

## intellectual property, information technology and the internet

***Protecting intellectual property rights (IPR) is of real importance to start-up companies especially in the life sciences and biotech sphere. In many cases the innovative ideas – the intellectual property – of a new company are its principal asset.***

Proof of ownership of those ideas and the ability to prevent others from exploiting them will often underpin the future success of the company. Ownership can be a particularly difficult area for a new company, since often the IP will have been created whilst working for someone else – in which case it is vital to ensure that those rights are transferred to your new company. Similarly, if you are using others to create new ideas for you, you need to ensure that your company, not the creator of the ideas, has the rights to that IP.

Intellectual property law encompasses issues relating to copyright, trade marks, patents, designs and confidentiality. E-commerce and use of the internet, including email, also presents a range of new issues for young businesses.

### **Copyright and database rights**

#### **What is it?**

Copyright protection is given to original literary, dramatic, musical or artistic works (including software), sound recordings, films, broadcasts, cable programmes, and to the typographical arrangement of published editions.

The owner of the copyright in a work has the right to prevent others dealing in the work, for example copying, broadcasting or adapting the work.

Copyright arises automatically on creation of a protected work and no further steps (such as registration) are required to obtain protection in the UK.

Copyright lasts for the life of the author of the work plus 70 years for literary, dramatic, musical and artistic works. For sound recordings, broadcasts and cable programmes, it generally lasts for 50 years.

Database rights are created where there is substantial investment in obtaining, verifying or presenting the contents of a database. Examples include financial databases where effort is made to verify the data received and to correct any inaccuracies. Database rights entitle the owner to prevent third parties from extracting or re-utilising substantial parts of the relevant database without the owner's consent.

#### **What does copyright protect?**

As well as books, films and music, copyright may also protect computer software, making it of key importance to IT companies.

A software development company will typically license its software and the terms of that licence, particularly in relation to sub-licensing, copying, reverse engineering and use of activation keys, can make the difference between success and failure for that business.

Copyright may also be the only protection for websites, as discussed later in this section, as well as official forms, photographs, newspapers and even product listings.

#### **Points to watch out for**

Copying a copyright work without permission is an infringement of the owner's rights. The copyright owner

can take legal action for damages and an order that infringing copies be destroyed. Infringement of copyright may also be a criminal offence.

Use of the © symbol, year of creation and name of the copyright owner is not a legal requirement in the UK but it is a useful way of asserting the existence of copyright in a work. Certain international jurisdictions, however, may still require such a copyright notice to be used to obtain protection.

Moral rights, such as the right to be named as author, are also protected by law and should be considered when dealing in copyright works. In addition, live performers will often have separate intellectual property rights in the performance itself. This could be particularly relevant to multimedia products such as CD-ROMs showing actors performing.

Companies should take steps to ensure that they own the rights in, or are entitled to use, any valuable databases underpinning a business.

### **Some steps to take**

- If you want to copy or otherwise deal in any material which may be copyright, make sure either your company owns the relevant rights or that appropriate licenses are in place, and ensure that they cover exactly what you need to do and where you intend to do it.
- Ensure moral rights are waived when buying the right to use a copyright work.

## **Trademarks**

### **What are they?**

A trademark is a sign (usually a word or symbol) which is used to identify a business' goods or services as its own and distinguish them from those of other businesses. Under UK law, smells, sounds and the shape of goods can also be trademarks.

Unregistered trademarks may create legal rights but, to be fully protected, trademarks should be registered in the appropriate countries and for the specific goods and/or services for which the mark is to be used. In the UK, trademark registration lasts initially for ten years but can be renewed thereafter every ten years. Only a trademark which has been registered can be identified through the use of the ® symbol. Businesses, however, often use the letters ™ to identify their unregistered trademarks in which they are claiming rights.

Registered trademarks include Channel, the Nike swoosh symbol and the shape of the Coca-Cola bottle.

### **Points to watch out for**

If your company has not registered its trademarks, then it will usually be more difficult to prevent other businesses using those marks to promote their own competing goods or services.

The owner of a registered trademark generally has the exclusive right to use that mark in relation to the goods and/or services for which it is registered and can take action against others who use the same mark for the registered goods and/or services. It is also possible for the owner to take action where the mark used is only similar to the registered mark and where the goods or services are only similar, if it can be shown that there is a likelihood of confusion on the part of the public. If trademark infringement has taken place, the owner will generally be entitled to damages and an order that infringing goods are destroyed. Trademark infringement can also be a criminal offence.

### **Some steps to take**

- Make appropriate searches before launching a product with a new brand name to ensure that it has not already been registered.
- Register any names which are important to your business.
- Ensure that you have the right to use any trademarks which appear on your products or which are associated with your services.

## **Patents**

### **What are they?**

A patent protects the rights in an 'invention'. To qualify as an invention the idea in question must be novel (not used or published before), involve an inventive step (not be obvious to those working in the field) and be capable of industrial application (ie, not purely aesthetic).

Patents are obtained for specific countries or groups of countries by way of a lengthy application process. If granted, they generally last for 20 years from the date of application. Patents have been granted on a wide variety of ideas such as methods of polymer manufacture, computer equipment and insecticides.

## Points to watch out for

A patent cannot be obtained for any invention which has been published or used in public. This means that it is critical that a patent application is made prior to, for example, the publication of any articles describing the discovery in academic or trade journals.

The owner of a patent has the exclusive right to use the patented invention and use of the invention without consent gives the owner grounds to take legal action, which can result in the award of significant damages.

## Some steps to take

- Apply for a patent at an early stage. Make sure you have confidentiality agreements in place to prevent publication by third parties.
- Ensure that appropriate licences are obtained for any manufacturing process, or for the sale of items incorporating the invention.

## Registered designs and design rights

### What are they?

There are two types of design rights – registered and unregistered design rights. Unregistered design rights may arise in both the UK and across the European Community. Registrable designs may also be protected in both the UK and the European Community.

It is possible to register a new design to protect the outward shape, texture, features, colours and contours of products. For a design to be registrable, it must be new and have individual character. Such registration gives the owner the exclusive right to use the design for a period of up to 25 years. Examples of registered designs include floral patterns, pens, computer monitors, packaging and perfume bottles.

Unregistered design rights arise when original designs are created and recorded. Design rights include the shape or configuration of any article. These rights last for the shorter of fifteen years or ten years from the date on which an item containing the design is first marketed. Unregistered designs could be a book end, steering wheel or circuit board.

### Points to watch out for

As for patents, it may not be possible to apply for a registered design right if it has been disclosed to the public

more than one year prior to application. Use of another person's design without consent could amount to infringement.

## Confidentiality

### Why is it important?

The majority of businesses possess sensitive or original material which gives them a competitive edge, be it customer lists or scientific data.

### Points to watch out for

There are very few situations where a duty of confidentiality is implied under English law and it should therefore be made express in contracts, otherwise a business may have no legal remedy if confidential information is disclosed.

### Some steps to take

- Ensure that those who have access to information which needs to remain confidential are contractually bound to treat it as such and not to disclose it to any third parties.
- Do not disclose information, particularly concerning inventions, to any third parties without first entering into a confidentiality agreement.

## Commercial exploitation

At some point, a technology company will look to commercially exploit or further develop its technology by entering into contractual relationships with other parties. It is vital that the contractual arrangements with those other parties clearly identify and adequately protect the company's intellectual property.

### Points to watch out for

- Is either party hampered in entering the agreement by existing restrictions on funding, personnel or intellectual property rights?
- Is it clearly set out what each party is and is not entitled to do with the technology? Who owns the results of any research to be carried out? If the "existing" and "new" aspects of the technology are to be dealt with differently, is the boundary between the two evident? This factor is often overlooked in Materials Transfer Agreements (MTAs) where materials are provided by one party to enable another to conduct research.

- Who is responsible for maintaining any new intellectual property rights arising and defending them against infringement? This is particularly important in collaborative research projects.
- Who is responsible in the event of infringement of other people's rights?
- Are the rights and responsibilities of all parties clearly defined with respect to each of the other parties? For example, clinical trials often involve interactions between the sponsor, a contract research organisation (CRO), the principal investigator and the site at which the research is to be carried out.  
(Also see the sections on commercial contracts and growth.)
- Place a copyright notice and disclaimer on your website.
- Take hard copy printouts of web pages following any amendments.
- Ensure the company has notified the Information Commissioner of its processing of personal data where relevant and that such notification includes use relating to the internet.
- When forming a contract online, ensure the company's terms and conditions are clearly stated.
- Ensure online information complies with company and advertising standards regulations.

## The internet and email

### Points to watch out for

#### Email

It is easy to forget that a quickly typed email can form a binding contract. In addition defamatory emails can create liability for your company even if sent internally by your employees.

#### Web pages

There are a number of questions to consider:

- Is your company prepared for a potentially global response to online information?
- Should your website be stated to apply to England and Wales only?
- Does the company have the copyright and trademark licences in place for online use?

Who owns the rights to the website, particularly where a web design agency has created it? Who has the authority to amend information on the website? How is it checked and are copies kept of any updates?

Do you own your own domain name with all country suffixes where you might do business (eg, .de, .fr) and do you own the trademark in the name?

### Some steps to take

- Put in place email and internet use policies for your employees.

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