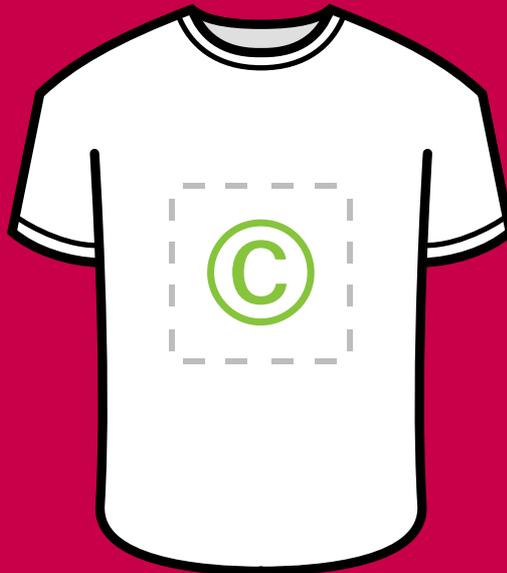


# 6

## Protecting your Creativity

- This chapter comments on the growing importance of intangible assets in the Age of Information.
- It talks about the importance of Intellectual Property and how to protect your ideas through copyright, design rights, trademarks and patents.
- Crucially, it discusses how to use intellectual property rights to turn your bright ideas into income streams.



 **Intangible assets**

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**The new millennium heralded the ‘Age of Information’ and a transition from the industrial age as significant as the transformation to the industrial era from agricultural society a couple of centuries earlier. Correspondingly there was a shift in power and wealth from land to factories and from now on towards information and ideas.**

### The Age of Intangibles

This new era could be called the Age of Intangibles because so much power and wealth is becoming tied up in **intangible assets** such as brands, market information, know-how and ideas. Though we cannot touch them, intangibles can be bought and sold like land or machines and represent an increasing proportion of global wealth. If you buy a share in Microsoft, only a small fraction of what you are buying is in land, buildings and computer hardware; most of what you are buying into is a share of Microsoft’s brands, licences, systems, expertise and morale of its employees – in other words the intangible stuff that will produce future profits. Conventional accountancy fails to find a good way of counting the value of intangibles, but the market takes it into account and is willing to pay far more than is represented on the balance sheet. It’s a multi-billion dollar equivalent of paying extra for that invisible goodwill when buying a shop for more than the value of the premises plus its stock.

### Intellectual Property (IP)

Creative ideas have been around since well before someone designed and built the first wheel, but ownership of creativity has never been as clear-cut as ownership of natural resources or production facilities, and still isn’t. For creative entrepreneurs living in the Age of Intangibles, ownership of creativity has never been so important. The ownership of creativity is complex, both philosophically and legally.

**Intellectual Property (IP)** is the product of creative ideas expressed in works and **Intellectual Property Rights (IPR)** are the legal powers associated with the ownership, protection and commercial exploitation of those creative works.

Intellectual Property is at the heart of the creative industries which have been defined as ‘those activities which have their origin in individual creativity, skill and talent, and which have a potential for job and wealth creation through the generation and exploitation of intellectual property.’<sup>16</sup>

### Copyright, Designs, Trademarks and Patents

This is a complex legal area but these main points should provide the basis for further research before seeking specialist advice.

In legal terms, ideas themselves cannot be owned, only their expression in a specific way. So the idea for a novel cannot be protected by copyright, only its written form. In UK law, copyright exists as soon as an idea is transformed into some permanent / tangible form. Registration is not necessary. Copyright automatically protects works including writing, music, film, artwork, broadcasts and computer programs. Generally copyright lasts for the lifetime of the author plus 70 years. The copyright symbol © is not essential, but indicates the copyright owner and that permission should be obtained to copy their work. Unregistered design right arises when a design is created, in a similar way to copyright. Designs can also be registered through the UK Patent Office so long as they have a unique ‘individual character’.

Trademarks are used to distinguish the goods or services of one business from another. Trademarks are not only the logos that companies and organisations use as badges, but can also be words, shapes, pieces of music, smells or colours. (Cadbury’s familiar purple colour is a registered trademark – nobody else can use the same colour for chocolate packaging.) Trademarks apply to different classes of goods and services which is why Penguin can be a trademark for both books and biscuits. Mimashima Records checked out

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trademarks globally before deciding their trading name. Though 'shima' was used by companies in Japan, none were record labels and so they were not infringing other companies' trademark rights. **Medication** is a registered trademark of a nightclub promoter, not a drug company.

Trademarks can be unregistered, or registered permanently through the UK Patent Office. Patents themselves are used to register and protect inventions and are mainly concerned with mechanisms, designs, processes etc.

The UK Patent Office website provides useful information and details of registering patents, designs and trademarks.

There is no obligation to register trademarks, designs or inventions – indeed the recipe for Coca Cola is protected by simple old-fashioned secrecy rather than a patent. Without registration, however, it will be more difficult to obtain legal protection if someone else uses your design, trademark or invention for their own purposes.

## Intellectual Property Rights (IPR)

Intellectual Property Rights include moral rights, publishing rights and mechanical rights. Moral rights relate to the creator's rights to receive recognition as the creator of their work and to prevent others from falsely claiming credit for the creator's work. Copyright may remain with the creator of the work, or be transferred to another person or company. Publishing rights may be granted to a third party to publish a work in a particular way, for a limited duration, in specified markets, without transferring copyright to the publisher. The term 'mechanical rights' is used in the music industry and refers to a particular recording of a work. So the moral rights, copyright and mechanical rights in a piece of music may belong to three different people or companies. Copyrights, trademarks and other intellectual property can be bought and sold like other commodities. The rights and ownership of *Yesterday* and other Beatles songs is a story in itself.

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In recent years the additional option of Internet downloads has created a new way to commercialise intellectual property. Rock legend Pete Dinklage had the foresight to insist on keeping the download rights to his music when negotiating with his record company in 2000. His songs are now available for download from the iTunes Music Store and the resulting royalties are his.

David Bowie, both an artist and a businessman, put his creativity into commerce in 1997 and pioneered the sale of bonds to raise \$55 million to buy back the copyrights in his music. He now controls the use of his works and repays bondholders a fixed rate of return on their investment from income generated by the exploitation of his intellectual property through numerous licensing deals.

## Employees, Contractors and Clients

It's worth noting that an employee who creates something as part of their employment normally does so on behalf of their employer and so they do not own it themselves, the employer does. There should be a clear understanding between employer and employee about these issues, and this is normally set out in a contract of employment. New Mind's employees' contracts specify that the software they create belongs to the company. For freelance contractors and other situations the position is less clear cut and is negotiable. This is an important consideration in the business environment of the creative industries where there are so many freelance contractors and ad hoc partnerships as well as conventional employer-employee relationships. When engaged by a client to produce a creative product, ownership and future use of the fruits of creativity needs to be agreed in advance so the position is clear to all parties involved. The ownership and transfer of IP should be written into client contracts and terms of trade. See [JAB Design](#).

[Ideas in Action](#) — see page 70

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So intangibles can be protected to some extent, but ownership of their means of production is virtually impossible. Food is the product of land somebody owns and goods the product of a factory owned by a firm, but ideas are the product of a brain belonging to a person who cannot be owned and can walk

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[Ideas in Action](#) — see page 42

away from the business. If all your employees won the lottery jackpot in a syndicate and didn't return to work on Monday (it happened in Spain!) what value would be left in your creative enterprise? Land or factories cannot just walk away, but your human assets can.

What you have left in the business when all the employees have gone home is really all that you own. Only those things that are not dependent on individuals belong to the business itself. These tangible assets probably amount to not much more than office furniture, computers and some equipment. A creative enterprise's wealth is more likely to lie in its intangible assets, ie in its intellectual property such as copyrights, brands, trademarks and patents, appropriately registered and protected.

Generating ideas is the everyday work of creative and cultural enterprises and the expression of those ideas creates intellectual property. *Protecting* that intellectual property through the registration of trademarks, designs and patents prevents unfair exploitation of your creations so that you remain in business. Owning intellectual property that becomes an intangible asset underpins the value of your enterprise so that your business remains beyond you.

When you want to move on or retire, this is all you have to sell, because if the enterprise is entirely based on your skills and what's in your head, your business cannot be sold to someone else. [New Mind](#) put all their intellectual property into one of their companies so that it could be sold separately in the future.

## Turning Creativity into Cashflow

Whilst moral rights give recognition to the artist or creator, in business terms the point of intellectual property rights is to utilise (exploit) them to create revenue streams for their owner through direct sales and licensing agreements.

Many creative businesses view the whole area of intellectual property purely defensively, simply to protect their rights. Successful creative entrepreneurs also have an assertive approach. I will use a metaphor from the world of tangible

products, for example goods stacked in a warehouse. Yes, we need to lock them securely away at night to protect them from thieves. But during the day we need to open our doors widely and confidently to sell our wares. That's when we make our money. Whilst we need to protect our intellectual property from theft, we must also look for opportunities to sell it, which cannot be done if the focus is so much on protection that the doors are permanently locked.

Creative work can be repurposed, ie expressed in different ways through a range of saleable items. So for example an artist can sell not only the original work but also prints, postcards or even mugs and mouse mats.

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The [Red Production Company](#) licenses format rights and sells DVDs of its TV productions.

Licence agreements allow third parties to use intellectual property, for specific purposes and periods of time, in exchange for fees, without selling the intellectual property rights. For example David Hughes has licence agreements with the BBC. See [ESP Multimedia](#).

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**In conclusion...**

**the business of creativity is the art of turning recognition into reward, and the science of turning intellectual property into income streams.**



## Key Points

- 1** Count your intangible assets as well as the tangible ones.
- 2** Assess your current intellectual assets as part of the PRIMEFACT analysis of your strengths and weaknesses.
- 3** Include your intellectual property – and its protection – in your business strategy.
- 4** Intellectual property should not only be protected but also exploited. How can you turn it into income directly or indirectly?
- 5** Are you sure you are not infringing on other people's intellectual property rights?
- 6** Are your contracts with employees, clients and contractors clear about the ownership and transfer of intellectual property rights?
- 7** A creative enterprise's wealth is more likely to lie in intangible assets than tangible ones.
- 8** What value do you have left in the business when all the employees have gone home?
- 9** Get expert advice on registering designs, trademarks and patents. How much value lies in the parts of your business that cannot just walk away?
- 10** Remember: the business of creativity is the art of turning recognition into reward and the science of turning intellectual property into income streams.