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Intellectual Property

What is Intellectual Property?

Intellectual property (IP) is something an individual/business/organisation creates that's unique¹. Its value, and potential commercial value, lies in its appeal to others who might wish to use it or the goods it describes². Intellectual property (IP) generally refers to:

- creations of the mind, such as inventions;
- literary and artistic works;
- designs; and
- symbols, names and images used in commerce.

National and international laws and conventions recognise the product of a person's mental efforts as an intellectual property right (IPR). An individual's creativity and innovation can be owned in the same way that they can own physical property.

Protecting Intellectual Property Rights

Legal systems recognise that dissemination of creative endeavours can benefit society and stimulate further creative activity. IPRs therefore allow originators to control access by others to the products of their creativity and benefit from it. It will often not be possible to

¹ UK Government. On-line guide: <https://www.gov.uk/intellectual-property-an-overview>

² Irish Patents Office About Intellectual Property : http://www.patentsoffice.ie/en/about_intellectual.aspx

control this access and benefit from it unless the IPRs have been applied for and granted, but some IP protection such as copyright arises automatically, without any registration, as soon as there is a record in some form of what has been created.³

The main statutory intellectual property rights cover two main areas:

- industrial property, concerning patents for inventions, trademarks and industrial designs; and
- copyright.

The type of protection required depends on what has been created. For example, artistic works are protected by copyright, while inventions are protected by patents. More than one type of protection can be utilised for the same product. For example, you can patent your product and register its name as a trademark.⁴

Copyright

Copyright applies to work that is recorded in some way; rights exist in items such as literary, artistic, musical and dramatic work as well as films, sound recordings and typographical arrangements. It gives the author specific rights in relation to the work, prohibits unauthorised actions, and allows the author to take legal action against instances of infringement or plagiarism.⁵

Copyright is an automatic international right. To protect the work, the author should mark it with the copyright symbol (©), the copyright holder's name and the year the work was created. This protects the work, as it shows others that it's covered by copyright and who owns it.

To be protected by copyright, the work must be original and physically exist (it can't be just an idea). Copyright in the UK lasts for the rest of the creator's life plus 70 years. UK copyright is automatically valid in countries who have signed the Berne Convention.

Design Rights

Designs may be subject to three types of protection,

- copyright;
- unregistered design rights; and
- registered designs which may be registered nationally.

Design rights cover the appearance of a product, in particular, the shape, texture, colour, materials used, contours and ornamentation. A design right does not cover any two-dimensional elements of a design, e.g. a pattern on a product's surface. To qualify as a new design, the overall impression should be different from any existing design. Typically the creator of the design owns any rights in it, except where the work was commissioned or

³ As cited above.

⁴ UK Government. On-line guide: <https://www.gov.uk/intellectual-property-an-overview>

⁵ The UK Copyright Service Summary of intellectual property rights: http://www.copyrightservice.co.uk/copyright/intellectual_property

created during the course of employment, in which case the rights belong to the employer or party that commissioned the work.⁶

Unregistered design rights protect the shape or configuration of a marketable (or potentially marketable) product, and are used to prevent unauthorised copying of an original design. Design rights can also be bought, sold or licensed in a similar manner to copyright.⁷

A unique design created in the UK will automatically become an 'unregistered community design'. Unregistered community designs are protected across the EU for up to 3 years after you make the design public.⁸

Patents

Patents are concerned with inventions producing a technical result - of new and improved products, processes and uses that are capable of industrial application. Patents are grants made by national governments that give the creator of an invention, for a limited period, an exclusive right to use, sell or manufacture the invention. After a patent has been granted, the creator can licence it to other people or defend it against infringements.

Like trademarks, patents are registered at a national or territory level with an appointed government body.⁹

Patent registrations can be complicated and are often handled by patent attorneys. It can take more than 4 years for a patent to be granted. A patent can last for 20 years from the date it was applied for. After a patent has been held for 4 years, it must be renewed every year.¹⁰

Trademarks

A trademark can be a name, word, slogan, design, symbol or other unique device that identifies a product or organisation. To register a trademark, it must be clearly different from any trademarks already registered for the same type of products or services.

A trademark registration lasts 10 years and is only valid in the country of registration. It can be renewed every 10 years.¹¹

Who owns intellectual property?

You or your business usually own the intellectual property if you create something.

⁶ As cited above.

⁷ As cited above.

⁸ UK Government. On-line guide: <https://www.gov.uk/intellectual-property-an-overview>

⁹ The UK Copyright Service Summary of intellectual property rights:

http://www.copyrightservice.co.uk/copyright/intellectual_property

¹⁰ UK Government. On-line guide: <https://www.gov.uk/intellectual-property-an-overview>

¹¹ As cited above.

If someone employed or subcontracted by an organisation creates something for it, their contract with the organisation should clarify who owns the intellectual property.

Application and Implications

A 2011 report by Professor Ian Hargreaves, *Digital Opportunity: A review of Intellectual Property and Growth*, identified that IP policy is an increasingly important tool for stimulating economic growth¹². Income generated through the commercial use of Intellectual Property rights can be worth millions of pounds.

Within this context there has been a growing recognition from various government, academic and commercial organisations of the need to effectively manage and exploit the Intellectual Property that they and their staff hold.

The UK's universities are at the forefront of such moves and in May 2013 the Intellectual Property Office launched a new strategy guide called, *Intellectual Asset Management for Universities*¹³. This guide provides advice and information to universities to help them understand how they can best use their institution's IP.

In order to create the best environment for IP to be produced and transferred to practical use, a university must have a suite of IP policies and practices that reflect the university's mission. The policies have to sit in a complementary way with the core objective of knowledge creation, scholarship and learning. An IP policy should at the very least ensure that there are arrangements in place for sharing any commercial returns from commercialisation of IP, that recognizes the range of IP activities of the university, and that displays a balance of engaging in IP work for reputational benefit, for positive social and economic impact, and for fiscal returns.¹⁴

Universities often find it advantageous to work in collaboration with industrial partners or other universities in order to exploit their research. In order to do this they need to have IP agreements in place that ensure that they secure the rights to continue to use existing IP and to exploit the IP that arises from research, whilst also balancing this with working collaboratively with other institutions, public or private.

Many people may have been involved in the work that leads up to IP creation and the work that subsequently reduces it to practice, such as staff, students or collaborators from elsewhere; many of these will not actually own any of the IP that is eventually generated. The legal rules of IP ownership are different for university employees and non-employees such as students, consultants, clinicians, honorary academics and employees of other bodies. It is an important responsibility to ensure that any arrangements which researchers have with others about IP they have created do not conflict with their obligations to the university under the IP

¹²Professor Ian Hargreaves, *Digital Opportunity: A review of Intellectual Property and Growth* (2011) <http://www.ipo.gov.uk/ipreview-finalreport.pdf>

¹³ Intellectual Property Office, *New guide for Universities to manage Intellectual Property* <http://www.ipo.gov.uk/about/press/press-release/press-release-2011/press-release-20110519.htm>

¹⁴ Intellectual Property Office, *Intellectual Asset Management for universities* (2013) <http://www.ipo.gov.uk/ipasset-management.pdf>

policy. This will apply in particular to consultancy agreements and sub-contracting arrangements with other institutions and to any arrangements that an institution makes with third party publishers.¹⁵

Almost all universities now claim ownership of IP generated by their fixed-term and tenured staff, whether funded internally or by major public sources, such as the Research Councils. This is consistent with the general provisions in IP laws which give broad ownership rights to employers. There are a few exceptions, but these typically reflect situations where, for historical reasons, there are variations in the terms of employment; some staff may possess contracts entitling them to retain IP they generate. It is essential that employment contracts are updated or at least reviewed to ensure that they are consistent with the policies of the university on staff

One example of an institution which demonstrates how effective policies can underpin the commercialisation of intellectual property is Cardiff University, which has generated around £7 million in licence fees and royalties over the last five years through implementing its Innovation and Engagement Strategy. The University's research has been developed into a number of commercial ventures such as MedaPhor Limited, an ultrasound simulation business which specialises in the development and sale of advanced virtual ultrasound training systems for the healthcare service.

Since 2004 MedaPhor has benefited from over £1.3 million of investment and new product development grants. It has also created more than 40 high tech jobs in the local area. Its ScanTrainer which provides fast and effective ultrasound training has now been sold to 11 hospitals and academic institutions in the UK. The company is now expanding its distribution to Europe, the US, the Far East and the Gulf.¹⁶

Conclusions

- The management of Intellectual Property and the commercial exploitation of this resource for economic benefit at an individual, organisational and national level is becoming increasingly significant;
- The exertion of Intellectual Property rights is likely to continue to be a key challenge for government, academic and commercial organisations and their staff
- Based on the evidence presented within this briefing note, which largely focusses on the university sector, the management and exploitation of Intellectual Property relies heavily upon policies and procedures relating to contracts of employment. Anecdotal evidence would suggest that this convention may also apply within other sectors including commercial business and government/publically funded bodies, but this information has proven impossible to confirm within the timeframe for completing this briefing note.

¹⁵ As cited above.

¹⁶ Intellectual Property Office, *New guide for Universities to manage Intellectual Property*
<http://www.ipo.gov.uk/about/press/press-release/press-release-2011/press-release-20110519.htm>