

World IP Day Q&A Wrap-Up

World Intellectual Property Day was marked on Wednesday, 26 April. Since then, we received many queries from clients looking for clarification on copyright and trade mark infringements.

This document looks to collate the most common issues with insights provided from our team drawing from their wealth of experience.

Q&A Wrap-Up

Insights and Analysis

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1. What is intellectual property?

Intellectual property (IP) is all around us. Products or services that we use in our daily lives are usually the result of a chain of big or small innovations, such as changes in designs, or improvements that make a product look or function the way it does today. Almost every business enterprise has a trade name and may have one or more brands. Many will develop creative original designs. Many will have produced, or assisted in the publication, dissemination or retailing of a copyrighted work. Some may have invented or improved a product or service.

It is important to understand the difference between the various types of IP. The main intellectual property rights cover a number of areas, including patents, trade marks, designs and copyright. It is often the case that more than one type of intellectual property right can be applied to the same creation. Some types of IP require registration, others apply automatically. Whichever is the case, holding a form of IP protection can add value to a business or asset.

2. Why protect intellectual property?

Protecting IP is not compulsory but should be considered. Protected intellectual property rights may be used to facilitate licensing revenue, as security for borrowing, for marketing purposes and can be a valuable asset in a business sale.

The protection of your IP may also give you exclusive rights (in countries where you have secured protection) to your particular asset e.g., brand name, invention, design etc. This also ensures that others cannot benefit financially from your hard work or, indeed, damage your reputation by forbidding others from creating an inferior product or service that appears to be associated with your business.

3. What are the benefits of registering a trade mark?

Trade marks are generally concerned with brand identity - principally of goods and services. They can be distinctive words, marks or other features, the purpose of which is to make a distinction in the mind of a customer between different traders, products and services.

Trade mark registration confers an exclusive right to use the registered trade mark in a particular class. The trade mark may be exclusively used by its owner or licensed to another party for use in return for payment.

Registering your trade mark creates an official record of your rights as owner of a particular trade mark and makes it easier to prevent others from using it. The relevant legislation in Ireland is the Trade Marks Act 1996 (as amended), and the body of EU law covering trade marks.

- Trade mark registration grants a statutory right, subject to certain conditions, to prevent others from using the trade mark without the registered proprietor's permission - i.e. to prevent infringement.
- Registration confers an exclusive right to authorise others by means of licensing to use the trade mark for the goods and /or services for which the trade mark is registered.

Although registration is not obligatory, registration makes it easier to prevent others from benefiting from the reputation established by the use of a trade mark by allowing the proprietor of the registered trade mark to take infringement proceedings before the courts.

4. How long does the trade mark registration last?

In Ireland, the term of trade mark registration is ten years. It can be renewed every 10 years on payment of a renewal fee, but subject to renewal, the protection conferred by the mark is indefinite. Trade mark rights are private rights and protection is enforced through the courts or the relevant trade mark office.

5. Are there any interesting trade mark registrations?

1. Words “HOME”, “FACE” and “BOOK” have been trademarked by Mark Zuckerberg’s Meta.
2. Karl Lagerfeld’s Iconic Look were trademarked with his ponytail and prominent spectacles.
3. From “Law & Order”, the two musical notes at the beginning of each episode.
4. The Robin-Egg’s Blue Colour of Tiffany & Co.
5. Mo Farah’s “Mobot” symbol.
6. Apple’s ‘Slide to Unlock’ function.
7. Michael Buffer’s phrase “Let’s Get ready to Rumble” was registered under the class announcing sports and entertainment events.
8. Darth Wader’s Breathing was registered under the classes 25 and 28(costume masks, Halloween costumes).
9. The word “Ping-pong” is trademarked by games company Parker Brothers.
10. Rapper 50 cent’s name.
11. Red Sole of Louboutin shoes.

6. What is copyright and what are the benefits of copyright?

Copyright is an intellectual property right which features mainly in, but is not exclusive to the cultural, arts and information technology sectors. It is the legal form of protection used by the creators or authors to protect the tangible form of all or part of their individual works for example books, plays, music, software etc. Copyright applies automatically to a work, and does not require to be registered

7. What can be protected by copyright?

There is no definitive list of what is or is not protected by copyright. Nonetheless, broadly speaking, works commonly protected by copyright throughout the world include:

- literary works such as novels, poems, plays, reference works, newspaper articles;
- computer programs, databases;
- films, musical compositions, and choreography;
- artistic works such as paintings, drawings, photographs, and sculpture;
- architecture;
- advertisements, maps, and technical drawings.

8. What are the remedies for breach of copyright?

In Ireland, there is no registration procedure for owners of a copyright work. The act of creating a work also creates the copyright, which then subsists in the physical expression of the work itself.

Copyright is protected by law under the Copyright and Related Rights Act, 2000 (as amended). The technical term for misuse of copyright material is infringement. Depending on the nature of the misuse of copyright material, the penalties may be either civil or criminal.

It is most important that the creator or originator of a work is able to show subsequently when the work and the consequential copyright were created as it may be necessary to commence or defend infringement proceedings at some later stage. One way of doing this is to deposit a copy of the work with an acknowledged representative who may be a bank or solicitor in such a way as to allow the date and time of the deposit to be recorded or notarised. Some parties are using blockchain for this purpose, as an indelible record of the date of creation. Alternatively, one may send a copy of the work to oneself by registered post (ensuring a clear date stamp on the envelope), retaining the original receipt of posting and leaving the envelope containing the copyright work unopened thus establishing that the work existed at that date and time.

9. Duration of copy right protection. How long does it last?

The duration of copyright protection varies according to the format of the work:

Literary, dramatic, musical and artistic works and original databases

- Copyright protection expires 70 years after the death of the author/creator.

Films

- Copyright protection expires 70 years after the last of the following dies, the director, the author of the screenplay, the author of the dialogue of the film, or the author of the music composed for use in the film.

Sound recordings

- Copyright protection expires 70 years after the sound recording is made, or if it is made available to the public, then 50 years from the date it was made available to the public.

Broadcasts

- Copyright protection expires 50 years after the broadcast is first transmitted.

The typographical arrangement of a published edition

- Copyright protection expires 50 years after the date it is first made available to the public.

Computer-generated works

- Copyright protection expires 70 years after the date it is first made available to the public.

Contact us

If you have any questions or would like to get in touch, please do by contacting either David Phelan, Laura Fannin, Jeremy Erwin or Ross Magee at the details below.



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