and legal expertise gained over 20 years, providing a premium service to sophisticated clients, wherever they may be. We offer our clients a better perspective.*

*Our philosophy is simple: to work with our clients to help them realise their objectives.*

*We do this by fully understanding your requirements, taking into account business parameters, developing and executing a strategy to minimise regulatory and legal risk and drawing together the full extent of our legal expertise and business experience. Ultimately, we provide you with solutions to achieve your ambitions.*

*We are entrepreneurial in the way we work, the way we approach the challenges facing our clients and the way in which we ensure that we meet your expectations.*

### Offices

#### ◆ London – United Kingdom



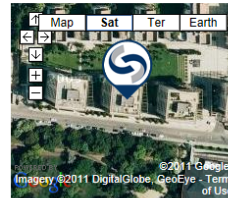
Enlarge the map

◆ Conybeare Solicitors - 3rd Floor, Cleanwater House  
4-7 Manchester Street – London W1U 3AE

◆ Tel: +44 (0) 870 753 0925  
◆ Fax: +44 (0) 870 762 7925

◆ Email: [law@conybeare.com](mailto:law@conybeare.com)

#### ◆ Budapest – Hungary



Enlarge the map

◆ 5th Floor, Gellert Tower  
4-7 Csorsz u. 41 (MOM Park) – Budapest 1124

◆ Tel: +36 1 886 7888  
◆ Fax: +36 1 886 7899

◆ Email: [budapest@conybeare.com](mailto:budapest@conybeare.com)

#### ◆ Bucharest – Romania



Enlarge the map

◆ 2nd Floor  
No. 13 Tudor Stefan Street, District 1 – Bucharest

◆ Tel: +40 21 230 0881  
◆ Fax: +40 21 230 0882

◆ Email: [bucharest@conybeare.com](mailto:bucharest@conybeare.com)