



Europeana Space has received funding from the European Union's ICT Policy Support Programme as part of the Competitiveness and Innovation Framework Programme, under GA n° 621037

1

Content Space

Valuing your IP, a Tool for Entrepreneurs

Why your IP Matters

As an entrepreneur you will have a good idea, or several good ideas, for products or services that could be commercialised. If you share an idea you cannot prevent others from using it but if you translate that idea into something tangible such as an image, word mark, design sketch or written/electronic document the idea can be protected. It can then be protected by intellectual property (IP) rights and may also be sold or licensed to others for a fee just as with physical assets. A licence legally establishes and communicates the permissions you give and/or deny to those who may want to use your IP. You will be familiar with licences such as those you receive whenever you buy a copy of computer software.

The intangible assets or IP you possess can often prove to be more valuable than physical assets for the success of your business. It is therefore important that you identify and manage your IP from the earliest stage of creativity, even if there are costs involved, to avoid far greater expenses or losses in the future. Your business plan should include a section listing your IP, and explaining how you will protect and manage it. The value of your IP may increase over time, as in addition to selling goods and services, you will develop ideas and build recognition and goodwill linked to your brand, product or service. It is important to recognise that what may seem unimportant now may be worth a great deal in the future.

For advice on creating a business plan go to www.gov.uk/write-business-plan. The British Library Business and IP Centre, also supports entrepreneurs, inventors and small businesses: www.bl.uk/bipc.

The 5 Types of Intellectual Property Right

To prevent others from making, using, importing or selling your creation there are several kinds of IP rights that can be legally enforced:

- Patents protect new inventions and cover how products work, what they do, how they do it, what they are made of and how they are made (e.g. machines, industrial processes, pharmaceuticals and their productive methods, computer hardware, electrical appliances and biological products and processes). Rules vary according to jurisdiction with regard to how you should apply for a patent, how much it will cost and how long it will take. It is advisable that you seek professional advice in your own jurisdiction from a Patent Attorney (some give initial advice free of charge) and it is essential if you want to draft an application that has a good chance of success. You also need to be sure the potential for profit outweighs the time and costs involved in getting and maintaining a patent and that the protection it offers will prevent copying in the markets you are interested in.

Note that if you are considering applying for a patent you must not reveal your invention before you have made an application as this disclosure will mean you lose the possibility of being granted one as the novelty will be destroyed.

- Trade marks can be made up of words, logos or a combination of both, an aspect of packaging and can even be sound or action based, or a shape or colour. Trade marks are used by traders in connection with goods or services and provide an indication of the origin of the goods or services. It is recommended that you register your trade mark according to the rules and procedures of your jurisdiction as it can be more challenging to sue someone for using your trade mark without permission if it is unregistered. You can use your trade mark as a marketing tool so that customers can recognise your product and services.

For more information go to: www.wipo.int/trademarks/en

You can check for existing trade marks at: www.gov.uk/search-for-trademark

Note that registering your company name or owning the domain name for your website does not give the same legal rights as a trade mark.

Note that you cannot register trade marks or design rights (see below) which are immoral/illegal or offensive to the public or which contain protected emblems. Trade marks additionally must not be such as to deceive the consumer, or include shapes or phrases which are too general or too descriptive, or which are already in common use.

- Design protects the overall visual appearance of a product. You can have your design examined and registered with the relevant intellectual property office. To apply, your manufactured product must have a special shape, configuration, pattern or ornamentation that can be registered and the application must include images of the product or packaging you wish to protect, which are identical to those which are actually placed on the market. A design would not include a product shaped in a particular way solely in order to achieve a technical function or to fit with something else. Legal protection for unregistered designs, as with unregistered trade marks, is automatic but is limited in terms of the protection it affords. A registered design gives you a legally enforceable right to use your design to gain a marketing edge and prevent others using it without your permission.

Note that design rights protect the appearance of a product while a patent protects a technical product and how it functions.

Note that unregistered design rights and unregistered trade marks are harder to enforce because you have to evidence the existence of the right (demonstrating that there is protectable goodwill in the trade mark or the design) and prove intentional copying yourself. In the case of trade marks you would also have to prove that the misrepresentation caused damage.

- Copyright protects books, art, music, websites, photographs, software, databases, films and print, radio and television broadcasts and promotional material. It protects the expression of but not the idea behind a work (for example the text in a manual but not the ideas conveyed in it), and gives the owner of a creative work the right to exclusively control and exploit its use. Most copyright protection lasts the lifetime of the creator plus 70 years from the date of their death. However, it is advisable to find out what the rules are in your jurisdiction. Businesses create and use copyright works all the time (e.g. databases, manuals, software) and it is important therefore to understand how to protect and commercialise them and also how to make use of copyright works belonging to others. If you commission third parties to create copyright works for your business you must agree on who will own the copyright before the work is created. Always check the terms and conditions and check with the

business from which you are commissioning the work, otherwise you could find the creator still owns the copyright and your use of the work is limited. It is also important that you obtain permission before using other people's copyright works otherwise they might take legal action against you to seek damages and prevent you from further use of the work.

Note that in the UK, copyright comes into effect automatically on the creation of the work, while patents, registered trade marks and registered designs must be applied for via the relevant intellectual property office. Lodging your work with a bank or solicitor does not prove it was originally created by you but could be used to show a court that you created it at a particular date.

For guidelines on clearing copyright and for Creative Commons and Open Source licence choosers see <http://www.europeana-space.eu/content-space/ipr-toolkit/>

- Trade secrets can be protected by the law of confidentiality. For information that is deemed to be confidential, non-disclosure agreements (NDAs) can be signed by anyone with whom the information is shared, after which legal action may be taken against them should they tell anyone else. (For templates see <https://www.gov.uk/government/publications/non-disclosure-agreements>)

To identify your assets and how to protect them, use the IP Health Check tool at <https://www.ipo.gov.uk/iphealthcheck>.

A WARNING!

Counterfeiting and piracy relate to certain trade mark, registered design and copyright infringements. These are criminal acts, and the authorities will have the power to seize and destroy infringing goods and bring criminal proceedings. It is important to remember not only to protect your own IP but to make sure you do not infringe the IP rights of others.

Carry out an IP Audit

It is important that you do an IP audit which means assessing and keeping an inventory of your IP assets; identifying the products and services that are key to your business, identifying your IP assets and the legal rights associated with them, and identifying what market advantage these rights give you. This will enable you to value your IP assets as you would your physical assets. Continue to update this as your business grows, and do not overlook your customer list or database, secret recipe or unique service technique as these are also intangible assets. Calculate how much time would be required to develop these assets from scratch or estimate how much a competitor might pay for them. An accountant will be able to help you to value your assets and place them in the context of your business.

For help on valuing your IP go to www.gov.uk/valuing-your-intellectual-property

For a detailed guide to presenting the security and financial worth of your IP when seeking finance and to help banks recognise the value of IP in your business go to: <https://www.gov.uk/government/publications/banking-on-intellectual-property-ip-finance-toolkit>

Understand the Future Potential of your IP

It is important to remember that in the future you may want to consider licensing your own IP or acquiring the right to license others' IP in order to:

- Share risk – where you as licensor licenses the right to manufacture and sell products and receives revenues without running the risk of manufacture, promotion and product sales or where you as licensee obtains the right to use IP without the expense of product development
- Generate revenue – you may want to use your IP to create revenue by licensing it to someone else to commercialise your IP in a different field
- Increase market penetration – you may want to license your IP to a business that can sell in territories you cannot cover due to language/cultural or other barriers
- Reduce costs – you may want to 'buy-in' innovation to reduce your research and development costs

- Save time – to get your products to market more quickly you may choose to acquire a licence to use existing IP instead of re-inventing the wheel (sometimes called “engineering workaround”).
- Access expertise – you may take a licence to tap into expertise you do not have ‘in-house’.
- Obtain competitive advantage – by acquiring existing IP you may obtain an advantage over competitors
- Collaborate – you may want to work with another business to develop new products and services

The licensor and licensee usually agree terms through a process of negotiation.

Once your business is successful you may also want to expand your operation without borrowing capital and an option is to license IP to franchisees as a way of systematically sharing IP with others to distribute goods and services. As franchisor, it may not only be your product or service but also your trade marks, promotional materials, business and marketing systems, shop fit-outs and confidential information you wish to license for your franchisee to use. With franchising you continue to own your IP, retaining all rights, while the franchisee pays a fee or regular royalties to use it. Often a well-known trade mark is licensed to a franchisee in return for a percentage of gross turnover.

More information on franchising can be found at www.thebfa.org.

Note that IP rights only give protection in the countries where they are granted or registered. If you plan to do business abroad you may need to expand your protection or obtain new protection in that country/countries by completing the legal formalities they require. See www.gov.uk/government/collections/ip-protection-abroad-country-guides for further information and advice.