

# Best Practice Guidance for Intellectual Property Rights

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CIPR

# Best practice guidance for Intellectual Property

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## Introduction

New developments in technology mean that others can copy and republish your material at the click of a mouse and you can do the same to theirs. Intellectual property legislation has struggled to keep up with the online world but it is not always clear what is legal and what is not. These guidelines should help PR practitioners make informed decisions about the use and abuse of intellectual property rights.

## What are intellectual property rights (IPRs)?

Intellectual property (IP) is the general term given to the output of certain types of intellectual or creative activity. It can cover inventions, designs, music, literary and artistic works, technical drawings, specialist know-how and business goodwill. Creators of IP can claim certain Intellectual Property Rights (IPRs). These include patents for inventions, trademarks for logos, slogans and product shapes, copyright for original literary and artistic works and registered designs for the shape or appearance of a product. Some rights (such as copyright) are automatic. Others, including patents and trademarks, have to be applied for and they must pass certain tests before they are granted.

IPRs give the owner the right to prevent unauthorised copying and seek recompense for infringement. In most cases, this is done through civil action in the courts. Some types of IPR infringement – for example, producing or selling counterfeit goods (such as unauthorised copies of DVDs) – are criminal offences and the law is enforced through the criminal courts.

The length of time an IPR lasts depends on the type of right. Copyright lasts much longer than a patent, for example, trademarks can last indefinitely as long as renewal fees are paid and other conditions are met.

Anyone can file an application for an IPR such as a trademark, a patent or a registered design – but there are many potential pitfalls. As with most areas of the law, it is prudent to use services of a specialist professional, such as a patent attorney, a trademark attorney or solicitor specialising in copyright.

Ideas and concepts cannot generally be protected by intellectual property rights. A novel idea in a new business pitch is not protected by copyright, although the precise words or images used to convey it may be.

## IPRs most relevant to PR practitioners

IPRs are granted by states and some international organisations. The legal details can vary considerably between jurisdictions. Legal protection differs around the world, especially for rights such as marks of origin for food and drink, seed varieties, traditional knowledge and – curiously – software (which is much easier to patent in the USA than it is in Europe). It pays to take professional advice.

In the UK, PR practitioners are most likely to be affected by the following IPRs:

### Copyright

Copyright is automatic. You do not have to apply for it. It relates to any medium: photography, writing, music, or video. Copyright is owned by the creator of a work, unless the work is created by an employee under a contract of service or if there is an overriding contract stating otherwise. For example, employers often have a clause in contracts of employment stipulating that any IPRs arising from an employee's work will belong to the employer. PR consultancies may include a clause in client contracts that assign copyright to the client – although they need to make sure that the copyright is theirs to assign.

Copyright can last up to 70 years from the death of a writer, musician or artist. There is no fee for copyright.

### Designs (unregistered or registered)

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Unregistered design right is similar to copyright in that it is free and automatic. It gives you the right to stop anyone copying your design for up to 15 years. If you apply to register a design and pay a fee you can earn the right to stop anyone copying or using your design in the United Kingdom for up to 25 years.

### Trademarks

Trademarks are distinctive signs or symbols, including names, logos, shapes, colours, odours and sounds. They are applied to the owner's products or services to distinguish them from those provided by competitors. They do not have to be officially registered but registration makes it easier to prevent competitors from copying or damaging them. Trademarks must be distinctive for the products or services involved and different from any earlier trademark for similar products or services. In the UK and the EU a trademark registration can continue in force indefinitely if renewal fees are paid every 10 years.

### Patents

Patents provide legally enforceable rights for new inventions. They give the owner the right to stop other people from making or using the invention for a limited period – occasionally up to 20 years from the date of applying for a patent. Although not many PR practitioners have their own patents, it is most important that they realise that no details of a colleague's or client's invention should be disclosed before a patent application is filed. Premature publicity will compromise the newness (novelty) of the invention and it will then be unpatentable.

## Asserting, enforcing and assigning your own IPRs

### Proposals and pitches

There is no copyright on ideas. However creative or novel they are in a new business proposal, pitch or business plan, there is no infallible or automatic way to stop clients or competitors taking them as their own. However, there are some sensible precautions you can take to make this more difficult and less likely:

- Before you agree to present ideas in a competitive pitch, get the potential client to sign an agreement that acknowledges that you are the owner of the intellectual property in your proposal.
- Brand every page or slide with your name and/or trademark.
- Consider using one of the low-cost commercial registration services that gives you an independently verifiable record of what was in your pitch or proposal: ACID IP tracker <http://acid.eu.com/acid-ip-tracker>, Creative Barcode [www.creativebarcode.com/overview](http://www.creativebarcode.com/overview)

### Press releases, reports and other material for publication

PR practitioners will sometimes want their material to be copied – for example, you may issue a press release that you will encourage the media to copy. In such cases, it is still wise to indicate who owns the copyright in a press release, photograph or video clip, but also indicate that the owner of the IPR is granting a free licence to reproduce the material for a defined period. This could be helpful in the future if, say, somebody wanted to reuse some of your press releases in a book.

You could do this by adding a statement such as:

© August 2011, Elizabeth Bowen, who grants a free licence to any news media to reproduce this material in part or whole during a period of 90 days from the above date.

You need to be certain that you actually do own the copyright in any material before you authorise others to use it. If you are issuing photographs or illustrations where the photographer or illustrator owns the copyright, you need to make sure you have contracts with the IPR owner that allow you to grant free licences to the media.

### Creative Commons

Another way to make material available to others while still asserting your copyright is through a Creative Commons licence. These provide simple, standardised alternatives to the traditional 'all rights reserved' version of copyright and are particularly suitable for material that will be published on the Internet: <http://creativecommons.org>

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### Brands and domain names

If you set up a limited company, you will need to register it at Companies House. Registering a company does not automatically register the name as a trademark and you will have to do that separately.

Your trademark is your brand identity. It distinguishes your business, services and products from those of your competitors. It can be a name, words, logos or a combination. You can have separate trademarks for your company name, any other trading identities and any products or services you wish to have brand identities for. You will find it easier to defend your trademarks if you register them with the Intellectual Property Office. You can search the IPO's database to check whether your proposed trademarks are already in use by anybody else.

Once you have registered your trademark, you can use the ® symbol to warn potential infringers that the mark is registered. The symbol ™ has no legal significance. Owning a trademark does not give you the automatic right to the associated internet domain name. You will have to register domain names separately, using one of the registration services (such as Nominet for the UK).

## The risk of infringing others' IPRs

If something you had written or designed was used commercially by somebody else without your permission, you would have a justifiable grievance. The same applies in the other direction, so be aware of the risk of being sued if you use protected material without getting permission from the IPR owner. You may have to pay a fee to get permission, but that fee is a great deal less than you will pay a specialist lawyer to prepare and present your defence if you are sued.

Situations where IPR issues are likely to arise include:

### An employee claiming ownership of IPRs created during working time

Court cases that try to sort out who owns IPRs are very expensive. Prevention is better than cure: both employers and employees should make sure there is a contract of employment that clarifies who owns any IPRs created by the employee and who is entitled to exploit those IPRs.

### Photographs or designs being used for more than was originally agreed

The original agreement is for a one-off use to illustrate an article in the house magazine. An enthusiastic editor then decides to put the image on the front page of the annual report, which is also published on the internet. It would have been a lot less expensive to agree an additional fee than to defend a case of copyright infringement in the High Court.

### Images downloaded from the Internet and put into a presentation

If it's on the Internet, anybody can use it, right?

Wrong: you can use it if it is explicitly marked 'copyright free' (or a similar phrase). Otherwise, you are running the risk of being sued for copyright infringement. Rights owners often belong to organisations that track down and chase cases of unauthorised copying.

### Selling the same piece of work twice

If a PR practitioner is commissioned to write a brochure or report for one client, and is then commissioned by another client in the same sector to write another similar document, can some of the text from the first job be recycled? The answer depends on what is stated in the first client's contract. Where IPRs (such as copyright) pass to the client, re-using text would be an infringement of the first client's copyright.

### Using unauthorised copies of software

The 'unauthorised copying or distribution of copyright protected software', according to the Federation Against Software Theft, is theft. Even if you are not guilty of buying dodgy versions of Microsoft Word from your local boot sale, you could (deliberately or inadvertently) be guilty of unlicensed corporate use – where the number of installations exceeds number of licences.

### Media monitoring

Paper, scissors and glue have given way to online publishing, keyword searching, newsfeeds and hyperlinks. Press cuttings agencies have been overtaken by online news aggregators. In-house PR departments and PR agencies pay a licence fee that, they believe, allows them to receive electronic versions of media coverage they are interested in and to redistribute that material to colleagues or clients. If you have such a licence, check the terms carefully and make sure that it allows you to do what you want to do.

The Newspaper Licensing Agency (NLA) is the UK press copy licensing service. The NLA is a private company subject only to regulation under copyright legislation. Currently, however, all organisations copying material from national and regional newspapers (and selected foreign titles) for internal use are required by the NLA to pay for a licence. This includes the photocopying of press clippings for internal and client distribution. A list of publications covered by the NLA is available on their website:

<http://blog.nla-eclips.com/documentation/>

If a company or person copies (including digital reproductions) a clipping and subsequently redistributes by fax or electronic means, they must also pay for a licence.

More information about the NLA is available on their [website](#).

The Copyright Licensing Agency (CLA) licenses organisations to copy and reuse content from magazines, books, journals electronics and online publications as well as press cuttings or documents supplied by a licensed third party. It does so on behalf of copyright owners, authors, publications and visual artists.

More information about the CLA is available on their [website](#).

The CIPR provides the following advice:

- Do not copy a whole newspaper, book, magazine or pages of a newspaper, book or magazine. Copy whole articles with care – it is important to include details such as the title and issue date of where the copy is taken from
- If you use or have a contract with a press clippings agency or a web aggregator, check that it has an NLA or CLA licence to provide a service to you and check what this covers and whether or not you or your organisation require a separate NLA licence
- Provide a copyright policy for all staff as part of the staff handbook
- At present the law is clear: if you copy, you owe copyright fees.

### IP in education

There is a myth in some circles that you can do what you like with other people's IPRs if your purpose is educational. It's a potentially dangerous myth.

PR courses at universities, like most other courses, involve giving students access to a lot of published material – books, articles, reports. Students undertaking their own research will access a lot more information and may often be tempted to copy and paste material they find on the internet.

Many schools and universities have a licence that authorises them to carry out a certain amount of photocopying (of magazine articles and small sections of books). The terms of those licences are tightly defined and do not permit academic staff to photocopy long sections of textbooks and hand them out to students as a substitute for buying their own copies.

Downloading material from the internet and passing it off as a student's own work is a cardinal sin of the highest order. Many universities now use plagiarism detection software and any student found guilty of this particular sin is likely to discover the hard way the meaning of 'rustication' – or worse.

## IPR and the CIPR Code of Conduct

These best practice guidelines are designed as a point of reference for practitioners on how to use IPRs in the corporate world, in government and in the not-for-profit sector. Although these guidelines do not constitute a legal document, all CIPR members are bound by the Code of Conduct which is based around three principles: integrity, competence, and confidentiality. A misuse of IPR may be considered a breach of these principles. The Code of Conduct should therefore be adhered to when engaging in any public relations activities.

Members should bear in mind that failure to adhere to the CIPR Code of Conduct could lead to disciplinary action, with sanctions up to, and including, expulsion from the CIPR. The comments above are intended only as an outline of some of the issues raised by the three Code principles – they do not in any way supersede the full text of the Code. This document is intended as a statement of best practice – not as an addition to the Code.

## Acknowledgements

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## Sources of information and advice

General information about IP rights  
The Intellectual Property Office  
[www.ipo.org.gov.uk](http://www.ipo.org.gov.uk)

The IP Awareness Network  
[www.ipaware.net](http://www.ipaware.net)

British Library Business & IP Centre  
<http://www.bl.uk/bipc>

Professional services  
Chartered Institute of Patent Attorneys  
[www.cipa.org.uk](http://www.cipa.org.uk)

Institute of Trademark Attorneys  
[www.itma.org.uk](http://www.itma.org.uk)

Solicitors specialising in IP – the Law Society  
[www.lawsociety.org.uk](http://www.lawsociety.org.uk)

Protecting and enforcing your IP rights  
ACID IP tracker  
<http://acid.eu.com/acid-ip-tracker>

Creative Barcode  
[www.creativebarcode.com/overview](http://www.creativebarcode.com/overview)

Newspaper Licensing Agency  
<http://www.nla.co.uk/default.aspx?tabId=40>

Copyright Licensing Agency  
<http://www.cla.co.uk/>

BB online (international)  
[www.bb-online.com](http://www.bb-online.com)

Software  
The Federation Against Software Theft  
[www.fastiis.org](http://www.fastiis.org)

[www.nla.co.uk](http://www.nla.co.uk)

Domain name registration  
Nominet (UK)  
[www.nic.uk](http://www.nic.uk)