



network
enterprise europe



Intellectual Property

A guide for Irish
Business

What is Intellectual Property ?.....	3
1.1. Copyright.....	3
1.2. Industrial Property	4
1.2.1. TRADEMARKS.....	4
1.2.2. INDUSTRIAL DESIGNS.....	5
1.2.3. PATENTS.....	5
Why Businesses Should Protect Intellectual Property	6
How to Protect Intellectual Property	7
Relevant Legislation	9
Useful Links.....	10

What is Intellectual Property ?

Intellectual property can be defined as anything which is the product of an individual's imagination and mental efforts. Intellectual Property Rights give individuals legal rights over their creations and their use. This is important in promoting fair and honest trade practices and encouraging creativity and innovation.

Intellectual property can be divided into two categories;

- Copyright
- Industrial property

1.1. Copyright

Copyright is a legal term which is concerned with protecting the rights of authors or creators of original creative works. These include:

- Literary, dramatic, musical or artistic works
- TV & Radio Broadcasts
- Software, original databases and computer programmes
- Images and works of Art
- Advertising & Multimedia
- Works of Architecture

Infringement of Copyright is the term used to describe the illegal use of protected works. In Ireland, legislation is in place to protect copyrighted works and those accused of Infringement can face both civil and criminal court proceedings. There is however no formal procedure for registration of work and to pursue any legal redress, it must be convincingly proved when the work was created and by whom. One way to prove ownership of a copyright is, for example, to place a copy of the work with a recognised authority, e.g. a solicitor, or with a body responsible for the specific type of copyright material, the date this takes place can be considered from a legal stand point as the date the copyright comes into effect.

Any work an author wishes to have recognised as being protected by copyright must have a notice of copyright indicated on that particular work. This should include the date the copyright comes in to force and the copyright symbol ©

The duration of Copyright varies depending on the content and type of work; the following are guideline lengths of protection for the various forms of copyright material:

- Literary, dramatic, musical & artistic works *Up to the time of the author/ creators death and 70 years thereafter*
- Films *70 years*
- Sound Recordings *50 years after the recording is made*
- Broadcasts *50 years after original transmission*
- Computer generated Works *70 years after first being made public*

1.2. Industrial Property

Industrial Property is the branch of Intellectual property which is concerned with the protection of all natural or manufactured products and creations. The main forms of industrial property are:

- Trademarks,
- Industrial Designs
- Patents.

1.2.1. TRADEMARKS

The Irish trademark Act, 1996, defines a trademark as “Any sign capable of being represented graphically which is capable of distinguishing the goods and services of one undertaking from those of other undertakings”

They are principally concerned with brand identity and the owner of the trademark has sole rights over this representation and its uses.

Standard trademarks can consist of words, slogans, designs or images, symbols, logos or shapes.

Other types of trademark include:

- A collective Mark which differentiates members of one association from those of another
- A certification Mark which confirms the goods or services of a particular company are of a recognised quality or standard
- A three-dimensional Mark which may cover the shape or packaging of a particular product.

The period of cover for protection of a Trademark has no limits. After an initial protection time of ten years, trademark registration can be renewed every ten years after this.

1.2.2. INDUSTRIAL DESIGNS

An industrial design refers to the physical and aesthetic appearance of a product. The design features may consist of the shape, lines or contours of the article and the colours, patterns, textures and materials that define and distinguish its appearance.

The design of a product relates to its visual appeal, to be considered for protection, a product must be able to be reproduced by industrial means, be a functioning article and its design or appearance must be new and different.

The design of a product is what makes it attractive to a customer and what distinguishes it from other products in the market. It can often be directly associated with the brand of the company which has created it and has as such, an important marketability and monetary value.

The protection period given to industrial designs in Ireland initially is 5 years. After this, the design protection can be renewed for periods of 5 years up to a maximum duration of 25 years.

1.2.3. PATENTS

A patent, as defined by the World Intellectual Property Organisation is an exclusive right, granted for an invention, which is a product or process that provides in general a new way of doing something or offers a new technical solution to a process.

This right is granted for a specific time period. In Ireland and most countries, this period lasts twenty years. A patent can be licensed, transferred or used by the owner themselves. Patents are granted by national offices in individual countries but international recognition is available under the provision of the European Patent Office and the WIPO's Patent Cooperation treaty (PCT)

There are two types of patent available in Ireland, full-term and short-term patents. A full term patent is the standard patent which gives the applicant protection for up to twenty years. The short term patent is useful for technically simple inventions and small scale inventors; this is because the procedure for applying for a short term patent is less strenuous and costly than the normal process. The life span of the short term patent is a maximum of ten years.

For an Invention to be granted a patent it must fulfil the **Conditions of Patentability**:

Novelty- The invention must be new in its specific technical field or possess characteristics which have not previously been seen by the public or those with an in depth knowledge of the product's field

Inventive step- The invention must include an element or step which would not have been obvious to someone with technical knowledge in the specific field of the product or process.

Industrial Applicability- The process or product must be capable of fulfilling some type of practical or industrial application

In order to prove the conditions of patentability and have a full-term patent granted, a search report or evidence of novelty must be requested by the applicant. A search report will be carried out by a patent agent on behalf of the applicant and will contain relevant documents published in the specific field of the product to conclude whether the invention is a new and non obvious development in that field, this report must be requested within twenty-one months of the initial patent application and will be published by the patent agent unless the application is removed within two months.

If the applicant has already applied for a patent in another country or to the European Patent Office or under the patent cooperation treaty, they do not need to request a search report but can submit a statement to the patents office which confirms the evidence of novelty already presented to another body.

Why Businesses Should Protect Intellectual Property

Intellectual Property Rights are essential to both the economy and individual businesses alike. They play an important role in encouraging continuing creativity and innovation. They also contribute to the production of more aesthetically appealing products through the competition and inventiveness that is promoted between companies. It allows the creators of intellectual property to benefit financially through the control of how and where their product or process is used. This can happen through the licensing of protected articles or from royalties say in the case of copyright protected material. Often Intellectual property such as trademarks or designs can be intrinsically linked to a company or brand; this means that for the company concerned they can have an important monetary value with links to both market value and quality assurance.

The enforcement of IP rights also promotes fair competition practices in industry. Under international guidelines, EU Directives and national legislation, facilities are in place to monitor the use of IP rights and to enforce the law when combating threats to business and industry such as Counterfeit Merchandise and infringement of ownership of rights.

As has always been the case, patent protection for inventions is essential for many products and can greatly increase their market appeal. Both in Ireland and internationally, as the

economy has become more knowledge based, for example, the IT sector, certain forms of Intellectual Property particularly trademarks and copyright have become more important than ever. With fierce competition in certain areas, brand recognition and protection of processes and ideas are essential if a business wishes to maintain its market position.

How to Protect Intellectual Property

Intellectual property rights are protected both nationally and internationally by specific legislation applying to the various categories of intellectual property. To benefit from this legislation, individuals must ensure their creations are registered with the appropriate bodies and that proof of ownership can be assured if a conflict arises.

Protection for IP can be established in its country of origin, on a European wide basis and also worldwide depending on the needs of the individual or company and the suitability to the product or creation. It is important the level of protection required is ascertained before applications are made to the appropriate bodies.

In Ireland, the organisations responsible for the protection of intellectual property are the Patents Office which is based in Kilkenny and Department of Enterprise, Trade & Employment's Intellectual Property Unit.

The Intellectual Property Unit has responsibility for formulating IP Policy and legislation for Ireland in keeping with European and International agreements. The unit also acts as liaison between the Department of Enterprise, Trade and Employment and the patent's office when drafting legislation and policy. Another important role for the unit is working with international bodies such as the European Patent office and World intellectual property organisation. They also take part in working groups which assess proposed legislation being presented before the European Council of Ministers.

The Patent office performs a number of functions. It is the body responsible for granting patents and registering trademarks and designs, it also has responsibility for the maintenance of these Intellectual Property Rights and for the renewal of patents and industrial property rights.

The various bodies concerned with Copyright protection are also registered with the Patents Office. These include:

- Irish Music Rights Association
- Newspaper Licensing Ireland Limited
- Irish visual Artist's Rights Association

The patent's office has more detailed information on the all the registered bodies including the ones above on their website, www.patentsoffice.ie

When applying to register any form of Intellectual Property with the Patents office, an agent is assigned to the company or individual to process the application. The requirements for the various forms of IP protection have been detailed above.

Enterprise Ireland also has a dedicated Intellectual Property Unit which acts in an advisory and informative role both for the patent application process and with regard to the commercialisation of the invention once its patent protected.

If European wide IP protection is required by an individual or company, they will need to apply to the European Patents Organisation. For trademark or design protection, they will need to apply to the Office of Harmonization for the Internal Market which is the registration body for the European Union.

The European Patents organisation is an intergovernmental body which comprises of the European Patents office and an administrative council which oversees the work carried out by the office. This organisation is responsible for implementing a uniform patent protection system across the EU member states.

The Office of Harmonization for the internal markets (OHIM) provides a single application service for protection of trademarks and designs across all member states. The terms given to these are the Community Trademark and Community Design. The Community Trademark addresses the same protection requirements as a national Trademark but entitles the owner to exclusive rights across all 27 member states. The same protection that applies for nationally protected Designs also applies to Community Designs which also offers protection throughout the EU member states.

The OHIM provides an important service for those looking for guaranteed Europe wide protection of IP rights and ensures the application process is as simple as it can by requiring only one application for all member states and only a single language application is required. Also, through this, the aim is the continued progression towards a more unified single European Market by making a single protection and registration body available to all member states. The European Commission is currently working on introducing a community patent to be implemented in the same way as the community trademark and design.

At an international level, the organisation responsible for the protection of IP rights is the World Intellectual Property Organization (WIPO). This agency works on behalf of the United Nations and focuses on two aspects of Intellectual property. These are the provision of an international IP registration system and the promotion of practices to protect IP amongst industrialised nations. Again, the application for international protection is a single language application which covers all countries who have agreed to operate under various treaties and international conventions. The WIPO also assists in the negotiations of these treaties and offers advice and training on implementing their requirements

Relevant Legislation

In Ireland:

[Trade Mark Act 1996](#)

[Patent's Act 1992](#)

[Patents \(Amendment\) Act 2009](#)

[Copyright and related rights act 2000](#)

[Copyright and related rights \(amendment\) act 2007](#)

[Industrial Designs act 2001](#)

In Europe:

[European Patent Convention](#)

[Basic Community Trademark Regulations](#)

- Council Regulations no 40/94 of 20 December 1993 on CTM

[Directive 2008/95/EC](#) : European parliament & Council directive as of 22 October 2008 relating to trademarks

[Community Design Regulations](#)

- Council Regulations (EC) NO6/2002 OF 12 December 2001 on community designs

[Directive 98/71/EC](#) : European Parliament & Council directive as of 13 October 1998 covering the legal protection of designs

International:

[Patent Cooperation Treaty](#)

[The Madrid System](#) : International Recognition of Trade & Service Marks

Also: [Madrid Protocol](#)

[Hague System](#) International Registration of Industrial Designs

Useful Links

Enterprise Ireland, Patent Fund & Advice:

<http://www.enterprise-ireland.com/ResearchInnovate/Research+Commercialisation/IP.htm>

The Irish Patent's Office

www.patentoffice.ie

European Patent's Organization:

www.epo.org

World Intellectual Property Organisation:

<http://www.wipo.int/about-ip/en>

Office for Harmonization in the Internal Market:

www.oami.europa.eu

Intellectual Property Unit for the Department of Enterprise, Trade & Employment

<http://www.entemp.ie/science/ipr/>

Intellectual Property Helpdesk for SMEs with regards to EU Funded Projects

<http://www.ipr-helpdesk.org/home.html>

© European Communities, 2008

Editor: Enterprise Europe Network Ireland West

Neither the European Commission nor any person acting on behalf of the European Commission is responsible for the use which might be made of the information contained herein. The views in this publication are those of the author and do not necessarily reflect the policies of the European Commission.