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property?

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## Fail to prepare and you might not own anything

Do you know precisely what intellectual property you currently own and are likely to create in the course of your business? Both individuals and companies can own intellectual property rights so you should take care to identify what rights the various individuals within your organisation may own and to ensure that ownership of these rights are legally transferred to the correct owner. For example, rights need to be formally transferred from an entrepreneur or business founder to the new company being incorporated. Investors carrying out due diligence exercises often refer to this set of transfers as the 'chain of title'.

## Who owns what?

Founders will likely own intellectual property rights they created before incorporating their company, however, these can often be jointly owned if more than one person was involved in their creation. If you have used contractors or other third parties in creating intellectual property rights then you will not own these rights unless you have an agreement that transfers those rights to you. This is a common pitfall for new (and many experienced) businesses. For example, did your website designer actually transfer the intellectual property rights in the website design to you? Unfortunately, payment alone is not enough to transfer ownership.

## Get your paperwork in order

It is never too early to organise your paperwork, but it can often be too late! When you ask another party to create intellectual property rights for use in your business, you should have a clear agreement that transfers ownership of those rights to your company. In some cases, the owner of those rights might only be willing to grant a licence to use those rights. This can be OK in some circumstances, however, not all licences are created equal and you should clearly understand if your business will need to use those rights in future before agreeing to a licence.

## Types of intellectual property rights

- Trade marks

Often referred to as a 'brand', a trade mark is a name or a sign that distinguishes your goods or services from other providers. Registered trade marks can be used to prevent others from using your mark or benefiting from the goodwill attached to it. There are rules that need to be followed and there may also be pre-existing right holders who could challenge your application, so research your proposed name or sign carefully from the start.

- Patents

Inventors can patent their creations to stop others from using them without permission. The invention must be novel and protection usually lasts for a limited time (20 years) and must be periodically renewed. There are strict rules about what can be registered as a patent but examples include mechanical devices, chemical compounds and methods or processes. If you have a new invention, it's important to remember that before you reveal any details (for example, when seeking investment or a licence to sell to a manufacturer) you should always get written agreement from the other party that information will be kept confidential. If you are an academic and you are considering a spin-out, remember to apply for your patent before you publish any details.

- Copyright

Copyright exists in many media forms and, importantly, also protects software to stop others from copying your work. Copyright arises automatically in the UK without the need for any registration (although some countries, such as the USA, also allow formal registration). There is an overlap between copyright and other intellectual property rights, for example there will be copyright in a logo that may also be registered as a trade mark or a design that may be registered as a design right. You can indicate that copyright exists in your work by using the symbol ©, your company name and the year.

- Design rights

You can gain registered protection for the look of a product you've designed, including the appearance, physical shape, configuration (or how different parts of a design are arranged together) and decoration. A registered design is much cheaper than a patent, however, it only protects against others copying the appearance of your product, not the way it works.

To be eligible, your design must be new, inoffensive and must not be a protected emblem (such as a flag). Registered design protection initially lasts for 5 years but needs to be renewed after each subsequent 5 year period and can last for up to 25 years.

- Know-how and confidential information

Practical skills, knowledge and expertise are just as valuable as any other form of registered intellectual property rights. Trade secrets (like recipes or a manufacturing process) give your business a competitive advantage. There is no specific register for this type of sensitive information. In the UK, these rights are protected under the common law of confidence as well as trade secrets legislation, and you need to actively manage your rights through keeping the information secret and only disclosing it to parties that have signed confidentiality agreements.

- Domain names

While not strictly a category of intellectual property, securing the right to use a domain name can be critical to the success of your business. You should ensure you become the registrant of your chosen domain name, renew your domain name regularly through your domain name registrar and carefully align your online strategy with your trade mark protection.

## Uses of intellectual property

The main use of your rights will be to protect your business by denying competitors the ability to copy your products or processes, however intellectual property can also generate income through being sold or, more usually, licensed in return for royalties. If you own a patent to a product, you could manufacture and sell those products, or you could create revenue from other manufacturers by licensing your patent. Alternatively, you could sell that patent and associated technology to an established manufacturing company, if you can show the product has commercial potential.

## Expand your horizons

As mentioned above, intellectual property rights vary from country to country and securing a registration in one country does not give you the ability to enjoy protection of that intellectual property elsewhere. Think carefully about where you want to operate your business and design your intellectual property protection strategy around your expansion.

## Seek professional advice

The need to protect and enforce your intellectual property rights never ends. Early preparation and ongoing management can make building your intellectual property portfolio more manageable and help to avoid early pitfalls or budgeting pinch points.

Shepherd and Wedderburn's corporate team combines industry knowledge and extensive experience with technical expertise, and is on hand to assist businesses at all stages of their growth journey. The team's Start to Scale initiative, comprising written guides, video content and in-person events, addresses some of the specific challenges affecting start-ups and scale-ups throughout their lifecycle to give entrepreneurs the insight they need to scale. Visit [shepwedd.com/start-to-scale](https://shepwedd.com/start-to-scale) for more information, or contact [Joanna Boag-Thomson](mailto:joanna.boag-thomson@shepwedd.com), Partner in Shepherd and Wedderburn's corporate team, at [joanna.bt@shepwedd.com](mailto:joanna.bt@shepwedd.com).

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