

Protecting knowledge

It's not easy to think about ideas or knowledge as property, but for some businesses it's vital that they do. Most of us have had an idea for a new product or service only to dismiss, postpone, or neglect it. Sometimes we later find that others had the same idea, but took it to market before we did. By that time, it is usually too late for us to take advantage of the idea.



Ideas are relatively easy to come by, but inventions are more difficult. It takes knowledge, time, money, and effort to refine an idea into a workable invention, even on paper. Turning an invention into an innovation - a new product accepted by the marketplace - takes a lot more effort, investment in both time and hard cold cash, and a little luck. There can be substantial barriers in the path of those who pursue innovation. Overcoming them usually requires determination and persistence.

The wisdom of trying to protect this investment is obvious. The answer lies in gaining some understanding of the concepts and laws relevant to what has become known as "intellectual property" or "IP".

Intellectual property represents the property of your mind or intellect. In business terms, this also means your proprietary knowledge.

Many inventors and innovators each year make application for protection under Australian and international laws and treaties. The main forms of protection for intellectual property are:

- **Patents;** for new or improved products or processes;
- **Trademarks;** for words, symbols, pictures, sounds, smells or a combination of these, to distinguish the goods and services of one trader from those of another;
- **Registered Designs;** for the shape or appearance of manufactured goods;
- **Copyrights;** for original material in literary, artistic, dramatic or musical works, films, broadcasts, multimedia and computer programs;

Other perhaps lesser known mechanisms include:

- **Registered circuit layout rights;** for the 3-dimensional configuration of electronic circuits in integrated circuit products or layout designs;
- **Plant breeders rights;** for new plant varieties; and
- **Confidentiality / trade secrets;** including know-how and other confidential or proprietary information.

It can be hard to decide which of these legal mechanisms is most appropriate for your particular invention or IP. Different IP rights vary in the protection they provide. Each category protects a distinct aspect of a creative work or expression. Often, more than one type may be necessary to fully protect your creation.

As business owners and innovators you should assess your risks and consider whether it is appropriate to develop strategies to protect your IP rights. Failure to do so can put your business at risk. Be cautious about talking too widely about new ideas, or making them public too soon, as you can lose the legal right to exclusive use of your IP.

When disclosing or marketing your invention or design in Australia, make sure you do not invalidate a future patent or design in another country.

With the exception of copyright and circuit layout rights, which are automatic, you must take formal steps to register your Intellectual property and obtain the legal rights of ownership. Otherwise, you will have to rely on common law to prove ownership and prior use for non-registered IP.

You should also note that registering your IP rights in Australia does not give you international protection. You must apply for this separately.

People who may not be interested in protecting their own rights must still take precautions to avoid infringing on the rights of others. This calls for more than the avoidance of copying. Some copying is unavoidable; but one can easily infringe on the rights of others without deliberately imitating specific features of goods or services.

IP is a complex and specialised area of law and it is recommended that you contact your solicitor. Good guidance can also be obtained from the Australian Federal Government agency IP Australia at www.ipaustralia.gov.au.

Cheers

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