



***The Nottingham  
Intellectual Property  
Guide for Creatives***

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First published 2015 by Nottingham Trent University: Publications  
Nottingham Trent University  
Burton Street  
Nottingham  
NG1 4BU  
UK

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British Library Cataloguing in Publication Data

A catalogue record for this book is available from  
the British Library

Nottingham Intellectual Property Guide for Creatives  
ISBN 978-0-9931112-2-8 (pbk.)  
ISBN 978-0-9931112-1-1 (ebk.)

Handbook design and concept by Jason Holroyd  
[jasonholroyd.com](http://jasonholroyd.com)

Printed and bound in Great Britain by Hickling & Squires  
[www.hickling-squires.co.uk](http://www.hickling-squires.co.uk)





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Phil spent several years as European Business Development Manager with a leading international logistics company, before establishing his own consultancy business specialising in small business growth and funding.

Further ventures included a specialist manufacturing business in the medical accessories sector, a print supply company, a telecoms business and an international express courier company.

**Ian Livingstone** CBE is one of the founding fathers of the UK games industry. He co-founded iconic games company Games Workshop in 1975, launching Dungeons & Dragons in Europe and the Games Workshop retail chain. He also wrote many titles in the Fighting Fantasy series which has sold over 17 million copies worldwide. Ian was Executive Chairman at Eidos plc, and also co-authored the influential Next Gen review published by NESTA in 2011, recommending changes in ICT education policy.

He was ranked the 16th most influential person in the UK's digital economy in the Wired 100 list for 2012, and was listed in the 2015 Debrett's 500 as one of the most influential people in UK.

Ian is a Patron of Creative Skillset, a Member of the Creative Industries Council, a Founder Supporter of the Creative Industries Federation, and the Creative Industries Champion for BIS.

**Estelle Paley** is a Business Development Officer. She supports a variety of engagement initiatives and activities to support academia – industry collaborations. One area of focus is Intellectual Property in Creative Industries.

Estelle has a background in innovation and technology transfer in healthcare, biotech and aerospace industries. She worked previously for Coventry University Enterprises Ltd connecting innovative organisations with overseas research and industry partners. The aim was to develop their innovation processes to exploit their intellectual property and to join EU R&D projects.

Estelle completed Business Studies at IUT Mulhouse, France. Then she graduated from Coventry University with a Bachelor and Masters Degree in Engineering Management.

**Al Needham** is a Nottingham-born writer, editor, scriptwriter and presenter, whose credits include The Mirror, Cosmopolitan, Maxim, Esquire, Scarlet, Marie Claire, Sky, Deluxe and More. As one of the original staff members of LeftLion (and its Editor from 2008 to 2013), Al has written about Nottingham's past, present and future, and dedicated entire issues

to the mythology of Robin Hood, the impact of Alan Sillitoe's Saturday Night and Sunday Morning on Nottingham, and the city's now-discarded status as the most underperforming musical city in the UK. An award-winning blogger, Al is an occasional presenter for BBC East Midlands' Inside Out and a regular contributor to Notts TV.

**Dr Jeremy Hague** is Head of Business Development and leads a team that provides a business 'front door' and which devises and manages projects to help businesses access skills, talent and support for innovation from across the University.

Following a degree in clothing and textiles, Jeremy worked for eight years within a multi-disciplinary action research team at Nottingham Trent University. While working as a PhD researcher and consultant to SME businesses, Jeremy pioneered the use of forum theatre and filmed dramas to stimulate new ideas between factory managers and their employees. He has subsequently worked in University business development for the past 12 years

Jeremy is on the National Council of AURIL, the largest knowledge transfer association in Europe and is a trustee of New Perspectives Theatre Company.

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## FOREWORD

It always amazes me that wherever you travel, the impact of the UK's creativity in music, literature, theatre, film, television, video games, fashion and design is enjoyed by people of different nationalities and cultures, right across the globe. However, beyond giving immeasurable pleasure and enjoyment, the creative industries are vital to our economic success. They are an important driver of growth, investment and tourism. They provide 1.7 million jobs and contribute £76.9bn to the economy – that's £8.8m an hour, or £146,000 every minute. It's also a very dynamic sector, currently growing three times faster than other industry sectors.

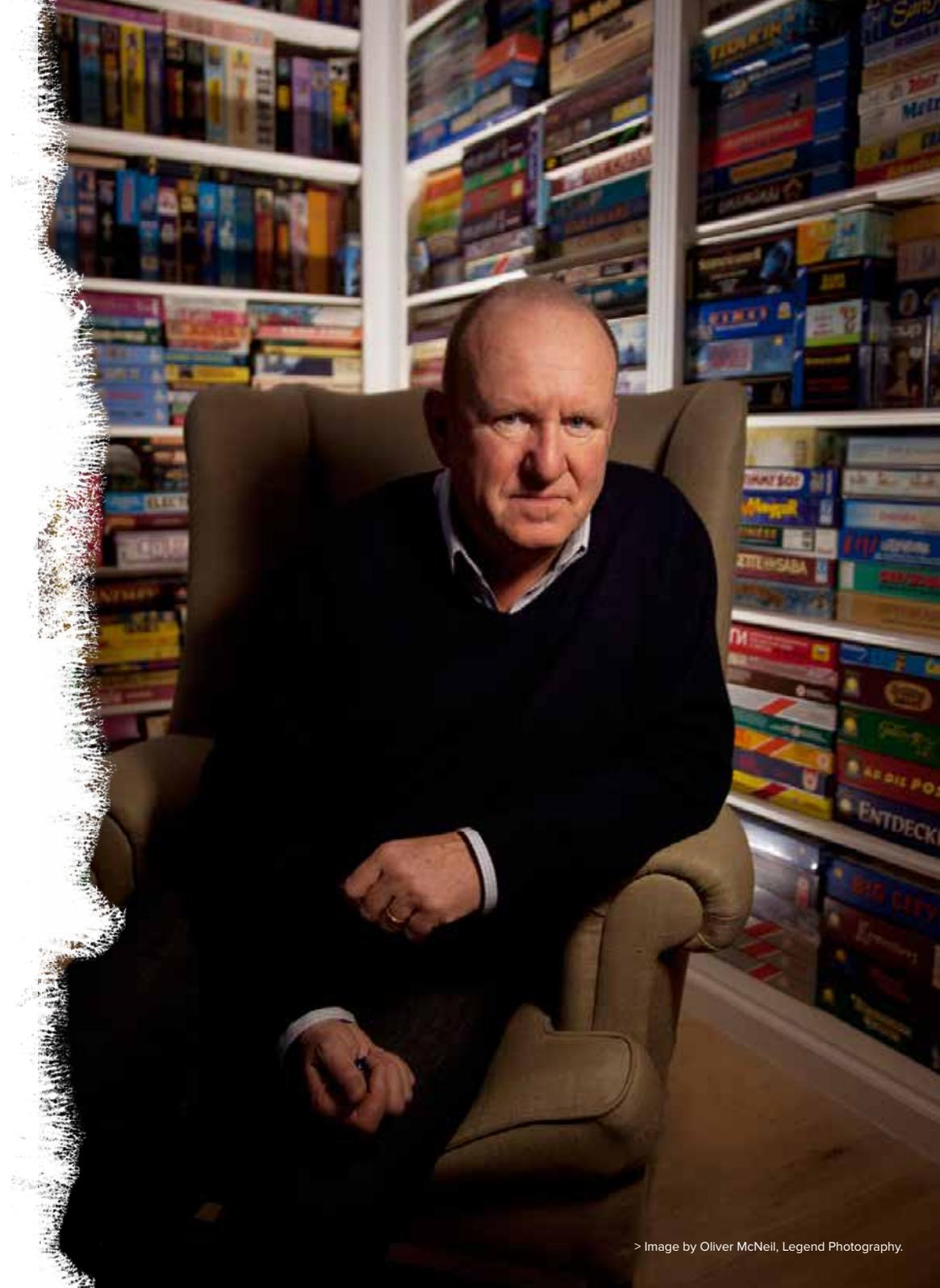
The success of the UK's creative sector is built upon our talent and expertise in transforming original ideas into new commercial products and services. A crucial element of this process is to recognise the contribution and worth of UK talent and to ensure that artists, writers, musicians, designers and performers benefit directly from their creativity. The UK often underestimates the value of intellectual property that is created here. I recognise the challenges of protecting, managing and exploiting intellectual property as something that creative professionals have grappled with over the years. For some young creative professionals, the enjoyment of being part of a vibrant and exciting industry is highly motivating, but that is no reason to undervalue their work. Just because their assets are intangible should not mean that they should be forced to trade away ownership of their IP in return for project finance in order to scale their businesses. For others, the frustration of seeing their work being 'ripped off' and feeling powerless to do anything about it has meant the commercial value of their IP has been disregarded. On this latter point, I'm particularly pleased that Nottingham Trent University, through the support of the IPO's Fast Forward Competition, is working hard to tackle this issue head on.

Nottingham is a city that has a significant creative heritage and while some of the industries on which the City was founded have moved to lower waged economies, it has been at the forefront of supporting and stimulating new industrial sectors. The Creative Industries are clearly playing an increasingly important role in both the economy and the life of the City. I am particularly proud of the role I played in founding Games Workshop, which has its Global HQ 'Warhammer World' in Nottingham and I've been involved in the ground-breaking GameCity festival for several years. I'm also excited to be supporting the development of the new National Videogame Arcade in Nottingham, which will provide new opportunities to help celebrate, understand and encourage students and young people to develop the skills needed for entering the UK Games Sector, currently worth £2.5bn a year, whilst also recognising the cultural impact of video games.

The Nottingham Creative IP Guide has been developed through a series of workshops and legal advice clinics, where participants from a range of creative disciplines shared 'war stories' about managing their IP, and a number of interesting case studies are included. Its creation also draws upon local talent. Nottingham designers, photographers, illustrators and writers have all been involved in its production. The publication of The Nottingham Creative IP Guide provides an important new resource to help students, graduate businesses and other creative practitioners understand the fundamental principles of intellectual property and to apply them to their own business practices. Creating and retaining ownership of IP will likely build greater enterprise value. You only have to recognise the value of 'Warhammer' to Games Workshop to appreciate that.

**Ian Livingstone CBE**

*Co-founder Games Workshop, Co-creator Fighting Fantasy, and former Chairman of Eidos plc*



## THE NOTTINGHAM CREATIVE INTELLECTUAL PROPERTY™ PROJECT LET YOUR IDEAS TAKE FLIGHT

In 1835, the Select Committee on Arts and Manufacturing led by William Ewart M.P. investigated the poor performance of the UK's manufacturing industry. It concluded firstly that Britain's designs were inferior to our European competitors which led to the development of regional design schools. Nottingham Trent University traces its origins to Nottingham Government School of design founded in 1843.

Secondly, the Committee observed that we were poor in protecting our designs. Today, while we have international recognition for our design schools and globally leading creative industries we still lack the knowhow to protect, manage and exploit intellectual property (IP).

For some creative business, an understanding of IP is integral to their mission and business model. However for others, and particularly smaller business and sole traders, there is still a lack of awareness of what effective use of IP could mean for them.

Led by Nottingham Trent University, The Nottingham Creative Intellectual Property Project is directed at businesses and students in the creative industries. By sharing experiences and listening to expert advice the project is helping creative practitioners gain knowledge and skills about IP and supporting them then to move their creative ideas and innovations from the drawing board into the marketplace.

The aim is to equip business and entrepreneurial students with a better understanding of how to identify, protect, manage and exploit creative ideas in relation to copyright, design, trade marks, patents and confidential information.

### Shared industry knowledge

Industry experts, experienced lawyers, entrepreneurs, local creative businesses and academics joined together to run a series of themed workshops in 2014-15 to share their knowledge and experience on the challenges, pitfalls and opportunities of working in the creative sector. The workshops, on 'Design', 'Performance', 'Moving image and broadcasting: film, TV and radio'; 'Interactive Media and Writing'; and 'Art and Image', all proved very popular.

This guide is designed to follow on from these workshops, getting even further under the skin of these issues.

The term 'intellectual property' (IP) is used to describe the various rights that protect innovation and creative endeavour. IP rights are complex, which is why it's important for businesses to have at least a basic understanding of them. For example, one item can be protected by a number of different IP rights, which can be infringed in different ways.

Throughout this guide, you will find concise, practical information to help you deal more effectively and strategically with IP issues. A series of creative IP case studies demonstrate how IP applies directly in a business context.

In order to protect your business and avoid serious legal and security risks, it is important to:

- understand how IP rights arise and what they protect;
- have a strategy for managing IP and avoid infringing IP rights owned by others; and
- know where to begin if problems concerning IP rights arise.

This guide will give you a simple and accessible understanding of these issues, helping you to safeguard your ideas and your business.

**Phil Clarke, Chris Davison, Janice Denoncourt, Jeremy Hague, Jane Jarman, Nick Johnson and Estelle Paley** (The Nottingham Creative IP Project Team, Nottingham Trent University)

*This project is part funded by the UK Intellectual Property Office and the European Regional Development Fund (ERDF).*



Intellectual  
Property  
Office



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Development Fund 2007-13

## THE DEVELOPMENT OF INDUSTRY IN NOTTINGHAM

### A diverse city with a strong cultural mix

You can't begin to talk about Nottingham without remembering it is one of the most central cities in an island that hasn't been invaded that much. Places in that position often end up as a hub of stagnation and cultural insularity. Luckily, England isn't that big; and Nottingham was lucky enough to be left alone to develop its own idiosyncrasies, while absorbing the influences it actually wanted to adopt.

(A shame, then, that one of them was the name 'Snotingham', but seeing as the place was originally known as 'The Place of Caves' and 'The Cavey Dwelling' to the Celts, it wasn't that bad.)

There's a very obvious example of how Nottingham has treated the rest of the country as a cultural Pic N' Mix: the accent. We say 'up' and 'cup' and 'bath' like Northerners, but also say 'down' and 'town' like Cockneys. There's obviously a strong Derbyshire and Leicestershire influence, but we also say 'eh' for 'ie' like Mancunians. When you speak in a true Nottingham accent, you're actually breathing in the influences of every corner of England and spitting it right out.

Many important designers have passed through Nottingham. The first and most important was the River Trent. Not only was it the de facto historical boundary between North and South, it also cut a swathe through Nottingham, biting into the sandstone that the settlement was built upon. This did two important things; firstly, it created a promontory with cliff faces up to 130 feet high, which was a pretty decent place to build a castle. Secondly, it carved out a vast and deep network of caves. And not only did they house and shelter some of the people of Snot, it gave them its first distinct advantage over the rest of the country.

The brewing of beer was nothing new in England, but thanks to the cave networks – which maintained a steady and suitably low temperature – Nottingham became the first (and for quite a while, only) place in the country with the ability to brew ale all year round. This ramped up the settlement's reputation as a trade hub; in a time when beer was considered a 'safer' drink than most water and a form of nourishment, the produce became so popular that even centuries later one of the most popular drinking songs in the land was called Nottingham Ale.

While the artisans were making their name, other Nottingham crafts flourished even further. South Derbyshire was renowned for its alabaster, but the art of carving it into religious figurines was concentrated in Nottingham – and although the practice developed as far north as York and as far south as London, the entire output of religious medieval carving is collectively known as 'Nottingham Alabaster'. It was one of the first examples of English craftsmanship that was highly desired elsewhere, especially in France – but pieces have been found in churches as far afield as Iceland, Croatia and Poland.

It was also around this time that the legend of Robin Hood developed. But everyone knows about him, don't they?

### Revolution in Nottingham

Long before the Industrial Revolution, Nottingham tested the waters of mass production and distribution. As coal overtook wood as the dominant source of fuel, two local businessmen – Huntingdon Beaumont and Sir Percival Willoughby – hatched a plan to move it from the mines of Wollaton to barges moored at Strelley. Their creation – a horse-drawn rail line called the Wollaton Wagonway – is regarded as the first overground railway system in the world.

Meanwhile, the actual means of production were being revolutionised by people like the Rev. William Lee, the Rector of Calverton. According to legend, he was so tired of waiting for his girlfriend to finish her knitting that he designed a machine known as the Stocking Frame in 1589. Unfortunately, it was too revolutionary; Queen Elizabeth I refused to grant it a patent, due to fears that it would put so many people out of work, and he was forced to flee the country and take his invention to France.

Nottingham never repeated that mistake again. In 1764, a weaver from Blackburn called James Hargreaves invented the spinning jenny, a machine that could do the job of over a dozen spinning wheels. He made yarn so cheap that he was driven out of Lancashire – so he moved to Nottingham, and opened the world's first cotton mill, just off Upper Parliament Street. Blackburn's loss, was Nottingham's gain as his invention eventually created far more jobs than it took away.

Richard Arkwright fared even better. He moved to Nottingham from Preston round about the same time as Hargreaves, invented the water mill – which was capable of creating hundreds of strong warps in one go – and set up his first in Hockley, which has a strong claim to being the first modern factory in the world. By the early 19th Century, John Leavers of Canning Circus invented the Leavers Machine – a contraption that could create intricate patterns out of lace, and Nottingham became the lace capital of the world.

And the more people you have, the more services they require. John Boot of Radcliffe on Trent was a farmworker whose illness forced him to relocate to what was then known as Hockley Village, where he set up shop selling herbal remedies. The holistic approach wasn't going to cut it in an embryonic factory town, but when his son Jesse took over and realised the need for a pharmacy that catered to the working poor of Nottingham, he opened the first Boots the Chemist in Goosegate in 1849. There are now over two and a half thousand of them in the UK, employing over 8,000 people in this city alone. And its research centres went on to attract the best and brightest from all over the world.

(And it wasn't all industry in Notts; cultural influences continued to be absorbed too, mainly in the figure of Lord Byron. Born in London – or Dover, depending on who you listen to – educated in Scotland, he moved to Newstead Abbey to inherit the mantle of Baron of Rochdale (don't ask) before being sent to Harrow and then Cambridge. It wasn't until he settled with his mother in Southwell that he really made his mark as a writer, garnering a reputation as being 'mad, bad and dangerous to know' before trolling off round the world and eventually dying in Greece. But seeing as the only productive time of his life was spent in Notts, we're rightfully claiming him as one of us.)

And so Nottingham transformed into the Queen of the Midlands, turning out scores of companies. There was John Players of Broadmarsh, which moved to Radford, pioneered the sale of pre-packed tobacco, merged with Imperial Tobacco at the turn of the century yet kept its own identity, and helped spread the name of Nottingham (and a picture of Nottingham Castle, which was its logo) all over the world.



There was – of course – Raleigh, who were billing themselves as the biggest bicycle manufacturers in the world by 1913, occupying seven and a half acres of factory space and becoming the other major industry in Radford. If you want to take one thing created by Nottingham and tag it with the over-used ‘iconic’ label, it would have to be the Raleigh Chopper. Designed on the back of an envelope by Alan Oakley from Netherfield in the late sixties, it became the desirable item for children of the Seventies. And, as before, success begat success; an offshoot company, Sturmey-Archer, dominated the gears market with a design patented in 1933 that was so unimpeachable it is still in use today.

And there was George Brough of Sherwood, who created his own two-wheeled revolution. His motorcycle – known as the Brough Superior – cost the same as the average house price of the time, and were known as ‘the Rolls-Royce of motorcycles’. Although the last one was made in 1940, they still carry considerable weight; one sold at auction for over £315,000 in 2014.

While the industrial side of Nottingham was flexing its muscles, the idea of Design as a necessary component of the manufacturing process took hold amongst the politicians of the day. This led to a string of Government Schools of Design across the country; Nottingham’s School opened on Heathcote Street 1843, went on to become the Nottingham School of Art, and then moved across town and formed the nucleus of Nottingham Trent University. One of the people to work at the new building was an Eastwood teacher called DH Lawrence, who was one of the first writers in the country to encapsulate the working class experience in print and whose influence in the literary world extended far beyond his death. Alan Sillitoe might have shocked the establishment in the early sixties with his tales of childhood and graft and carousing in the streets and factories and pubs of Radford, but he never had a novel practically put on trial, as Lawrence did with *Lady Chatterley’s Lover* in 1960.

Nottingham has never been short of designers and innovators. Take Ada Byron Lovelace – Lord Byron’s daughter – who worked with Charles Babbage on his Analytical Engine in the 1840s and is credited by some as the world’s first computer programmer. Or George Green, the son of the man who built the windmill in Sneinton, who became the first person to create a mathematical theory of electricity and magnetism in 1828, which influenced an entire wave of scientists from Kelvin to Einstein and beyond.

It seems that in every field of British life, in an era when the country was still one of the world’s most influential hubs of innovation, Nottingham made an indelible mark. The place is unquestionably the true home of professional football, thanks to Notts County – but Nottingham Forest were the first club in the world to use shin pads, crossbars and goal nets. And they were still innovating as late as 1980, when they opened what’s now known as the Brian Clough stand and became the first football club in the world to have their name picked out in different coloured seating. Nottingham and its people gave the world its first traffic light (James Percy Knight, 1868), the first tarmac road surface (Edgar Purnell Hooley, 1901), and – thanks to Frederick Gibson Garton, a Nottingham grocer who invented HP Sauce – its first proper bacon sandwich.

And in a rare example of British industry taking over and importing an entire business from abroad, Nottingham’s other key sporting innovations have come from the Speedo company, which was transplanted from its roots in Bondi Beach in the 1990s. Although most famous for their male swimming trunks, that only comprises 2% of their output; they absolutely dominate the swimming world. The LZR Racer swimsuit which helped Michael Phelps win a record-breaking eight gold medals at the 2004 Olympics? That was created in a factory near The Meadows.

As Britain became the ‘Workshop of the World’, Nottingham’s next wave of innovation began. At the turn of the 20th Century, Frederick Stanley Kipping – a Manchester-born chemist who relocated to The University of Nottingham via London and Munich – began his research into silicone. By World War Two, it was being used as a vital oil and grease substitute. Nowadays, it’s used as an ingredient in practically everything.

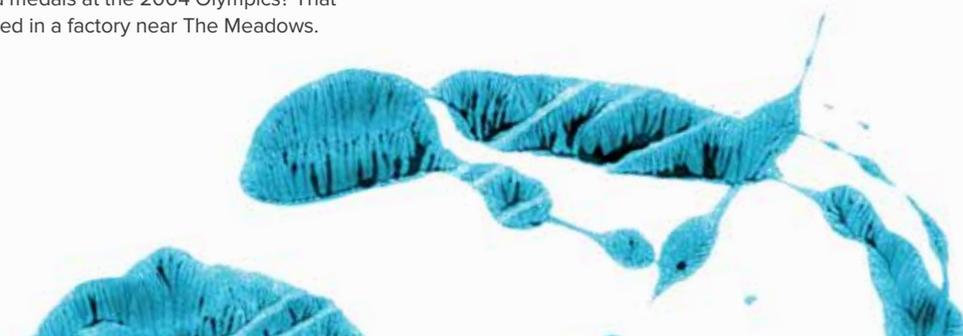
And even when the mantle of manufacturing powerhouse slipped off the shoulders of post-war Britain, Nottingham companies still proved their worth. The first video recorder in the world designed specifically for home use was made in Nottingham in 1963. Available complete or in kit form, the Telcan could only record a maximum of 20 minutes – but that’s 20 minutes more than anyone else in the world could manage at the time. At the same time, a lecturer at The University of Nottingham called Peter Mansfield began his research into magnetic resonance imaging – which eventually led to the development of the MRI scanner, which converts radio signals from body scans into images. This won him a Nobel Prize in 2003.

And then there is Dr Stewart Adams, who served an apprenticeship at Boots in Cambridgeshire, and eventually moved to Nottingham to work on a new treatment for rheumatoid arthritis. One of the compounds he discovered – ibuprofen – became the most popular over-the-counter painkiller in the world. And so the city that got its start by brewing beer was the one that found an antidote to it. And that would be the perfect end to the story of Nottingham’s industrial and creative heritage, were it not for the fact that the story never ends.

The latest chapter is one of consolidation and preparing the ground for the next wave of innovation and creativity. Much of the architecture of Watson Fothergill, Robert Smythson and Thomas Cecil Howitt are still in place; they’ve been added to by a revamped Market Square and the Sky Mirror (which has been copied by New York, St Petersburg, Dallas and Brighton). The Midland Group revitalised the post-war art scene in Nottingham; a revival sparked by the student-led Moot Gallery at the turn of the century saw an outbreak of independent art galleries in the City, followed by the construction of Nottingham Contemporary and the New Art Exchange. The building of Rock City in 1980 saw Nottingham gradually develop a wide range of music venues; now we’ve got scores of local bands and musicians to play in them.

The influence that the Nottingham Playhouse had over post-war British theatre was immeasurable; there was a time when it was seen by the acting establishment as the national theatre before the National Theatre was built in London; The Actor’s Workshop, Dance 4 and the New Perspectives company are carrying on the tradition of performing arts in the city. The establishment of Central East Midlands in Lenton in 1982 finally put Nottingham on a televisual par with other major cities in the UK (and gave the world Bullseye); the recently-launched Notts TV has already established itself as one of the best City TV stations in the country, in collaboration with Nottingham Trent University and the Confetti Institute of Creative Technology. The legacy left by Lord Byron, Alan Sillitoe and DH Lawrence is being championed and built upon by people like the Nottingham Writers Studio and an array of independent publishers such as Five Leaves and Candlestick Press. And what Boots started when its research centres attracted some of the best and brightest scientific minds to Nottingham, Biocity – the largest bioscience incubation centre in the county – is continuing. As is this story.

**Al Needham**



## SAFEGUARDING YOUR IP

### WHY IT PAYS TO TAKE CARE OF YOUR IP

Did you know that intellectual property (IP) rights comprises around 75% or more of the market value of a creative SME? Yet many businesses in this sector vastly underestimate its commercial significance.

IP is about much more than ideas and concepts. They are genuine business assets with a strong financial value. As such, they are integral to the viability of your business.

Protecting your IP rights is therefore a key part of your professional success. IP law consists of a bundle of legal rights designed to protect a host of business assets.

As IP rights are legally enforceable, this means no one can use your creative work and inventions without your permission (and payment to you). So it pays to protect your IP rights in every sense of the word.

Great ideas and concepts can lead to reputational and financial success, and inevitably will be coveted by others in the industry. By protecting your IP rights, you're looking after your good name as well as your financial wellbeing.

While the Internet has many commercial advantages, one disadvantage is that there is an increased risk of misuse of creative IP. Unique ideas, designs, graphics, moving images, products or services may be used without permission, making IP protection more important than ever.

#### IP in the creative industries

The principal issues surrounding IP development, its protection and enforcement are the same for all creative businesses, big or small. As a creative business, you can rely on copyright, design law, trade marks, patents and confidential information law to prevent competitors from using your IP without consent.

From a legal perspective generally speaking, IP rights fall into two categories: those which are automatic and those which must be registered, for example:

- automatic IP rights include copyright, the design right and confidential information which must meet certain minimum legal criteria; and
- registered IP rights such as patents, registered designs and trade marks.

#### Taking the initiative

Unfortunately, there are no 'IP police' to check to whether your IP has been infringed. This means you need to be proactive in protecting your IP assets. This guide will explain the importance of measures to protect and enforce IP, but it is not an exhaustive account of the whole of IP law. Practical IP information will help to empower creative business to make commercial decisions that enhance financial success, sustainability and reduce legal risks.

Finally, one good point to bear in mind is that protecting your IP is time well spent and easier and less expensive than you might expect. If no registration is required, then the IP you create is protected automatically for free. If the IP right requires registration with the UK Intellectual Property Office or in other countries, you may need the advice and services of a trade mark solicitor or patent attorney and there will be registration and renewal fees to keep the IP asset legally in force.

So creating IP will sometimes incur a cost for your business, but if your business strategy is sound, this will add value in the long term.

## IP FOR DESIGN

### Protecting your ideas, designs and products

The design industry encompasses a wide range of products, from jewellery, textiles and fashion to bicycles and aircraft. Successful creative design businesses are built on well-managed intellectual property (IP) assets. Considerable resources and expense go into creating the design features that provide a competitive edge in the market place. It is these features which are the subject of design protection.

Artistic expression and freedom to innovate is hugely important in the field of creative design. Being able to enforce your IP against infringers helps to preserve your artistic integrity.

### When do IP rights come into force?

Essentially, when a designer creates something new or original. These rights are intended to reward and encourage creators, discouraging misappropriation. Unfortunately, designers are vulnerable to the risk of being copied, which can undermine their commercial and artistic reputation, as well as devalue their product.

The law exists to provide protection against this. In the UK, several forms of IP protection used for British products are:

- copyright
- design law
- patent law
- trade mark law

Business brands and product names are protected by registered trade marks and the common law of passing off (for unregistered names and logos).

### How does IP law protect creative innovation?

There are two distinct ways that IP rights help designers:

**Protection.** This stops someone else benefiting from your hard work by copying or using your product without your permission; and

**Exploitation.** You can generate revenue from your designs by entering into licensing agreements for your designs with third parties.

Designs may be protected in a number of ways:

- automatic copyright (2-D, or artistic; craftsmanship or sculpture);
- registered design (3-D);
- automatic unregistered design right (3-D);
- trade marks (brand, logo, product names);
- patents (how the product works); and;
- confidential information and knowhow (trade secrets).

Sometimes these IP rights overlap and can exist in the same product. For example, the same design might be protected by copyright, design right or confidential knowhow.

Some IP rights need to be registered – and then maintained by paying regular renewal fees. So it's important to check whether you need to register your IP right or if it is automatic.



## IP Protection in the fashion industry

The key areas of IP protection for fashion designers are:

- copyright, which protects 2-D sketches, drawings, photos, works of artistic craftsmanship;
- design law, which protects the appearance of 3-D articles;
- trade marks, which protect brands, logos and other non-traditional marks eg, shape marks; and
- patents, which may protect innovative textiles.

### Different types of IP that protect fashion designs

What?	How?	Duration?
Drawings	Copyright	Life plus 70 years
Patterns	Copyright	Life plus 70 years
Prints	Copyright	Life plus 70 years
Photos	Copyright	Life plus 70 years
Garments	Design Right	Up to 15 years
	Registered Design	Up to 25 years
One-off garment	Copyright	Life plus 70 years
Handmade jewellery (work or artistic craftsmanship)	Copyright	Life plus 70 years
Name / Label	Registered Trade Mark	Indefinitely, renewal fees payable
Logos	Registered Trade mark	Indefinitely, renewal fees payable
Innovations	Patent	Up to 20 years annual renewal fees

## Case study

### **Eternal Spirits - Susi Henson**

Susi Henson is the founder of Eternal Spirits, a Nottingham-based fashion business, which produces corsetry and lingerie designs sold in exclusive boutiques across the world. She established the company in 2002, after she achieved a first-class BA (Hons) Fashion Design and a Masters in Fashion and Textiles at Nottingham Trent University.

“As a designer the subject of IP is very important,” she says. “There are so many ways in which our work is copied or infringed. Out of principle, should we fight it? My creative ideas are mine. However, time spent fighting these battles means less time spent on other elements of my business, such as customer service and sales.

“Small business owners constantly find themselves in this ‘catch 22’ situation, balancing developing the business with IP protection, which is one of the biggest challenges I have faced as a designer. Fortunately, there are inexpensive ways to protect designs and brands which are useful tools to know.

“As a designer I communicate visually. What I put out into the world will always run the risk of being copied – and my designs have been copied locally, nationally and internationally. One of my designs is officially the most copied corset on the Internet! This actually spurs me on to want to innovate more. However, I have limited resources.

“Many years ago I thought I should fight every IP battle that came my way but I ran the risk of losing my health, my sanity and my creativity. I have since learnt that I must choose my IP battles carefully and play to win. Would I win if I went up against China and those who copy images of my work on Internet? Maybe not.

“Are cheap, nasty polyester plastic-boned corsets selling for little more than a tenner really going to sway my customers from buying my luxury product at nearly 50 times the price? No.

“But there are IP battles I won’t walk away from, such as when other brands pass off my design products and names as their own and I could lose customers and business. These are my IP battles, the ones I choose. My advice is fight the battles that you can win or that best protect your business.”

#### **Nottingham Creative IP says:**

Susi relies on her automatic free copyright and design rights (that do not require registration or payment of fees) to protect her corsetry and lingerie designs. She should keep a file for each design, including copies of her design documents, photographs of the finished article, advertising and sales figures. This will help if she ever needs to prove the origination of her designs or take action to enforce her rights.

Registering her most popular and lucrative designs would increase the financial value of her business on the balance sheet and make taking IP enforcement action simpler.

Susi could develop a relationship with a specialist IP law firm. If she chooses to pursue a particular infringer and is successful, she may be able to negotiate a financial settlement to compensate for unauthorised use of her designs, photographs, product names and brand. In addition, she may be able to negotiate a licence fee for continued authorised use generating income from her IP.

Being vigilant about her valuable IP will also likely deter other infringers who will choose other less troublesome targets to copy.

To learn more detailed information about how IP law may protect your design read the next section.





## Copyright protection for fashion

In the UK, copyright protection is free and automatic, as long as your work is original, in the sense that it is not copied. Copyright doesn't apply to ideas, information, styles, techniques or names. Copyright prevents 'freeriding' and allows designers to make money from their labour by selling or licensing its use.

How does copyright apply to fashion designs? For example, a milliner can't simply protect the idea for hat. But once sketched or digitally drawn design, it becomes 2-D and that is protected by copyright. In the same way, textile designs may benefit from copyright protection but an actual jacket or dress (when made) does not. A 3-dimensional design can also be protected under section 4 of CDPA 1988 as an 'artistic' work.

Under the Copyright Designs and Patents Act 1988, a designer must prove that the design:

1. Is original and not a copy; and
2. Required of skill, labour and judgement (i.e. creative input)

Copyright protection gives the owner of the design the exclusive legal right to:

- reproduce the design;
- issue copies of the design to the public;
- rent or lend the work to the public; and
- authorise others to carry out any of these, e.g. grant licences.

Once you've established you have copyright protection, it's a good idea to display a prominent notice on your work (such as © 2015 Designer + contact details).

Make sure you keep good records of your designs and examples of how they have evolved into the finished product.

### The original designer and ownership

The author of design copyright is the person who creates the work. If you have collaborated with another designer in creating the design, it may be a work of joint authorship with both of you sharing the rights. Agree this in advance, preferably in writing.

The designer is first owner of copyright, but there are exceptions to this rule. For example, if the design is created by an employee in the course of employment, then the employer is the owner.

**Since October 2014, if the design was privately commissioned, the first owner of the work will be the designer unless a contract provides otherwise. This is also the case for unregistered and registered designs.**

*In addition to copyright protection, a designer should consider how design law protects their work.*

## Design law protection

Design rights are often regarded as the least important IP right after copyright, patents and trade marks which potentially last longer. However, as commercial design gains in economic importance, this is starting to change.

Although a designer can rely on copyright protection, if you make multiple copies, mass produce, or make industrial designs, you should also consider design law protection to safeguard your work.

Design protection is concerned with 'how things look' and protecting designers of products from having the visual appearance or shape of their products copied. It will give you a monopoly over the visual appearance of your product, but not the way it functions or the way it feels. From a legal perspective, it makes no difference if the appearance of the design element is aesthetically pleasing or has any bearing on the consumer's choice of the product.

There are two forms of unregistered design right, a European Community version and a UK version which are free and automatic.



### The European Community Design Right

A Community design is a unitary industrial design right that covers the European Union. It has both unregistered and registered forms.

The unregistered EC Design Right is the most relevant form of legal IP protection for design entrepreneurs and SMEs seeking protection in one or more EC member states. This right is automatic so you don't need to register.

It protects the appearance of the whole or part of a product and includes lines, contours, colours, shape, texture, material and ornamentation, provided the design is new and of individual character.

Be aware, the EC Design Right protects more design features than the UK version i.e. colours and surface patterns, but is more susceptible to attacks on whether the design features meet the criteria for protection (subsistence). Under this right, you will have three years' protection and you don't need to register or pay any fees. Make sure you keep good records as evidence you are author / owner and how the design came into existence and developed into its final form.

See Council Regulation (EC) No.6 (2002) & Commission Regulation (EC) No 2245/2002.

### The UK unregistered Design Right

The UK version protects the design of any aspect of the shape or configuration (internal and external) of the whole or part of an article, provided the design is original and non commonplace in the design field at the time of its creation. This means that it only protects 3-D aspects of products and not things such as surface patterns and materials.

Designs are not original if they are commonplace in any qualifying country (which is not the same as 'well known'). A product's appearance can become very well known, but its design features may remain uncommon.

An unregistered design comes into existence when the design has been recorded in a design document or an article has been made to the design. It does not matter how a design is recorded, either way will suffice. The UK design right lasts for up to 10 years from when an article was first made to the design.

See Part III Copyright Designs and Patents Act 1988

Registering a design with the UK Intellectual Property Office has a number of advantages, including:

- stronger legal rights that provide an exclusive monopoly for up to 25 years;
- easier, more cost-effective legal action; and
- producing an identical copy or one with only immaterial differences is now a criminal offence if done with intent and knowledge of the registered design.

In contrast, the UK unregistered design rights only last for 10 years from the end of the year of first marketing and third parties may copy the unregistered design after five years if they pay you a reasonable royalty.

Further, the design law protection is only against those who copy your work, so if someone creates something that looks the same, but they have not copied, there is no infringement.

Remember registering your design in the UK will not protect it abroad.

In Europe, an unregistered community design right only lasts for three years from first being shown in public. The registered Community design can last for up to 25 years which is a big difference often worth paying for if you want stronger legal protection in EU countries.

See Registered Designs Act 1949



### Your IP protection choices are:

#### REGISTRATION

##### Stronger protection

UK Registered Design (up to 25 years)  
or  
EU Community Registered Design  
(up to 25 years)

#### AUTOMATIC AND FREE

##### Easier but lesser protection

UK Unregistered Design Right (up to 15 years)  
or  
EU Community Unregistered Design Right  
(up to 3 years)  
or  
UK copyright (as an artistic work under s4  
CDPA 1988, life of the author plus 70 years)

### How to register your design

Your design must be new and give a different overall impression to an informed user (usually someone with suitable knowledge in the design field).

You'll need to file an application to register one or more designs with the UK Intellectual Property Office (UKIPO), which includes a representation of the design (typically drawings or photographs of the article from different angles) and pay the fee.

Next, you'll need follow to the procedure that leads to a registered design being granted:

1. Check if you can register your design
2. Prepare your illustrations
3. Apply using the form available at <https://www.gov.uk/register-a-design>

You may need the assistance of a solicitor or patent attorney for this.

It's now a criminal offence for a person in the course of business to intentionally copy a registered design so as to make a product exactly to that design or only immaterially different. The infringer must be shown to know or have reason to know that the design is a registered design. The offence is punishable by imprisonment of up to 10 years and by fines, and applies to both UK and EU Community registered designs. See Intellectual Property Act 2014.



## Patent protection for designs

Patents protect the way something works, but not how it looks. For example, patent protection can be useful for textile and fibre technologies used in fashion and for sport or other activities, such as fire-resistant fabric.

A patent may be granted for a device, substance, method or process that is new, inventive and useful.

A word of warning. Your invention must remain completely confidential until you apply for a patent, otherwise you will lose the right to apply. To register a patent, you need to file a detailed patent application at the UK Intellectual Property Office and pay a fee. This can be done online at <https://www.gov.uk/patent-your-invention>.

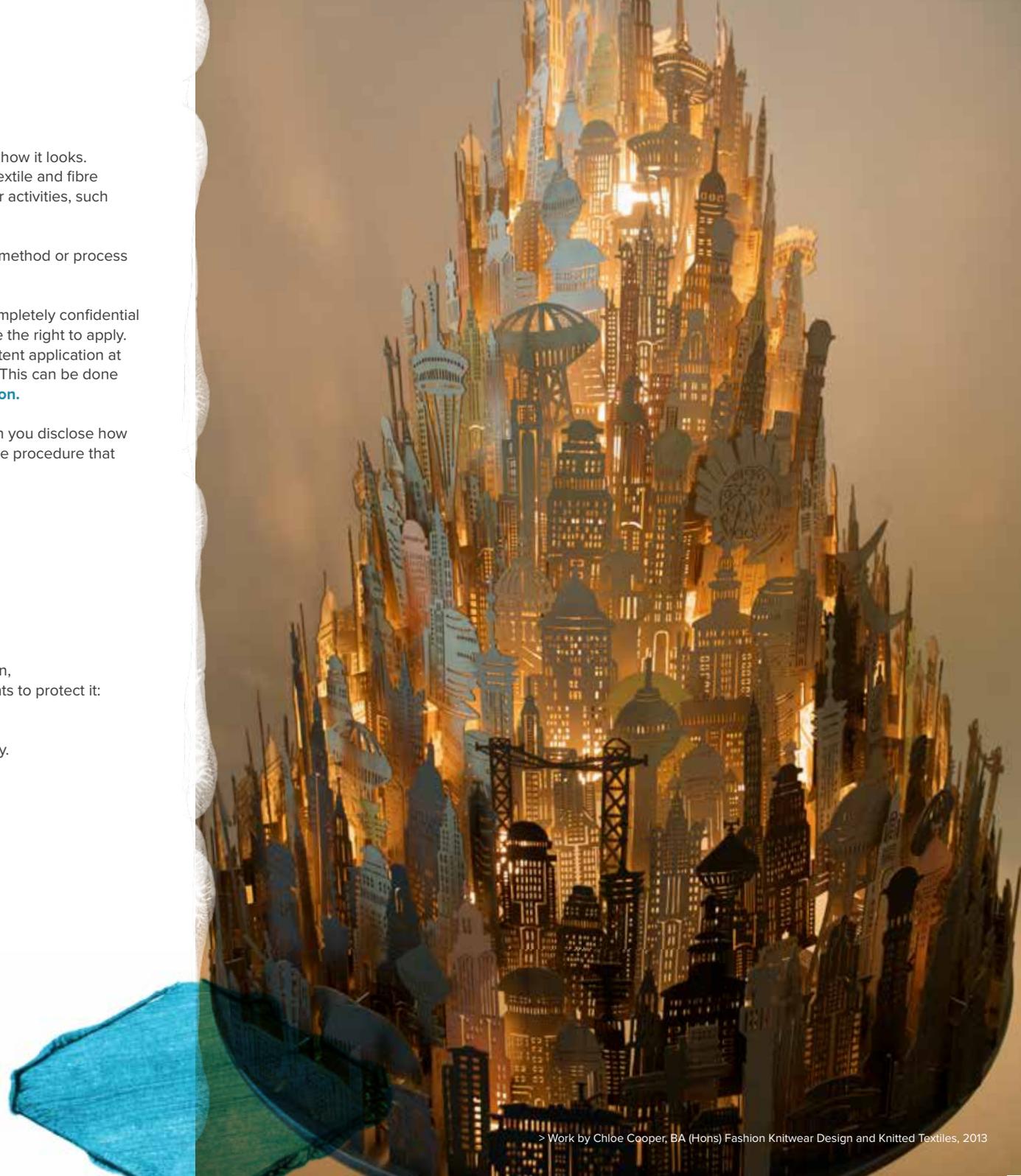
Only when you've filed your patent application can you disclose how your invention works. You'll then have to follow the procedure that leads to the patent being granted:

- Confirm what you can patent
- Prepare your application
- Apply for a patent
- Request your patent search and examination
- Apply for international patents

You may need the assistance of a patent attorney.

In summary, depending on the nature of the design, it may be possible to rely on three separate IP rights to protect it: (1) copyright, (2) design law; and (3) patent law.

You can also enforce any of these rights separately.



# Trademark



## Frequently asked questions

We've put together some commonly asked questions about IP for design here...

### How do I check if someone has already created a similar design?

An Internet search is the best way to start, as there's no central global database of unregistered designs. You can find registered designs at the UK Intellectual Property Office Registered Design databases or OHIM for European design registrations. Alternatively, you could ask a solicitor or patent attorney firm to carry out a search, but this will cost you.

### How can I search for a UK registered design?

Go to <https://www.gov.uk/search-registered-design>

You can filter your design search by:

- product type
- design classification
- owner
- design number

### Will posting a copy of design drawing to myself help to prove I am the designer?

It's too easy to fake or manipulate a record of posting for this to be a safe method. The best thing to do is collate all your work, including sketches and drafts, then file it with a solicitor or independent organisation such as Anti-Copying in Design (ACID).

### Another designer alleges I've copied their design, but this is coincidental. How do I prove I created my own an unregistered design?

In order to prove infringement of an unregistered design there has to be evidence of copying. Similarities between the two designs aren't necessarily enough to prove copying. Keep evidence of your design process, including sources of inspiration, sketches, computer graphics etc.

### How much does it cost to register?

Visit <https://www.gov.uk/government/publications/design-forms-and-fees/design-forms-and-fees> for the latest information, including an online registration system.

### Do both copyright and design right protect the same product?

Occasionally the rights do overlap – in some cases there can be three different IP rights in force.

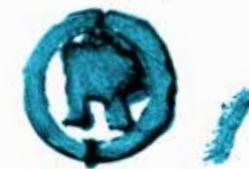
A product could be protected by UK design right for its shape and by copyright for its surface patterns or decoration if they can exist independently from their application to the 3-D shape. A good example of this is the design of the perfume bottle (protected by design right for its shape) and the drawing of a star applied to it (copyright will protect the surface decoration which could exist without being applied to the perfume itself).

### What are the advantages of copyright protection over registered design protection?

You don't need to register for copyright protection and it lasts longer (life of the author plus 70 years). Moral rights will also apply to the artistic/aesthetic work. These rights are not concerned with morality, rather with non-monetary interests such as receiving credit for your work (the right of attribution) and the right to object to derogatory treatment of the work by a third party (the right of integrity).

### Should I register my design to protect how it works?

No, this isn't possible. You can apply for a patent – however, you'll have to demonstrate that the way that your design works is new (anywhere in the world) and inventive.



### Does a freelance designer have rights in my design?

If you want to own all the IP rights, the best strategy is to agree with the freelance designer to assign (sell) these rights to you in a written agreement, preferably before they begin any work.

### Someone has registered a copy of my design before me, what can I do?

You will need to seek legal advice and apply for a 'declaration of invalidity' of the registration so that you can register the design in your name.

### I registered a design I made while working for my employer. Do I own it?

No. If you created the design during the course of your employment as a designer, your employer alone has the right to register the design. The registration will be invalid.

### Is IP protection and enforcement within the UK, the EU and worldwide affordable?

It really is important to allocate part of your budget to registering your designs and to enforce your IP rights where necessary. In the UK and EU, protecting your designs is fairly cost effective. You can file applications covering more than one design. Each design in the multiple application is a separate piece of property and can be licensed and assigned separately. At renewal, not all the designs have to be renewed. You can claim different priorities for each design and defer the registration and publication of only some of the designs.

Many companies pay a small additional fee and defer publication (see [www.oami.europa.eu](http://www.oami.europa.eu)) so that competitors cannot see their new designs before they are launched and marketed.

### How do I protect my brand and product names?

As there is no global trade mark registration system your brand protection strategy depends on where you intend to use the brand or sell the product. There are three options. You can register your mark using the national UK registration system, the Community Trade Mark (CTM) system to cover specific EU member states or the International (Madrid Protocol) system to register overseas.

### Is it possible to take legal action relying on unregistered rights?

Yes. However unregistered rights such as copyright and design rights only protect against copyists. If someone has produced a similar-looking product without copying, there is no case to answer. The evidential burden is on you to prove your case if relying on unregistered rights. Keep a paper trail of the concept design to finished product in case you need it in the future, making sure all documentation is signed and dated.

### How do I know which countries recognise unregistered rights?

Not all countries have a separate design law system. However, copyright offers protection due to various international conventions and treaties which most countries in the world have signed which offer reciprocal protection to contracting states.

### How do I protect my design in the USA?

The USA does not have a design registration system as such. You need to apply for a Design Patent to protect 3-D wholly or partly functional designs. According to the US Patent and Trade Mark Office, 'design patents may be granted to anyone who invents a new, original, and ornamental design for an article of manufacture.' The best thing to do is instruct a local American attorney to draft and file your application.



### I have discovered a 'look alike' product, what should I do?

Establish what you want to achieve if you take legal action (this doesn't necessarily mean going all the way to court). You can often settle the dispute through effective correspondence. Any damages should reflect quantifiable loss and include an admission of liability and your costs paid.

### If I change a few design elements is it ok to copy something?

This is a common myth in the design field. The test for copyright infringement is whether the alleged infringing piece reproduces the whole, or a substantial part, of the work. In other words, what is copied may only be a small amount of the work, but it may nevertheless be a visually striking or substantial part of the author's skill and labour.

### I have registered my design in the UK. Do I also need to register it in the People's Republic of China where it will be manufactured?

The UK registration is territorially limited to infringing acts that take place within the UK so won't cover any infringing copies made in China. You can register a design there, but enforcing your rights can be costly. It could make more sense to have a strict agreement in place with the manufacturer in the PRC and obtain an EU registration which would cover all of the EU. This would mean if any copies were made in China and then brought into anywhere in the EU, you could take action closer to home.

### My design has been copied by a manufacturer in the PRC but I can't afford to take action? What should I do?

The majority of copies made in the PRC are destined to be imported into the EU and the UK so the best course of action is to target those business who are importing them. You could consider notifying Her Majesty's Royal Customs (HMRC) or the EU member state equivalent. HMRC will act for UK traders who suspect their business identity or products are being abused by the import of bogus goods.



## IP FOR DESIGN RESOURCES:

Anti-Copying in Design (ACID) [www.acid.uk.com](http://www.acid.uk.com)

Business Guidance on changes to the law on designs (June 2014) UK Intellectual Property Office at: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/323145/changes-to-designs-law.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/323145/changes-to-designs-law.pdf)

Chartered Society of Designers [www.csd.org.uk](http://www.csd.org.uk)

Design Council [www.designcouncil.org](http://www.designcouncil.org)

Design Week [www.designweek.co.uk](http://www.designweek.co.uk)

IP Health Check Tool, UK Intellectual Property Office [www.ipo.gov.uk/iphealthcheck.htm](http://www.ipo.gov.uk/iphealthcheck.htm)

Your Creative Future [www.yourcreativefuture.org](http://www.yourcreativefuture.org)

Branagan, A. *A Pocket Business Guide for Artists & Designers* (2011) A& C Black Publishers

Burke, Sandra, *Fashion Entrepreneur: Starting Your Own Fashion Business* (2012, 2nd Revised ed.) Burke Publishing, Oxford



## IP FOR PERFORMANCE

### Recognising and rewarding your creative talents

Professions in the performance industry include actors, dancers, musicians and comedians and other variety performers. While it can often be a tough industry to break into, it's highly appealing because of the potential financial rewards and accompanying lifestyle.

But it takes more than talent to sustain a prolific career in the sector. The most successful performers are those who take control of their performers' rights, which are a form of IP.

### Performers' IP

Performances may be protected in a number of ways:

- copyright (eg in the dramatic work, music, recording);
- performers' rights (also known as neighbouring rights or related rights);
- moral rights; and
- trade marks (brands)

### What is a performance?

A performance is a:

- dramatic performance (which includes dance and mime);
- musical performance;
- reading or recitation of a literary work; or
- performance of a variety act or any similar presentation which is a live performance given by one or more individuals.

For example, whenever a script is read there will be a performance. Rehearsed movements and sequences of events amount to a dramatic work e.g. staged combat. A dance, music, comedy or variety act is also a performance.

### What are performers' rights?

As a performer, you have certain economic and moral rights. You'll also be entitled to fair payment if recordings of your performance are used commercially (e.g. played or communicated to the public).

Under the Part II Copyright Designs and Patents Act 1988 (CDPA 1988), two groups, performers and recording/film companies, are granted exclusive rights:

- Performers are entitled to performers' rights in their performance and any recording, film or broadcast of that performance.
- Recording and film companies have exclusive recording rights to record the performances of such artists' rights.

A performer has the right to withhold consent for recording, broadcasting or transmission of a performance.

### The performers' moral rights

A performer's moral rights include the right to be identified as the performer and the right to object to derogatory treatment of their performance, which are enforceable by civil action. See s205C Copyright Designs and Patents Act 1988

### Why do performers' rights exist?

Performers' rights arose as a result of the development of sound and image recording technology. Because the performance is an integral part of the creative process, the performer is seen as having an intellectual input in their performance over and above that of the author of the work.

While the appeal of performing is often fame and fortune, a survey commissioned by Casting Call Pro in 2014 found that just one in 50 actors in the UK earned more than £20,000 per year. Performers' rights are intended to allow you to make a living from your work, and to prevent it being copied or reproduced without your permission. The Internet and sophisticated digital technologies have vastly increased the opportunities for both copying and digital manipulation of performances.

### How does IP law help performers?

You have more control over how your performance is used, including better bargaining power with producers and broadcasters.

Although performers' IP rights appear similar to copyright, they are a newer and completely separate category of property right. Essentially, performers' rights provide varying degrees of exclusive or monopoly rights over live performances. No one has the right to use or perform the artists' work without their permission. However, performers' rights won't protect the artistic or creative input of you as the performer and don't provide protection against imitation.

Musicians, singers, actors, dancers and variety performers have rights to prevent or give permission for:

- the recording or broadcasting of their live performances;
- subsequent commercial use of those recordings e.g. by the production company;
- distribution of copies;
- future broadcasting; and
- making performances available via the Internet

The law creates civil and criminal offences to protect performers from the unauthorised use of the performance.



## Case study

### *Jodie Aysha (singer)*

In 2007, the song 'Heartbroken' by British producer T2 was released featuring vocal recordings by Jodie Aysha (her stage name) via the record company All Around the World Recordings. The track was successful, peaking at number 2 in the UK singles chart and in the top 40 chart for 46 weeks.

Jodie recorded the track whilst visiting T2 (Tafazwa Tawinezvi) in 2005. However Jodie disputed the terms regarding how the recording would be used.

T2 then signed with another company, 2NV. Jodie was offered a fee of £1,500 for her vocal performance by 2NV but she rejected this. 2NV then made the track available to All Around the World Recordings, who released it.

Jodie claimed she didn't consent to her vocal performance being used on the release. She didn't receive any record royalties nor was she paid for her role in the video or for the use of her name on the record art work. Jodie decided to bring a claim against All Around the World Recordings for infringing of her performer's rights.

Jodie filed her case with in the Intellectual Property Enterprise Court in 2013. The judge decided that All Around the World Recordings had infringed Jodie's performers' rights as well as her moral rights when copies of her performance were made and issued to the public without her consent.

She was awarded damages of £30,000 based on the 6% royalties which the court considered would have been agreed between her and All Around the World Recordings, and a further £5,000 for her loss of reputation and for not being able to promote her name: to read more about the case *Google Henderson v All Around the World Recordings Ltd and Another* [2013] EWPC 7.

#### Nottingham Creative IP says:

Jodie was proactive and took steps to enforce her performers' rights, her right to remuneration and her moral rights. She took legal action in the Intellectual Property Enterprise Court which is effective for low value, straightforward IP disputes, particularly for individuals and small and medium-sized business looking to enforce their IP rights.

If you're a producer, it's wise to get written consent when working with a singer, musician or other performer. This should clearly set out what the consent has been provided for and the financial terms agreed. A written consent is good evidence that will provide protection for both the performer and the producer.

#### Free, automatic protection

Performers' and recording rights arise automatically and protection is free, there is no need to register anywhere.

Performers' rights kick in when there is what's known as a 'qualifying performance' by a 'qualifying individual'. This is a UK or EU citizen or citizen of a designated country, or a performance that takes place in the UK, EU or other designated country.

Performers' rights last for 70 years from the end of the calendar year the performance took place.

#### Right to fair payment for sound recordings

A performer is legally entitled to fair payment from the owner of sound recording copyright in a recording of their performance provided it has been 'commercially published'.

#### Exploitation and licensing performers' rights

In order to fully protect your rights, you need to enter into a contract with the producer when they hire your services. This allows them to exploit your performance by using it either in a sound recording or film. This is why the legal protection of performers is closely linked with sound recording and film copyright. Your consent is required to make and disseminate a recording of the performance otherwise the producer is infringing your rights. The contract should include your terms of payment and royalty expectations, including for future use of the recording.

#### Offences

There are both civil and criminal offences related to dealing with illicit recordings and certain other unauthorised uses of recordings, broadcasts or films of live performances.

#### Enforcing your performers' rights

If your performers' or moral rights have been infringed, the first thing to do is try to negotiate a settlement with the infringer. If this doesn't work, you can apply to the Intellectual Property Enterprise Court. It's quick and inexpensive, the trial is usually relatively short and legal costs are capped at £50,000.

## Case study

### The Glee Club

Mark Tughan is the owner of The Glee Club, a small but well-known chain of live comedy and music venues based in the UK. In 2014, he won a landmark High Court case involving the infringement of his trade mark when Twentieth Century Fox launched the US TV series Glee in the UK.

"Registering the trade mark and logo of my comedy business was really an afterthought," says Mark. "I was nagged by some friends and eventually got around to doing it. A few years later when the renewal notification came through the post I almost let the protection lapse. The reality is that protecting your trade mark is like any insurance policy, you question the cost of it right up until the time you need it, only then do you realise its value.

"Not long after renewing the trade mark I was flicking through the TV listings and saw an E4 programme with my name on it (Glee). Initially I took no action, but over time I noticed that customers were getting confused about the offering of my club and that of the television series of the same name.

"My business was being impacted through no fault of my own and I feared for my brand! It was a fight-or-flight situation, I could do nothing and risk my business failing as customers and performers got confused about our offering or I could fight to protect my business and reputation. I chose to fight.

"I took some initial advice as to whether my registered trade mark was being infringed and the coffee-shop answer was 'yes'. Around the same time, as the TV series gained popularity, I was being made aware of other companies trying to register Glee-related names for all sorts of things. The situation was getting worse. I decided to get the formal process rolling and to seek a barrister's opinion.

"The feedback was positive, I had a very strong case and so I started proceedings against Fox and what I believed was their infringement of my trade mark and the subsequent negative impact on my business. We ended up in the High Court, and in 2014 the judge found against Fox. The case has been reported in the press as 'David verses Goliath' but the reality is that I had to protect my brand, my reputation and my business. "I'd advise anyone in my position to register their trade mark and think of any costs as an insurance policy. And be prepared for a fight. If the case can't be resolved amicably then find the right lawyers and help them fight your corner. Finally, don't be intimidated by the size of the opposition, it's your trade mark and the law is there to protect you."

Fox is currently appealing the decision. To read more about the case *Google Comic Enterprises v 20th Century Fox* [2014] EWHC 185

#### Nottingham Creative IP says:

Venues for live entertainment are on the rise as a result of the digital revolution as performers prioritise live and touring venues, so registering a trade mark over the business brand name is a great way to build consumer awareness and ensure long-term success.

Mark is an excellent example of what to do to safeguard valuable IP rights. He paid a relatively small fee to register his trade mark in the UK and was able to rely on his legal rights to stop a major player in the entertainment industry from using the same name which would have devalued his brand by confusing his customers. Having a registered trade mark makes taking IP enforcement action simpler and less expensive. Ultimately, if Mark is successful in court, the law provides that the loser pays the winner's legal costs and Fox will be ordered to stop using the word GLEE in the UK for its TV show and associated merchandising without Mark's permission.

Mark will also be entitled to choose between an award of damages or an 'account of profits' (both are forms of financial compensation).

## Frequently asked questions

We've put together some commonly asked questions about IP for Performers here...

### PERFORMANCE

#### I am a dance student and gave a performance as part of my course, do I have any rights?

Students also have performance rights, for example, performing in an end-of-year show. Your consent should be sought before any recordings are made or disseminated.

#### I am a singer, do I have to pay to perform someone else's song in public?

Yes. First you will have to get permission to perform the song (a licence) and then you will have to pay the composer, or the music company who owns the song, a reasonable fee (royalty).

#### What's the difference between performers' rights and performing rights?

Performing rights are the royalties due to the composer for a piece of music under copyright in return for the licence (permission) to perform the piece in public. In other words, performers must pay performing rights to composers.

#### I've discovered an unauthorised DVD of my performance, what should I do?

Establish what you want to achieve if you take legal action (this doesn't necessarily mean going all the way to court). You can often settle the dispute through effective correspondence. Any damages should reflect quantifiable loss and include an admission of liability and your costs paid.

#### Do performers' rights apply to the Internet?

Yes. You have the right to control what is made available to the public, the law refers specifically to communication via the Internet.

#### Someone has uploaded a recording of my performance to YouTube. What can I do?

Sometimes people will post videos of you on YouTube without your permission. If you have contacted the person who posted them and cannot get him or her to remove the videos, contact YouTube directly to request that the videos be taken down. Click on the Flag icon immediately below the unauthorised video that says 'Report' icon below the video. Click on 'This infringes my rights' and follow the process and then click 'Submit'. Give your details and YouTube will investigate and respond.

#### What types of contracts do performers' regularly have to deal with?

There are two main types of contracts:

- assignments (sale or transfer) of the performers' property rights to the producer; and
- licences of performers' rights (consents).

#### Is my performance protected overseas?

No, your UK rights don't cover any unauthorised use of your performance in another country.

#### What are my performers rights in other countries?

Unfortunately, there's no international treaty giving performers control over how and when their work is used abroad. EU member states have a similar level of protection to the UK, and the US and developed Commonwealth countries have their own systems, but unfortunately many countries still don't protect performer's rights. You'll need to research these depending on where you work.

#### What professional associations for performers exist to help me protect my rights?

Actors' Guild of Britain (£10 - £25 to join)  
[www.actorsguild.co.uk](http://www.actorsguild.co.uk)

Mechanical-Copyright Protection Society (MCPS) collects royalties for members when their music is reproduced. (£50 to join)

Performers' Rights Society for music licences collects and distributes royalties for members when their music is played, performed or made available around the world in line with our distribution policies. (£50 to join) [www.prsformusic.com](http://www.prsformusic.com)

Equity [www.equity.org.uk](http://www.equity.org.uk)  
Spotlight [www.spotlight.com](http://www.spotlight.com)

#### Do I need to register my stage name?

You'll need a unique professional stage name, whether it's your own or one you've chosen. This will be your personal brand name, which you'll use for all organisations you join and on all your documents. Equity and Spotlight require completely unique names (so won't accept Pete Smith if there's already a Peter Smith).

The following are also discouraged to avoid confusion:

- adding initials e.g. Daniel Craig and Daniel J Craig;
- including middle names e.g. Rachel Weisz and Rachel Jane Weisz;
- double-barrelled first names e.g. Kate Winslet and Katie-Jane Winslet; and
- same names with different spellings e.g. Helen Mirren and Helena Mirren.

Avoid duplicating names with overseas performers, or using the names of deceased artists The best place to start is the Internet Movie Database [www.imdb.com](http://www.imdb.com) to make sure no one else is using your chosen name.

### BRANDING

#### What are the advantages of registering a trade mark?

When you register you'll be able to:

- take legal action against anyone who uses your brand without your permission, including counterfeiters;
- put the ® symbol next to your brand – to show that it's yours and warn others against using it; and
- sell and license your brand.

#### How do I check if someone has already the same or a similar mark?

An Internet search is the best way to start, as there's no central global database of registered trade marks. You can find registered trade marks at the UKIPO Registered Trade mark database [www.gov.uk/intellectual-property/trade-marks](http://www.gov.uk/intellectual-property/trade-marks) or OHIM for European trade mark registrations [www.oami.europa.eu](http://www.oami.europa.eu). If you want to search for a UK trade mark visit [www.gov.uk/search-for-trademark](http://www.gov.uk/search-for-trademark). Alternatively, you could ask a solicitor or trade mark attorney firm to carry out a search, but this will cost you.

For more information read the UKIPO's Guide to Getting a Trade Mark, which advises on what you can and can't register as a trade mark. See [www.gov.uk/how-to-register-a-trade-mark](http://www.gov.uk/how-to-register-a-trade-mark)

#### As a performer how do I protect my brand and product names?

As there is no global trade mark registration system, your brand protection strategy depends on where you intend to use the brand or sell the product. There are three options. You can register your trade mark using the national UK registration system, the Community Trade Mark (CTM) system to cover specific EU member states or the International (Madrid Protocol) system to register overseas.

### How much does it cost to register?

In the UK and EU, protecting your brand is fairly cost effective at £170 plus £50 for each class of goods or services you register.

Visit [www.gov.uk/register-a-trademark](http://www.gov.uk/register-a-trademark) for the latest information, including an online registration system.

### How long does it take to get a trade mark?

Filing the application to obtaining the registration typically takes between 6-9 months. Once the registration is granted, the registered trade mark takes effect from the day the application was filed. Sometimes, applications can take longer to process if any objections need to be dealt with and overcome.

### How long does the trade mark last for?

The period of protection lasts for 10 years, however a trade mark registration can be renewed indefinitely in 10-year periods, meaning the trade mark can theoretically exist forever. The Bass brewery red triangle mark is the oldest UK registered trade mark and was originally registered on 1 January 1876.

### Is there an unregistered version of a trade mark?

Yes. If you sell a product or service under a particular brand then over time you could develop a goodwill and reputation in respect of that brand. The public will come to associate goods or services as originating from a particular source and/or having particular qualities. If somebody else then begins using the same or a similar name people could be confused into thinking that their products are your products or that you are in business together. In those circumstances, you may have an action for what is known as 'passing off'.

## Performers' rights resources

Adeney, E. *The Moral Rights of Authors and Performers: An International and Comparative Analysis* (2006, 6th ed.) Oxford University Press

Arnold, R. *Performers' Rights* (2008 4th ed.) Sweet & Maxwell

Association for Performing Arts and Collections (APAC) [www.performingartscollections.org.uk](http://www.performingartscollections.org.uk)

British Council [www.britishcouncil.org](http://www.britishcouncil.org)  
(Cultural information and relations)

British Library Performing Arts websites  
[www.bl.uk/reshelp/findhelprestype/webres/perfarts/perfweb](http://www.bl.uk/reshelp/findhelprestype/webres/perfarts/perfweb)

Creative Scotland [www.creativescotland.com](http://www.creativescotland.com)  
(opportunities and funding)

European Festivals Association (EFA)  
[www.efa-aef.eu/en/festivals](http://www.efa-aef.eu/en/festivals)

Harrison, A. *Music The Business* (2014, 6th ed.) Virgin Books

International Federation of Arts Councils and Culture Agencies (IFACCA) [www.ifacca.org](http://www.ifacca.org)

International Network for Contemporary Performing Arts (IETM) [www.ietm.org](http://www.ietm.org)

International Society for the Performing Arts (ISPA) [www.ispa.org](http://www.ispa.org)

Poynton, K. *Contacts 2015* (2014) Spotlight

PRS for Music [www.prsformusic.com](http://www.prsformusic.com)  
(music copyright, royalties and licensing)

Schwensen, D. *How to Be a Working Comic: An Insider's Business Guide to a Career in Stand-Up Comedy* (2013) North Shore Publishing

Smartt, U. *Media and Entertainment Law* (2014, 2nd ed.) Routledge

Spotlight casting agency [www.spotlight.com](http://www.spotlight.com)

Trott, L. *Actors and Performers Yearbook: Essential Contacts for Stage, Screen and Radio* (2014, 11th ed.) Bloomsbury Methuen Drama.

Chartered Society of Designers [www.csd.org.uk](http://www.csd.org.uk)



> Picture by Debbie Whitmore



## IP FOR IMAGE AND MEDIA

### Safeguarding your visual creations

The UK has a rich heritage and culture in the visual arts. In particular, photography, TV and film are now firmly established as part of the fast-paced modern creative economy and a major influence in popular culture both in the UK and around the world. At the same time, the Internet and sophisticated digital technologies have made copying and digital manipulation of images and film incredibly easy and a major concern for creators and producers.

As the use of media in the creative industries continues to evolve, it's increasingly important that you have a clear understanding of IP issues.

### How does IP law help?

You can protect the creative content in your photographs, films and audiovisuals in a number of ways:

- copyright
- moral rights
- trade marks (brands)

Copyright is the free and automatic legal protection of creative expression in any form of media. Film copyright, for example, helps to generate income from several revenue streams including:

- theatrical exhibition;
- home videos /DVDs;
- TV broadcast rights; and
- merchandising

Understanding copyright law, knowing how to clear the rights in existing content for inclusion in your work and being able confidently to make legal use of copyrighted works (fair dealing) in the real world and cyberspace is a significant, but manageable challenge.

The Copyright Designs and Patents Act 1988 protects many types of works:

Works that must be original (originate from the author and not be copied)

- literary works;
- dramatic works;
- musical works; and
- artistic works (including photographs)

The copyright in these works is infringed by copying or broadcasting the whole or a substantial part of the work (primary infringement) or dealing in infringing copies (secondary infringement). Piracy is the popular term for the illegal copyright infringement activity.

### Entrepreneurial works that don't need to be original

- films
- sound recordings
- broadcasts

### Photographs and IP law

Still image photography is generally protected by copyright and moral rights law. As the use of photos is broad, so are the potential income streams for the 'use rights' of those images. Therefore, it's vitally important to grasp these two forms of valuable legal protection, as they can potentially help your photography career to thrive.

### Photographs and copyright

As soon as a photo is taken, copyright automatically protects the original work against copying, re-use and dissemination to the public without permission.

Copyright subsists in an original photo (a recording of light or other radiation on any medium on which an image is produced, or from which an image by any means can be produced) which is not part of a film. You don't need to register copyright in a photograph.

Photographs are classed as artistic work, but the existence of copyright does not depend on artistic merit. To be protected, photographs must represent the photographer's intellectual creation and show at least a small degree of mental effort.

The owner of the copyright in the photograph is the photographer – the creator – however, where the photographer is an employee and the photo is taken in the course of employment, the first copyright owner is the employer, unless otherwise agreed.

Copyright in a photo protects the photographer from their work being either directly copied or indirectly copied (a substantial part being reproduced).

Copyright in a photograph lasts for the life of the photographer plus 70 years.

### Photographers' moral rights

Moral rights are especially important for photographers. A photographer's moral rights in a photo include the:

- right to be identified as the photographer (the attribution right or paternity right);
- right not to have the photo manipulated, mutilated or distorted (the integrity right); and
- the artist's resale right (the right to receive a small percentage of the sale price each time the photograph is sold).

The attribution right (being credited as the photographer) is fast becoming more valuable than the copyright itself for photographers in terms of reputation and generating income.

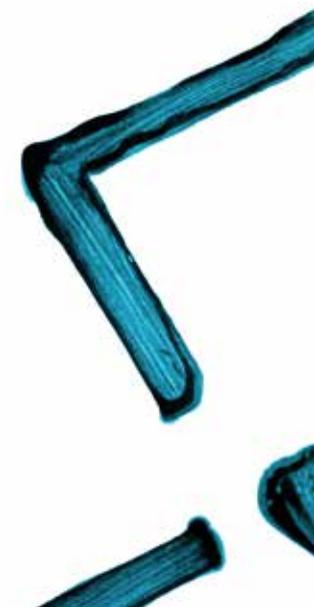
However, moral rights need to be asserted. In other words, you need to publicly claim the moral rights in your photos or you can't rely on them. It's simple to do – stating "John Doe asserts his moral rights in this image", perhaps accompanying your copyright information or digital watermark is sufficient.

If you don't assert your moral rights (or if a waiver has been thrust upon you) the image will most likely become orphaned i.e. have no author. You won't be able to access secondary income from reprography, and will also lose your resale right and possibly any future commissions.

When you supply photographs to magazines, newspapers and similar periodicals the usual terms of the arrangement are that you agree to waive your moral rights, as editors need to crop the photos to suit or fit the text and, of course, advertisements will take priority. Always check the terms before you agree supply the photo. The same applies to employed photographers who are not permitted to publish, broadcast or exhibit photos taken for 'private domestic' clients unless they have the client's permission.

### Legal restrictions on publishing – paparazzi

Remember that publishing certain photographs is legally restricted due to privacy law, public morality and protection of children.



## Case study

### Martin Shakeshaft

Martin Shakeshaft is an established freelance photojournalist, best known for his iconic photos of the 1984 miners' strike ([www.strike84.co.uk](http://www.strike84.co.uk)). He freely admits that when he started out as a photo journalist, he knew little about IP, but his knowledge has grown over the years.

“You need to be very clear and precise about the copyright you are licensing and stipulate the use, for example print, web or broadcast and which regions it can be used in. Sometimes a photograph can take on historical significance and these images can potentially be sold over the years to multiple markets.

“Over the last 30 years the world has changed hugely, not least of which is the advent of the Internet. Each day more than 500 million photos are shared, which means you need to get the right balance between making sure your images get visibility while keeping control of your intellectual property.

“For the photos I want to share I use Creative Commons licensing ([www.creativecommons.org](http://www.creativecommons.org)) specifically the CC BY-NC-ND licence which says anyone can use the photo, provided it is properly attributed, not changed and not used for commercial purposes. This option means I can get my images seen and used, but still maintain control of the IP and license them for a fee if a company wants to use them commercially. Every photograph I take gets digitally watermarked with a link to my website, and I periodically use tools like Google and Tineye to check the web to see how my images are being used.

“How I react to a potential infringement of my copyright depends on the severity, ranging from ignoring occasional use in social media, through to asking for an image to be removed within 24 hours, right up to seeking a financial settlement. Fortunately, I've never had to go to court, as most companies don't want to incur the cost, time or reputational damage of a court case. Many companies even have a pot of money in their budget specifically to pay for copyright infringement claims. In one year, over a third of my income came from pursuing infringers who agreed to pay to for a licence to use my work!

“What would I advise someone starting out today? I would definitely recommend the services of a professional organisation. I'm a member of the National Union of Journalists (NUJ) and they offer really good legal advice and support around IP, I can't repeat often enough that you should be very careful about what IP you're signing away when you sell a photograph, you need to be very specific and keep records.



“You can also register for DACS ([www.dacs.org.uk](http://www.dacs.org.uk)), a not-for-profit rights management organisation. They can help with licensing and with potentially getting a revenue stream from the secondary uses of your images such as photocopying. You need to understand that IP law does not automatically put the rights of the photographer first. Be clear about what rights you will retain and how you want to manage them. Develop an IP strategy that sits comfortably with your outlook and philosophy on life. It's not a joke to say that my photographs are part of my pension!

“There's a lot of pressure on someone starting out in photography and the rise of the Internet gives both huge opportunity and challenges, which is all the more reason to think carefully about your IP.”

#### Nottingham Creative IP says:

Martin is an IP superhero. He has taken control of the copyright and attribution right in his vast portfolio of photographs. He uses technology to watermark his work and earns money while he sleeps through his extensive licensing programme. In his commercial dealings, he is knowledgeable about his rights and the rates he charges for various uses of this work, both domestic and international. Martin keenly negotiates the specific terms of the contracts he signs and keeps good records. He is proactive in pursuing infringers. Martin's IP management strategy is exemplary and will stand him in good stead in the years to come.

\*The photo used in this section is one of 30 Martin released under the Creative Commons licence. Although we have given full attribution and not altered the image, because this book is in-part commercial, we had to obtain permission from Martin to use the image, which he was happy to give for no fee.

## Broadcast copyright

Copyright protection for a radio or TV broadcast didn't exist until 1956. Only broadcasts made after 1 July 1957 when the new copyright law came into force are eligible for copyright protection. Broadcast copyright has since been updated to include all forms of electronic transmission (radio, cable and satellite broadcast, webcasts etc) made to the public, including encrypted transmissions.

Copyright in a broadcast radio or TV programme expires 50 years from the end of the year in which it is broadcast. Repeating the broadcast does not extend the period of copyright.

Broadcasts will often involve underlying copyright in the creative content, which requires permission to use.

Recording the broadcast for commercial purposes and letting a TV broadcast be seen by a paying audience without permission are both infringements of broadcast copyright.

### Is there IP protection for a TV format?

You may be surprised to learn that there is no specific standalone form of IP protection for the creative content in a TV format, as is the case for photographs or film, despite the commercial success of TV shows like The X Factor and Celebrity Big Brother.

In a very short time, TV formats have grown from a niche business into a global phenomenon responsible for many of the biggest entertainment brands on earth.

Essentially, a creator licenses a format to TV networks in the UK and internationally, so a version of the show is tailored to a particular nationality and audience. Currently, creators must rely on contractual terms, their brand protection (e.g. trade marks) and copyright in the format 'Bible' that sets out in writing the key components of the format. This includes the overall concept and premise of a copyrighted programme.

Copycat formats seek to duplicate the success of an original format without paying the rights holder of the original format. Format developers try to prevent this by various means, including the use of trade marks or withholding distribution of other programmes

Fortunately, an organisation called the Format Recognition and Protection Association (FRAPA) is trying to change the law to make it less complicated to protect TV formats which are a major part of the TV industry. It has recently developed its own TV format registration system (FRS) that enables you to register your own format online. FRS is affordable and members pay £20 per registration. This helps to provide evidence that you developed the concept and which will help to protect your interests when you pitch and sell the format. The FRAPA website also has a 'Bible Generator' which provides a template for gameshows, reality, factual and scripted formats.



## IP for film

The UK is a magnet for filmmakers. The country's fledgling film industry has a long history and began back in 1896 when the first regular public exhibition of 'moving pictures' was held at the Old Cinema in Regent Street, London. Audiences were thrilled by the programmes of short 50-second silent films showing simple everyday events. Since then amazing technological advances in film emerged: continuity involving action moving from one sequence to another, close ups, audio, animation, lighting and special effects.

As films lasted longer, specialist writers were employed to develop storylines derived from novels or plays for film and sound recordings were paired with the film to further enhance the experience. The creative impact of sound and the use of colour was magical and transformed the film industry forever.

Films were so popular that during the 1980s, audiences started watching them at home on their VCRs. The film studios unsuccessfully took legal action to try to ban home ownership of the equipment as a breach of copyright. In time, the sale and rental of home videos became a significant source of revenue for the film industry. Now the industry is adapting its business model to online streaming and the digital environment. In 2014, the Department for Culture, Media and Sport reported that the UK's film, TV and music industries are now worth £71.4 billion per year to the UK economy – that's a staggering £8 million pounds an hour!

Film franchises such as Harry Potter have been the best performers so far in the 21st century. Films generate income from several revenue streams including:

- theatrical exhibition;
- home videos;
- TV broadcast rights; and
- merchandising.

IP rights shape each stage in the development of the film from script to screen.

## Copyright in a film

Copyright is the cornerstone in film-making enterprise. Everyone has seen the long list of credits at the end of a movie for the army of people involved in making the film. Film-making is a collaborative endeavour and there are many different elements to a film, including the screenplay, the music, the direction and the performances.

Films are defined in s.5B of the Copyright Designs and Patents Act 1988 as 'a recording on any medium from which a moving image may by any means be reproduced'. This means that a film may be made with a camera or other technology. The copyright includes the film's soundtrack, so even if only the soundtrack is copied, the film copyright will still be infringed. In some cases reproducing only one frame of a film will amount to copyright infringement.

IP protection is via copyright protection:

- as a dramatic work (script, dialogue, dance, stunts/fights – the rights of performers will need to be considered);
- for artistic works created for the film (sets, costume design); and
- for musical works (soundtrack, sound recordings and performers' rights).

It is also available via moral rights of the various authors.

Copyright in a film production includes:

- novel or dialogue (literary works);
- screenplay, dance, stunts (dramatic work);
- costume design (artistic work); and
- original music (artistic work) and performances (sound recording).

## Principal director and producers' rights

The principal director's creative directorial input such as framing scenes and editing may also be protected as a dramatic content.

The producer is an 'entrepreneur' rather than a creator who arranges for film projects to get off the ground and the film or sound recording to be made. The producer hires the performers and ensures they give all the necessary permissions in their contracts to enable the film to be exploited. The producer negotiates many types of agreements that define how the IP rights arising from the creative input of the various creative contributions to the film will be used and remunerated.

## Moral rights

This broadly means protection of the work as a reflection of the author/creator and his or her career. In the UK this means protection of two types:

Attribution – the right of an author or director to have 'due acknowledgement' with his or her name cited or attached to the film whenever it is reproduced; and integrity – protection from the editing or re-use of a work in some way which might be regarded as derogatory, potentially undermining the original work and the reputation of its author or director.

Normally, moral rights don't apply to film actors at all, as the terms of the contract for hire will require them to waive their moral rights in their performance in the film. However, they may have the bargaining power to negotiate to retain the moral right to be acknowledged as the performer and the right to object to derogatory treatment of a performance. This will help performers to control the legitimate exploitation of their work in the film.

## Content clearance

If you want to be able to distribute your film and screen it in public, you need to make sure you have all the necessary written permissions to use everything that appears in your film, including images, music, logos, brand names and any stock footage.

## Ownership and duration of entrepreneurial works

Owner	Right	Duration
Producer and principal director	Film	Last of either the Principal director, author of the screenplay or dialogue, or composer of specially created music dies.
Producer	Second recording	50 years from making or first publication
Broadcaster	Broadcast	50 years from first broadcast

## Case study

### Wellington Films Ltd

Husband and wife team Alastair Clark and Rachel Robey founded Wellington Films in 2000 and were later joined by producers Anna Griffin and Tom Wood. The Nottingham-based company produces feature films and has made over 30 short films for festivals and TV. Since inception, Wellington Films has been nominated for numerous awards and accolades including Best Achievement in Production at the British Independent Film Awards for its debut film *London to Brighton* (2006). The company has gone from strength to strength and the budget for making their feature films is in now over £1 million, they have gained valuable experience in managing IP along the way.

As producer, Alastair and the team make sure they obtain all the necessary copyright permissions. They supervise the making of a film before it's presented to a film distributor for release and focus on business matters such as finance, budgets and contractual matters. Alastair has the final say on whether scenes or music need to be cut from the film as he is in charge of the commercial exploitation of the film and arranging the distribution rights.

Alastair explains how they dealt with copyright clearance when producing *A Man's Story* (2012):

"The film is a 98-minute documentary about Ozwald Boateng OBE, English menswear designer of Ghanaian descent, known for his classic British tailoring.

"Our company acquired the film footage from the director who had filmed Boateng for a period of 12 years as his career unfolded, culminating with the largest menswear show in history when the designer closed London Fashion Week in 2010. The film gave the world a behind-the-scenes insight to the world of high fashion.

"A Man's Story was an 'unholy nightmare' to produce! Although Wellington acquired the decade or so worth of film footage that had already been shot, no copyright permissions for the photos, images or film clips of the celebrity clients used in the film had been sought. We had to go through the painstaking process of clearing the film from possible copyright infringement.

"We had to identify each copyright work appearing in the film footage (e.g. paparazzi shots, literary works, TV and news footage, publicity photos, magazine covers and music). Then we contacted the copyright owner to negotiate the terms and conditions for permission to use each copyright work before the film could be released.

"There is no doubt that film is a collaborative industry involving an army of people and this complicates copyright matters.

"We had to negotiate the copyright licence terms which dealt with the purpose of the use, the duration of the permission, the jurisdiction and, finally, the all-important fee. The upside to this due diligence process was that I had a great excuse to contact many famous individuals, even the British Royal Family!

"This lengthy copyright clearance process took me about a year to complete. The film's been a great success and no copyright issues have arisen, either for us or for the other companies involved in the project.

#### Nottingham Creative IP says:

Alastair and the team had hard time carrying out content clearance because they had to do it retrospectively. They were lucky that he didn't encounter problems getting permission for things. However, as experienced producers, Alastair and the team appreciated that for *A Man's Story* to be commercially successful, a clear chain of title documentation proving the ownership of all the underlying IP rights in the film was needed to secure distribution deals in key markets. This may involve release to local cinemas, in DVD forms, licences to local TV stations or sales to foreign buyers at film festivals. So when it comes to securing the funds to produce a film, these IP rights, supported by clear chain of title documentation, are by far the most valuable assets Alastair and the team hold. Without a clear chain of title, the sale of the film property can become very difficult, if not impossible. Alastair and the team sought to acquire as many rights as possible to optimise profitability. Further distribution agreements usually contain terms to ensure the distributor has the legal right to change the film if necessary for the purpose of distribution (e.g. change the title, cuts designed to comply with film classification / censorship requirements, dubbing and sub-titling etc).

#### Fair dealing in copyright works

While authors and creators have the right to control the copying and re-use of their works, the law provides exceptions that may allow parts of certain types of work to be used without permission if it relates to 'non-economic' activity. This includes private study and non-commercial research, criticism or review, reporting current events, teaching and helping disabled people, caricature, quotation and pastiche, among others. What is fair depends on the amount used (how much is copied) and the way it is used (how widely it is published). It would generally not be considered 'fair dealing' to copy the whole work.

## Frequently asked questions

We've put together some commonly asked questions about IP for image, TV and film here...

### Do IP rights in images, TV and film apply to the Internet?

Yes. You have the right to control what is made available to the public, and the law refers specifically to communication via the Internet and the digital environment.

### How do I copyright my idea for a script I've written?

You can't copyright an idea, but if you've written a script it will attract copyright protection automatically because it is in a permanent form (it is your expression of the ideas in writing that are protected). In addition to copyright in the script, you may also have copyright in other elements of the eventual film such as character design, art design and images.

### My film is loosely based on someone else's story. I've credited this in the film but have not secured the adaptation rights from the author. Is this acceptable?

First, check if the copyright has expired. If not, find out who owns the story. If you don't acquire the adaptation rights, you may expose yourself to the risk of copyright infringement, which would have consequences for the release and commercial success of your film.

### I made a film while I was a student and used their equipment, does the college now own my film?

Not necessarily. Whether you are the director and producer will depend on the college's policy with respect to ownership of IP rights of student-created works, which will be part of the terms and condition of your enrolment.

### One of my characters in the film is watching a game show on TV, is this OK?

No, you must get clearance (a licence) to use the TV footage in your film because it is protected as someone else's copyright work. If the footage is merely incidental because it's shown in the background and the TV programme is not specifically identifiable then that may not infringe.

### A film character sings a few seconds of a famous song, do I need clearance?

This could still infringe the copyright in the song if it is a substantial part of the music i.e. the most famous line or memorable part of the song and copyright is still in force.

### How long does copyright last?

UK copyright in a film expires 70 years after the death of the last of the director, producer or author of the screenplay, author of the dialogue, or composer of the music made for the film. If there is no one in these categories, then copyright in the film expires 50 years after the film was made. Similarly, copyright in a broadcast lasts for 50 years from the date of making the broadcast.

### What is meant by the term public domain?

This refers to content in which copyright protection has expired.

### How can I enforce my rights?

If your copyright or moral rights have been infringed, the first thing to do is try to negotiate a settlement with the infringer. There are both civil and criminal offences related to dealing with illicit copies and certain other unauthorised uses of copies of images, broadcasts or films. You can apply to the Intellectual Property Enterprise Court. It's quick and inexpensive, the trial is usually relatively short and legal costs are capped at £50,000.

### What are the remedies for infringement of my IP rights?

Remedies for breach of copyright include damages (monetary compensation to put you in the position you would have been in had the infringement not occurred), or an account of the profits the infringer made from using your work, and an injunction (to stop the use of your work).



## Image and Media resources

Arnold, R. 'Copyright in Photographs: A Case for Reform' (2005) European Intellectual Property Review 303-305.

Association of Photographers  
[www.the-aop.org](http://www.the-aop.org)

BBC Filmmaking Guide Rights & Clearances Checklist at <http://www.bbc.co.uk/filmnetwork/filmmaking/guide/before-you-start/checklist>

British Film Institute (BFI)  
[www.bfi.org.uk](http://www.bfi.org.uk)

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Guild of Photographers  
[www.photoguild.co.uk](http://www.photoguild.co.uk)

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## IP FOR INTERACTIVE MEDIA

### Protecting the fusion of creativity and technology

Interactive media, where cutting-edge creativity meets the latest technology, is the fastest-growing creative content sector in the world. IP is at the heart of interactive media business involving software, websites, videogames, mobile technology and tablets. If you're a creative working in this field, you have specific information needs regarding the various IP laws that protect your work.

Interactive media means products and services on digital computer-based systems which respond to the user's actions by presenting creative content such as text, graphics, animation, video, audio, games, etc.

However, many interactive media developers are unaware of the legal and commercial implications of IP when they create and publish content. It is essential to understand the importance of copyright, trade marks, patents and confidential information law when negotiating the terms of contracts, as this determines ownership of creative content.

All those involved in the digital rights ecosystem e.g. the developers, publishers and distributors need to make sure that appropriate IP protection is in place so that they can share in the financial benefits from their work.

### Interactive media platforms

Most art forms and genres – narrative, visual art, music – come together to form an interactive media project. Some even regard it as the newest form of art. Content developers create the concept and collaborate with a variety of professionals to develop it into a marketable product. The project may be commissioned or developed in-house by an interactive media company.

The Web quickly became the largest hardware platform, and development for it became the most common form of interactive development in the form of DVD, iTV, mobile communication and tablets. iPhones and iPads are now the main growth platform for the sector, with three quarters of companies targeting Apple's platforms.

### IP and creative content

There are a number of people involved in conceptualising, and realising, an interactive media project. These include:

- writers, who write the story, narrative and any dialogue;
- programmers, who develop the technical structure;
- media production specialists, who concentrate on the design of the relevant text, audio, video, graphics and animation;
- graphic artists who produce web pages;
- composers and sound engineers, who provide the music; and
- programmers, who define the content for applications.

The sector is interdisciplinary as a diverse range of creative and technical skills is needed. Specialist skills might be also needed for market sectors like e-learning, publishing, games, advertising, music, law, marketing etc.

Each of these stages creates valuable IP, leading to a variety of commercially significant IP rights. A single interactive media project may contain a variety of IP rights simultaneously. These may include:

- copyright and derivative works;
- sound recordings;
- moral rights;
- performers' rights;
- image and personality rights;
- trade marks and branding;
- confidential information and knowhow; and
- patents to protect technological innovation.

## Who is involved in an interactive media project?

Lead management	Middle management	Developers
Company directors Business development managers Information architects Database analysts Finance and accounts Specialist interactive media lawyers Online market analysts	Creative director Technical director Account managers Project leaders	Media asset production specialists Content originators/creators Programmers Animators Subject experts

### The UK: a world player in the global videogame industry

The videogame is an incredibly popular and dynamic art form, arguably the most important development in entertainment since television. It's also a contemporary compendium of art and design, a piece of software, an engineering project, a musical score, an animated short movie, combining all popular forms of media and content distribution into one.

The UK's gaming industry is even bigger than previously thought. Research commissioned by NESTA found that 1,902 games companies were active in 2014, contributing an estimated £1.7 billion to the UK economy.

The number of firms entering the market every year is increasing at a rate of 22%, as consumer demand for interactive entertainment continues to grow. Interestingly, the average family spends more on video games than on cinema tickets and recorded music combined.

### Nottingham, GameCity and the National Videogame Arcade

Nottingham plays an integral role in this video game industry as host to the GameCity. This is an independent, annual videogame festival that began in 2006. Directed by Iain Simons of Nottingham Trent University, it has been described as the 'Sundance' of the video games world.

Capitalising on the success of GameCity, the £2.5m National Videogame Arcade (NVA) will open in Nottingham 2015. Built with the support of Nottingham Trent University and Nottingham City Council, among others, the NVA will be the world's first cultural centre dedicated to videogames and promoting it as an art form. The NVA will act as a multi-purpose research hub and learning centre, helping to promote careers in the creative industries, attract investment and be the permanent home for the National Video Game Archive, a collection of important historic game-related objects.



## Case study

### ***The Lord of the Rings***

#### Derivative copyright works and videogames

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J R R Tolkien (1892-1973), an English writer and university professor, wrote the epic fantasy works *The Hobbit*, *The Lord of the Rings* and *The Silmarillion*. These literary works are still protected by copyright.

To make a film adaptation of the *The Lord of the Rings*, director Peter Jackson had to obtain a licence from the Saul Zaentz Company which holds movie rights to Tolkien's work. As a derivative work, the film trilogy was protected as a new copyright work which could be licensed in its own right.

In 2001, interactive media giant Electronic Arts (EA) developed the first *Battle for Middle Earth* game on the basis of a licence from Peter Jackson films. Under this licence, EA could only produce game content (a derivative work that came from the Jackson films).

In 2005 while creating the sequel to *Battle for Middle Earth* and other related games, EA acquired a licence to produce a game based on Tolkien's published books (literary works). This opened up even more new territory for interactive entertainment development.

#### Nottingham Creative IP says:

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Copyright owners have the right to make an adaptation of their work or to allow others to adapt, modify or reproduce their work. The adaptation of a novel requires permission to adapt the book into a videogame. You need to consider how much of the original work is used (and remains recognisable) in the modified version. Once an adaptation is created, a new copyright exists in the adapted work. However, an adapted work does not have its own right of adaptation. In other words, you cannot make another adaptation from an adapted work.

Understanding IP law, knowing how to license rights in existing content and being able to confidently and lawfully use IP-protected works is an important part of interactive media content development.





## IP in videogames

The type of IP right applicable to videogames isn't always obvious – with so many people involved, authorship is complex to establish.

Whether these professionals own copyright or other IP rights will depend on their contribution to the work and the specific legal requirements of type of IP right. Below is a list of potential IP rights common to most modern video games:

- IP in Game Design (an ordered sequence of events within an overall framework)
- IP in Software / Code
- IP in Text
- IP in Audio / Sound / Music
- IP in Graphic Art and Displays
- IP in Film (series of images)
- IP in Image and Personality Rights of Characters
- IP in the Game Title, Subtitle and Characters
- IP in Video Capture Performers' Rights
- IP in Know How and Confidential Information
- IP in Patented Technology

However, the look and feel of the game is more elusive, as is the nature of the game play.

### How does copyright law help?

Copyright is the main form of IP protection for the creative content of the game. But it's important to remember, copyright doesn't protect the game concept, only the actual work you've created and fixed in electronic form.

The Copyright (Computer Software) Act 1985 confirmed copyright for computer programs (software) as literary works, and this is not altered by storage in electronic format. Further technological development such as the World Wide Web, the Internet and websites led to the Copyright Designs and Patents Act 1988 in force today. The legal definition of writing includes 'any form of notation or code... regardless of the method by which, or medium in or on which, it is recorded'.

The definition of electronic as 'actuated by electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy' is equally wide and applies to websites and multimedia works such CD-ROMs and DVDs.

Different types of copyright works such as the text or the film provide legal protection for varying periods of time.

Copyright gives digital content creators economic rights to control use of their work, for example:

- making copies;
- issuing copies to the public; and
- using online.

### These are valuable property rights.

Since the first mainstream game console by Nintendo in 1985, videogames have become a global industry worth an estimated £40 billion. The industry is dominated by multinationals such as Sony, Nintendo, Microsoft, Apple, and Samsung and publishers such as Activision, Electronic Arts (EA) and King (mobile).

However, new technologies have opened up the gaming industry to many new independent developers and there is huge potential for growth. As the owner of the economic rights in the interactive media, you will also be in a position to generate income from several revenue streams including the sale of DVDs and merchandising.

Videogames present a number of challenges in terms of copyright as they are composed of multiple copyright works. Modern videogames contain at least two main parts:

- audiovisual elements (including pictures, video recordings and sounds); and
- software, which technically manages the audiovisual elements and permits users to interact with the different elements of the game.

## Case study

### *Nova Productions v Mazooma Games (2007)*

Arcade game developer Nova argued that Mazooma had copied the 'look and feel' of its skill-based coin-operated arcade video game Pocket Money, in which players could win cash prizes. This copyright infringement claim was unsuccessful. Mr Justice Kitchin decided that although Mazooma copied certain elements of Nova's copyright, it had not copied 'a substantial part' of Nova's game. *Google Nova Productions Ltd v Mazooma Games Ltd [2007] Court of Appeal, EWCA Civ 219 at [www.bailii.org/ew/cases/EWHC/Ch/2006/24.html](http://www.bailii.org/ew/cases/EWHC/Ch/2006/24.html)*

#### Nottingham Creative IP says:

If you take an existing copyright work and copy all or a substantial part of it and copying is factually established, this amounts to copyright infringement and you will be liable to account for any profits you have made or pay damages to the copyright owner.

To evaluate Nova's claim, Mr Justice Kitchin carefully analysed features of the game that Mazooma were alleged to have copied. He found that although Mazooma had copied certain features these were 'at a very high level of generality or abstraction' and had 'no meaningful connection with the artistic nature' of the Nova original. He determined that no exact code or architecture had been substantially copied and only 'generalised ideas' had been used. He decided that many of the comparable features were 'obvious', 'commonplace' or 'functional' but not substantial. Finally, he concluded that Mazooma's Trick Shot arcade game 'was the subject of considerable independent creative effort'.

This case demonstrates that software which only uses the generalised ideas of an earlier program or game is not enough to infringe copyright because, 'Ideas and principles which underlie any element of a computer program are not protected by copyright'.

**Interactive media projects usually involve the following types of IP protection:**

**Copyright:** story, characters, art, code, music, packaging, website

**Trade mark:** company name, company logo, game title, game subtitle, characters

**Patent:** hardware technical solutions, inventive game or game elements, technical innovations such as software, network or database design

**Confidential information:** games proposals, business information, in-house development tools, pricing information, distribution information, customer information, commercial terms

**Source:** Adapted from Greenspan, D. Boyd, S.G. and Purewal, J. "Videogames and IP: A Global Perspective" (April 2014) WIPO

## Case study

### Patent infringement: *Philips Electronics v Nintendo (2014)*

In a landmark UK case, Japanese company Nintendo, the world's largest videogame maker, was found to have infringed Philips' motion-gesture tracking technology by using it without permission in its popular Wii game console. Judge Colin Birss said the Nintendo console infringed two of Philips' patents. The first involved technology that controlled a virtual image, using software which stored a gamer's body movement sequences. In particular, the Judge said that Nintendo's *Island Cycling* game indirectly infringed Philips' patent as it used technology to convert a gamer's irregular variable motion into steady motion. The second patent related to a pointing device which used hand-waving gestures to direct a fixed unit, such as a TV (as used in the *Wii Tennis* interactive video game). The hand-held pointing device combined two main features, a physical motion sensor and a camera. Judge Birss determined that Nintendo's reasons for combining the two were not credible. Therefore Nintendo had infringed Philips' second patent as well. The amount of damages (financial compensation) to Philips will be confirmed by the court soon, but is thought to be a very high figure given the commercial international success of the Wii. Philips is also bringing legal actions against Nintendo in the USA, Germany and France. Nintendo says it will be appealing the case because it believes that Philips' patents for recognising hand gestures and motion are invalid.

The case is *Koninklijke Philips Electronics NV v Nintendo of Europe GmbH (2014) HC12E04759*, UK IP Enterprise Court, Chancery Division.

#### Nottingham Creative IP says:

Nintendo has a long history of developing innovative interactive media products while respecting the IP rights of others. However, on this occasion the company does not appear to have adequately considered the risk of patent infringement and the need for obtaining a licence from the patent owner. Philips' spokesman Bjorn Teuwsen reportedly told news agency Reuters that they had tried to persuade Nintendo to agree to license the use of their technology on fair terms since 2011 without success. Philips therefore decided to take legal action against Nintendo in the UK in 2012. This was a test case for Philips who, clearly buoyed by their success, will seek further damages from Nintendo in other key international markets. This case demonstrates the commercial and reputational risks involved in not carefully clearing all IP rights that may be involved in an interactive media game such as the enormously successful Wii.



## Patent law

Patents protect new inventions and products, e.g. computer hardware, parts, sensors, tools and a range of technical innovations. A patent protects how things work, what they do, how they do it, what they are made of and how they are made. The patent owner has the right to stop others from making, using, importing or selling the invention without permission. Patent protection may last for up to 20 years and then the invention will pass into the public domain and be free for anyone to use.

## Confidentiality

It is vital to keep your invention secret until it's registered. A non-disclosure agreement lets you discuss your invention with someone and stops them from telling anyone else about it or using it for themselves. However, a non-disclosure agreement can't protect the invention if it's already in the public domain. If you have made your invention public, you could lose the possibility of being granted a patent.

## Novelty

Don't try to patent existing technology. Your invention must never have been made public in any way, anywhere in the world, before the date your patent application is filed. Before wasting time and money, search the UKIPO's patent database called Esp@cenet, sales brochures and the Internet. This will help you decide if someone else has already made your invention.

Patents are the most difficult form of IP to obtain. You should seek legal advice before applying for a patent as it can be a complex and costly process. A patent specification is a legal document and requires specialist skills to draft properly. Your chances of obtaining a useful patent are much greater if you use an IP professional. See the Chartered Institute of Patent Attorneys, [www.cipa.org.uk](http://www.cipa.org.uk)

It can take several years to obtain a grant and the UKIPO will publish your application after 18 months of filing. In this time, others may find ways to work around your patent or launch a similar product. However, certain patents are very valuable and can provide the owner with power monopoly rights for up to 20 years.

## After grant

Once your patent is granted, it's your responsibility to enforce it and ensure it is properly protected by paying annual renewal fees. You will need to take legal action to enforce your rights and find the funds to finance the action – this can be expensive, so it's a good idea to allocate part of your budget for this purpose.

## Videogames and image rights

The use of a person's name, nickname, photo, image, likeness, silhouette or voice in a videogame is potentially problematic.

Game developers in the US, where image rights are stronger, have been sued for using the likenesses of celebrities in video games. For example, one game publisher allegedly 'used a look-a-like model to evoke the persona and image' of a famous actress by emulating a photograph of her. The developer responded by arguing that the likeness used had an element of parody and created a wholly new and original copyright work. In this type of case, a court will have to decide if the use is fair.

In England and Wales, even though legal protection for image and personality rights does not exist per se, there are still a variety of laws that could be relevant. For example, 'passing off' could apply if there was an impression of false endorsement by including the likeness of a person in a way that would lead to people to think s/he is endorsing the product because they are in the videogame. Most celebrities have registered trade marks for their names, so these could be infringed if used without permission. Defamation could also apply if false words are communicated as part of the game's dialogue that would reduce the subject person in the eyes of right-thinking people.

So it's best to tread carefully when using someone's likeness or image in a videogame without their permission, because a number of statutory and common law rights may still offer them legal protection.



## Case study

### Lauren Knifton and [theladyinwaiting.org](http://theladyinwaiting.org)

Lauren started her blog in 2011 as a postgraduate student to help her develop her writing skills and find her own voice. Now back in her hometown of Nottingham, Lauren is pleased with how her blog has developed into a vibrant website which attracts visitors from all over the world. Lauren's 135,000 plus readers mainly live in the UK, the US and India and are interested in afternoon tea recipes, British TV and movies, the monarchy and quintessentially British topics. Her breakthrough year was 2012 with the Queen's Diamond Jubilee. The first step Lauren had to get to grips with was selecting an online publishing platform. Carefully reading all the terms and conditions of various blog hosting sites was tedious and time consuming but crucial. Lauren says:

"Don't put yourself in a vulnerable position by signing up to a platform that asks you to waive your rights or rescind ownership of your own work. You don't know where your blog may lead to in a few years' time – it could easily be paying for the roof over your head through advertising, spin-off books, or tours... but only if you still own your own work and you proactively manage your rights."

Over the years, the blog has featured in websites and social media accounts including the BBC, the RAF, The Lady and the British Monarchy. Lauren is pleased her blog has always been cited correctly, noting:

"Within the blogging community, bloggers adopt a certain etiquette of always attributing their sources and the works of other writers, so I have never encountered any problems with other bloggers." She feels being a UK blogger offers substantial legal protection for her IP but she is not sure about other countries. Lauren is all too aware that accessing images and content directly through online search engines is extremely easy nowadays. She says that some search engines allow:

"People to see your images and pictures without any need to visit your website, so to avoid that happening I make sure I give my images a random, numeric file name so that they can't be regurgitated through the search engines." She also ensures all the domain names she owns are ex-directory so that her personal details are kept out of the public arena.

"It's amazing what personal information you can find online and for a small annual fee I can keep my details safe, which gives me peace of mind to effectively manage my relationship with my readers. Now I know that they can't turn up on my doorstep, I find that my writing is more liberated and I can be more open with my audience."

Lauren's blog is exactly what spurred on her current employer to contact her and offer her a job. She has already developed a new visual image for the Nottingham-based company, designed its website and made social media an integral part of the business.



> Picture by Lauren Knifton

#### Nottingham Creative IP says:

Everyone owns IP, what does Lauren now own in connection with her blog? She's designed the online look and feel of her blog, given it a name, written the posts and uploaded images. Every blog is packed with IP protected creative content including the logo, the text, the layout, and imagery. Each of these components attracts IP rights.

Copyright law is the most important form of legal protection for creative content. When Lauren writes a blog post, she instantly creates a copyright work. Lauren's photographs and any audio material on her blog will be owned by the person who created it. Lauren is IP aware and knows that if she didn't create the content herself, she needs to get permission from the owner to use it and give attribution of authorship. Although there is no copyright register in the UK, Lauren might consider filing online copyright registrations with the US Copyright Office as her blog is popular there ([www.copyright.gov](http://www.copyright.gov)). In India she can register copyright with the Indian Copyright office, but this is not necessary to enforce her rights.

The name of her blog, 'The Lady in Waiting' may be registrable as a trade mark in the UK, the US and India to distinguish her blog from competitors. A trade mark can often be seen as a 'seal of approval' helping to promote your blog and establish your reputation and a loyal readership. It also would give Lauren comfort knowing that no one else could use or trade on her blog name without her permission. Owning a strong brand may lead Lauren to consider licensing merchandise that she can sell online via her blog and enter the world of e-commerce.

Lauren should check out the free to use online IP Health Check tool at <https://www.ipo.gov.uk/ip4b/ip4b-uk/iphealthcheck.htm> to give her a tailored confidential report to audit the IP she owns and learn how best to use and protect it in the UK and abroad.

## Frequently asked questions

We've put together some commonly asked questions about IP for interactive media here...

### I'm a game developer, why should I bother with IP protection?

You can ask good questions when dealing with IP advisors, saving everyone time and money. A game developer familiar with IP may recognise the warning signs of IP infringement early, before wasting money on creating an infringing character, storyline, or feature. Much of IP protection requires planning and structure within the development company, and a clear understanding of IP helps to do this to best effect. Most importantly, the contracts and licences surrounding games deal with IP, from the work-for-hire contracts for employees to publishing deals, royalty structures, and movie rights. Even though as a developer you're working with lawyers, you make the final decisions and should know that the ultimate responsibility for protecting and selling the game rests on you.

### What should I do before pitching my idea for a videogame to an interactive media company and investors?

Develop a relationship with an experienced IP advisor/ solicitor so you can protect your rights in advance. It's a good idea to ask the other parties to sign a non-disclosure agreement, or get your solicitor to review any agreement they ask you to sign before disclosing your idea.

### Do IP rights apply to the Internet?

Yes. You have the right to control what is made available to the public, and the law refers specifically to communication via the Internet.

### Is there a trade association for the interactive media industry in the UK?

Yes. The Association for UK Interactive Entertainment (UKIE) was founded in 2010 and is the only trade body for the UK's games and wider interactive entertainment industry. It is a not-for-profit organisation, and as a member you can get practical support, advice, guidance, introductions and discounts on services and events such as trade shows.

### Someone uploaded a section of my company's videogame to YouTube. What can I do?

Sometimes people will post videos on YouTube without your permission. If you have contacted the person who posted them and cannot get him or her to remove the videos, contact YouTube directly to request that the videos be taken down. Click on the Flag icon immediately below the unauthorised video that says 'Report' icon below the video. Click on 'This infringes my rights' and follow the process and then click 'Submit'. Give your details and YouTube will investigate and respond.

### What types of contracts do interactive media companies regularly have to deal with?

Every interactive media business is unique but there are some common legal issues that most will need to consider, including getting the contracts in place for the assorted activities that you'll be undertaking. UKIE, through the Developer Sub Group, has worked with law firm and UKIE member Harbottle & Lewis to produce a series of standard templates created specifically for interactive media businesses, as simple starting points when drafting your own contracts. The standard contract template available at [www.ukie.org.uk](http://www.ukie.org.uk) include:

- development agreement;
- web terms of use agreement;
- website privacy policy;
- non-disclosure agreement (one way);
- non-disclosure agreement (mutual);
- employment agreement; and
- consultancy agreement.

### What is an IP licence?

This is a formal agreement to use someone else's copyright, trade mark, patent or knowhow. You and the owner must agree the terms of the licence, e.g. the cost or how long it will last. If you license registered IP rights such as a trade mark or a patent, it is a good idea to complete the form to record a licensee and return it to the UKIPO who will note it on the register. Send an application to remove or amend the record of a licence when the agreement ends or if you need to change it. The owner must sign any form you send, or you must send proof of the agreement with your application.

Each application costs £50.

### Are the IP rights in my videogame protected overseas?

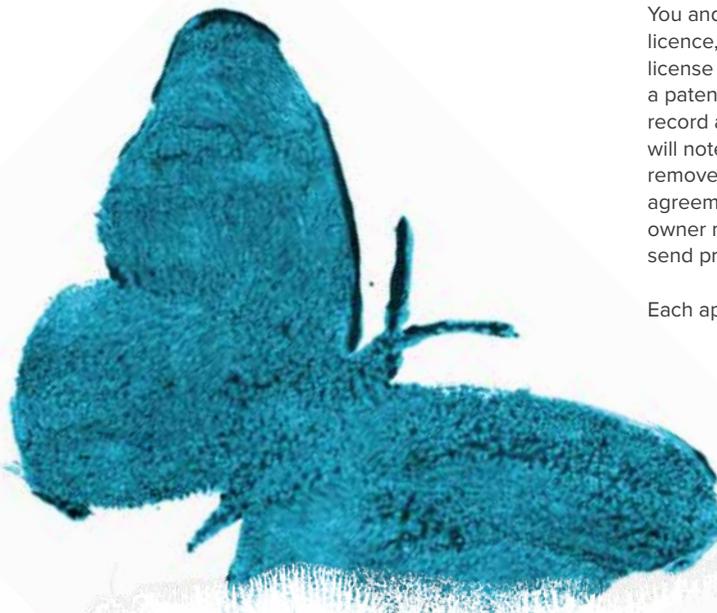
No, your UK rights don't cover any unauthorised use of the creative content, branding or patented technology in your videogame in another country. You'll need to research the specific IP rights that apply in other countries.

### What is the difference between piracy and counterfeits and why is it so bad?

A counterfeit videogame is an unauthorised imitation of a branded game including packaging which infringes the IP rights of the owner under the law of the country of importation.

Piracy involves making or distributing an unauthorised exact copy – not a simple imitation – of an item covered by IP rights without the consent of the IP right holder under the law of the country of importation.

The international trade in counterfeit and pirated goods is growing in magnitude. Both are forms of IP crime that are detrimental to innovation, directly affecting job creation and economic growth. Industries which protect their ideas through IP rights may be less inclined to develop new ideas and products. Risks are particularly high for the gaming industry as the development costs are high compared to the production costs of the finalised product (e.g. the DVD which is easily reproduced or shared).



### Can I include technological protection measures (TPMs) in my videogame to prevent it being copied and distributed?

Unauthorised use and distribution of creative content is negatively impacting on revenues in the game industry, leading to developers considering including TPMs to prevent piracy. TPMs are a form of digital rights management. However, these have been criticised because TPMs inconvenience honest users or may involve secretly installed software. Gamers have become increasingly frustrated by invasive TPMs and digital restriction management (DRM) measures on latest releases. Balancing effective copyright protection with user rights is still an ongoing problem with interactive media publication, so it is best to seek professional legal advice to make sure what you intend to do is lawful.

### What does the Digital Economy Act (UK) 2010 do?

The Act addresses media policy issues related to digital media, including copyright infringement and the liability of Internet Service Providers and end users, Internet domain names and video games. The Act adopted the Pan European Game Information (PEGI) standard for videogame ratings to restrict violent games.

### As a form of digital entertainment, are live screenings good for the theatre?

Yes, they have been a commercial success and enhanced public access to theatre productions. For example, The National Theatre generated record-breaking income of £100 million in 2013/14. In 2012/13 ticket sales from NT Live screenings to cinemas at home and abroad increased 179% from £2.4 million to £6.7 million.

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Nottingham's GameCity Festival [www.gamecity.org](http://www.gamecity.org)

National Videogame Arcade

UK Interactive Entertainment (UKIE) [www.ukie.org.uk](http://www.ukie.org.uk)



## IP FOR ART AND ARCHITECTURE

### Securing your rights in the visual arts industry

The UK has a rich heritage and culture in the visual arts such as drawing, painting, printmaking, sculpture and architecture – essentially, art that is developed primarily for aesthetics.

Nottingham's School of Art was the first government art school to be established outside of London in the centre of Nottingham due to the city's dynamic art scene which was quick to embrace new technologies. The School of Art & Design, part of Nottingham Trent University, is now celebrating 170 years nurturing contemporary art and design education to produce internationally regarded, critically engaged artistic work. A range of prestigious degree shows embracing a broad range of artistic practice is celebrated annually, both on the NTU City site and at events in London.

### How does IP law help artists?

As an artist, you will rely heavily on IP, not only to protect your livelihood as a business, but also to safeguard your artistic integrity. Artists create the artwork and possess the physical artwork itself, together with the exclusive rights to reproduce and distribute it. Why is it that so many artists give away their art for little recompense and resist acting in their own best interests when their art is copied?

IP helps to solve the problem of the general devaluation of artistic works and this begins with the artist.

A clear understanding of your IP rights helps you protect the creative content in your aesthetic creations, big or small, regardless of medium or artistic merit. Artistic works can be protected and enforced through the courts in number of ways:

- copyright;
- design law;
- moral rights; and
- trade marks (brands)

### When do IP rights in artwork arise?

Effectively, when an artist creates something new or original. IP rights are property rights that are intended to reward and encourage artists, discouraging misappropriation. Artists are vulnerable to the risk of being copied, which can undermine their commercial and artistic reputation, as well as devalue their artwork.

### How does IP law protect artistic works?

As an artist or someone who creates arts and craft works, two types of IP rights are important: copyright and unregistered design rights. Both are set out in the Copyright Designs and Patents Act 1988.

### Copyright and artistic works

Copyright is the legal protection of creative expression in any form of media to prevent unlawful use.

Copyright protects the form or expression of creativity by the artists, rather than the idea underlying it. This legal protection doesn't apply to ideas, information, styles, techniques or names.

In the UK, copyright protection is free and automatic, as long as your work is original (i.e. not copied) – there is no official copyright registration process.

In a dispute, you would need to prove that the artistic work:

- is original and not a copy of someone else's work; and
- required your creative input (skill, labour and judgement)

For example, the US Supreme Court has ruled that a photograph of a painting fails the originality test and does not create a new copyright in that photograph. This could prove persuasive if a similar legal issue comes before a UK court.

In the UK the threshold for originality is quite low. It is higher in many EU countries.



Copyright protects several types of artistic work, including:

- graphic work, photographs, sculptures or collages;
- architecture – a building or model of a building; and
- artistic craftsmanship.

A 'graphic work' means any visual work fixed on a surface, for example, a painting, map etching, engraving or lithograph – a sand sculpture that is washed away is not fixed. The work is protected by copyright regardless of artistic or aesthetic merit.

However, there are a few exceptions to this principle. Sculptures and handmade works of artistic craftsmanship (e.g. jewellery, stained-glass windows, hand-painted plates) need a degree of artistic merit to be protected by copyright. Mass-produced, identical items will not be protected as artistic works by copyright, and in this instance design right is the more appropriate form of legal protection.

Copyright will also protect 2-D design drawings of an artistic work. If someone makes a 3-D object based on your design drawing, you may have a claim for copyright infringement (e.g. if they make a ring from your drawing of the ring design).

Copyright protection gives the owner of the artistic work the exclusive legal right to:

- reproduce;
- issue copies to the public;
- rent or lend the work to the public; and
- authorise others to carry out any of these, e.g. grant licences.

This allows artists to earn a living from their artwork by selling or licensing its use. Artistic copyright, for example, helps to generate income from several revenue streams including:

- exhibition;
- reproduction; and
- merchandising

In addition to copyright protection, you should consider how design law protects the 3-D aspects of your work, especially if it is mass produced.

### Design law protection

A 3-D artistic work may also meet the criteria for protection as an unregistered or registered design for the whole or part of the work. This means the artist or designer has the exclusive right to make the design, and can sue for infringement even if it not directly copied.

The unregistered design right is free and automatic, but provides less protection than paying to register a design. It will protect the artist/designer if someone makes a similar work that they can prove was copied.

See Chapter 1 IP for Design for more detailed information.

### How long does the protection last?

Artwork is protected by copyright for the entire life of the artist plus 70 years after his or her death, when ownership passes to their heirs or estate. This includes drawings, paintings, prints, photos, sculptures and architectural works.

If the creator of an artistic work died more than 70 years ago, copyright will have expired and anyone will be permitted to make a copy.

The advantage of copyright over unregistered design right protection is the length of the period of protection. Copyright lasts for the life of the artist plus 70 years, while unregistered design rights last for a maximum of 15 years in the UK and 3 years in the EU. Registered design protection last for up to 25 years in the UK.

Once you've established you have copyright protection, it's a good idea to display a prominent notice on your work (such as © 2015 Artist + contact details).

Make sure you keep good records of your artworks and examples of how they have evolved into the finished work.





### The original artist and ownership

The artist is the person who creates the work and is the original owner. The general rule is that the artist/designer will own the copyright and design rights in any work they create. However, there are exceptions to the rule.

### Employed artists

If the artwork is created by an employee in the course of employment, then the employer is the owner.

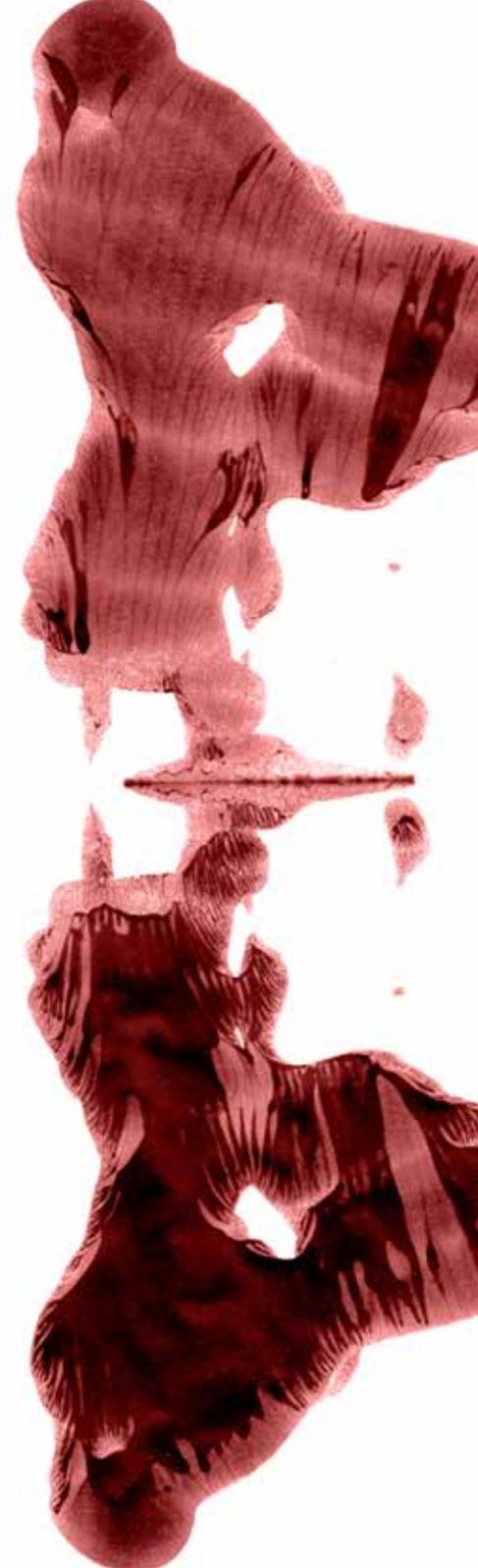
### Collaborations

If you have collaborated with another artist in creating the artwork, it may be an artwork of joint authorship with both of you sharing the IP rights (as long as your contributions to the piece are indistinct from each other). It's best to agree this in advance, preferably in writing. As a contributor to an artwork of joint authorship, you will need the other artist's permission to use and exploit the artwork.

### Freelancers

A freelancer will own the copyright in the artistic work (i.e. the exclusive right to reproduce), not the person paying for the artwork. The only way to change ownership of the copyright in the artwork is to make a written signed agreement for you as the artist to sell (assign) the copyright to the client. However, the commissioner will have a limited implied permission (a licence) to use the artwork for the purpose for which it was commissioned, without infringing your copyright.

The IP rights in an artwork can be bought and sold, so you are free to enter into contracts to change ownership. However, this is not the case with an artist's statutory moral rights, which protect your reputation, and these cannot be bought or sold.



## Case study

### Emma Ball

Emma Ball is the founder of Emma Ball Ltd ([www.emmaball.co.uk](http://www.emmaball.co.uk)), a creative arts business she set up in 1999 after completing her degree in Graphic Design at Nottingham Trent University. The company now employs eight staff and three freelance illustrators, and supplies shops worldwide with greetings cards and gifts. Emma's artwork has a unique style and she is well known for capturing the British seaside using watercolours.

On one occasion, while visiting a shop that she regularly supplied, she saw a copy of her artwork for sale. She bought the item as evidence and spoke with the manager to get the relevant details of the supplier. She briefed a solicitor who contacted the infringing firm and negotiated a settlement without the need to go to court. Emma is very clear about the importance of IP:

"Copyright is hugely important to any visual arts company," she says. "Having someone steal your artwork for their financial gain can be damaging in terms of costs, loss of business and stress. I've learned to pick and choose my IP rights claims, as some are worth following through not only for the financial side of things, but on principle.

"Sometimes it's well worth making a point. I followed through with a breach of copyright claim against another company and, although I didn't recover money (in fact I suffered a small loss in the short term), I more than reaped the benefits by gaining publicity through the trade magazines telling our copyright infringement story!

"This publicity has helped the business by making that point that Emma Ball Ltd will take infringements of our artwork further if necessary. This stops some firms copying us. "Looking back now, I should have also followed through demanding all my costs of enforcing my IP rights be paid.

"What would my top tip be? Don't let the risk of being copied put you off showing your work."

Emma is a member of the Greeting Card Association which is a helpful source of preliminary advice in relation to copyright matters. You can find out more about Emma via her Facebook page [www.facebook.com/emmaballtd](http://www.facebook.com/emmaballtd) and follow her on Twitter via @emmaballtd

### Nottingham Creative IP says:

Emma relies on her automatic free copyright (that doesn't need to be registered) to protect her watercolour artwork. There is little doubt that when it becomes known to potential infringers that you do indeed enforce your copyright they think twice about ripping you off. Emma didn't let being copied mist her vision. She was proactive when she spotted the look-a-like and took prompt action that stopped more unlawful copies being sold.

When artists don't enforce their rights and simply move on to another range or commission, their apathy allows the unlawful copying situation to perpetuate, confirming to the infringers that most artists won't do anything to stop them.

In future, Emma could negotiate favourable terms for a financial settlement to compensate for unauthorised use of her artwork (and possibly the lack of attribution of her as the artist if her moral rights have also been infringed). In addition, she may be able to negotiate a licence fee to authorise any future use of her artwork to generate additional income from her IP.



### What can I do if my art is copied?

Copyright infringement occurs when all or a substantial part of an artistic work has been copied without permission.

However, don't automatically assume that copyright in your artistic work has been infringed as there are many limited exceptions to copyright protection.

### Incidental inclusion

Artistic works can be 'incidentally' featured in another artwork, sound recording, film or broadcast, without seeking the permission of the copyright owner. 'Incidental use' usually means that the work is in the background of another image, or permanently sited in a public place, and not the main feature of the artwork, recording or broadcast. This exemption is not automatic, and it's important that the exact use of the artwork is carefully considered. You may need to seek advice if you are unsure if your work has been incidentally featured or your copyright infringed.

### Fair dealing in copyright works

As an artist or creator, you have the right to control the copying and re-use of your work. However, there are legal exceptions that may allow parts of certain types of work to be used without your permission if it relates to 'non-economic' activity. This includes private study and non-commercial research, criticism or review, reporting current events, teaching and helping disabled people, caricature, quotation and pastiche, among others. What is fair depends on the amount used (how much is copied) and the way it is used (how widely it is published). For example, it would generally not be considered 'fair dealing' to copy the whole work.

### Ideas

It is important to remember that there is no copyright in an idea, only in the way you have expressed the idea in a fixed form. This means copyright in your artistic work is not infringed if someone uses the underlying ideas, theme or style in a new artistic work.

### Using inconsequential or unsubstantial parts

Inconsequential parts of copyrighted work may be used without the owner's permission.

However, 'substantial part' is defined in terms of quantity. In other words, it is not about how much of the work is used, if it covers the significant parts of a copyrighted work. Even small parts of a work could be deemed 'substantial'. The quality and importance of what is being appropriated into the new artwork is more important than the quantity. There is also no legally defined limit to what is 'substantial'.

### Sculpture

In the UK, sculpture and buildings which are permanently sited outdoors can be reproduced in 2-D, filmed, broadcast or transmitted without the copyright owner's consent. This means that 2-D images of a sculpture or a building can be used commercially without consent.

### What is the legal test for copyright infringement?

In the case of artistic works, copying arises:

- when there is a causal link between the content of the claimant's work and the defendant's work (this can be indirect); and
- the unlawful taking relates to a substantial part of the work (this is assessed qualitatively not quantitatively).

### Independent creation that results in the same features being present is not copying.

The more abstract and general the things copied, the less likely they are to amount to a substantial part of the artist's skill, labour and creative judgement.



### Direct and indirect copyright infringement

The copyright in an artistic work may be directly or indirectly infringed.

Direct infringement is:

- copying the work in any material form (including digital);
- issuing copies to the public;
- renting or lending the work;
- showing the work in public; and
- making an adaptation of the work (changing form e.g. converting an illustration in a book into a mural).

Indirect infringement is commercially dealing in infringing copyrights.

### How do I get the owner's permission to use their copyright work?

The best way is to write to the copyright owners explaining you want to use the copyright-protected material in your own new work. You should explain:

- what the new artwork will be;
- the appropriateness of the new artwork;
- what you intend to do with the new artwork; and
- whether this will generate income.

You can request a licence to make the new work incorporating the copyright material. If the use will be non-profit making, the owner may grant the licence for free. A licence will set out how the new artwork can be shown, where and for how long.

### Artists' moral rights

While copyright protects an artist's economic rights, the moral rights protects his or her reputation. This means protection of the artwork as a reflection of the artist and their career.

In the UK the key types of protection are:

- attribution – the right of an artist to have 'due acknowledgement' with his or her name cited or attached to artwork whenever it is displayed or reproduced;
- integrity – protection from altering the artwork in some way which might be regarded as derogatory, potentially undermining the original artwork and the artist's reputation; and
- the artist's resale right (the right to receive a small percentage of the sale price each time the photograph is sold).

All artistic works as defined by the copyright law are protected against moral rights infringement and it's the creator, not the copyright owner, who has the moral rights. The attribution right (being credited as the artist) is especially important in terms of reputation and generating income.

Moral rights are personal to the artist, and cannot be assigned (sold) although they have to be formally asserted to take effect. In other words, you need to publicly claim the moral rights in your artwork or you can't rely on them. This is simple – stating 'John Smith asserts his moral rights in this painting', together with your copyright information or digital watermark – will suffice.

However, if you don't assert your moral rights the artwork may become orphaned (be the work of an unknown artist). You won't be able to access secondary income from reprography, and will also lose your resale right and possibly any future commissions.

You can also be asked to waive your moral rights (but you don't have to agree to this).

For more information about the Artists' Resale Right see Chapter 3 IP for Image and Media.

## Artists, branding and trade marks

As an artist, it is important to create a striking visual identity and this may involve a logo, signature or your own name or nickname. Your brand should reflect the ethos and values of your artwork.

A trade mark can be a word, letter, name, signature, numeric device, logo, colour, symbol, picture, aspect of packaging or shape, or sound. It can consist of words or images alone, or any combination of the above signs.

If you have come up with an original name for your creative business and/or range of artistic works, you may be able to register it as a trade mark, which will make it easier for you to stop others using it. A trade mark must be distinctive and non-descriptive, e.g. you can't register 'Paintings' for a painting (otherwise no one else could use the word 'painting'!) but you may be able to register a brand like 'Messy Art' or 'Artress' alone or as logo with a signature colour. All aspects of applying for a registered trade mark can be found on the UKIPO website [www.ipo.gov.uk](http://www.ipo.gov.uk)

As a creative artist or small business you may not yet have the cash flow to spend on registering trade marks.

However, it is important that any brand or range names you wish to use don't infringe existing registered marks, so you should carry out an online search and with the UKIPO trade mark database and seek advice as to what you can and can't use in your branding. If your search is clear, then you can include the ™ symbol after your unregistered mark. If you apply to register your mark and this is granted, then you can use the ® symbol after the mark.

If you want to have a website for your artwork, you will have to register the domain name separately, as a trade mark does not automatically entitle you to the domain name.

As an artist you may be approached to license your artwork for other uses. If you haven't already done so, immediately register your trade mark to cover the goods and services envisaged. This will protect your right to use the mark and license others to use it as well. You should also consider whether to extend the trade mark registration to other countries which will be your key markets to protect your brand outside the UK.

The key message is think about how you will protect your business identity.





## Case study

### Street artist Stik

Graffiti is art displayed on the streets or produced illegally, but is nevertheless creative and potentially commercially valuable. Street artist Stik, based in London, reached a settlement with an advertising company he discovered was using his work 'Stick Thief' in a TV commercial without his permission. Stik stated that he suddenly saw his image all over the advert and that he hadn't given his permission or received any payment from the company for using it. He had the financial resources to get legal support and his representative wrote a letter to the company which resulted in a confidential financial settlement.

#### Nottingham Creative IP says:

Stik created his artistic work by painting on the door of his own art studio. Although this was a public place, it was his own premises and he could paint his door as he wished. No one else has the right to reproduce Stik's artwork without his permission or to exploit it commercially without acknowledging him as the artist.

Although street artists use their outdoor works as a public gallery, if the urban art is created as a result of trespass, vandalism etc without the property owner's permission, copyright laws currently do not protect the graffiti artist's work.

The way forward is for street artist to make prints or canvases of their work to display or sell – just be sure to sign and date them.

#### IP for Building Architects

Copyright can be an important mechanism to protect architectural works and building plans. However, copyright does not apply to pictures taken of a building if the architectural work is regularly visible from a public place.

## Case study

### Zaha Hadid Architects

Dame Zaha Mohammad Hadid, Dame Commander of the Order of the British Empire (DBE) for services to architecture, is an Iraqi-British architect. She received the Pritzker Architecture Prize in 2004 and the Stirling Prize in 2010 and 2011. She is known as 'The Queen of the Curve' and her architectural design firm employs more than 350 people, and is headquartered in London ([www.zaha-hadid.com](http://www.zaha-hadid.com)).

One of Zaha's buildings is allegedly being copied in the People's Republic of China (PRC) and the company is reportedly taking legal action against a Chinese construction firm, Chongqing Meiquan. Zaha's building project is located in the Wangjing Soho complex in Beijing and has three distinctive pebble-shaped curved towers. The alleged copycat building is being reproduced in Chongqing. Hadid's Soho complex project director believes someone got a hold of certain digital files containing confidential architectural plans which ended up with the 'pirate architects'. Zaha's Practice Director, Nigel Calvert told *The Guardian*, "We will be demanding that the copycats immediately cease construction, change the exterior of the building, offer a public apology and provide compensation." Zaha told the newspaper, "It is fine to take from the same well – but not from the same bucket."

Meanwhile, Chongqing has defended their project publicly stating that it was not inspired by Hadid's curves, rather by cobblestones on the bank of the Yangtze River. In response to the copyright infringement claim, Chongqing launched the advertising slogan: "Never meant to copy, only want to surpass".

Source: Wainwright, Oliver 'Seeing double: What China's copycat culture means for architecture' (7 Jan 2013), *The Guardian*

#### Nottingham Creative IP says:

Copyright counts even in the PRC which is a signatory to both the Berne Convention for the Protection of Literary and Artistic Works and the Agreement on Trade Related Aspects of Intellectual Property Rights. So, as in the UK, an architectural work is protected if it's original and not copied. A foreign enterprise, such as Zaha Hadid Architects, which first publishes architectural works in the PRC will have protection under PRC Copyright Law. For the matter to be decided, a comparison between the finished buildings will need to be made to determine if a substantial amount of Zaha's work has been used.

The PRC also has a moral rights legal regime. The architects could claim authorship and object to any modification, distortion or mutilation to the replica architectural work.

If Zaha's claim for breach of copyright in their architectural work is successful, the likely outcome will be compensation awarded on the basis of what the firm should have been paid to use of their plans, as well as for breach of the moral rights of attribution and/or integrity.

This is a high-profile copyright infringement case that will showcase the Beijing IP Court's contemporary approach to copyright and moral rights enforcement to the global community. The case is ripe for settlement.



## Frequently asked questions

We've put together some commonly asked questions about IP for Artists here...

### I have an idea for an artistic work but I haven't started working on it yet, is it protected by copyright?

No. You can't copyright an idea for an artistic work, but once it is in a permanent or fixed form it will attract copyright protection automatically (it is your expression of the ideas in the artistic work that are protected).

### I created my artistic work as a student and used their equipment, does the college now own it?

Not necessarily. This will depend on the college's policy with respect to ownership of IP rights of student-created works, which will be part of the terms and condition of your enrolment.

### How do I check if someone has already created a similar piece of art?

An Internet search is the best way to start, as there's no central global database of copyright-protected artwork.

### Is my artistic work protect by both copyright and design right?

Occasionally the rights do overlap. An artistic work could be protected by UK design right for its shape and copyright for its surface patterns or decoration if they can exist independently from their application to the 3-D shape. A good example of this is a work of artistic craftsmanship such as a piece of jewellery (protected by design right for its shape) and the drawing of a mermaid applied to it (copyright will protect the surface decoration which could exist without being applied to the bracelet). The answer to this question is not always straightforward as it will depend very much on the nature of your artistic work.

### What can I do to protect my work from being copied when exhibiting?

It is important to display your work at exhibitions and in galleries to give your work exposure and generate commissions. One tip is to commission a professional photographer to take photos of your art. Your professional portfolio is your most precious possession and important for publicity. Make sure you have a written agreement with the photographer to retain the copyright in the photos so you can use them for promotional purposes and online. At a public exhibition, try to prevent any unauthorised photos being taken of your work as these will be owned by the photographer. Reducing the amount of digital images in existence can help you to reduce the likelihood of manufacturers reproducing your art using an image.

### Another artist alleges I've copied their artistic work, but this is coincidental. How do I prove I created my own unique art?

In order to prove copyright infringement of an artistic work there has to be evidence of copying. Similarities between the two artistic works aren't necessarily enough to prove this. Keep evidence of your creative process, including sources of inspiration, sketches, photos of the work in progress etc.

### Is it legal to paint a celebrity from a photograph if it is artistic in nature and a copy of the photo?

It depends. Artists have always been inspired by images from popular culture. A simple painting based on another's photo that doesn't alter the composition of the image would be open a claim for copyright infringement.

### I painted a life model, do I need to get them to sign something?

Yes, a model release is a contract that states that you are allowed to display, publish and sell an artwork that contains a recognisable person. By signing the contract, the model agrees that their likeness can be made public (and you are not exploiting them). If your painting becomes famous, the model will have little chance of suing you for compensation. The model release contract should say that you have permission to publish, make copies and sell the artwork. It should also give your heirs rights to the artwork after you pass away. The contract should be signed by the model and an independent witness.

### I agreed to paint a portrait, was paid a fee and delivered the painting to the client on completion. We have no formal written agreement, but I want to use the painting in an exhibition and make some prints. What should I do?

It would have been easier to agree these issues before handing over the portrait. As no express or implied contract terms were agreed it could be argued that the fee paid by the client is only for the original artwork and does not include copyright or reproduction rights which remain with you, the artist. You should also have the right to photograph the artwork for publicity or reproduction purposes or on your website. You and your heirs maintain all reproduction rights to the artwork and the client shall not reproduce the artwork without your permission. However, you will need to negotiate the right to exhibit the commissioned portrait as this was not agreed before the artwork was delivered and is now in the possession of the client.

### If I change a few creative elements is it acceptable to copy?

This is a common myth in the art field. The test for copyright infringement is whether the alleged infringing piece reproduces the whole, or a substantial part, of the artistic work. In other words, what is copied may only be a small amount of the artistic work, but it may nevertheless be a visually striking or substantial part of the author's creative skill, labour and artistic judgement.

### My artistic work is inspired by on someone else's style. Is this acceptable?

First, check if the copyright has expired. If not, find out who owns the artistic work that is the source of your inspiration. If your work is substantially similar and you don't receive permission to reproduce it, you expose yourself to the risk of copyright infringement. This would have consequences for your artistic work and what you can do with it.

### I have discovered a 'lookalike' piece of artwork, what should I do?

Establish what you want to achieve if you take legal action (this doesn't necessarily mean going all the way to court). You can often settle the dispute through effective correspondence. Any damages should reflect quantifiable loss and include an admission of liability and your enforcement costs paid.

### What kind of contracts do artists regularly need to enter into?

Artists and craftspeople need to make contracts for: consignment of goods to galleries and shops;

- exhibitions of artwork;
- commissioning of artwork;
- artist, craftspeople / gallery relationship; and
- artist model releases.

When leaving your artwork on consignment, always make sure you receive a receipt for your work. A simple written agreement should be drafted and a copy given to each party.



### What insurance do I need to protect my artwork?

As an artist you take many risks, and it's important to minimise these wherever possible. To start with, you need to make sure you have the right amount of insurance cover for your artwork, your equipment, your premises and visitors (e.g. students), for yourself in case of injury or inability to work and complete commissions, and for any employees. There are affordably priced tailored insurance policies specifically for visual and applied artists that cover:

- artwork (completed work is insured for the artist's net selling price, work in progress cover, storage, transit and exhibition risks);
- studio insurance (contents, tools and equipment, buildings);
- business interruption (loss of profit, exhibition venues and contract sites);
- employers' liability; and
- public liability (visitors, students, the public).

### How do I protect my work online?

You have the right to control what is made available to the public, and the law refers specifically to communication via the Internet and the digital environment. According to Artquest, one practical safeguard is to keep images of your work on the Internet in low resolution, as this makes them unsuitable for printed reproduction. If you need to send out high-resolution images (e.g. to apply for a grant or for publicity) check that these will be stored securely and not available generally on the Internet. If images of your artwork are to be used on a website, resize them to a low resolution and request that they be clearly captioned with your copyright information e.g. © Jane Smith 2015 All rights reserved.

### Should I use Pinterest or other social networking sites to promote my art?

Pinterest ([www.pinterest.com](http://www.pinterest.com)) is one of the fastest-growing social networks with over 70 million users. The gist of Pinterest is collecting pictures (known as 'pins') by themes in folders ('boards'). You can upload pictures from a PC or save pictures from any site using a browser app. This will keep the link to the original image. Also you can look in other people's collections and save their pictures. This is why Pinterest appeals to artists – it's for people who search for visual content and Pinterest has incredible collections of artworks.

### What's involved with selling my copyright?

You can assign (sell or give away) copyright by signing a written agreement. It is better to license your copyright:

- to maintain your statutory moral rights to prevent the artwork from being physically altered in some derogatory way or when reproduced; and
- so that you and your heirs continue to participate in the economic success of reproductions and merchandising of your artwork while the period of copyright protection lasts.

You can grant a copyright licence for a limited period of time, for specified forms of reproduction and merchandising, and in limited countries for a specified one-off upfront fee, royalty or both. This way you can keep the copyright and control how your work is used (e.g. merchandising) while continuing to generate an income. Basically, if someone wants to reproduce your artwork you should be paid a fee and this includes in art gallery catalogues. There is no fixed fee so you'll need to negotiate this. A new artist could decide to waive this fee for the opportunity of your work appearing in the catalogue.

### How do I protect my brand and the name of my range of artistic works?

As there is no global trade mark registration system, your brand protection strategy depends on where you intend to use the brand or sell your artistic works. There are three options. You can register your mark using the national UK registration system, the Community Trade Mark (CTM) system to cover specific EU member states, or the International (Madrid Protocol) system to register overseas.

### My artwork has been copied by a manufacturer in the People's Republic of China (PRC) but I can't afford to take action? What should I do?

The majority of copies made in the PRC are destined to be imported into the EU and the UK so the best course of action is to target those businesses who are importing them. You could consider notifying Her Majesty's Royal Customs (HMRC) or the EU member state equivalent. HMRC will act for UK traders who suspect their business identity or products are being abused by the import of bogus goods.

### How can I enforce my IP rights

If your copyright or moral rights have been infringed, the first thing to do is try to negotiate a settlement with the infringer. There are both civil and criminal offences related to dealing with illicit copies and certain other unauthorised uses of copies of images, broadcasts or films. You can apply to the Intellectual Property Enterprise Court. It's fairly quick and inexpensive, the trial is usually relatively short and legal costs are capped at £50,000.

### What are the remedies for infringement of my IP rights?

Remedies for breach of copyright include damages (monetary compensation to put you in the position you would have been in had the infringement not occurred), an account of the profits the infringer made from using your work, and an injunction (to stop the use of your work).



## **IP AND ART RESOURCES**

AON Fine Art Insurance  
[www.insurance.aon.co.uk/personal/insurance/art-collections-insurance/fine-art-insurance](http://www.insurance.aon.co.uk/personal/insurance/art-collections-insurance/fine-art-insurance)

Art Monthly [www.artmonthly.co.uk](http://www.artmonthly.co.uk)

Artists & Illustrators Magazine  
[www.artistsillustrators.magazine.co.uk](http://www.artistsillustrators.magazine.co.uk)

Artquest [www.artquest.org.uk](http://www.artquest.org.uk)

Arts Council England [www.artscouncil.org.uk](http://www.artscouncil.org.uk)

Association of Photographers [www.the-aop.org](http://www.the-aop.org)

AXA Art Insurance [www.axa-art.co.uk](http://www.axa-art.co.uk)

British Institute of Professional Photography  
[www.bipp.com](http://www.bipp.com)

Contemporary Visual Arts Network [www.cvan.org.uk](http://www.cvan.org.uk)

Creative Commons [www.creativecommons.org](http://www.creativecommons.org)

Entrepreneurship Summer School for Creatives  
[www.arts.ac.uk/csm](http://www.arts.ac.uk/csm)

Greeting Card Association  
[www.greetingcardassociation.org.uk](http://www.greetingcardassociation.org.uk)

IP Health Check Tool, UK Intellectual Property Office [www.ipo.gov.uk/iphealthcheck.htm](http://www.ipo.gov.uk/iphealthcheck.htm)

National Portrait Gallery [www.npg.org.uk](http://www.npg.org.uk)

Nottingham Contemporary  
[www.nottinghamcontemporary.org](http://www.nottinghamcontemporary.org)

Nottingham Society of Artists  
[www.nottinghamartists.org.uk](http://www.nottinghamartists.org.uk)

Own it, University of the Arts London [www.own-it.org](http://www.own-it.org)

Royal Academy of Arts [www.royalacademy.org.uk](http://www.royalacademy.org.uk)

Royal Photographic Society [www.rps.org](http://www.rps.org)

Royal Photographic Society Journal  
[www.rps.org/publications/rps-journal](http://www.rps.org/publications/rps-journal)

Royal Society of Portrait Painters [www.therp.co.uk](http://www.therp.co.uk)

School of Art & Design, Nottingham Trent University  
[www.ntu.ac.uk/art](http://www.ntu.ac.uk/art)

Tate Britain [www.tate.org.uk](http://www.tate.org.uk)

Your Creative Future  
[www.yourcreativefuture.org](http://www.yourcreativefuture.org)



## PROTECTING, EXPLOITING AND ENFORCING YOUR IP RIGHTS

Society accepts that those who exert skill, brainpower and effort on in the creative industries and who develop identifiable works of art or new products or process as a result, deserve protection from those who would unfairly deprive them of the commercial benefits of their endeavours. The aim of the IP legal framework is to enable those people to protect, and when required, exploit those rights

IP can often seem to be separate to your business. The concept of IP protection can appear to be a 'bolt on' to your work. In fact, properly managed, they are a pivotal part of your creative business. You can prevent other people from using your work without consent but equally you can sell it, license or mortgage it to provide financial support for your growing business.

One of the most important things you can do is keep records, documenting your creative process wherever possible. This 'legalistic' approach may seem anathema to most creative people but it can pay dividends in the future. In the event of a breach of your rights by another (or, in a worst-case scenario, a claim that you have breached the IP rights of someone else), evidence from your day-to-day working practices can be invaluable to your lawyer to prove that you designed a particular object.

### First principles: What have you got? Conducting an IP Audit

Try to work out what IP assets you actually own. You may be pleasantly surprised!

Many rights arise automatically, such as copyright or unregistered design rights. They can be easy to overlook because they often hide in plain sight. You may think that only the innovative closure mechanism of the new coffee beaker is worth protecting by patent. Think again. Those drawings for the beaker are protected by copyright. The shape of the beaker may be protected by unregistered design rights. The name that you have given the beaker may be building up recognition in the market to such an extent that it is a distinctive brand in a short amount of time.

Unregistered rights are fine but you may also want to invest in registered rights when available. These perform a double duty. First of all, it is easier to prove infringement of a registered right - its parameters are clearer.

Secondly, the fact of the registration is like a neon sign indicating that you know, and value your IPR and are willing to defend those rights.

What do you need to protect? What's special about you and your work? Once you become more aware of IP rights there is a temptation to believe that everything should be protected. However, there are costs associated with the registration of IP rights and if you believe that a particular products is likely to be short lived than it may not be cost effective to secure protection. You may decide that it is easier to rely on confidentiality agreements with distributors rather than registration.

It is ironic that the main asset value of many businesses resides not in physical assets but IP rights:

- What rights do you actually own – do you own all of the rights that you need in your business or have you worked in the past on a collaborative basis are the ownership rights clear?
- Consider all of the unregistered rights that you may have, perhaps in drawings and artwork where rights may have arisen automatically.
- Can you put a value on IP? It has an asset value (see below). Make sure that you speak with your accountant as to how this aspect of your work should be valued in your accounts.
- Who is involved in the creative process with you? Consider not just collaborators but also support staff and administrative staff and distributors. You may wish to consider some form of non disclosure agreement or confidentiality agreement as part of the contract. This is a 'business hygiene' factor. The fact that you have such agreements often means that you do not need to enforce the agreements! It sends a signal – "I know my rights – and so do you!"

- When you want to be in the short, medium and long term? Have you considered the value of your intellectual property rights to the overall value of your business?
- What is your strategy to protect your rights? Consider your options. For instance, many pharmaceutical companies spent many millions of pounds to develop trademark recognition for their branded products to ensure that their products still have a strong market presence after the patent has long since expired. You may decide that a short-lived, relatively cheap product is sufficiently protected by automatic, unregistered rights. However, projects into which you have invested heavily may require all of the IP toys to be taken out of the box.

### Licensing strategy

This is probably the most cost-effective way in which to leverage your IP rights. A licence is simply permission to do something which will otherwise be an infringement of the intellectual property rights. A licence provides the licensee with permission to use but not to own the copyright, design or trade mark.

Licensing can be a good way in which to earn money from your creative work. The value of the licence and any associated royalties payable is a matter of negotiation and the relative strengths of each party. One of the most important issues is not to underestimate the value of your rights. You may, for instance, lack the financial muscle or other resources in which to develop your products and a licence can be a useful way in which to raise money from your work that can be invested elsewhere in your business

- Licensed to what? A licence is simply permission to do something which would otherwise be an infringement.
- Consider whether you want to grant an exclusive licence to the licensee or whether it should simply be the sole licence.

Take care in defining the parameters of such a licence. The methods of production are likely to figure in such a clause so if you have any particular requirements they should be set out clearly. This could be quite important. For instance, a licensee may wish to use cheaper materials than you wish during production and, depending on the agreement, this could have an effect on your brand image.

- Know your exits. In any agreement, work out your exit strategy. If everything goes horribly wrong, are you able to exit the agreements with the minimum amount of fuss and without penalty?

### How do you police your IP rights?

- It may be something as simple as a Watch Service to ensure that a competing trade mark is not registered which could dilute your rights.
- It is useful to periodically Google your competitors and others in your area of work to ensure that your work is not being copied. Software and web applications such as Tin Eye or Google Image can be helpful in tracking down infringing copies of your work.
- Location, location, location. In which geographical region are you going to licence your particular product? You may, for instance, wish to sell your rights abroad but to retain them in the UK. Time flies. How long is the licence going to last? It is likely that a licence will last for a reasonable amount of time. However, you may also wish to specify a short lease in the first instance to metaphorically dip your toe in the water before committing to a long-term agreement.
- Where is the money? How are you going to be paid? You may require some form of upfront payment together with ongoing royalties on a monthly or quarterly basis.



## Raising finance and exploiting your IP rights

### Exploiting your IP rights

Creative IP assets are valuable forms of personal property that have financial value. Recently, creatives have invested more in their IP than in fixed or physical assets. High growth, IP-rich businesses are more resilient and perform better than others over time so it's crucial to develop an IP strategy to make the most of your investment that centers on your competitive strengths. IP assets (unregistered and registered) are unique to your business and need to be integrated in your business plan.

#### Tips for developing an IP strategy:

- search the design, trade mark or patent databases to confirm your ideas are new and to avoid infringing the rights of others
- search online for new business opportunities and to monitor competitor activities
- conduct an IP audit to confirm what you think you own, especially if anything has been produced by consultants or contractors
- educate staff as to their obligations and, if necessary, have them sign confidentiality agreements
- make effective trade marks the core of your brand strategy
- develop an infringement strategy and consider IP insurance.

### Creative IP assets and funding

After exhausting your self-finance, retained profits, family, friends where do you turn? There are many forms of public (government) and private funding:

Arts Council England Capital - Small Grants, 2015-18  
 Arts Council England Research Grants Programme 2015-18 – the Arts Council England  
 Arts Impact Fund  
 Artists' International Development Fund  
 BFI Film Fund  
 British Fashion Council  
 Business Growth Fund  
 Creative Business Loan Fund  
 Creative England  
 Creative England Digital Accelerator  
 Creative England Production Fund  
 Creative Industry Finance Programme  
 Disney Healthy Living Initiative  
 Enterprise Investment Scheme  
 Film Enterprise Fund  
 Growth Vouchers  
 IC Tomorrow  
 Innovation Vouchers  
 iShorts  
 Launchpad  
 Music Export Growth Scheme  
 Seed Enterprise Investment Scheme (SEIS)  
 SMART  
 Start-Loans  
 UK Business Angels Association  
 West Midland Production Fund:

UK banks that make secured loans to creative sector businesses Aldermore, Barclays, Close Brothers, Clydesdale & Yorkshire, Handelsbanken, HSBC, Lloyds Bank, the RBS Group (RBS, Natwest and Lombard), Santander and Shawbrook

Crowdfunding and Peer-to-Peer funders also support the creative sector. This involves lending money to unrelated individuals (person to person) via a crowdfunding online platform without using a bank. Typically, an unsecured personal loan is made to an individual rather than the business. See <http://www.ukcfa.org.uk/members>

### Infringement strategy

This may seem odd. However, it is better, in the cold light of day, to work out how you will react to the infringement of your rights. The moment that you realise your work has been copied is not likely to be the most rational day of your life! You need to have a system in place that is activated when you become aware or someone infringing your rights. It may be something as straightforward as a cease-and-desist letter or an IP professional to whom you refer such matters.

The most difficult decision is whether to enforce your rights. It takes time, money, stamina and supportive evidence. Each case is different but it is worth remembering that there are mechanisms short of trial which may assist (such as mediation). It is also important to ensure that your target is 'good for the money' otherwise you will have a hollow and expensive victory.

It is also possible to buy insurance against inadvertent infringement of another's IPR, although the premiums can be prohibitive in some high-risk areas such as design.

### Confidentiality and IPR

A contract will frequently include a provision designed to preserve the confidentiality of information passed from one contracting party to the other. But even in the absence of any contractual provision which imposes an obligation of confidence, English law imposes an obligation of confidentiality. The basic test is:

- the information must have the necessary quality of confidence about it;
- the information was passed to the recipient in circumstances importing an obligation of confidence; and
- there must be an unauthorised use or disclosure (actual or threatened) of that information which would be detrimental.

This is a fall-back position. It is helpful to have a clear non-disclosure or confidentiality agreement in place. There is, however, a 'nip and tuck' element to the protection afforded to the creative process by the law. It may not be possible to copyright an idea, but a well-drafted confidentiality agreement may provide a platform by which a miscreant may be brought to book.

### When things go wrong...

Things will go wrong. No matter how careful or well meaning you are, business dealings have a habit of turning sour every now and then. Even though these occurrences are rare, it is important to have a strategy in place for those times which you can simply activate. It will mean that you can manage problems quickly and return to concentrating on your business. Contentious matters have a tendency to monopolise your time so it is important that you tame that particular beast so that you do not become exhausted in time, money and motivation. So, before turning to the specific IP issues, consider how best to protect your business:

- a certain amount of litigation 'static' is endemic to a business. Unpaid bills, disputes with employees and suppliers must all be factored into the business mix;
- consider which insurance products are suitable for your business? Comparison websites can be a good start but you may need to take advice from a specialist insurance broker for your business. How much you spend and on what type of product is up to you but litigation backed by an insurance policy rather than entirely out of your own financial resources is a less stressful option. It may also be dependent on the structure of your business – can you take advantage of limited liability status? While there are costs involved in setting up a limited company, the benefit of limited liability status – which limits the liability to the assets of the business – is preferable to the unlimited liability of the sole trader. There are usually concessions for SMEs, so this is something to discuss with your accountant;

- invest in some general terms and conditions of business. Basic contracts written in plain English can really help your case when things go wrong with a job. It is easier to say “this is my invoice, these are my payment terms, these are the letters evidencing my requests for payment”.
- keep the money coming in – many businesses find themselves in financial difficulty and litigation because of a pinch in cash flow. They may be profitable and have a really good service or product but they simply run out of cash. For every day your bill remains unpaid you are effectively giving credit to that client. Don't let any client run up too large a bill. It's bad for them and it's bad for you.
- have a look for some basic accounting and billing software like Kashflow or similar. The more efficient your system for sending and collecting cash, the more time you can spend on your creative projects.

#### When someone alleges you've infringed their IP

Sometimes the nightmare scenario does arrive. Just as you may wish to take action against someone who you feel has infringed your rights, the contrary is also true. The metaphorical knock at the door may find you served with papers alleging infringement against you.

First of all, don't freeze in terror. Don't ignore the situation. The vast majority of claims don't end up in court, but you may need to act fast. Think about holding a 'beauty parade' of lawyers before the worst happens, so that you can select a lawyer with whom you feel comfortable rather than seeking to appoint one when you are stressed and under threat of legal action.

There are also special insurance products that can provide cover in the event of such allegations. Insurance companies often have their own panel of specialist lawyers for these eventualities, which can only be a good thing from your point of view.

Again, your archive of work is going to be of pivotal importance. Whatever the intricacies of the law, the main lifeblood of any piece of litigation is good, contemporaneous evidence.

#### What are the best remedies for IP infringement?

Some infringement actions in IP tend to be long and expensive. Most of the time, the motivation of the party taking action is to stop some action, and perhaps, to receive an account of profits generated by the infringing action. Sometimes it may be in the interests of all concerned to settle the matter and grant a retrospective licence.

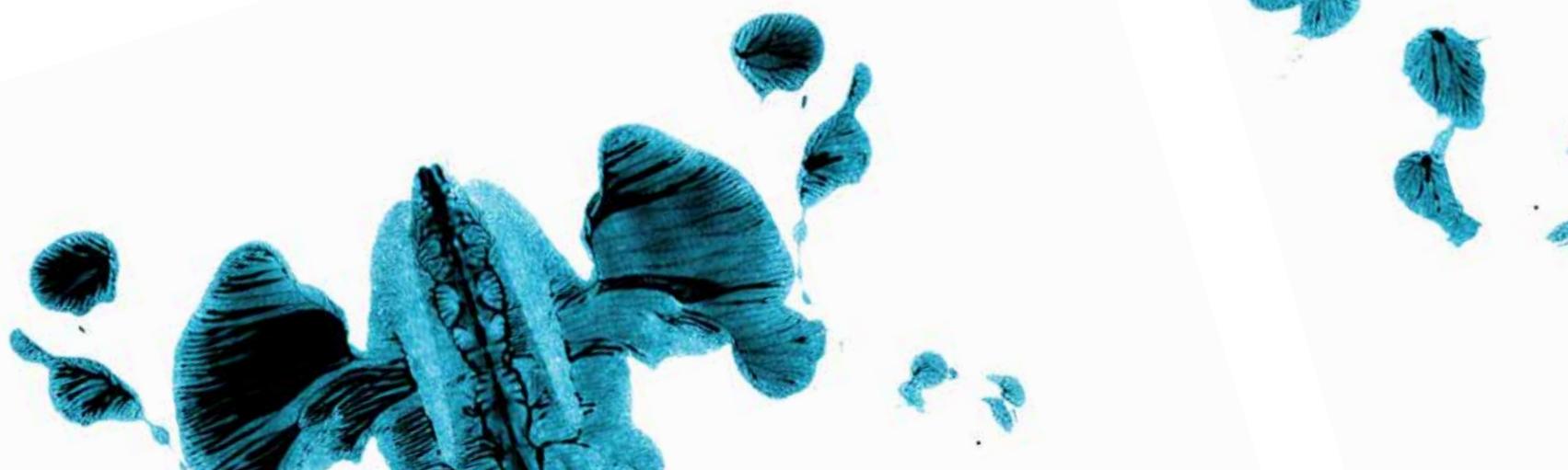
#### Injunctions

The most well-known legal remedy in IP is an injunction. A word of warning. Do not ignore an injunction! The penalties are severe and the judge has a palate of options ranging from a fine and some harsh words to the sound of the cell door clanging behind you. Therefore if you are enjoined get legal help immediately to review your options. It may be possible to get the injunction discharged or limited in some way but there is no option to ignore it.

Think very carefully about seeking to injunct another party. It sounds straightforward. “I want them to stop doing x”. Yes you can apply for an injunction... but are you willing to give an understanding in damages to the other side for their costs of complying with an injunction. Perhaps not.

#### Produce evidence

Make life easier for yourself in the event of litigation. Keep good notes. If you speak to someone, jot down the contents of the discussion and the date and time. You might consider keeping a day book or a diary. Use whatever works for you but keep evidence of the contemporaneous way in which you work. You may have to meet a case in litigation that you know is not true but you are at a loss to produce good evidence of instructions and time and date. You may think that the other side are being disingenuous. Perhaps so, but they may often have convinced themselves of the story so you need to show them the error of their ways. It is more persuasive to show rather than just tell.



## Q&A – Getting Legal Assistance

### How can I get legal advice on IP issues?

It depends on what the problem is.

**Patent attorneys** generally deal with **registered** IP rights such as patents, trade marks and registered designs.

**Trade mark attorneys**, as their name suggests, deal with advising on, registering and handling proceedings relating to trade marks.

**Solicitors** with an IP specialism will generally handle copyright, trade mark infringement design infringement and passing off. Many firms of solicitors deal with registering trade marks and registered designs though relatively few handled patents (if they do, they tend to have their own in-house patent attorneys). **Solicitors** will generally deal with drafting agreements such as non-disclosure agreements, licences, assignments of rights etc. as will, in their specific areas, **patent attorneys** and **trade mark attorneys**

Some **barristers** will deal directly with clients and this may be useful if you are involved, or are likely to be involved soon in a court case.

Some legal advisers will offer free initial advice. There are some free legal advice centres, though most do not deal with IP issues. One or two University Legal Advice Centres, however do provide support.

### How should I select my legal representative?

Choosing a lawyer will depend on a variety of factors including cost, the task you need doing, the value of the issue on which you seek legal advice and, most importantly, what you know of the legal adviser and their business.

As with many services, there are few better ways of working out who will be best to instruct than personal recommendation. If you know fellow designers, practitioners, writers etc. who have had a good experience with a legal adviser, then that is often the best way of selecting someone to assist. Make sure, always, that they understand your business.

You may also find that a trade association or another professional group that you're part of may have details of legal advisers whose work has been particularly effective. You may get assistance from, say, a writers' guild or artists' association.

There are several legal guides. For example, the Legal 500 or Chambers:

<http://www.legal500.com/assets/pages/united-kingdom/uk.html>

<http://www.chambersandpartners.com/guide/uk/1>

Both have on-line guides to experts in the field.

### How much should it cost?

The common answer to this amongst legal professionals has sometimes been caricatured as “how long is a piece of string”? Yes, it's not an answer, it's a question; the truth is, it is often very difficult to get a clear answer to the question.

Legal advisers usually charge, like mechanics or plumbers, on a time-cost basis. The longer a piece of work takes the greater the cost. It follows that, if the piece of work you need doing is not clearly defined, then the cost will always be uncertain. It is therefore important to be clear at the outset what it is you want your legal advisers to do.

Usually, however, you should be able to get estimates (which are not precise) or quotations (which should be) as to how much a piece of work should cost. If, for example you want advice on whether a mark you have is registerable, then a legal adviser should be able to give you a fixed fee for each stage of the process (e.g. for the initial advice, for searching to find out what other marks there are and then the process of registering). For contentious matters, it is much more difficult to estimate; however, most legal advisers should give you an indication of how much costs should be at each stage of the process.

Unless you are convinced you want a particular legal adviser, always get several quotes or, if not possible, estimates for the work to be done.

### Who can represent me in court?

Depending on the case, patent attorneys, trade mark attorneys, solicitors and barristers have what is known as “rights of audience” and, if a case comes to court, then you may find that any one of them can represent you.

### Do I have to use a legal adviser?

No. However, conducting complex litigation or negotiating your way through the registration of a trade mark or patent is very difficult and it's usually vital to have the correct advice to ensure the process goes smoothly. It is possible, for example, where the sums claimed are small to handle litigation yourself, particularly in the Intellectual Property Enterprise Court.

### If I get involved in litigation, how can I avoid significant cost?

This is very difficult. Litigation is usually an expensive business. If you do bring court proceedings, even if you win, you won't recover all your costs. If you lose, then you will almost certainly be liable for a proportion of the other party's costs as well as your own.

Litigation is not something to take on lightly. However, steps have been taken to try and make the process more accessible. Though much IP litigation is conducted in the High Court, steps have been taken to make the process easier by the introduction of the Intellectual Property Enterprise Court.

## How and when can I use IPEC?

In some cases, you can use the Intellectual Property Enterprise Court (IPEC) small claims or multi-track procedure. IPEC is based at the Royal Courts of Justice in London.

If your dispute is for less than £10,000, involves copyright, UK or EU registered trade marks, passing off or UK or EU unregistered design rights, this can be dealt with in the IPEC small claims track. This is designed for use by those who are not using a legal adviser and the procedures are significantly streamlined to assist those acting for themselves.

In most cases, if you are not represented, you can be supported by someone else who can provide moral support though they can only usually speak with the permission of the court.

Though you may have to pay court fees and certain other expenses (both for yourself and for the other party if you lose), the court will only award legal adviser costs against you if behave unreasonably. This significantly reduces the danger of a significant costs award being made against you if you

Some remedies are not available in the small claims track (for example, search and seizure or asset freezing remedies). However, it is possible to get an injunction in the small claims track to stop someone infringing your IP rights. It is also possible for a case to be dealt with in the small claims track without the parties attending (if they agree) and to transfer a multi-track case to the small claims track if both the court and the other parties agree.

Multi-track cases in IPEC must be limited to claims involving £500,000 and costs awards to pay the other side's costs are generally limited to a cap of £50,000.

## Is there an alternative to litigation?

Fortunately there is. If both parties agree a dispute can be mediated. This is something that can cost but is usually less expensive than litigation. It's not a panacea in dispute resolution and can fail and lead to further litigation. However, it is something which should be explored.

The courts will usually encourage and, in some cases, insist that the parties explore mediation.

## How can I mediate a dispute?

First, secure the agreement of the other party to the dispute (not the easiest thing to do).

Those using the IPEC small claims track cases may use the Small Claims Mediation Service which is a free service provided by the court though it can only be accessed after a claim has been issued.

Mediation appointments are conducted by telephone and so the parties are not required to attend at court or at the mediators' offices. Parties can also mediate through the small claims mediator without speaking to one another.

There are a range of associations and organisations which may be to assist to find a privately funded mediator – e.g.

<http://www.nmpa.org.uk/>

<http://www.cedr.com/>

<http://www.ciarb.org/home>

## What other forms of assistance are there?

Legal aid is not available for these types of dispute. However, there are resources which are either free or can be accessed at low cost.

The British Library provides a Business and IP service and there are a few free legal advice clinics which can provide some guidance. Some people may have legal expenses insurance through their household or other insurance which can cover a wide range of disputes or access to legal advice through a trade union. Though this usually doesn't cover business disputes, it could be useful if your dispute is, say, with an employer over IP rights.

The resource list at the back of this book has lists of potential sources of advice – for example, the Writer's Guild provides a contract vetting service to members (details of which are on its website). It is certainly worth exploring these to see what is available.

The website of the UKIPO contains a wealth of information, guidance and links and is always a good starting point for those with an IP related problem:

<https://www.gov.uk/government/organisations/intellectual-property-office>

It also has available an IP Health Check which may well help prevent problems arising in the first place:

<http://www.ipo.gov.uk/iphealthcheck.htm>

## NOTTINGHAM CREATIVE IP GLOSSARY

**Account of profits:** Where the infringers have sold or benefited financially from the infringing goods, the court may order that they pay you a sum equivalent to the profits the made from using your IP.

**Author:** For copyright purposes, a person who creates a work.

**Berne Convention:** An international convention adhered to by more than 160 nations that requires its members to treat nationals of other countries as their own nationals for copyright purposes.

**Cease and desist letter:** Correspondence sent to a party demanding that it cease and desist from certain action in an IP context.

**Community Trade Mark (CTM) System:** A trade mark system allowing mark owners to file one single trade mark application that covers all members of the European Union.

**Confidential Information:** This concept typically protects trade secrets and know how. The fundamental principle of the legal doctrine of confidential information is that a person who has received confidential information from another will not take unfair advantage of it or profit from the wrongful use or publication of it.

**Copyright:** Copyright is a partial monopoly right that legally protects works of authorship, composition or artistry. Modern copyright law gives the creators the benefit of protection over a wide range of material such as literature, drama, art, music, sound recordings, films, broadcasts, cable programmes, computer software and databases. The purpose of copyright is to allow creators to gain financial rewards for their efforts with a view to encouraging future creativity and developing new material.

**Counterfeiting:** The term 'counterfeit' describes fake goods. 'Counterfeiting' is the manufacture, importation, distribution and sale of products which falsely carry the trade mark of a genuine brand without permission and for gain or loss to another.

**Damages:** Damages compensate the IP owner for the loss suffered as a result of the infringement. If the owner is not successful, no damages will be awarded and the owner may have to pay the defendant's costs of the litigation.

**Delivery Up:** In cases of copyright infringement, the copyright owner is deemed to be the owner of the infringing goods. In delivery up, the owner is entitled to have those goods, rather than have them destroyed.

**Derivative work:** A work based on one or more preexisting works, such as a translation, fictionalization, dramatisation, revision, or abridgment.

**Design:** Design law exists to protect the 'appearance' of articles that are new and have individual character.

**Enforcement:** Taking action against a person who infringes your IP rights is known as enforcement. The value of IP rights is directly related to the ability of the owner to enforce them. Effective enforcement of IP rights is necessary to maintain their value in legal terms, as an ongoing deterrent and to retain the ability to attract commercial value. Rights that cannot be enforced may be considered worthless, because ownership of them does not prevent other people from using them in any practical sense.

**Goodwill:** The value inherent in achieving consumer loyalty to a particular product or service through maintenance of consistent quality of the products or services offered under a mark.

**Industrial property:** The term used in some foreign countries to refer to IP.

**Infringement:** IP infringement occurs when someone uses your IP without your permission. Infringement" is a legal term for an act that means breaking a law. IP rights are infringed when a product, creation or invention protected by IP laws are exploited, copied or otherwise used without having the proper authorisation, permission or allowance from the person who owns those rights or their representative. It can range from using technology protected by a patent to selling counterfeit medicines/software or copying a film and making it available online. All of these acts will constitute a civil infringement but some copyright and trade mark infringements may also be a criminal offence such as the sale of counterfeits including clothing.

**Injunction:** Once infringement is proved, a permanent injunction preventing the infringer from undertaking any further infringing conduct follows as a matter of course. The infringer will not be able to continue their conduct without a licence to do so from the IP owner.

**Intellectual Property (IP):** This term is used to describe the various legal rights that protect innovation and creative endeavour. It concerns the ownership of intangible property.

**International Classes:** The categorisation of goods and services into separate topics (classes) for trade mark purposes; classes of goods or services must be identified in a trade mark application.

**Joint work:** A copyrightable work created by two or more authors with the intent that their contributions be merged into a unitary whole.

**Legal remedies:** If you are successful in a legal action to protect your IP rights, there are a number of remedies that may be awarded by the court. The most common remedies are: damages, account of profits, delivery up of infringing goods and a final injunction to prevent any further infringement.

**Literal copying:** Identical duplication or copyright of another's copyrighted work.

**Logo:** A design used as a trade mark.

**Madrid Protocol:** An Agreement adhered to by more than 70 countries including the EU and US that provides an 'international trade mark registration' that would be valid in all member nations.

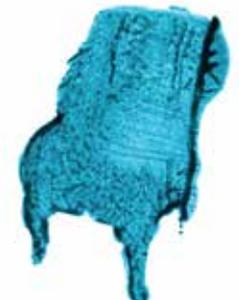
**Misappropriation:** The taking or using of property created or secured at great effort by another.

**Moral rights:** These are rights of creators of copyright works including the right of attribution and the right to the integrity of the work, among others. Moral rights are distinct from any economic rights tied to the copyright work. Even if an artist has assigned his or her copyright rights to a work to a third party, he or she still maintains the moral rights to the work.

**National Treatment:** Principle that member countries adhering to a treaty guarantee to the citizens of other member states, the same rights in IP matters as they provide to their own citizens.

**Non-disclosure agreement:** An agreement requiring a party to maintain information in confidence; also known as a confidentiality agreement.

**Non-exclusive licence:** A grant of rights to more than one party.



**Originality:** In copyright law, a work that is independently created (not copied) and that exhibits a minimum threshold amount of creativity.

**Orphan works:** Works that may be subject to copyright protection but whose owners cannot be found and thus for which permission to use is nearly impossible to obtain.

**Passing off:** Attempting to sell one's goods or services as those of another.

**Patent:** In the UK, a patent is granted by the UK Intellectual Property Office conferring a right for a limited period (potentially up to 20 years) to exclude others from making, using or selling an invention without the permission of the patent owner.

**Patent Cooperation Treat (PCT):** A 1978 treaty adhered to by more than 130 countries that provides a centralised way of filing, searching, and examining patent applications in several countries simultaneously.

**Patent Law Treaty (PLT):** A WIPO treaty that came into force in 2005 to harmonize formal requirements for obtaining patents around the world.

**PCT application:** A patent application that has applicability and effect in member states that have signed the Patent Cooperation Treaty; often called an 'international application'.

**Performing Rights Society:** An organisation of copyright owners that licenses the rights to use copyright music to third parties, collects fees and remits those fees to its members, the authors of the works.

**Piracy:** The act of reproducing movies, music, books or other copyright works without permission from the copyright owner.

**Prior art:** In patent law, the generally available public knowledge relating to an invention at the time of its creation.

**Publication:** The distribution of copies of a work to the public for sale or other transfer of ownership by rental, lease or lending.

**Public domain:** A work or invention that is free for all members of the public to use.

**Renewal:** Document filed with the UKIPO to maintain a trade mark, registered design or patent for an additional term.

**Reverse engineering:** Disassembling an object or a computer program, to understand its function elements.

**Royalties:** Periodic payments paid by one who uses or licenses property owned or created by another, usually based on sales or licences of the property.

**Trade mark:** A trade mark is a sign (e.g. work, symbol or logo) used in relation to goods or services so as to indicate a connection in the course of trade between the goods or services and some person having a right to use the mark. The legal purpose of a trade mark is to prevent others from using the mark and benefit from the goodwill attached to it.

**Trade name:** A name used to identify a business or a company.

**Trade Related Aspects of Intellectual Property Rights (TRIPS):** International agreement administered by WIPO on behalf of the World Trade Organization (WTO) providing IP protection for WTO members.

**SME:** Small and medium-sized enterprises are businesses whose personnel numbers and turnover fall below certain legal limits. The abbreviation "SME" is used in the European Union and by international organisations such as the World Bank, the United Nations and the World Trade Organization. SMEs are responsible for driving innovation in many economic sectors.

**Trade secret:** Any valuable commercial information that, if known by a competitor, would provide some benefit or advantage to the competitor.

**Unfair competition:** A branch of law protecting against deceptive and improper conduct into the marketplace.

**World Intellectual Property Organization (WIPO):** A specialised agency of the United Nations with more than 180 member states that promotes IP throughout the world and administers various multilateral treaties dealing with IP, including the Berne Convention on copyright.

## NOTTINGHAM CREATIVE IP CHECKLISTS

### Preparing to see your lawyer

Many people find the whole process of instructing a lawyer intimidating and difficult.

Seeking legal advice can be daunting and, if as a client, you are unprepared, can cost more than it should do.

If you have an IP problem, the following checklists will help you get the most out of your legal advisers and understand what issues to consider before involving lawyers. They have been prepared in conjunction with two of the firms involved in the Creative IP Project. The first goes through preparing to meet your lawyer. The others, which you may also find useful before you meet your lawyer, highlight the issues which may arise when:

- entering into a non-disclosure agreement (for example when discussing the financing of a project where you wish to protect your ideas);
- setting up a collaborative project; and
- licensing your creations/intellectual property rights.

### Checklist: Preparing for a meeting with your lawyer – what they are likely to ask and how to get the best out of them

Your lawyer is likely to ask for:

- your basic information: name, address, occupation, date of birth and contact details;
- proof of identity so they can formally set you up as a client;
- Identity of your opponent, are they an individual or a company, do you have any previous history with them and
- information relating to the dispute – how it began, what is its current status, what are your thoughts on settlement,

They will also discuss your IP rights, in terms of:

- Who created the particular work in question?
- When did they create this piece of work and why was it created? Do you have any evidence to support this? Was the work created by an individual whilst they were an employee during the course of business?
- Who now owns the particular IP right in question? If it was created by a third party (such as a designer), has there been a written assignment of the relevant IP rights? How do you use this particular piece of work now? Are you aware of or do you allow any other third parties to use the work and are there any relevant non-disclosure agreements (NDAs) or licences in place?
- Has the work been adapted in any way since its creation?
- Is the work registered or in the process of being registered? Were there any oppositions to the registration?
- Are you aware of any similar works that are being used?

### How to get the best out of your lawyer

- Think carefully about what you want from the meeting and make sure your lawyer has your contact details and they know how they can obtain further instructions – consider whether you are happy with someone else giving instructions on your behalf. Agree on a plan of action going forward so that you are clear what will happen next – ask if there is anything you need to do and schedule a follow-up meeting or call if needed.

### Fees

Consider how much you are prepared to invest and if you can afford to pay the fees involved with the matter. It may be that you can agree a fixed fee or some other kind of fee arrangement; for example, most lawyers will provide an estimate of costs for each stage of a project or dispute. Make sure you are aware of what other costs you may be responsible for (for example, registration fees, court fees, costs of experts).

### Information

Give your lawyer as much relevant information as possible, making sure you have a record of important dates and the correct names and positions of the individuals involved. It can be daunting to hand over everything at the start; however, your lawyer is there to represent you and the information you give them is held in the strictest confidence.

### Documentation

Bring along copies of any important evidence or documents relating to the issue. Ideally you should provide your lawyer with these in advance so that they will have had a chance to review them before the meeting. If the issue is in relation to a design, a work of art, a mark or similar then you should try to bring a reproduction or a rendition to your meeting. Also take any correspondence with you that relates to the matter.

If you are unsure of something it is always best to ask for clarification. It may be helpful to prepare a list of questions beforehand to make sure you remember everything you want to discuss. In this situation, there is no such thing as a stupid question!

### Checklist for non-disclosure agreements (NDA)

Below is a checklist for (NDAs) where you may have confidential information to disclose to third parties.

Generally, these situations occur where you are trying to win new customers, or is trying to discuss collaborations/joint ventures, or supply arrangements. What the agreements should contain will depend on the situation and an NDA should be tailored to the needs of the project concerned. For example, NDAs are vital when discussing patents as disclosure can invalidate a patent application. The restrictions would be different where you are seeking to discuss other types of creative ideas.

NDAs are also called confidentiality agreements, and require one or both parties to keep confidential information disclosed by that party to them which is confidential information in law.

To be protected by an NDA, information must be confidential in law; it must not be something which is public property and public knowledge. For example, a customer list is usually regarded as confidential information. It doesn't have to be complex, marked as confidential or encrypted and notably marking such documents as confidential won't determine whether information is confidential. However, indicating or marking something as confidential is very useful to establish that something has been disclosed in circumstances which creates an obligation of confidence.

An obligation to keep information confidential may occur because of a contract (e.g. an NDA), or because it is implied by the circumstances of disclosure. It is implied, for example, in an employer/employee situation.



The rights in confidential information can be enforced against third parties who had no knowledge of its confidential nature on receipt, once they are aware of that fact.

It may be that the NDA is because a specific aspect of technology needs to be kept confidential. This may be particularly relevant if you are considering making a patent application. Disclosure of inventions prior to filing any patent can invalidate the application. Where technology may be the subject of a patent application it is essential to keep the technology/invention confidential until that time, and NDAs can be extremely important in achieving that.

Alternatively, you may simply need or wish to have a generic NDA in place that you can use for a variety of different situations. This is possible to do, but care needs to be taken, as NDAs can have very different parameters, and what works for one situation may not work for another.

### Checklist

Consider the following when seeking an NDA:

- Is the proposed confidential information actually confidential in law (and therefore protectable)?
- What is the purpose of the NDA?
- What information will the NDA cover?
- Is this an NDA that will be used for a specific purpose, or is it intended to be generic?
- Who is disclosing and to whom? It's important to be certain who owns the information, who is receiving it and therefore who should enter into the NDA
- Is the NDA one way or two ways? Does the person disclosing the idea have to accept a reciprocal obligation to keep information confidential?
- Is it part of a wider collaboration agreement at this stage, or will those discussions happen later?
- Is there an intention to seek registered rights in relation to any of the confidential information that is proposed be covered by the NDA?
- For what purposes can the person who uses the information disclose it?

- What are their obligations in relation to it? Maintain confidentiality? Take all reasonable steps and precautions to do this?.
- Not to use the information for its own benefit or the benefit of any third party, except as authorised? Any other restrictions?
- Are there any exceptions to the obligations to maintain confidentiality; for example these can often apply where disclosure is required by law?
- Can the confidential information be disclosed to e.g. employees and/or advisors? This needs to be realistic in terms of who needs to see the confidential information.
- What specific security measures are needed to safeguard the confidential information? Is the disclosee allowed to make copies? If so, how many? What controls are going to be in place regarding the confidential information?
- Should the confidential information be returned, destroyed or erased electronically at the request of the discloser?
- Does all confidential information disclosed remain the property of the discloser?
- Are any rights, such as intellectual property rights, in respect of the confidential information, granted to the person receiving the information?
- How long will the agreement be in place for? Is it for a fixed period or will it run indefinitely? If it is for a fixed period, will there be a provision to extend or vary the term?
- Will the agreement terminate automatically, on notice, on breach or on the occurrence of specified events?
- What are the consequences of termination?
- What will happen to the confidential information after termination? Should it be returned to the discloser or destroyed?

You may be asked to give warranties that you have the right to disclose the confidential information. You may want to seek an indemnity – a promise to cover all losses arising from any breach of the agreement by the other party.

### Checklist: issues to consider when entering into a collaborative project

Many creative projects are collaborative. But few will ask at the outset of a project how the rights created by such a project should be dealt with as the question is often very difficult to raise with others whom you may be trying to develop a strong, creative, collaborative partnership.

Asking at least some of the questions below, however, can often prevent disputes arising later on.

### The project

- What is the purpose of the project? Can you clearly describe what the goal of the project is?
- What will the duration of the project be? Is this time limited, or will it finish when the goal is achieved?
- What will your role be? Will you be involved in the entire project or just a small defined part?.

### Confidentiality

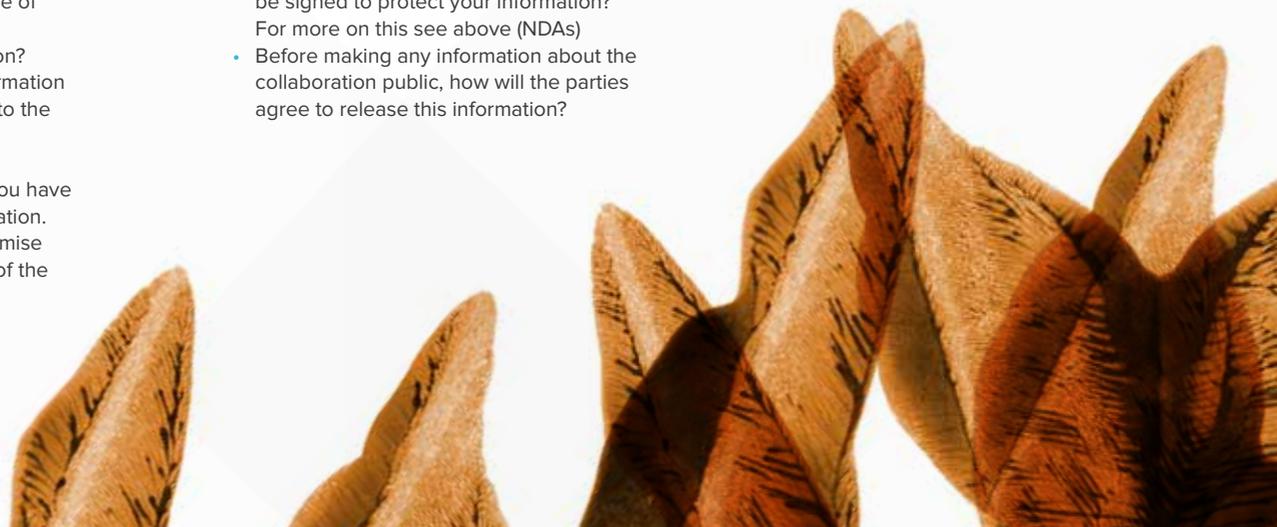
- Do you have any specific knowledge which would be of value to the other party to the collaboration?
- Do you wish to share this knowledge freely with the other party or do you require a non-disclosure agreement to be signed to protect your information? For more on this see above (NDAs)
- Before making any information about the collaboration public, how will the parties agree to release this information?

### IP Rights

- Do you have any existing IP rights which you have been asked to share for the purposes of collaboration?
- Do you need a licence to allow the other party(ies) to use your IP during the collaboration? If so, on what terms (see Licence checklist below)?
- Are any licences needed from people who are not part of the collaboration?
- Who will own any IP rights that are developed during the collaboration?
- Will any existing IP need to be assigned as part of the collaboration?

### Relationship between the parties

- Who will you be collaborating with e.g. a company, an individual, or a group of companies?
- Following the collaboration, who will own the intellectual property rights? Is it a new company? If so, who will hold the shares and control that new company?
- Will you each be carrying out a specific part of the project or working together to achieve a common goal?
- What duties and obligations will each party have? Are you confident that you can meet those obligations?



## Costs

- Who will pay for the legal costs in preparing any agreement?
- How will the costs of the collaboration be shared between the parties to the agreement? Will each party bear its own costs? Remember to consider labour costs too.
- If you are jointly selling or marketing goods or services, consider how you will contribute to a marketing budget, marketing plan or business plan and the input each party will have to these.
- Who will pay for the costs of registering/protecting any IP rights?
- If the project is being funded by a grant from a third party (especially if it is a publicly-funded body), check if there are any specific restrictions in the funding arrangements that you will need to comply with.
- If any profits are made then how will these be split between the parties?
- Who will have liability for any debts that may be incurred during the term of the project?

## Dispute resolution

If there is a dispute between the parties to the collaboration, how will you resolve this?

For example:

- negotiation between the parties;
- independent mediator;
- one party has final say;
- adjudication; and
- court proceedings.

## Ending the collaboration

How do you want to be able to end the collaboration? Will this be (for example):

- by mutual agreement;
- where a party breaches the agreement;
- where a party is insolvent;
- if one party simply does not wish to continue the collaboration; and
- where a dispute cannot be resolved?

When the collaboration ends, how will the benefits of the collaboration be split? If there is a new company, will this retain the relevant intellectual property rights?

Will there be any financial penalties for ending the collaboration?

Can either party continue to use the materials created by the collaboration with another third party to progress the project? If so, on in what circumstances and on what terms?

## Terms of the agreement

- Do you have a set of clear terms which you have agreed, which will be incorporated into any collaboration agreement?
- Do you have clear deadlines for completion of specific tasks? What are the penalties if these are not met (if any)?
- Sub-contracting – do you want either/both/neither of the parties to have the ability to sub-contract their obligations under the agreement? If so, on what terms?
- In what circumstances can the agreement be varied?
- Is there a work programme?  
Consider the following points
- Are progress reports or regular meetings necessary? If so, at what intervals? Is there an agreed schedule of work which needs to be incorporated in the agreement?
- Should there be an appointment of a project manager and, if so, how will that project manager be appointed? What powers will they have?

## Checklist for Licensing/Royalties

If you own IP rights, there are a number of ways in which another person can become entitled to use them. IP rights can be sold outright. Alternatively, permission can be granted through the creation of a licence agreement. This allows a creator to retain an interest in the rights and may allow them to exploit them later on or in a different way.

It is important to be clear what sort of licence is being granted. A licence can confer an exclusive right upon the licensee to use IP; that includes preventing the licensor from using it as well. A sole licence, unlike an exclusive licence, usually allows both the licensor and licensee to use the IP rights, but prevents anyone else doing so. A licence that preserves the right for the licensor to offer licences to third parties is called a non-exclusive licence.

Under competition law, contracts that restrict trade in a manner that is deemed uncompetitive – particularly under European law – can be illegal and therefore unenforceable (though this is unlikely to apply to smaller-scale projects).

Licences that relate to creative projects have a particular character; they may well be contained within more complex agreements, such as management agreements, publishing agreements or recording agreements. Commonly, they include provisions for royalty payments back to the owner of the IP rights (often copyright).

Licences will often contain royalty clauses, detailing payments to be made and the basis on which they are calculated.

Moreover, there are various tax issues that need to be considered in relation to royalties, on which you will need separate advice.



## Terms of a proposed agreement

### Subject matter

- What is the subject matter of the licence and what IP rights are involved? What is their status?
- Will future IP rights be created?
- Should the licence be exclusive, sole or non-exclusive (see above).

### Duration and time limits

- Will the licence be for a fixed period or will it run indefinitely?
- If it is for a fixed period? Will the parties have an option to extend the term?
- If it is for an undefined period will there be provisions for parties to terminate upon giving sufficient notice?
- Will the licence terminate on breach or on occurrence of particular events?
- What are the consequences of termination? For example should the property in question be destroyed and/or returned to the licensor?

### Royalties

- What is the royalty rate? Is it net or gross?
- What royalty mechanism will be used? For example: will there be a fee paid up-front? Or will there be a royalty rate e.g. based on percentage of sales turnover, units of production or net profits?
- If based on turnover/profits, other merchandise included?
- Will there be a minimum royalty obligation, and what will be the consequences of failure to meet it?
- When are payments due and how will they be made?
- Is VAT expressly excluded?
- What are the consequences for failing to make a payment and is there provision for interest on late payments?
- How will royalty payments be monitored? What information will the licensor be provided with to confirm the basis on which the royalty payment is calculated? Will it be audited?
- What are the tax consequences of any royalty payment?

## Extent of the licence and on-going obligations

- What will be the scope of the licensee's territory – UK, EU or further afield?
- Will the licensee be under an obligation to ensure that product are of satisfactory quality and are properly marked?
- Will the licensee need to provide samples?
- Should the licensee allow access to its premises to inspect?
- When a licensee makes improvements or alterations to the licensed product it may result in new intellectual property rights ("IPR"). Who will own these rights?
- If the licensee retains these rights will the licensor also have the right to use them?

## What warranties will be required

- Can warranties be given regarding ownership of the licensed IP?
- Will the licensee provide an indemnity in respect of claims against the licensor as a result of the use of the licensed IP?
- Can you give warranties that the licensed IP does not infringe third party rights? If so, will you be prepared to indemnify the licensor against any such claims?
- Will there be an obligation that the licensee will use its best endeavours to exploit the licensed IPR?

## Is a confidentiality provision required?

- See also NDAs above.

## LAW FIRMS WHO PARTICIPATED IN THE NOTTINGHAM CREATIVE INTELLECTUAL PROPERTY PROJECT

This publication is the result of a wider project which was part-funded by the UK Intellectual Property Office. However, it has also received significant support from the legal practices listed below which have provided invaluable support at workshops and clinics to enable us to deliver the project. All these firms either originate in Nottingham or have a strong presence in the City and their work has been key to making this project a success.

These firms are available for further support in the event that any of the issues highlighted in this text have indicated that you may have an on-going or likely legal need. Nottingham Law School's own Legal Advice Centre, based in Chaucer Building on NTU's City Campus, can also in some cases provide first level advice on IP queries.

### Browne Jacobson

**Areas of work covered:** advice on all aspects of IP law including collaboration agreements, licensing, assignments, corporate due diligence, brand clearance, sponsorship and merchandising dispute resolution

**Nottingham Office:** Mowbray House Castle Meadow Road Nottingham NG2 1BJ

**Other UK offices:** Birmingham, London, Manchester and Exeter.

### Contact details:

Tel: +44 (0)115 976 6000 Fax: +44 (0)115 947 5246

### Website:

<http://www.brownejacobson.com/default.aspx>

**brownejacobson**  
law. less ordinary

Browne Jacobson's IP team describes itself as:

"...provid(ing) expert advice on creation, exploitation and protection of all IP rights. The IP team's extensive legal knowledge is backed by powerful technical and industry experience, with many of the team's members having either worked in-house or participated in secondments at major corporations. The team is rated very highly by Chambers & Partners for their "...commercial acumen, and for a very good-value, London-quality service" and is ranked alongside firms such as Field Fisher Waterhouse, DLA Piper and Marks & Clerk for their brands work by the World Trade Mark Review 1000. In-depth knowledge of clients' businesses and brand protection strategies means that the team can provide a fully outsourced, single-point of-contact solution, under which it manages the portfolios and can make decisions on the matters and issues which arise on a daily basis freeing up the clients to focus on other areas.

The firm services a range of clients, from SMEs and start-ups to major national and international corporations across a diversity of sectors, including retail, manufacturing, media, creative, banking, food and drink, consumer goods, universities, science and technology and the environment. In 2014, the team have advised clients on a range of projects including major re-branding exercises, sponsorship and celebrity endorsement agreements, experiential advertising campaigns, licensing and co-branding agreements, and IP protection, litigation and dispute resolution. The team also regularly advise clients on multi-jurisdictional issues, reflecting the strong international dimension of intellectual property. The team have built an established network of international contacts, enabling the sourcing of responsive, high quality advice from trusted legal advisers across the globe.

The IP team sits within the wider Browne Jacobson practice, a full-service national law firm with over 700 employees, including over 350 lawyers, 99 of whom are partners. The firm operates from its five-office network providing services across the commercial, public, health and insurance sectors."



## Eversheds

Areas of work covered: full range of IP services including strategic counsel, litigation, licensing and exploitation and trade mark and patent prosecution

**Nottingham Office:** 1 Royal Standard Place, Nottingham, NG1 6FZ

**Other UK offices:** London, Birmingham, Cambridge, Cardiff, Edinburgh, Ipswich, Leeds, Manchester, Newcastle (office elsewhere in the world)

### Contact details:

Telephone: 0845 497 9797 Fax: 0845 497 7477

### Website:

<http://www.eversheds.com/global/en/where/europe/uk/index.page>

Eversheds Nottingham office describes itself as:

“Eversheds is one of the world’s largest corporate law firms. Committed locally, but connected globally it has offices based in the world’s major economic centres, with a proven track record of delivering consistently high-quality legal services across jurisdictions.

Based in Nottingham, Eversheds offers you a high-quality legal service that focuses on innovative thinking and deep client relationships. Our UK specialists deliver a full legal service where technical knowledge is strengthened by a detailed understanding of your organisation and the environment in which you operate.

From our office at 1 Royal Standard Place you can also access the expertise and resources of one of the world’s largest law firms. Wherever you operate, we can provide you with a seamless service that will help you to succeed in all your global activities.”

As to its IP service, Eversheds states:

“In a dynamic commercial landscape with ever-expanding technological horizons, it is increasingly important for businesses to capture value from their intellectual capital and knowledge-based assets. We work closely with many leading businesses to help them develop effective strategies for managing their IP portfolios. We are on hand to ensure that the IP they and their employees create is protected and, where appropriate, enforced and exploited.

And when disputes arise, we recognise that the best dispute resolution process depends on a broad mix of commercial and legal considerations.

Clients turn to us because they know we can be relied on to be proactive in preserving their costs, reputation, relationships and other relevant factors when pursuing a successful outcome.

Our global IP team comprises many specialist lawyers providing the full range of IP services. This includes:

- strategic counsel
- litigation
- licensing and exploitation
- trade mark and patent prosecution”



# EVERSHEDS

## Nelsons

Areas of IP work covered: contentious and non-contentious aspects of intellectual property law from trade marks, patents and copyright to research and development agreements, licensing and infringement.

**Nottingham office:** Pennine House, 8 Stanford Street, Nottingham Nottinghamshire, NG1 7BQ

**Other offices:** Leicester and Derby

**Website:** [www.nelsonslaw.co.uk](http://www.nelsonslaw.co.uk)

“Nelsons has offices throughout the East Midlands in Nottingham, Leicester & Derby, providing legal services for Businesses and legal advice for Individuals. We have grown from a cold start in 1983 into a Regional Firm of Solicitors capable of handling everything from buying or selling your Business through to helping you plan your family’s future security.

We are a Full Service Law Firm with specialists in nearly every area of Personal Legal Services and Commercial Law as well as market leading Online Law Services.

Our specialist experience and the depth of our resources also enable us to offer services to other solicitors through Fusion Legal - a mutually-beneficial referrals and support network for law firms.

The firm has been recognised by the leading, independently researched Legal 500 as a Regional Heavyweight for the last eight years and is recommended by them in 23 practice areas. The firm is recommended by Chambers and Partners and also features in The Lawyer’s UK 200 Annual Report of the UK’s largest 200 law firms.

We are committed to the concept that all aspects of our operations and services should be of the highest quality and are accredited by Lexcel.

This quality mark recognises the commitment of everyone at Nelsons to providing clients with the superior service which they are entitled to expect.”

Of its IP team, Nelsons states

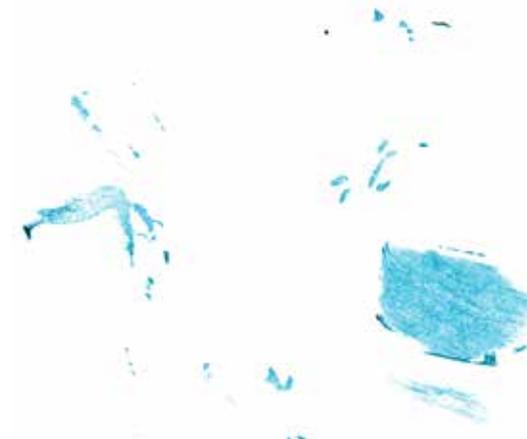
“...we make it our job to protect clients and their interests. Our intellectual property lawyers help make sure that companies’ defining assets – their names, logos, products – are also assets which are valuable and secure.

Our team works with businesses based in the UK and further afield advising on contentious and non-contentious aspects of intellectual property law from trade marks, patents and copyright to research and development agreements, licensing and infringement.

We have also developed a range of online services which allow clients to generate intellectual property documents themselves, checked by our lawyers. It’s a user-friendly and low-cost option for businesses which are looking for agreements dealing with:

- trade mark licences
- non-disclosure
- transfer of copyright”

**nelsons**  
[www.nelsonslaw.co.uk](http://www.nelsonslaw.co.uk)



## Potter Clarkson

Areas of work covered: Patents, trade marks, registered and unregistered design, copyright and dispute resolution

**Nottingham office:** The Belgrave Centre, Talbot Street, Nottingham, England, NG1 5GG

**Contact details:**

Telephone: +44 (0)115 955 2211

**Fax:** +44 (0)115 955 2201

**Email:** info@potterclarkson.com

**Website:** <http://www.potterclarkson.com/services/>

Potter Clarkson is an international practice but retains its sole office in Nottingham. It describes itself as:

“...providing expert advice on all matters relating to intellectual property to clients varying from global giants to SMEs to local entrepreneurs.

Celebrating its 125th year, Potter Clarkson LLP is an industry-recognised, top-tier firm of patent and trade mark attorneys working together in its single, state-of-the-art office in Nottingham. Over 55 highly qualified professionals, with the assistance of 90 paralegals, administrators and support staff, provide this expertise across a wide range of technical areas. The qualifications, experience and commercial savvy of their professionals are outstanding and many are recognised as leaders in their field.

We have built up an extensive international network of trusted local attorney firms with whom we work on a regular basis. This enables us to deliver a truly international IP service to our clients who benefit from the latest expert local knowledge and practice development.

Our services involve all issues relating to commercial intellectual property. These include:

- the drafting, prosecution, and opposition of patents, trade marks and designs throughout the world;
- commercial and strategic advice and litigation support for all intellectual property issues including infringement and validity opinions.

Our attorneys specialise in technical fields across the whole spectrum of science and technology so that the right people can provide the best advice to our clients. These fields include medtech/healthcare, chemistry, biotech, engineering, cleantech, electronics, computing and telecoms.

We help our clients to achieve their business goals by identifying and protecting their own intellectual property, and identifying and, where appropriate, challenging other company's rights.”



## Nottingham Law School Legal Advice Centre

Areas of work covered: initial advice on many aspects of intellectual property law

**Contact details:**

Telephone: 0115 848 4262

**Email:** nls.legaladvicecentre@ntu.ac.uk

**Website:**

[http://www.ntu.ac.uk/legal\\_advice\\_centre/](http://www.ntu.ac.uk/legal_advice_centre/)

Nottingham Law School's Legal Advice Centre describes itself as follows:

“This Centre has developed from the original Legal Advice Clinic which Nottingham Law School established in 2006.

Our aim is to provide reliable, high quality legal advice and information to the local community and individuals in need. We provide advice on a range of issues, including intellectual property law and in some cases, are able to offer follow-up work.

The Centre also provides practical experience for law students undertaking their professional legal training at Nottingham Law School. Students, supervised by professionally qualified staff and lawyers from private practice who generously give their time for free, are able to gain experience of practice during their period while at the same time offering advice and guidance to members of the public and local businesses.

We offer free legal advice and assistance on a range of services including, in addition to IP law:

- employment rights;
- business law;
- housing, property and environmental law;
- debt and welfare rights; and;
- tribunal and court representation, in particular in employment and social security tribunal through Nottingham FRU.

Our aim is to provide high-quality legal advice and information while offering practical experience for Nottingham Law School students. Our services are provided by current law students, who work under the supervision of qualified solicitors.



## WHERE ELSE YOU CAN FIND INFORMATION

IP Web Resources, Links to Professional Organizations and trade organisations

ACID Anti Copying in Design	<a href="http://www.acid.co.uk">www.acid.co.uk</a>
Artquest	<a href="http://www.artquest.org.uk">www.artquest.org.uk</a>
Association of Photographers	<a href="http://www.the-aop.org">www.the-aop.org</a>
Brand Enforcement	<a href="http://www.brandenforcement.co.uk">www.brandenforcement.co.uk</a>
Chartered Institute of Patent Attorneys	<a href="http://www.cipa.org.uk">www.cipa.org.uk</a>
Chartered Society of Designers	<a href="http://www.csd.org.uk">www.csd.org.uk</a>
Copyright Licensing Agency	<a href="http://www.cla.co.uk">www.cla.co.uk</a>
Creative Commons	<a href="http://creativecommons.org">creativecommons.org</a>
Equity	<a href="http://www.equity.org.uk">www.equity.org.uk</a>
European Commission	<a href="http://www.europa.eu.int/comm">www.europa.eu.int/comm</a>
European Court of Justice	<a href="http://curia.europa.eu">curia.europa.eu</a>
European Free Trade Association	<a href="http://www.efta.int">www.efta.int</a>
European Patent Office	<a href="http://www.epo.org">www.epo.org</a>
Esp@cenet	<a href="http://www.espacenet.com">www.espacenet.com</a>
European Union	<a href="http://www.www.europa.eu.int">www.www.europa.eu.int</a>
Federation Against Copyright Theft	<a href="http://www.fact-uk.org.uk">www.fact-uk.org.uk</a>
Federation Against Software Theft	<a href="http://www.fast.org.uk">www.fast.org.uk</a>
Giftware Association	<a href="http://www.ga-uk.org">www.ga-uk.org</a>
Greeting Card Association	<a href="http://www.greetingcardassociation.org.uk">www.greetingcardassociation.org.uk</a>

Protection of IPR in China	<a href="http://www.chinaiprlaw.com">www.chinaiprlaw.com</a>
IFPI (Recording Industry)	<a href="http://www.ifpi.org">www.ifpi.org</a>
Institute of Trade Mark Attorneys (ITMA)	<a href="http://www.itma.org.uk">www.itma.org.uk</a>
Intellectual Property Office	<a href="http://www.ipo.gov.uk">www.ipo.gov.uk</a>
IP Bar Association	<a href="http://www.ipba.co.uk">www.ipba.co.uk</a>
IP Law firms Database	<a href="http://www.intellectualpropertylawfirms.com">www.intellectualpropertylawfirms.com</a>
International Intellectual Property Institute	<a href="http://www.iipi.org">www.iipi.org</a>
Managing IP	<a href="http://www.managingip.com">www.managingip.com</a>
National Union of Journalists	<a href="http://www.nuj.org.uk/home">www.nuj.org.uk/home</a>
OHIM	<a href="http://www.oami.europa.eu">www.oami.europa.eu</a>
Own-it	<a href="http://www.own-it.org/">www.own-it.org/</a>
Performing Rights Society	<a href="http://www.psrformusic.com">www.psrformusic.com</a>
Society of Authors	<a href="http://www.societyofauthors.org">www.societyofauthors.org</a>
Society for Computers and Law	<a href="http://www.scl.org">www.scl.org</a>
UK Interactive Entertainment	<a href="http://ukie.org.uk/">http://ukie.org.uk/</a>
United States Patent and Trade Mark Office	<a href="http://www.uspto.org">www.uspto.org</a>
World Intellectual Property Organisation	<a href="http://www.wipo.org">www.wipo.org</a>
World Trade Organisation	<a href="http://www.wto.org">www.wto.org</a>
Writers' Guild of Great Britain	<a href="http://www.writersguild.org.uk">www.writersguild.org.uk</a>



## UK IPO Resources

In 2013 the UKIPO published its plans to help all SMEs maximise the value of their IP, as part of the BIS innovation strategy setting out the UKIPO's engagement with SMEs. As at 2015, the UKIPO's suite of tools for creatives, businesses and their advisors to enhance awareness of IP assets and how they can be protect and exploited includes:

- **IP Basics** – a free guide on the different types of IP and how they can be used to add value to a business;
- **IP Equip** – a free interactive e-learning tool to help identify assets which may be protected by IP;
- **IP Health Checks** – a series of free basic diagnostics to allow business to identify potential risks and opportunities;
- **IP Master Class** – a more in-depth training package, offered in online or in person which covers IP and its use in business, including the topic of IP enforcement.
- **IP Tutor** – an IP awareness and education online package aimed at Universities.
- **IP Finance Toolkit** – a free 44 page document to help IP owners prepare for finance raising.

See [www.ipo.gov.uk](http://www.ipo.gov.uk)



## NOTTINGHAM TRENT UNIVERSITY IP, RESEARCH AND ENTREPRENEURS

### Contact Details

#### Nottingham Trent University

Burton Street  
Nottingham  
NG1 4BU

#### Legal Advice Centre

Nottingham Law School  
Chaucer Building  
Goldsmith Street  
Nottingham NG1 5LP  
Email: +44(0)115 848 4262

Email: [nls.legaladvicecentre@ntu.ac.uk](mailto:nls.legaladvicecentre@ntu.ac.uk)  
Phone +44(0)115 848 4262

The Legal Advice Centre at Nottingham Law School was opened on 25 June 2014 by the then Attorney General, Dominic Grieve. The Centre has developed from the original Legal Advice Clinic which Nottingham Law School established in 2006.

The aim of the Centre is to provide reliable, high-quality legal advice and information on a range of legal issues including employment, housing and welfare law to the local community and individuals in need. The Centre also provides advice on intellectual property and business law issues. It provides practical experience for law students undertaking their professional legal studies at Nottingham Law School.

The Centre runs in conjunction with the Free Representation Unit (FRU).

#### Nottingham Law School

Nottingham Law School has been committed to the promotion of IP education for undergraduates, postgraduates and specialist practitioners for well over a decade.

NLS highly esteemed IP law programmes are the most extensive in the East Midlands and include:

- Undergraduate LLB third year elective module on the F/T and D/L programmes
- Postgraduate Diploma in Commercial Intellectual Property
- LLM in Intellectual Property Law
- LLM in Intellectual Property Litigation
- Intellectual Property Litigation and Advocacy Professional Qualification
- Professional Certificate in Trade Mark Practice.
- Staff also supervise MPhil and PhD students in the IP law field.

#### NLS IP Research Group

NLS has significant depth in the field of IP education and research. The IP Research Group comprises staff who engage in refereed publications, conference presentations in the UK and overseas, interdisciplinary research and projects, as well as designing and teaching on programmes that span undergraduate, postgraduate and professional IP education.

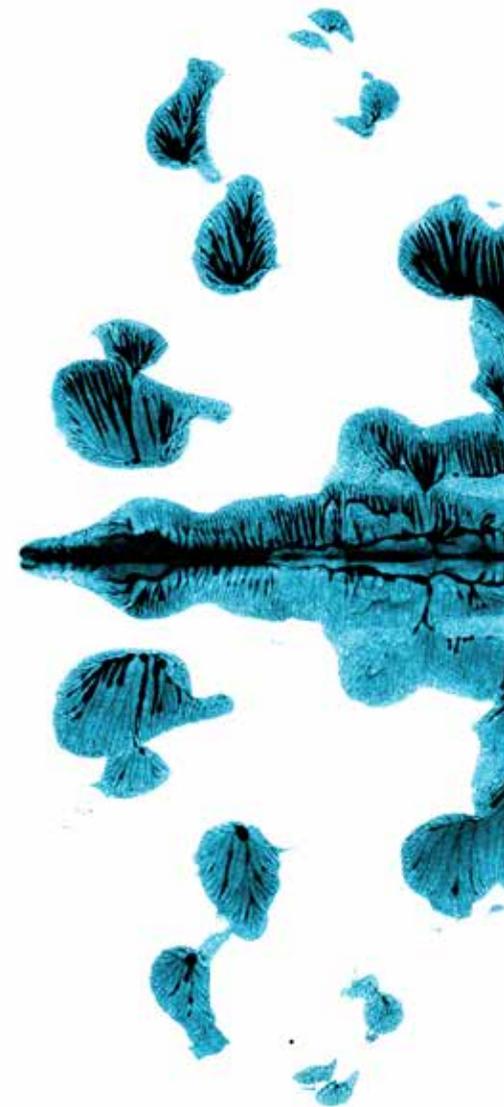
The Law School's IP Research Group was established in 2012 is led by Janice Denoncourt, Senior Lecturer, and aims to lead research in this field within the East Midlands region. See ([http://www.ntu.ac.uk/apps/research/groups/3/home.aspx/group/157798/overview/intellectual\\_property\\_research\\_group](http://www.ntu.ac.uk/apps/research/groups/3/home.aspx/group/157798/overview/intellectual_property_research_group))

IP Research Group members have received funding from government IP organizations and worked together with professional bodies including:

- UK IPO awarded the Nottingham Law School 'Nottingham Creative Student IP' project £24,980 in the UKIP StudentsHIP Enterprise Awards 2015.
- UK IPO awarded the Nottingham Law School £69,000 in the Fast Forward Competition to run a series of workshops entitled, 'Nottingham Creative IP' in 2014/2015.
- Denoncourt, J and Soetendorp, R. 'Appendix A IP, Education and Training' Banking on IP?' research report (2013) commissioned by the UK Intellectual Property Office and the Department of Business Innovation and Skills (BIS) at pp 220-221, available at: <http://www.ipo.gov.uk/ipresearch-bankingip.pdf>
- Institute of Trade Mark Attorneys (ITMA) to create the Professional Certificate in Trade Mark Practice launched in September 2011.
- Chartered Institute of Patent Attorneys (CIPA)
- Intellectual Property Regulation Board (IPREG)
- European Intellectual Property Teachers' Network
- NLS Legal Education Centre
- NLS Legal Advice Centre

The Law School has developed an array of initiatives and resources to support IP law education and research enabling us to connect scholars, policy-makers, alumni, international organisations and other individuals and groups across the world, and to facilitate broad, often genuinely international debate on the implications of the IP education and legal research conducted by its staff.

NLS IP legal academics have always been integral and have long been committed to producing legal research which makes an impact outside academic life.



**The Hive**

Nottingham Trent University  
Burton Street  
Nottingham  
NG1 4BU

Email: [thehive@ntu.ac.uk](mailto:thehive@ntu.ac.uk)  
Phone: +44 (0)115 848 4354

The Hive is Nottingham Trent University's purpose-built centre for entrepreneurship and enterprise where we offer a supporting and supportive environment for aspiring entrepreneurs as well as a safe environment in which to test their ideas. It is a shared environment reducing the potential for self-employment to appear a lonely path to follow, where they have both the time and opportunity to develop those ideas and build self-confidence.

We support students and graduates (and staff) to start up businesses through many different programmes. We raise awareness of and develop skills in Enterprise and Entrepreneurship for students (and staff) through in-curricula workshops and teaching across Nottingham Trent University, embedding Enterprise and Entrepreneurship into the course curriculum across NTU as well as providing a range of extra-curricula activities and programme. In short we relate Enterprise and Entrepreneurship skills to Employability needs for all students.

We are one of the links between NTU and Business and the business support networks, especially local businesses & SMEs.

It is the aim of the Hive to ensure we are one of the principal "go to" business faces of the University and become part of the fabric of the local community through our engagement with local business, local authorities and other business support organisations. We are one of the main links between Nottingham Trent University and business and the business support networks, especially local businesses & SMEs.

Since 2002 The Hive has helped create almost 400 businesses, generating an annual turnover in excess of £11m and cumulatively more than £55m and employing some 500+ staff. Almost 70% of those businesses are still trading today and we are currently enjoying a business survival rate of 85% beyond three years.

We have an honours list of more than 10 winners and finalists per annum of regional and national competitions.



## Creative Industries courses at NTU

NTU has an international reputation and strength in the arts and art and design. With over 5000 students currently enrolled on courses aligned to careers in the creative industries, our graduates work at the leading-edge of their professions. Our alumni include Turner prize winner Simon Starling, filmmaker Jonathan Glazier, actor and comedian Paul Kaye and All Saints founder, fashion designer Stuart Trevor. We have a broad range of courses at undergraduate and postgraduate level which equip our graduates to work within this vibrant and growing sector.

### Fashion, Textiles and Knitwear Design

- BA (Hons) Fashion Accessory Design
- BA (Hons) Fashion Design
- BA (Hons) Fashion Knitwear Design and Knitted Textiles
- BA (Hons) Textile Design
- MA Fashion Design
- MA Fashion Knitwear Design
- MA Textile Design Innovation
- MA Fashion and Textile Design (part-time)
- PGCert Creative Pattern Cutting

### Fashion Management, Marketing and Communication

- BA (Hons) Fashion Management\*
  - BA (Hons) Fashion Marketing and Branding\*
  - BA (Hons) International Fashion Business (one year top-up)\*
  - MA International Fashion Management
  - MA Fashion Marketing
  - MA Fashion Communications
  - MA Luxury Fashion Branding Management
- \*No creative portfolio required for entry.

### Visual Communication

- BA (Hons) Animation
- BA (Hons) Art and Design Media Practice (one year top-up)
- BA (Hons) Graphic Design
- BA (Hons) Photography
- FdA Media Creatives
- MA Graphic Design
- MA Branding and Identity
- MA Illustration
- MA Graphic Design: Theory and Practice (part-time)
- MA Photography
- MA Film Practice
- MA Puppetry and Digital Animation

### Visual Arts

- BA (Hons) Costume Design and Making
- BA (Hons) Decorative Arts
- BA (Hons) Design for Film and Television
- BA (Hons) Fine Art
- BA (Hons) Theatre Design
- MFA Fine Art

### Architecture and Civil Engineering

- BArch (Hons) Architecture
- BSc (Hons) Architectural Technology
- BA (Hons) Interior Architecture and Design
- BSc (Hons) Civil Engineering
- BEng (Hons) Civil Engineering
- MEng Civil Engineering Design and Construction

### Design and Product Engineering

- BA (Hons) Furniture and Product Design
- BA (Hons) Product Design
- BSc (Hons) Product Design
- MSc Advanced Product Design Engineering
- MSc Smart Design
- MA Smart Design
- MA Product Design
- MA Product Design and Business
- MA Furniture and Product Design
- MA / MSc Medical Product Design

### Computer Science and Technology

- BSc (Hons) Computer Science (Games Technology)
- BSc (Hons) Digital Media Technology
- BSc (Hons) Information and Communication Technology
- MSc Computer Games Systems
- MSc Data Analytics for Business (MDM)

### Civil Engineering

- BSc (Hons) Civil Engineering
- BEng (Hons) Civil Engineering
- MEng Civil Engineering Design and Construction

### Design and Product Engineering

- MSc Advanced Product Design Engineering
- MSc Smart Design
- MA Smart Design
- MA Product Design
- MA Product Design and Business
- MA Furniture and Product Design
- MA / MSc Medical Product Design

### Journalism, media and creative writing

- BA (Hons) Broadcast Journalism
- BA (Hons) Print Journalism
- BA (Hons) Media (single and joint honours available)
- BA (Hons) English with Creative Writing
- BA (Hons) Communication and Society Joint Honours
- BA (Hons) Film and TV (Joint Honours)
- MA Broadcast Journalism
- MA Newspaper Journalism
- MA Magazine Journalism
- MA Documentary Journalism
- MA Creative Writing
- MA English Literary Research
- MA Museum and Heritage Management

If you are interested in studying at NTU contact

School of Art & Design

Tel: +44 (0) 1159 41 8418

Email: [art.ug-queries@ntu.ac.uk](mailto:art.ug-queries@ntu.ac.uk)

[www.ntu.ac.uk/art](http://www.ntu.ac.uk/art)

School of Architecture, Design and the Build Environment

Tel: +44 (0) 1159 41 8418

Email: [adbe.ug-queries@ntu.ac.uk](mailto:adbe.ug-queries@ntu.ac.uk)

[www.ntu.ac.uk/adbe](http://www.ntu.ac.uk/adbe)

School of Science and Technology

Tel: +44 (0) 1158 48 3589

Email: [sci.enquiries@ntu.ac.uk](mailto:sci.enquiries@ntu.ac.uk)

[www.ntu.ac.uk/sat](http://www.ntu.ac.uk/sat)



## Thank you

The Nottingham Creative IP Project Team would like to thank all those who have supported the project from its concept development right through to its book launch. We have had tremendous help from our speakers, NTU members of staff and students, local law firms and organisations key to the Creative Industries. We would like to thank Jason Holroyd for his invaluable expertise throughout the development of this publication and with support of Anomaly Design for image selection and Kay Garrett for editorial assistance.

## Endorsements

The Writers' Guild believes it is vital that all that all of us who work in the creative industries are aware of the need to fight for the right to retain our intellectual property - it's all we've got. This guide is simple, clear, and packed with the kind of useful information it is easy to overlook in the excitement of completing a commission. Whether you're starting out on your career or already experienced read it. It's packed with the kind of things you need to know and probably don't.

### **Nick Wood**

*Chair of the Writers' Guild Theatre Committee.*

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"The IPO is thrilled to have supported the creation of this guide by providing Fast Forward Competition funding. Managing IP assets effectively can make the difference between business success and failure, so anything that helps folk get their heads around what can feel like tricky concepts is welcome. The Nottingham Intellectual Property Guide for Creatives does just that, bringing each IP right to life with great case studies from local entrepreneurs. The Guide is an excellent starting point for any creative entrepreneur keen to get to grips with IP."

### **Rosa Wilkinson**

*Director of Innovation, Intellectual Property Office*

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The Chartered Society of Designers believes that Intellectual Property is the international 'currency' of design and that designers are uniquely placed to develop IP and determine its value, enabling and empowering them within both the commercial and social sector. In order to practice professionally in a global market place designers must understand, respect and value IP. The Nottingham IP Guide provides design students and practitioners with an understanding of the mechanisms for establishing, protecting and valuing their IP and ensuring they respect that of others.

### **Frank Peters**

*Chief Executive, Chartered Society of Designers*

