

Business Law (6th edn)

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Published in print: 07 May 2020

Published online: September 2020

Abstract

The final chapter in the book examines matters relating to the intellectual property created and/or owned by a business and their responsibilities for the data they access and/or produce. Given the value of the outputs from the intellectual creativity of persons (software programs, books, music recordings etc.), this chapter outlines the rights available to protect them and the consequences for infringement. It first identifies the law surrounding creative ideas and work (copyright) before a product's appearance (design rights) is considered. The chapter continues by assessing the protection of a brand name and image (trademarks) and finishes the substantive issues through examination of inventive ideas and works (patents). Confusion of the public through the unlawful use of an existing business' name or product can result in the tortious liability of 'passing-off'. Intellectual property is produced by employees and the consequences of employment status for the rights to exploit the property must be effectively managed. The chapter concludes with an assessment of developments in data protection—the GDPR, Data Protection Act, and the tactics available to businesses to avoid transgression of the law.

Keywords: intellectual creativity, copyright, design rights, patents, trademarks, infringement, ownership, passing-off, GDPR, Data Protection Act

Intellectual property is of vital importance to business. Most commonly seen in copyrighted materials, patents, and trademarks, businesses invest considerable resources in developing and acquiring brand images or the rights to materials. Hence, they are rightly protective over who has access to utilize the material and the control that they, as owners, can exert. If a business owns the copyright to a film or album, or where they have the right to use a trade name (Microsoft, Apple Inc.), and so on, it is easy to see the problems and concerns of unauthorized use of this material. Therefore, businesses need to know how to protect their intellectual

property rights, and also how to ensure they do not, deliberately or innocently, infringe the intellectual property rights of another. Businesses and their personnel are subject to the protection of data they generate and hold about individuals. With the coming into force of the General Data Protection Regulation, strict rules regarding compliance have been introduced and it is essential that businesses know of these and how to incorporate those into their practices and policies.

Business Scenario 24

Alexei is a rising star in Mixed Martial Arts and has proved increasingly popular since he joined the UPC fighting organization. On the basis of his rising popularity, Alexei was approached with a proposition. He could make use of his image rights in the form of a series of cartoons to be used to encourage children to be more active and engage in sporting activities. Alexei established a company 'Fighting Fit Alexei Ltd' which hired a cartoonist to produce the cartoon. Fighting Fit Alexei Ltd registered the trademark 'The Notorious Alexei' and sold t-shirts and other associated merchandise.

The cartoon series was very successful and given his increased publicity, Alexei secures a high profile and financially lucrative showcase boxing match with the former champion Floyd Pilgrim. Alexei's stardom seems likely to enable him and Fighting Fit Alexei Ltd to maximize his intellectual property rights.

The following events have transpired which require assessment. In each case, no permission has been sought or granted from either Alexei or Fighting Fit Alexei Ltd:

- The cartoon series involving Alexei has been posted to YouTube by several of their content creators. They are receiving revenue based on the advertising associated with the number of views.
- Alexei's old private school has begun an advertising campaign using his image of when he participated in school sports day events. The school is trying to entice parents to send their children to the fee-paying school in order to achieve the same guidance which made Alexei a sporting success.
- The individual who created the cartoon for the videos has begun reproducing the same images for sale directly to fans of Alexei through the internet. Further, he is invited to sporting goods stores where he draws caricatures of the patrons alongside the Alexei image and also prepares the image directly onto clothing sold in the stores. These are then sold as The Notorious Alexei Sportswear.

p. 648 Learning Outcomes

- Explain the concept of copyright and how ownership is established and enforced (24.3–24.3.7.2)
- Identify the rights an owner of copyright has in relation to the intellectual property (24.3.3)
- Describe what is meant by design rights and explain the registration procedure (24.4–24.4.1)
- Assess the protection provided through the registration of a trademark, and where registration may be refused (24.5–24.5.4)

- Describe the tort of passing-off (24.5.5)
- Explain the process of gaining protection for an invention through obtaining a patent (24.6–24.6.3)
- Identify the ownership of the intellectual property when it is produced by an employee or an independent contractor/freelance firm (24.7–24.8)
- Explain the impact of the Intellectual Property (Unjustified Threats) Act 2017 on rights holders' ability to communicate with infringers without fear of legal action (24.9–24.9.4).
- Discuss how the General Data Protection Regulation and the Data Protection Act 2018 regulate the new obligations of businesses to protect the data of individuals (24.10–24.11).

24.1 Introduction

This chapter considers some issues regarding a business's ownership of **intellectual property** (IP). Ownership of goods and the issues surrounding buying and selling of these have been identified in Part 3 of this text. Further, due to the constraints of this text, it is not possible to discuss issues regarding the ownership of land (although guidance for those interested in the topic is provided in the Further reading section at the end of this chapter). Rather, this chapter considers the issues surrounding the concept of IP and how this may be more difficult to determine than ownership of land. The intellectual creativity of persons can prove to be very valuable (consider the revenue generated from computer software, books, music recordings, and so on), and the common law and statutes have sought to offer protection to the owners of these creations. Without protection and enforcement of the owner's rights, the desire and impetus placed into creating these materials may be stifled, negatively impacting on society and the economy. Remember, protection of IP rights allows the owner to control the 'fruits of their labour' whilst also allowing the public to have access to it (and enjoy the benefits of this).

IP is a broad concept but may be most readily seen where businesses create a name, brand, product, process, and so on, and wish to protect against its unauthorized use. The UK Intellectual Property Office (UK-IPO) provides an example of the applicability of IP in terms of a mobile telephone where the ringtone would be covered through copyright, its shape is protected through a registered design, the name of the phone or associated logo could be protected through a registered trademark, and the processes used in its manufacture can be protected through patents (see **Figure 24.1**).



Figure 24.1 Protection of intellectual property rights

24.2 Protecting intellectual property

IP is a wide-ranging term, but essentially it is used to describe the patents to protect new inventions; trademarks that are used by businesses that may define brands, logos, and the shapes of products; design rights and registered designs; and copyright, which provides the owner with protection against unauthorized use of their literary, artistic, and dramatic works, sound recordings, software and databases, and so on. There are regulations regarding the protections afforded and the mechanisms available to enforce rights, and these are identified in the following sections.

24.3 Copyright

The law relating to copyright is governed, through statute, by the Copyright, Designs and Patents Act (CDPA) 1988 (as amended by the Copyright and Related Rights Regulations 2003). The protection of copyright is afforded to anyone's creation of a literary, dramatic, musical, or artistic work or the creation by an employee who is contracted to create such works. Through this ownership, control may be exercised as to who may use the work and how permission will be granted (e.g. through licensing). Examples of the use of the copyrighted materials may include the publication of literary products (such as books and articles—although these may be written, spoken, or sung to qualify as literary works under s. 1(1) as is very broadly defined), the distribution and broadcast of films and music, the creation of databases, and the production of computer software. Section 3A(1) identifies a database as a collection of independent works, data, or other materials that are arranged in a systematic way and are individually accessible by electronic or other means. The copyright also crosses media, such as when a photograph is reproduced on a website it would still breach the owner's copyright even though they are in different mediums. Copyright need not be applied for, and claims can be made for the unauthorized use of the owner's copyright once the work has been fixed (such as being recorded and written down).

From 1 October 2014 the new Intellectual Property Act (IPA) 2014 commenced with the aim of modernizing copyright law and further helping those who design and hold patents to protect the valuable intellectual property that they produce. Copyright law was previously out of date and had not kept adequate pace with changes in technology or how people produce, access, and consume copyrighted materials—think of the use of ebooks, digital libraries (e.g. iTunes), and cloud-based computing services, and how each has changed the way people interact with copyrighted materials. IPA 2014 has led to small, but important, changes in the law which will not be fully realized until several years after the full commencement of the Act.

Further, the Act aims to simplify and strengthen the protection of the UK designs industry, which the Government estimates is worth in excess of £15 billion a year to the UK economy. It creates a criminal offence, which prior to the 2014 Act was merely a civil offence, for intentional copying of a registered design. It makes

changes to research conducted at UK universities; it enables a system of webmarking, as opposed to greater detailed information, relating to a patent right; and it facilitates the expansion of dispute resolution relating to patents.

24.3.1 Who is Protected?

The copyright holder is entitled to protection where the work fulfils the following criteria:

1. it is of a type that is protected under CDPA 1988;
2. it has been produced in some tangible form—written, recorded, and so on;
3. it satisfies the requirement of originality;
4. the owner/creator is a British citizen and/or the work was first published in the UK.

The term ‘original’ does not refer to an idea or thought that is original, but rather it is the expression of the idea that must be original. For example, in preparing a textbook, the text will refer to other authors’ work in books and journals, judgments, research reports, government documents, and so on. These will be ‘owned’ by the copyright holder in each case, and other textbooks may have already included similar materials, but if the way the ideas are expressed is original, and they have been expressed in some tangible form (referred to as being fixed—s. 3(2)), then copyright will exist for this ‘original’ work.

Consider

The YouTube uploaders may have infringed the rights of Fighting Fit Alexei Ltd as the first owners of the copyright—it hired the cartoonist. The cartoonist is not the legal owner of the image of Fighting Fit Alexei and is breaching copyright by drawing the image on pictures and clothing.

24.3.2 What is Protected?

Under the Copyright Directive 2001/29/EC, ‘work’ requires: 1. that the subject matter concerned is an original intellectual creation; and 2. there must be an ‘expression’ of that original intellectual creation. Copyright affords the owner protection against breaches such as the unauthorized use of *original* material including (s. 1(1)):

- *Literary works*: This includes books, computer software programs, song lyrics, and even instruction manuals (s. 3);
- *Music and broadcasts*: Including films, videos, and radio shows (ss. 5 and 6);
- *Dramatic productions*: Including plays, dances, and sound recordings;

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- *Artistic works*: This is wide-ranging and includes drawings, diagrams, logos, photographs, and sculptures (s. 4). As logos also may involve trademarks, it can be seen how IP rights are not restricted to one of the categories identified in this chapter.
 - *Typological arrangements of published editions*: This involves the planning and establishing of type that may then be printed. Examples include sections of a newspaper and the layout of a book (s. 8).

Consider

The YouTube uploaders have breached the CDPA s. 5A—the protection for broadcasts due to the definition provided in that part of the Act.

Lucasfilm Limited v Ainsworth (2011)

Facts:

Mr Ainsworth contracted with Lucasfilm to make the iconic Stormtrooper helmet made famous in the Star Wars films. He was provided with a clay model from which to make the helmets. He produced the items for Lucasfilm and then proceeded to make more helmets from the model which he sold for personal gain over the internet. LucasFilm sought to assert copyright in the clay model and enforcement of their US copyright.

Authority for:

The clay model was an object with a functional purpose, not an artistic one. The Supreme Court concluded therefore that it was not a ‘sculpture’ within s. 4 of CDPA 1988. This meant that copyright did not subsist, and the issues on the availability of defences to copyright infringement were irrelevant.

It is not possible to claim copyright protection for ideas; names, phrases, and slogans (although they may be applicable to trademark protection); or products and manufacturing processes (although patents may be applicable). Use of the copyright without the owner’s consent will enable enforcement proceedings to be initiated, with the possibility of an action in damages.

Copyright protection may be granted to expressions, but not to ideas, procedures, methods of operation, or mathematical concepts. In *Case C-310/17 Levola Hengelo BV v Smilde Foods BV*, the Court of Justice of the European Union (CJEU) heard a case from a Dutch court regarding the copyright protection of food. A spreadable dip with cream cheese called ‘Heksenkaas’, created in 2007 by a Dutch retailer, had been transferred to a different company, Levola. In 2014 another company manufactured and sold, through a supermarket chain, a similar product. Levola argued that this product infringed its copyright (under the

p. 652 Copyright Directive Directive 2001/29/EC) as to the taste of 'Heksenkaas'. The CJEU confirmed that to be protected under copyright the taste of a food product must be capable of being classified as a 'work' within the meaning of the Directive. This required the subject matter concerned to be an original intellectual creation, and it must be an 'expression' of that original intellectual creation. These criteria could not be met and therefore the ruling established that the taste of a food product cannot be classified as 'work' and gain protection under the Directive.

24.3.3 Rights Provided Through Copyright

- *Legal rights*: The owner's legal rights allow them to (s. 16):
 - copy and distribute copies of the work to the public;
 - issue copies to the public;
 - perform, show, or play the work in public (such as through various broadcast media);
 - broadcast the work or include it in a cable programme service;
 - make an adaptation of the work or do any of the above in relation to an adaptation;
 - sell a work; under the Artist's Resale Rights Regulations 2006, an artist has the right (resale right) to a percentage of the selling price (resale royalty) when they own the copyright and certain forms of art are sold.
- *Moral rights*: The owner has the legal rights to the work, but it must be recognized that they also hold the moral rights (beyond those economic rights—s. 77). These rights include:
 - protection against the distortion of the owner's work;
 - in relation to literary, dramatic, artistic, or musical works, that they have the right to be recognized as the author of the work whenever it is performed commercially or in public;
 - literary, dramatic, artistic, or musical works may not be falsely attributed to an author;
 - where an undertaking has been made to make a film or take photographs for private consumption, they may not show or broadcast this to the public.

Infection Control Enterprises Limited v Virrage Industries Ltd (2009)

Facts:

A question arose regarding the rights held by the owner of IP in the form of bespoke software.

Authority for:

In the event of IP being created in the form of bespoke software, a customer will only receive the minimum rights necessary unless they specifically provide for these in the negotiations. Here, the court rejected the argument of *Shirlaw v Southern Foundaries* (see 8.3.2) that such a fact was omitted

from the contract because it was ‘so obvious’ there was no need for it to be mentioned.

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IPA 2014 allows for the reasonable copying of sound recordings, films, and broadcasts which are used for non-commercial research and private study, without the need for ↩ obtaining the permission of the copyright holder. This is particularly important for researchers at university and students who will have access to content, although copying and use of the material must be reasonable and fair.

24.3.4 Registration of Copyright

A significant protection afforded to the owners of copyright in the UK is that it is automatic and, unlike other protections of IP rights, there is no registration process. Because of the lack of formal registration, the owners of the property may be concerned as to how proof of ownership is established. Tactics have included sending a copy of the work in a dated and unopened package to oneself, or leaving a copy of the work with a solicitor. Further evidence of ownership may be supplemented through the use of the internationally recognized copyright symbol © followed by the owner’s name and the year of the work’s creation which identifies copyright and prevents others from infringing, intentionally or unintentionally, that copyright. As this symbol is internationally recognized, it transcends the jurisdiction of the UK, but whilst it is acknowledged elsewhere, many countries have their own rules on the enforcement of breaches of copyright, and the domestic laws of the relevant country will have to be used to enforce copyright ownership (which evidently differs as regards success rates depending upon where in the world the copyright is infringed). It is also important to note that simply because materials are available free of charge does not necessarily mean that they are free of copyright. Materials on the Internet may display the © but even if they do not, downloading or using materials may be infringing the owner’s rights (the Copyright and Related Rights Regulations 2003 have harmonized the protections in this area through the European Union). This also applies to the peer-to-peer networks where copyrighted materials are made available for download without charge (unlike, e.g., iTunes, where legal downloads are permitted). The owners of copyright, particularly corporations, are often vigilant in enforcing their IP rights, and actions against children and their parents for illegal downloads of copyrighted materials (games, movies, music, and so on) are not uncommon.

24.3.5 Duration of Copyright Protection

The protection afforded under copyright differs depending on the nature of the work, the time at which it was created, and where the copyright was established. Table 24.1 identifies the duration of copyright protection.

Table 24.1 Duration of copyright protection

Type of original works	Duration of copyright
Sound recordings	50 years
Broadcasts	50 years

Type of original works	Duration of copyright
Literary and dramatic works	The life of the creator plus 70 years
Typographical arrangements	25 years
Publication of a literary, dramatic, musical, or artistic work (previously unpublished) and commercially exploited	25 years
Databases	15 years

p. 654 24.3.6 Primary and Secondary Infringement of Copyright

Infringement of copyright exists where a qualitatively substantial part of the work is copied. Primary infringement of copyright does not consider the perpetrator's motive or knowledge of the copyright's existence. Infringement occurs when one or more of the exclusive 'legal' rights of the owner as identified in 24.3.3 have been breached (hence performed/used without the permission of the owner—s. 16(2)).

However, a breach of a secondary infringement requires the perpetrator to know, or they should have known, of the existence of the copyright of the work being infringed. Further, this is for some other reason than for the person's own personal/domestic use (hence to exploit this infringement commercially), and the person does not have the owner's permission (licence)—s. 22. Secondary infringement occurs where the person, without the owner's permission:

- imports an article into the UK (s. 22);
- possesses an article in the course of business;
- sells or lets for hire; offers for sale or hire such an article;
- in the course of business exhibits in public or distributes an article; or
- otherwise than in the course of business, distributes an article to an extent that it prejudicially affects the owner of the copyright of the article (s. 23).

Further, where the person transmits the work by means of a telecommunications system (other than through broadcasting/cable programme service) without the owner's permission, knowing or having reason to believe that infringing copies of the work will be made by this means, this will constitute a secondary infringement (s. 24). CDPA 1988 also protects against secondary infringement where a means has been provided for making copies of work that would enable a breach of copyright (s. 24), where a person gives permission for a performance in a public place of literary, dramatic, or musical work that infringes copyright (s. 25), or where this is infringed through the public performance of copyrighted works (e.g. playing sound recordings or showing films—s. 26). Where such events have taken place in which the person knows, or should have been aware, that the owner's permission had not been granted, this will constitute infringement.

24.3.7 Enforcement of Copyright

Where the owner of a copyright considers their property rights are being infringed, the first step may be to inform the transgressor. This informal measure may be achieved through a letter, either personally drafted or through a solicitor, and many cases cease at this stage. However, where the other party does not respond, or may challenge the ownership of the copyright, then legal proceedings may have to be initiated. The penalties for infringing copyright may include civil and criminal liability.

24.3.7.1 Civil actions

Section 96 of CDPA 1988 provides that infringement of copyright is actionable by the owner and relief may be available through damages, injunctions, and the transgressor being held to account.

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Consider

Enforcement of Fighting Fit Alexei Ltd's rights against the YouTubers could be somewhat problematic in practical terms—identifying and initiating the legal action itself. A complaint could be made to YouTube and its role in facilitating the infringement and the impact of the safe harbour provided to hosts of third-party content under the E-Commerce Directive could be effective. Note, an injunction would only need to be sought if YouTube ignored the notification of it hosting infringing material.

Whilst damages is an available remedy in cases of infringement, if the defendant can satisfy the court that at the time they were unaware (and did not have reasonable grounds to believe) that the copyright existed, an award of damages may be reduced or removed (s. 97). This is because the court will take all matters into consideration when determining if an award is to be made, including the flagrancy of the infringement and any benefit that accrued to the defendant. A more useful remedy, perhaps, than a damages action, is the availability of injunctions. Here the court orders the transgressor to stop infringing the copyright (through an interim order) until the full hearing, and a further injunction may be ordered following this hearing. A court is also empowered to make an order for the delivery of the product infringing the copyright or its destruction (s. 99). Further, s. 100 provides for the owner or a person authorized by them to seize and detain work exposed or otherwise available for sale or hire (where an action would have been available under s. 99). However, the time and place of the proposed seizure must be given to the police, it must be public (but cannot be a permanent or regular place of business), and the owner or the person authorized by them must not use any force.

An infringement of a moral right is actionable as a breach of statutory duty owed to the person entitled to the right. Where equitable, the court may grant an injunction to prevent further abuses (s. 103). However, while it is possible to assign copyright in its entirety, and parts of copyright (such as bequeathing it in a will—s. 95), it is not possible to assign moral rights (s. 94).

24.3.7.2 Criminal offences

Criminal offences may be committed by a person who:

- offers for sale or hire;
- imports in the UK otherwise than for their own private and domestic use; or
- possesses, in the course of business, with a view to committing an act infringing copyright, an article which is, or they have reason to believe is, infringing copyright of a work. The defendant, if found guilty, may be liable, on summary conviction, to imprisonment for a period not exceeding six months (s. 107).

Further, where goods are imported into the UK, the owner may give notice in writing to the Commissioners of Customs and Excise that they are the owner of the copyright in published literary, dramatic, or musical work; or the owner of copyright in a sound recording or film, and request that the Commissioners treat the copies as prohibited goods (s. 111). Other works may be physically protected from infringement through the use of technology (anti-copy DVDs, smart cards/decoders for satellite broadcasts).

p. 656 ↩ In situations where the two parties have disagreements regarding the terms of an agreement, the Copyright Tribunal exists and can determine the facts and assist the parties in reaching a decision.

There are exceptions to breaches of copyright and in certain situations there is no need for permission. The user is granted limited use of the material that is used for non-commercial research or study (such as copying a section of a book), where the materials are used for reporting events/court proceedings, and if they are used in reviews. Previously, exemptions under CDPA 1988 allowed for businesses to take copies of copyrighted materials for commercial research insofar as this was fair. The Copyright and Related Rights Regulations 2003 ended this exemption from breach of copyright.

24.3.8 Exceptions to Breach of Copyright

The following is a non-exhaustive list. The rules regarding copyright and the application of CDPA 1988 have already been discussed. IPA 2014 provides for certain situations where the use of another person's copyright material may be used without seeking the permission of that owner:

- *Non-commercial research and private study*: This allows a non-owner of copyright to copy limited extracts of works when this is used for non-commercial research or private study and the amount of materials taken was reasonable and appropriate for those purposes (what is known as fair dealing). This exception has been included to facilitate researchers and students to make limited copies of all types of copyrighted works and the criterion to be applied is that the use of the copyrighted material must not have any significant financial impact on the owner. Where researchers use such materials, they must acknowledge the use and source of the material.
- *Criticism and review*: The fair dealing exception to copyright material extends to where the works have been used for criticism, review, or quotation. In respect of reporting current events, fair dealing applies to any type of copyright work except for a photograph. Again, acknowledgement of the source and ownership of the copyrighted material used in these exercises is necessary.

- *People with disabilities*: Two exceptions exist to copyright where these offer a benefit to disabled people (which may be a physical or mental impairment). The first is where the individual with the disability, or someone acting on their behalf, produces a copy of lawfully obtained copyright material in a format that helps the individual with the disability to access it. Making this accessible copy is permitted where the person with a disability lawfully owns or has the right to use the particular work, but the nature of the disability or impairment makes the work in its current format inaccessible; and producing a copy in the format accessible to that individual is not commercially available. The second exception enables educational establishments and charities to make accessible copyrighted materials on the behalf of persons with disabilities. Again, the exception will only apply where the newly formed accessible materials have not been available commercially. Where they are available in such format, the exception will be invalid, as will, in either situation, the person making the accessible copy profiting from this (this does not extend to charging a fee which has been incurred in producing the copy).
- *Time-shifting*: One of the problems with CDPA 1998, and a criticism often levelled against the domestic law, was that it was out of date and did not reflect adequately changes made to digital services and the way that individuals consume media. The time-shifting development enables individuals to record a broadcast which is intended for private and domestic use and can be viewed or listened to at a time convenient for that purpose.
- *Personal copy*: A remnant from the old legislation was that individuals were unable, lawfully, to copy materials such as CDs and DVDs. There is now a personal copying exception that permits individuals to copy such media, which they own, for the purpose of backing-up and in so doing, the individual is not breaching the owner's copyright. This may involve taking hard/electronic copies of CDs or perhaps 'ripping' CDs to include in digital libraries such as iTunes. The requirement here is that a copy is made for personal use and access; it is not lawful to make a copy and distribute it to friends and family, or to hire DVDs, for example, and to make copies or to download copyrighted materials from file-sharing websites.
- *Parody*: Some copyrighted materials may be used by individuals without the owner's permission for the purposes of parody, caricature, or pastiche. This is based on fair dealing and will enable an artist to make reference to films, songs, artworks, and so on.

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24.4 Design rights and registration

- *Design rights*: A business may have spent time and resources in developing a product's shape and design that makes its appearance stand out or may become synonymous with the business (e.g. consider the shape of a Coca-Cola bottle). A design right is established, and the period of protection begins when the work is first 'fixed' in design documents such as a drawing or when it is first made. The design must be original, and in demonstrating that it is not commonplace in a specific area (the UK, the EU, and certain other third countries which have established reciprocal arrangements with the UK), the owner should maintain their records of the design's development (such as in email communications, plans, and files). The specific areas are the UK, the EU, and certain other third countries which have established reciprocal arrangements with the UK. The issue of design rights assists a business as the design right of

the product is an automatic right (like copyright) and it prevents others from copying the design for a period of 15 years. There is also an EU-based recognition of unregistered design rights, and this protects the product's shape and pattern for a three-year period (and throughout the EU). The copyright protection is effective where the design is artistic or involves plans and drawings, and the design is not intended to be mass-produced. Where the creator of the design wishes to gain further protection, not just of preventing the design being copied without permission, but also of controlling the exploitation of the design in any manufacturing of products, it must be registered. Protection under the Registered Designs Act (RDA) 1949 exists for a period of 25 years. **Table 24.2** identifies the duration of protection of a design right.

Table 24.2 Duration of protection of a design right

Design right	Duration of protection
UK registered design	Five years from the date of filing (renewable in five-year periods to maximum of 25 years).
UK unregistered design	Automatic—10 years from the first marketing of the product or 15 years after the design's creation (whichever is earlier).
EU registered design	Five years from the date of filing (renewable in five-year periods to maximum of 25 years).
EU unregistered design	Three years from the date the design was first made available to the public.

- Design rights are applicable to three-dimensional works only, but the unregistered community designs procedure (under EU law) does protect two-dimensional products. The main drawback when compared with the registered method is that the unregistered method gives protection for a shorter period of time, it is less likely that the threat of legal action here will be a deterrent as the owner has to prove they held the design right, and then that the person infringing the right has deliberately copied it, and demonstrating the right to sell or licence the use of the rights is considerably more difficult. It is important to recognize that in the final five years of the design right's period of protection, its owner is obliged to agree licensing terms with third parties who wish to use the design. Where no agreement can be reached, the terms are decided by the UK-IPO.
- Registered designs:* Whilst the design right provides protection without any form of registration, as it is governed by Part III of CDPA 1988 (and may be considered closely related to copyright), it must satisfy the requirements of originality of the design. However, greater protection is afforded the owner if they register at the Patent Office (Designs Registry) under RDA 1949 (which is more closely related to patents). Whilst in the case where damages are sought for infringement of the design right, there must have been an intentional decision to infringe the owner's rights, under the registration scheme, such intention need not be proved and damages may be awarded in cases of unintentional breach.
- To qualify for the right to register the design it must be a new design, and it must have characteristics that give its appearance an original look. This form of protection is often limited to the exterior of a product (rather than how it actually works—see patents). Following the registration, the owner is

granted exclusive rights to produce and use (in the UK) any product that incorporates the design and this right exists for five years, with renewals possible for further five-year periods to a maximum of 25 years. The registered design right includes two- and three-dimensional works. Due to its registration and the confirmation that the IP belongs to the owner, selling or the licensed use of the design is more successful than unregistered designs. As the owner may use this as an income stream, the registration process, whilst incorporating expenses such as the registration fee, may be more advantageous than unregistered designs.

- The protection for registered designs only applies, and is enforceable, in the UK. As protection may be sought beyond the jurisdiction of the UK, a mechanism exists at the EU level where the registration rights apply throughout the Union and ensures that registration procedures are consistent throughout the EU. Registration is made to the Office for Harmonization in the Internal Market and following registration the design is published in the 'Community Designs Bulletin'. There has been further expansion to these rights following the agreement of the EU to join the World Intellectual Property Organization's (WIPO) Geneva Act of the Hague Agreement (and hence each of the 28 Member States of the EU are now included). Since 1 January 2008 designers in the EU can apply for international protection for their designs and this is applicable in all the countries that have signed up to the agreement. The Internal Market and Services Commissioner commented: 'European businesses will now be able to obtain and protect their designs internationally in a simple, affordable and effective way. This should further stimulate trade and innovation, create new commercial opportunities and boost integration within the EU Internal Market.' Further, IPA 2014 is extending the international design registration by the UK joining the Hague system as a member in its own right (not simply being included as a Member State of the EU). Registration can be effected just to the UK, rather than having to select the EU-wide registration as currently exists, and should lead to less expense incurred by the person seeking the registration.
- The registration process involves identifying the design, even simply through sample drawings that show the work and how the design is to be applied. This design must be original and not simply a collection of other designs fashioned together to form something 'new'. Registration of a design that has been used in marketing may be made at any time up to 12 months after it was first marketed, but this should be performed as soon as possible to ensure protection. The UK-IPO website contains the relevant details and forms that must be submitted, including details of the registration fee applicable, and these are sent to the UK-IPO Design Registry (more than one application may be made at the same time, and if so, only one registration fee is payable). The applications are generally examined within two months of submission, and on the basis that no objections are submitted, two to three months following the application the registration process should be complete.

p. 659

24.4.1 Enforcement of a Design Right

With regard to businesses that may take 'inspiration' from the works they have seen and been influenced by in creating a design, it is important not to transgress another's design right. This can be embarrassing, show a lack of imagination or integrity, and it can also be very expensive (legal fees and damages actions may be the result). Therefore, it is prudent to identify whether the design has been registered through the UK-IPO.

However, as some design holders may not register the work, the use of a specialist lawyer may assist in ensuring design rights have not been breached (The Chartered Institute of Patent Attorneys maintains details of relevant lawyers in the UK).

Where a possible infringement has taken place (such as the use of the design or the sale of designs belonging to the holder) it is typical to begin an informal route through communication with the other party, explaining the right and the consequences of further breaches. If both parties are still in dispute, and they agree, they may seek to use a mediator under a form of alternative dispute resolution (see 4.4) to avoid the necessity of court action. If unsuccessful, then the holder of the right may be forced to commence a civil action to recover damages and seek the granting of an injunction to compel the transgressor to cease their activities. Clearly where the case involves an unregistered design, the claimant will have to demonstrate that they own the design right and the defendant had copied it. Where the design has been registered, following the unsuccessful attempt at preventing the breach through the communications between the parties, the holder may claim damages due to the defendant's work closely resembling the holder's design (rather than having 'copied' it).

If the situation arises where the alleged breach has occurred whilst in the process of registering the design, the UK-IPO may be contacted to request an urgent examination, and subsequent registration, of the design.

p. 660 24.4.2 Changes to Design and Patent Law

The main changes which IPA 2014 will bring into effect are:

- *The ownership of design* (IPA 2014, ss. 2 and 6): For designs that are created on or after 1 October 2014 or are the subject of contracts after this date, the owner of a commissioned design will be the designer and not the person who commissioned the work unless the contract provides otherwise. It is therefore vitally important that the parties are aware of this change in the legislation and act accordingly to prevent disputes at a later date. This does not simply include commercial contracts but rather should be a feature in contracts of employment (however, the current system whereby employees producing designs as part of their job and general employment duties do so on the basis that the design belongs to the employer, will continue).
- *Prior use* (IPA 2014, s. 7): In the event that a person uses a design in good faith (e.g. the design was not copied) which is subsequently registered by another person, protection will be available to them against infringement actions. The individual who is using the design but who subsequently finds that another person has registered that same design before they have, will be able to continue using the design on the basis only of how they have used it previously and will not be able to exploit the design—the exploitation of the design and its further use will belong to the person who first registered it.
- *Criminal offence* (IPA 2014, s. 13): Prior to IPA 2014 the intentional copying of a registered design was a civil offence. The 2014 Act now makes such action a criminal offence. The requirement necessary for the guilt of the individual is that they intentionally copied the design without the consent of the owner and whilst knowing, or having reasonable belief, that the design was registered. Remember, accidental and incidental use of a copy design (essentially use in good faith) will not establish a criminal offence. Powers of enforcement will belong to Trading Standards officers in England and Wales and to the

procurator fiscal in Scotland. Such a criminal offence carries the penalties already in existence for copyright and trademark violations—a fine and/or imprisonment of up to 10 years (although such a sentence would be passed in only the most serious instances).

- *Unregistered design right* (IPA 2014, s. 2): IPA 2014 has simplified the process of a person qualifying for an unregistered design right in the UK. Further, it restricts the ability of an individual to base a claim for copying on a cropped area of the unregistered design.

24.5 Trademarks

A business has to protect its IP rights and by registering its trademark, the owner has the right to use the ® symbol to demonstrate ownership. It warns others who may otherwise have used it without authorization that legal consequences may follow for infringement. Without following the registration process, the owner must seek a remedy through the common law action of ‘passing-off’.

A trademark is defined under the Trade Marks Act (TMA) 1994 as:

any sign capable of being represented graphically which is capable of distinguishing goods or services of one undertaking from those of other undertakings. A trademark may, in particular, consist of words (including personal names), designs, letters, numerals or the shape of goods or their packaging (s. 1(1)).

- p. 661 ↩ A trademark (denoted by the ® symbol) identifies that the owner of the trademark has been registered, and it prevents others from using the same image (using the symbol without the required registration is an offence). A trademark may be applied to a name or logo that identifies a product or service, or it could further include a slogan used by a brand or even some sound.

Shield Mark BV v Joost Kist hodn Memex (Case C-283/01) (2003)

Facts:

Shield Mark BV, a Dutch company, had registered 14 sounds as trademarks to be used in computer systems, commercial communications, and so on. In four instances, the sounds included the first nine notes of a composition of Ludwig van Beethoven. A question was raised as to whether sounds could be registered as trademarks.

Authority for:

The European Court of Justice held that notes from a composition by Beethoven could constitute a trademark when used in an advertising campaign on the radio.

As such, they are often associated with a business, product, or brand, and are of significant advantage in assisting customers to recognize the company. McDonald's 'golden arches' and the Nike 'swoosh' are instantly recognizable symbols that the public associate with that company. Indeed, many Nike products, including hats and T-shirts, do not even contain the company's name, but merely that symbol, as it denotes the company. Following registration, the trademark provides the owner with exclusive use of the mark, and those who infringe the mark are subject to a civil action by the owner, but it also enables the police and/or Trading Standards to initiate criminal proceedings for breach (such as with counterfeiters). The law is governed by TMA 1994 (following the transposition of EU Directive 89/104/EEC). Once the registration process has been completed, infringement is committed where the trademark and the other item are confusingly similar to make the consumer (for instance) buy one good believing it to belong to the trademark holder.

Arsenal Football Club Plc v Reed (2003)

Facts:

The football club Arsenal FC brought an action against Reed who had sold souvenirs and other memorabilia bearing the club's name and its badge (for several years). It was claimed that Reed had infringed registered trademarks, but Reed's defence was that these products would be perceived as a badge of support rather than indicating trade origin. Following reference to the Court of Justice of the European Union (Court of Justice) it was held the trademarks, when applied to the goods in this instance, were purchased as badges of support, but this did not prevent the third party being liable to jeopardize the function of the trademark. Following this case, Arsenal changed its club badge to prevent potential further abuses.

Authority for:

A key issue regarding infringement of a trademark is whether the consumer would believe there was a link between the proprietor and the goods being sold.

p. 662 24.5.1 Reasons to Refuse the Grant of a Trademark

TMA 1994 defines where an absolute refusal of registration will take place. Under s. 3 the following shall not be registered:

1. signs which do not satisfy the requirements of s. 1(1);
2. trademarks which are devoid of any distinctive character;
3. trademarks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services;

4. trademarks which consist exclusively of signs or indications which have become customary in the current language or in the bona fide and established practices of the trade;
5. the shape which results from the nature of the goods themselves, or where it is necessary to obtain a technical result, or which gives substantial value to the goods;
6. marks which are contrary to public policy or to accepted principles of morality, or are of such a nature as to deceive the public;
7. if or to the extent that its use is prohibited in the UK by any enactment or rule of law or by any provision of Community law; or
8. if the application is made in bad faith.

Having registered the trademark, it must be renewed every 10 years to remain effective (and may be renewed indefinitely), and where the owner has not registered it, the action to ensure protection against unauthorized use lies in the common law through an action under the tort of 'passing-off'. Whilst such a claim is possible, the costs and complexity of such actions must not be underestimated, and even though costs may be awarded against the party at fault, this is still a considerable undertaking that registration may have made easier. A registered trademark is enforceable throughout the UK, whereas unregistered marks may not be applicable to such an extent and may be confined to enforcement in restricted geographical areas. In the EU, a trademark that has not been genuinely used for more than five years in the country to which it was subject to the registration, or, in relation to an EU trademark, where it has not been used in the EU, may be revoked unless an accepted reason is presented for the non-use.

24.5.2 Registration of the Trademark

A trademark may be registered in the UK through the completion of form TM3 from the UK-IPO, along with the required fee, and submitting these to the UK-IPO Trademarks Registry. The applicant should conduct a search to ensure that the trademark is not registered or that another person has not applied for the same or similar mark. Since 1 October 2007, all trademark applications are subject to regulations with the effect that there will no longer be an automatic block of the registration of the mark if there is an earlier conflicting trademark (The Trade Marks (Amendment) Rules 2007, The Trade Marks (Fees) (Amendment) Rules 2007, and The Trade Marks (Relative Grounds) Order 2007). ↩ The application will result in an examination of the existing UK, EU, and international trademarks protected in the UK and the EU, and on the basis that the UK-IPO discovers a conflict with an earlier trademark, the applicant will be informed of this finding and given the choice to:

1. continue with the application and the UK-IPO will inform the owner of the previously registered trademark of this new application, enabling them to oppose the application based on specific times and procedures (note that licensees will not be given the right to object to an application);
2. change the application so that it is sufficiently different from a current trademark;
3. liaise with the owner of the existing trademark to allow the application to continue unopposed; or
4. withdraw the application.

As such, the role is to attempt to settle potential disputes at as early a stage as possible and reduce the instances of court actions. There has been a move by the courts to introduce alternative forms of dispute resolution, and this is extending more broadly to include legal jurisdictions such as IP.

Where the nature of the product requires protection beyond the territory of the UK, the registration process will have to be undertaken with the various international bodies. The process has been somewhat simplified in that rather than having to seek an application (individually) to each country, the applicant can register a Community Trade Mark (CTM) through the Office for Harmonization in the Internal Market to have effectiveness throughout the EU. The CTM applies to any person resident in a Member State or a business that is based in a Member State, and includes any distinctive sign capable of graphical representation. The benefit of an EU-wide system of registration is that its application is throughout the EU and any injunctions used to enforce a right and prevent infringement have force in each of the Member States. It has a further advantage of lower costs and administrative burdens than applying to each country individually, but due to the size and composition of the EU, a single system of registration may be difficult to enforce and apply in practice.

A further registration system applicable to the entire world was developed through the Madrid System, and following registration in the UK, an application can be made to WIPO.

24.5.3 Rights Provided Through Registration

Registration is recommended in most cases as it provides access to TMA 1994 (as amended) and enables the injured party to seek remedies provided under that Act. Section 10(1) provides: 'A person infringes a registered trademark if he uses in the course of trade a sign which is identical with the trademark in relation to goods or services which are identical with those for which it is registered.' Further, infringement occurs where the identical sign is used in relation to goods and services similar to those for which the trademark is registered and there exists the likelihood of confusion on the part of the public (s. 10(2)), or where the identical sign is used not for similar goods and services, but the trademark has a reputation in the UK and its use takes advantage of, or is detrimental to, the distinctive character or the repute of the trademark (s. 10(3)).

p. 664

Consider

The use of the name The Notorious Alexei Sportswear by the sports shops is a breach of the company's trademark. This action involves advertising merchandise which is similar/identical to that which is subject to a trademark.

TMA 1994 identifies that a sign, for the purposes of the Act, is used where it is fixed to goods or the packaging; exposes or offers the good for sale; imports or exports goods under the sign; or uses the sign on business papers and on advertising literature.

There are limits placed on the rights of a registered trademark, and as such s. 11 states that there will be no infringement where:

- the person uses their own name and address;
- it consists of the use of indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, or other characteristics of goods and services;
- the use of the trademark is necessary to indicate the intended purpose of a product or service;
- it is used in the course of trade in a particular locality of an earlier right which applies only in that locality.

24.5.4 Enforcing a Registered Trademark

There exists an automatic right to enforce the trademark against a person infringing the owner's rights and the courts are empowered, as with the common law, to award damages and grant injunctive relief to the claimant. Where the trademark breach has involved a criminal offence, beyond the loss to the owner where a common law remedy is available, such as dealing in counterfeit goods, Trading Standards may initiate an action that could lead to imprisonment for a period of 10 years and/or an unlimited fine.

24.5.5 The Tort of Passing-off

'Passing-off' protects the holder of an unregistered trademark. At common law, where an individual or business attempts to pass itself as another business, or to pass goods off as being those of the other business, in an attempt to deceive or confuse the public, a tort of 'passing-off' may have been committed. It aims to prevent the infringement of the holder's right and to prevent the other person from benefiting from the holder's reputation.

Irvine v Talksport (2002)

Facts:

The defendants had used a distorted, but still recognizable image of Eddie Irvine (a famous F1 racing driver) to endorse their product. This led to his claim for damages for the tortious act of 'passing off'.

Authority for:

Irvine had a property right in his goodwill which could be protected from unlicensed use comprising of false claims of association or endorsement of a third party's business or goods. Irvine's claim of passing-off succeeded.

Therefore, it is concerned with the relationship between the holder of the trademark and the public.

Consider

The school may have fallen into the trap of false endorsement (see *Irvine v Talksport*). This involves the school passing-off its association with Alexei as an endorsement and may have the effect of negatively affecting Alexei's future commercial interests.

Trademark law is associated with the concept of goodwill, and this is established in business names, brand names, packaging of products, even a person's name (e.g. a professional football player's image rights), and so on. When considering the amount of money spent on advertising, contracting to have a sportsman/woman wear one manufacturer's brand of sporting goods, and so on, it is very clear why the holders of these rights want to protect their investment.

24.5.6 Goodwill

For infringement, the goods/services in question must have goodwill attached. This means that they exhibit particular identifying features which enable the public to associate with the good/service.

Pfizer Ltd v Eurofood Link (UK) Ltd (1999)

Facts:

The defendants had marketed a health food drink as 'Viagrene' and its properties had an aphrodisiac quality. It was a blue coloured liquid and the bottle contained a diamond shape. The claimant manufactured 'Viagra' the impotence treatment. It sold the drug in a quite distinctive blue, diamond-shaped tablet. Viagra had been registered under British and EU trademarks, and Pfizer argued that such a name was too similar to its product 'Viagra' and could be considered similar. The High Court held that the defendants had been passing-off the product as the claimant's drug.

Authority for:

The claim involved an action under s. 10(2) and (3) of TMA 1994. The judgment confirmed the Court of Justice decision that there was no requirement to prove confusion for a breach of s. 10(3). Viagra had an established reputation and there was a breach of goodwill that would amount to a misrepresentation. There was a potential to damage the claimant's reputation and therefore the tort of passing-off had been committed.

It is also important to recognize that passing-off is a strict liability tort. Therefore, the motive of the person infringing the right is irrelevant.

24.5.7 Recognizing Infringement

In order to mount such an action against a transgressor, it has to be established that the public associated the trademark with the claimant's product, and that the product of the other party was mistaken for that of the claimant, and in so doing has caused them loss/damage (such as reductions in sales).

As such the three elements may be seen as in **Figure 24.2**. Be aware that whilst **Figure 24.2** identifies a quite simple outline of the process to establish a successful claim, the reality is of course very complex and open to interpretation. For instance, these tests have been established through the common law, not by statutory definition, and proving infringement of the holder's goodwill is very subjective. In the *Pfizer* case above, the judge outlined that the name 'Viagra', even though an anti-impotence drug, was actually a household name. As such, a similar named product claiming to relieve the symptoms of impotence would likely damage the goodwill of the drug company. In other situations, associating the damage or potential damage due to the association of the public with the good/service may be considerably more difficult.

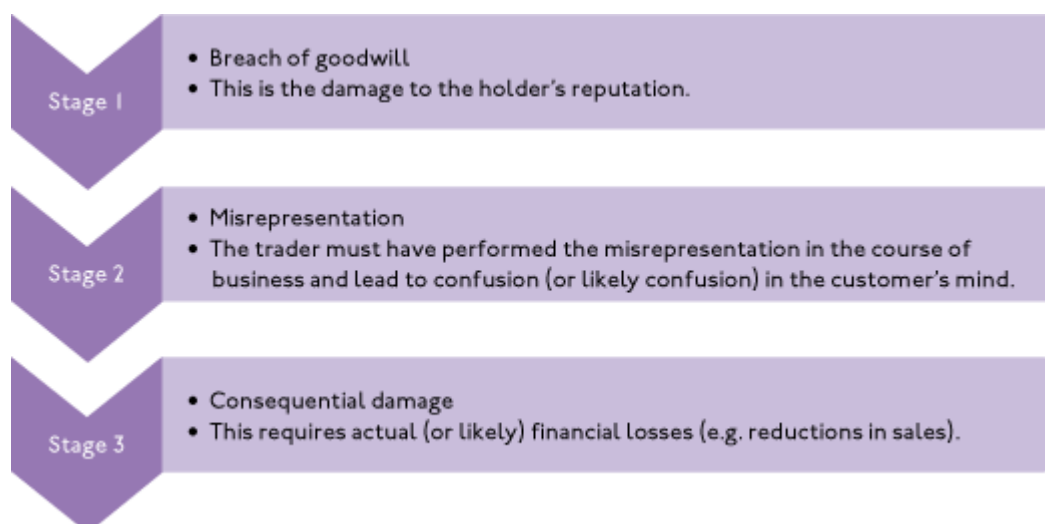


Figure 24.2 Stages to establish a successful claim

p. 667 24.5.8 Defences Available

It is possible to defend an allegation of passing-off and the following are the most common defences:

1. the holder of the IP had given consent;
2. the holder's trademark (slogan, brand, and so on) was not distinctive;
3. the trademark is generic;
4. the defendant is using their name innocently.

24.5.9 Remedies

Following the successful finding of passing-off, the following remedies are available to the court:

1. damages or account of the defendant's profits (not double awards for both aspects);
2. delivery/destruction of the infringing goods;
3. injunctive relief;
4. an enquiry to establish loss.

24.6 Patents

A business may seek to protect its inventions, such as a new product, or its new way of making the product (a new process) that has an industrial application. An invention would constitute an inventive step where it would not have been obvious to someone with skill and experience in the area. To be considered as new, the invention must not form part of the **state of prior art** (this includes all factors that were publicly available prior to the invention). To be considered as having an industrial application, it must be capable of being used or made in any form of industry (with exceptions regarding medical treatment, diagnosis, and so on identified in s. 1(3) of the Patents Act (PA) 1977). It is important to recognize that a patent need not be a completely new item, but rather it could include a new way in which an item already in existence is produced (or other such examples). A typical example of a patent was that of the bagless vacuum cleaner developed by the Dyson company. When the Hoover company produced its own 'version' of such a cleaner, it was held that this was a breach of Dyson's patent (*Dyson Appliances Ltd v Hoover Ltd* [2001]).

By registering the patent, it prevents others from using or selling the same product without permission. The registration period lasts for five-year periods and must be renewed (up to a maximum of 20 years in total). The law in this jurisdiction is governed by the Patents Act (PA) 1977 and s. 1(1) provides that a patent may be granted if the following criteria are satisfied:

1. that the invention to be patented is new;
2. that there is an inventive step involved (not obvious to a person with knowledge and experience in the area);
3. that it is capable of industrial application (as such it is capable of being made or used);
4. that the granting of the patent is not to be excluded by ss. 1(2), 1 (3), or 4A of PA 1977.

p. 668 ← Section 1(2) identifies that the following will not satisfy the requirements of 'inventions' and hence are incapable of patents being applied:

- scientific and mathematical discoveries, theories, or methods;
- works of an artistic, literary, dramatic, or musical nature;
- ways of performing a mental act, playing a game, or doing business;
- certain computer programs; or
- the presentation of information.

Section 1(3) continues that in certain circumstances, a patent should not be provided on the basis of it being contrary to public policy (against the law) or morality. Section 4A provides that a patent shall not be granted for the invention of a method of treatment of the human or animal body by surgery or therapy or a method of diagnosis practised on such bodies.

24.6.1 Exploitation of a Patent

The power of a patent is that it provides the owner with a monopoly right to control it, even where another person, acting independently of the owner of the patent, could have developed the same invention. (This is merely to recognize that whilst patenting an invention gives control of it to the owner, they will still be subject to rules governing its potential use. This is commonly seen where pharmaceutical companies develop drugs—these drugs still have to be licensed for use in the UK.) With the monopoly control, the owner may exploit the invention for commercial gain, and as this form of IP is identified as personal property, it is capable of being sold, licensed, used to raise finance (such as through a charge over it), or transferred to another party (through inheritance and so on). As this is property, it may also be owned by more than one person (as could other property such as land or a house), and such joint owners have rights over the property.

The patent provides the monopoly right, but this is subject to competition rules and the Comptroller-General may issue a compulsory licence where relevant (s. 48B). They will also determine the level of payment for the licence. Three years after the granting of the patent, any person may apply to the Comptroller for a licence if:

1. the invention is capable of being commercially worked in the UK, but is not being so worked (or not worked to the fullest extent that is reasonably practicable);
2. where the patent is a product, the demand for it is not being met on reasonable grounds, or is being met through importation from countries outside of the EU;
3. where the invention is capable of being commercially worked in the UK, it is being prevented or hindered from being worked through imports;
4. by reason of the refusal of the proprietor of the patent to grant a licence(s) on reasonable terms, the market for the export of the patented product is not being supplied, the working or efficient working in the UK of other patented inventions which make a substantial contribution to the art is prevented or hindered, or the establishment or development of commercial or industrial activities in the UK is unfairly prejudiced;
5. by reason of conditions imposed by the proprietor of the patent on the grant of licences under the patent, or on the disposal or use of the patented product or on the use of the patented process, the manufacture, use or disposal of material not protected by the patent, or the establishment or development of commercial or industrial activities in the UK, is unfairly prejudiced.

p. 669 24.6.2 Application for a Patent

The Patent Office is the body that is responsible for granting patents with effect in the UK and is headed by the Comptroller-General. The applicant will identify what the invention is, details regarding its specifications (blueprints/schematics and so on), an abstract explaining the nature of the patent being applied for, and

submission of the relevant fee. As the patents may be sought by persons in industry to protect against their inventions being used in an unauthorized way, the application process is essential and the Office will record this date of the application. The Patents Office will only officially record this date of filing where all the relevant documents have been submitted and the correct fee has been paid, and the applicant has specifically identified their request for a patent. Therefore, care must be taken when submitting documents.

The documents must be filed on the prescribed form and submitted in the prescribed manner (s. 14(1)(a)), it must contain sufficient detail to enable a person 'skilled in the art' to produce the invention (s. 14(3)), and as such include details on the matter for which the applicant seeks protection, be clear and concise, be supported by the description, and relate to one invention (or a group) to form a single inventive step (s. 14(5)). Having filed the appropriate forms, paid the fee, and submitted the necessary information, the submission is examined to ensure compliance with PA 1977. If the application passes this preliminary test, the next stage is the substantive test. Here, any anomalies in the application are identified and these are passed on to the applicant who is provided with the opportunity to respond (and change any elements of the application if necessary). Given that the changes made are to the satisfaction of the examiner, the application will be granted for the patent; if the changes are unsatisfactory, the application may be refused. Following the successful application process and the grant of the patent, this fact is published in the *Patents and Designs Journal*.

24.6.3 Breach of a Patent

A patent protects the owner who has control and a monopoly right over the invention. However, a breach/infringement of the patent will not occur where the 'breach' is performed for research/experimentation (s. 60(5)(b)), or where its use is for private rather than commercial purposes (s. 60(5)(a)). Infringement of a patent is determined on a decision as to whether or not a very similar product comes within the scope of the exclusive right.

Catnic Components Ltd v Hill & Sons Ltd (1982)

Facts:

The claimant possessed a patent for a lintel. It provided that the rear face was vertical and the defendant relied on this description by making their lintel with a face with a 6-degree slant. The House of Lords held that a purposive rather than literal approach should be given to interpreting when an infringement occurs. A skilled person would interpret vertical to also include slightly-off vertical.

Authority for:

The traditional, certain literal approach of interpretation may assist the courts, parties, and third parties, but may enable deviation and hence evasion of infringement. A method with more 'common sense' is to adopt a purposive approach, but this leads to uncertainty and provides the patentee with greater protection than envisaged when filing the patent.

p. 670 ↩ Situations where a person infringes a patent in force in the UK include (s. 60(1)):

1. where the invention is a product, the person makes, disposes of, offers to dispose of, uses or imports the product or keeps it whether for disposal or otherwise;
2. where the invention is a process, the person uses it, or offers it for use in the UK knowing (or reasonably ought to have known) that its use there without the consent of the proprietor would constitute an infringement; or
3. where the invention is a process, the person disposes of, offers to dispose of, uses, or imports any product obtained directly by means of that process or keeps any such product whether for disposal or otherwise.

Having established a breach, an injunction (which may also be awarded against the owner of a patent who brings unfounded claims against another that they have breached the patent) may be granted to prevent further infringements of the patent. Damages may be awarded if the defendant knew (or ought reasonably to have known) that the patent was in existence, there may be an order made to deliver any of the patented products, the defendant may have to account for any profits derived from their breach (but awards will not doubly compensate the claimant in respect of this head of claim and damages), and a declaration may be made that the patent is valid and had been infringed through the defendant's actions. Describing a product/process as a patent where no such grant has been made constitutes a criminal offence.

24.7 Employees and intellectual property

It is important to recognize that a business may be involved in creating products and works that may be commercially valuable (stories for a publishing company/drugs for the pharmaceutical industry and so on). Universities, for example, invest heavily in research and development in the attempt to further understanding, but also in the hope that such results will be commercially successful. There may be IP rights being created even when the employee is not hired in such a capacity. Developing databases, producing training manuals, and so on may also form a valuable IP. When an employee produces a valuable IP, who owns it?—the employee (who has been paid a salary), or the business that has engaged the employee?

Based on the 'general' rules of an employee's contract of employment (see **Chapter 20**), the creation by the employee of IP rights at work, clearly having benefited from, and had access to, the resources that the employer has made available, belongs to the employer. Whilst this is generally true, it is prudent to specifically state this in the employee's contract of employment (the contract may also state that the employee will be

acknowledged in relation to the creation—the moral rights. This would be applicable to artistic, literary, musical, and dramatic rights). As IP rights are often very valuable to a business, an employer may wish to use a restraint of trade clause (see 23.5) to restrict the employee's exploitation of such sensitive (and possibly lucrative) information. However, contract terms in contravention of the Patents Act 2004, regarding patents and their ownership, will be considered unenforceable.

p. 671 In relation specifically to patents, PA 1977 provides at s. 39(1) that inventions created by employees will belong to an employer where they were created during the normal course of employment and relating to the employee's duties at work (and as such would be reasonably considered to be the result of carrying out those tasks). This is considered in light ↵ of the implied terms in employees' contracts (see 19.6.1), and the fact that provision for the ownership of IP rights has not been drafted to include, for example, an obligation or expectation that inventions will be created, does not restrict the duty of fidelity providing the employer with a means to secure the ownership of the IP.

British Syphon Co. Ltd v Homewood (1956)

Facts:

Mr Homewood was employed as the chief technician for the claimant. During his employment, Homewood invented a soda water dispenser which he wanted to patent, having joined a rival company.

Authority for:

The invention belonged to Homewood's employer. He was an employee at the time of making the invention and thus the patent would be assigned to the employer.

The courts will look towards what tasks/duties are being undertaken in the course of employment that will establish the obligations on the employee, rather than simply reviewing a contract of employment and using the terms therein to determine ownership of IP.

Re Harris' Patent (1985)

Facts:

An employee had made an invention that was patentable. The fact that he was a salesman with no requirement or expectation to invent resulted in the invention belonging to him, not the employer.

Authority for:

An employer will generally be the owner of IP rights established by employees, unless the invention has no relation to their employment.

There has been a development to the law in this area and PA 2004 provides that in situations where an employee has created an invention for the employer and a patent has been granted, the employee is entitled to be compensated (determined by a court or the Comptroller-General. The court/Comptroller also has the authority to award compensation in situations where an employee has assigned the patent to the employer for less than it was worth). When determining whether compensation is to be payable and its amount (if any), the following will be taken into consideration: the size of the organization, whether the invention or its patent is of outstanding value to the employer, the nature of the employer's business, and so on, and then whether it is just and reasonable to award the employee compensation. The compensation awarded will reflect the employee's share of the benefit received (or expected to be received) by the employer.

p. 672 **24.8 Independent contractors and intellectual property**

The employer owns the employee's IP created at work because of the contract of employment and the distinctive feature of control exercisable by the employer (a fundamental feature of employee status). However, if an independent contractor/freelance worker is used by the employer to perform some task that creates an IP (which could include an advertising campaign, or the development of a firm's website), who owns this? Do not think that simply because a business has paid for a creation that has IP rights that it will automatically have ownership of it to use, change, and sell however it chooses. Again, in general terms (and as such there may be exceptions) the employer has an implied right to use the IP created, as this will have formed part of the contract, but such rights must be assigned to the employer or the business otherwise they will not own the IP or be in a position to make further use of them. The key element is to establish at the contract stage who will possess ownership, and therefore control, over the created IP and this should also identify any moral rights to the creation.

In situations of copyright, for example, the creation by an employee will usually result in the work belonging to the employer. However, an independent contractor will, unless stated otherwise, retain control of the copyright. Legal advice to draft a secure contract may be money well spent in the longer term. Care must also be taken when a business begins negotiations to sell or license its product or work. Registering the design, trademark, and patent, and ensuring ownership of copyright is present through the techniques identified earlier will reduce the possibility of unauthorized use, and enable legal action to prevent infringements.

Beyond the use of contracts and restraint of trade and confidentiality clauses within contracts of employment, a business should restrict physical access to materials that have a valuable IP from those who could make unauthorized use of them. This is a simple technique, but it ensures that information does not get leaked and information is restricted to key individuals in a firm. Where tasks are outsourced to third parties, it may be wise not to provide information regarding the nature of wider projects that the materials are being designed for. For a very good example of ensuring confidentiality and secrecy in IP, investigate the Apple Corporation

and consider how many actual leaks regarding new products come to the public domain before officially announced—relatively few. This is why that business has been growing successfully and is one of the most innovative organizations in the technology sector.

24.9 The Intellectual Property (Unjustified Threats) Act 2017

p. 673 The law of IP is often complex and legal action can be daunting. Beyond the commonplace notion of ‘patent trolls’ who pursue legal action against those who, so the troll claims, has infringed their IP rights, as IP is frequently referred to as the fourth industrial revolution, its value to society and to its owners is significant—and worth defending. The oft faced problem with IP rights was the rights of the owners, their power and ability to intimidate alleged infringers with very costly and time consuming legal actions, and whether such actions amounted to unjustified threats and perpetuated, in some cases, monopoly controls which would have negative results for public policy and innovation. ↩

The law, pre the Intellectual Property (Unjustified Threats) Act 2017 (the 2017 Act), allowed both rights holders and their legal representatives to be sued for issuing a threat of action against an alleged infringer. The rules relating to this right and the control of it were spread amongst common law principles and various legislative instruments. The result was a lack of clarity and consistent application depending upon the IP rights applicable. The 2017 Act seeks to address those points by clarifying and harmonizing the law by identifying what rights holders may do in the event of an alleged infringement of their rights without falling victim to a retaliatory threats claim.

The Intellectual Property (Unjustified Threats) Act 2017 received Royal Assent on 27 April 2017 and came into force on 1 October 2017. It stemmed from the Law Commission’s consultation on the reform of the law and the existing common law provisions regarding unjustified/groundless threats. Whilst it began with the law of patents, it applies now to the majority of IP rights (patents, trademarks, registered, and unregistered designs) with the exception of copyright and the tort of passing-off. These provide alleged IP infringers with a standalone right of action where an IP owner threatens them with action for their IP infringement (see **Figure 24.3**).



Figure 24.3 Steps to identify an actionable threat

24.9.1 What is a Threat?

A threat must relate to acts of infringement executed, or to be undertaken, in the UK with proceedings being brought in the UK. The threat may, however, originate from anywhere in the world.

A threat is demonstrated according to the test established in the case *Best Buy v Worldwide Sales Corp.* [2011] which is what a reasonable person, in receipt of the communication, would understand it (perceive it) to mean (the test incorporates both objective and subjective elements). The manner of the threat is not relevant. The

threat may be in the form of a letter, communication through a lawyer, it may also be verbal. It does not have to be communicated directly from the infringer. The communication also needs to be viewed at the time of its issuance and it may not preclude a future threat of action—hence still breaching the 2017 Act.

24.9.2 Exclusions Permitted

The Act will allow the rights holder to threaten primary infringers with any act of infringement—but in relation to patents specifically, a primary infringer may also be threatened with a claim for acts of secondary infringement.

The Act further allows for permitted communications based on ‘permitted purposes’ which the rights holder believes are true, and are:

- giving notice that a right exists;
- discovering the primary infringers; and
- any purpose which the court considers in the interest of justice to allow.

p. 674 24.9.3 Justifying Threats

For all the rights it is a defence to an unjustified threat where, obviously, the threat can be justified (the holder can prove the right subsists and is being infringed).

24.9.4 Remedies

Damages, an injunction, and declaratory relief remain the same under the 2017 Act.

p. 675 24.10 The General Data Protection Regulation ((EU) S.I. 2016/679)

Since May 2018, the GDPR has governed data protection and through its framework it seeks to harmonize protection throughout the EU. It refers to issues relating to consent and the rights of data subjects, the transfer of data and security and data breaches, and consequences for non-compliance. It applies to data within and between EU Member States although individuals who consent may allow data processors to transfer the data beyond the EU/European Economic Area. The GDPR is complemented by the Data Protection Act 2018. The UK has also confirmed that the GDPR will continue regardless of the UK’s future membership or otherwise of the EU (the wording ‘Member States’ will simply be replaced with ‘the UK’).

The GDPR was established due to the rapid technological changes occurring since the implementation of the Data Protection Directive (95/46/EC) (which the GDPR repealed) into national law. Member States were allowed to make changes (in limited circumstances) in the transposition of the GDPR, and the UK achieved this through the Data Protection Act (DPA) 2018. The GDPR became directly applicable across the EU in 2018 and the DPA 2018 came into force on 25 May 2018.

The GDPR provides some new data subject rights—such as the right to erasure/right to be forgotten—and has enhanced other rights—such as the right to be informed.

24.10.1 What is protected?

The GDPR protects the ‘personal data’ of a ‘data subject’.

Personal data is defined as:

... any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

Thus personal data includes:

- personal information (e.g. name and address);
- employment information;
- contracts (e.g. goods purchased by the data subject);
- health-related information.

If you are unsure of whether data is personal or not, ask yourself the two questions asked in **Figure 24.4**.

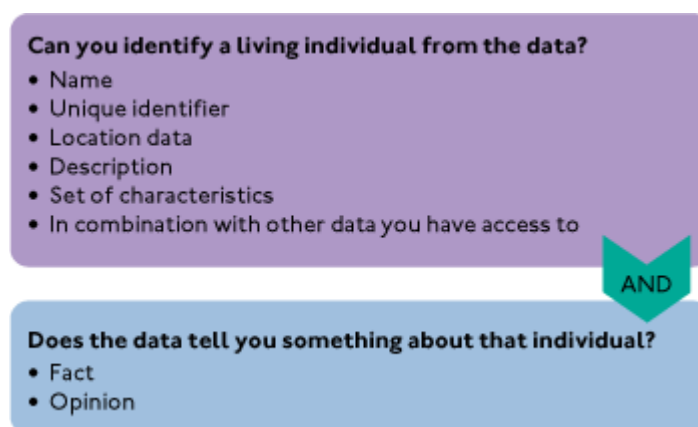


Figure 24.4 Is the data personal or not?

A data subject is an identifiable living individual (DPA 2018, s. 3(3), Pt. 1).

The data subject must *consent* to the processing of their data (GDPR, Art. 6(1)(a)).

24.10.2 Special categories of personal data

Similar conditions apply to criminal convictions data. Financial data is not a special category of personal data, but the impact of misuse/losing this data is significant so processing requires extra care.

p. 676 24.10.3 Why is data protection important?

There are many aspects of data protection which can adversely affect the individual (data subject) and the institution causing or allowing the breach (see **Figure 24.5**). The damage and distress to data subjects, and then complaints through the GDPR, make it easier for them to bring a civil action—including for distress.



Figure 24.5 Special categories

Enforcement actions, including fines, can be the result, but reputational damage can be much greater and a loss of trust (and therefore loss of business) can adversely affect staff and clients. Failure to comply by staff could lead to disciplinary action and also some criminal offences which could be corporate or could be

p. 677 individual (see **Figure 24.6**). ↩

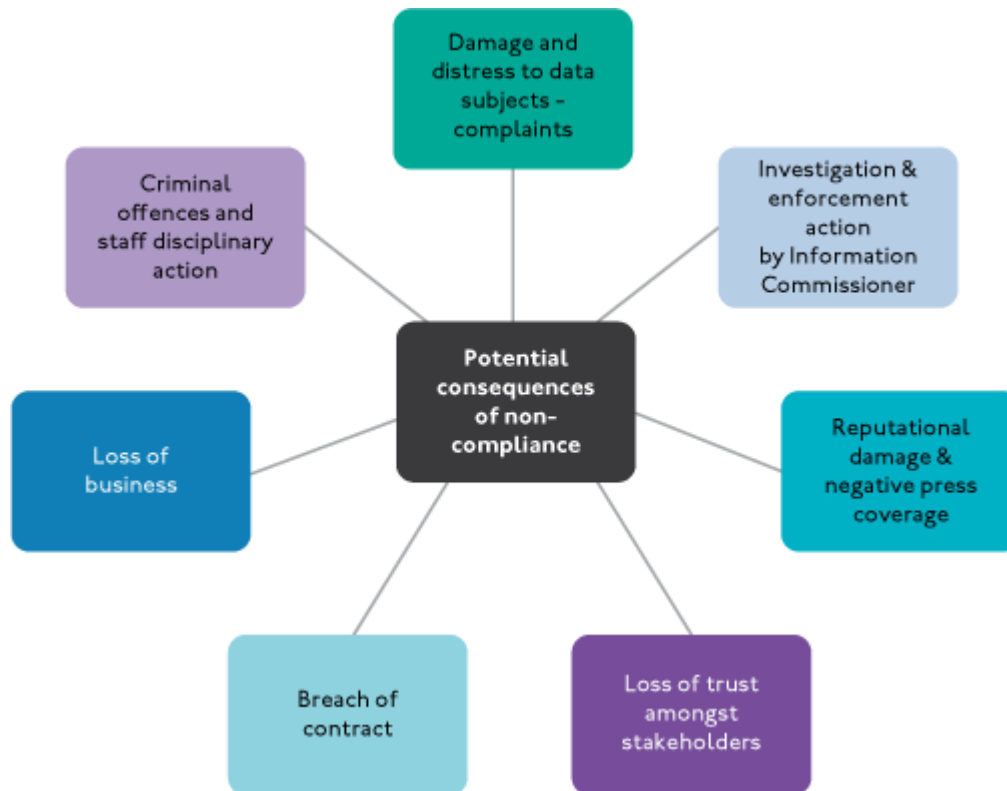


Figure 24.6 Examples of the consequences for breach of data protection

Compliance is required by everyone processing the data for the data controller.

24.10.4 Individual rights

Under the GDPR individuals have:

- the right to erasure (Art. 17);
- the right to be informed;
- the right of access (Art. 15);
- the right to rectification (Art. 16);
- the right to restrict processing (Art. 18);
- the right to data portability (Art. 20);
- the right to object to processing (Art. 21); and
- rights in relation to automate decision-making and profiling:
 - the right to erasure—this enables individuals to request that data held about them to be erased (subject to exceptions)—businesses are obliged to remove this data within one month of notification of the request; and

- the right to be informed—businesses and other organizations must ensure individuals understand who is collecting their data and which data controllers are processing it. This is achieved by maintaining privacy policies and it is the controller business' responsibility to demonstrate their compliance with the GDPR.

p. 678 **24.10.5 Data protection principles**

These principles must be applied to all processing of personal data. Personal data shall be:

1. processed lawfully, fairly and in a transparent manner;
2. collected for specified, explicit, and legitimate purposes;
3. adequate, relevant, and limited to what is necessary;
4. accurate and where necessary kept up to date;
5. kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which those data are processed; and
6. processed in a manner that ensures appropriate security of the personal data.

As a general rule, operate your data protection policy on the following basis—'Need to know, not nice to know'.

24.10.6 Data protection officer

Businesses, such as a public authority that carry out large-scale systematic monitoring of individuals, are required to appoint a data protection officer who will help with meeting the requirements of the GDPR, including monitoring compliance.

24.10.7 Data controllers

This is a person who determines the purposes and means of processing personal data.

24.10.8 Data processors

Data processors have responsibility for the implementation of measures for securing personal data during its processing activities. The legal responsibilities of the data processors may exceed the contractual responsibilities between the individual and the employer/business.

Thus, a marketing company may be both a data controller (they will collect personal information from a website visitor and those who complete online forms) and a data controller (they control that data, adapt it, combine it, and determine if they will keep the data and how it will be used).

24.11 The Data Protection Act 2018

The DPA 2018 is divided into seven Parts:

- Part 2, Ch. 1 covers general processing, scope, and definitions in relation to Part 2.
- Part 2, Ch. 2 supplements the GDPR and applies to data processing coming within the scope of the GDPR. Further, it identifies the restrictions and exemptions from the rules of the GDPR (similar to ss. 29–35 of the DPA 1988).
- Part 2, Ch. 3 explains how certain types of processing (to which the GDPR does not apply) will be regulated.
- Part 3 makes identifies the processing of personal data by competent authorities for law enforcement purposes. It explains the implementation of the LED.
- Part 5 explains the role and responsibilities of the Information Commissioner's Office.
- Part 6 relates to data protection enforcement.

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The DPA 2018 provides an effective framework, transposing as it does the GDPR, for the UK's withdrawal from the EU as planned in 2020. Ensuring the equivalent standards as required under EU law will facilitate a continuation of data processing and transfers between the organizations in the UK and EU Member States.

Given the distinct features of both the GDPR and DPA 2018, it is important that businesses and those staff with responsibilities for data are familiar with the provisions of each.

Conclusion

This chapter has identified the rights that owners of IP have over their creations and inventions. Whilst rights are provided, as recognized by law, in certain instances by simply being the creator of a work, there is far greater protection through the registration of the ownership of the IP and, where relevant, establishing with employees and contractors as to ownership of valuable IP. Due to the value of names, slogans, logos, and inventions to business, these matters should be of serious consideration when the business is established and throughout its creation of products. Whilst this chapter has identified, briefly, some important points, always refer to professionals when ensuring protection.

Summary of Main Points

Intellectual property

- IP is often a very valuable commercial asset that can be exclusively used by the owner, sold, and licensed. It may provide a significant revenue stream for businesses.

Copyright

- The law is governed by the Copyright, Designs and Patents Act 1988 and the Intellectual Property Act 2014, which protect the owner's original materials including literary, dramatic, musical, artistic works, and typographical arrangements.
- Copyright is an automatic right and need not be applied for (but proof may be needed to establish ownership).
- The copyright must be expressed and fixed (such as being written down) and as such ideas/thoughts are not copyright protected.
- Legal rights (and in some cases moral rights) are attributed to copyright holders.
- Copyright exists for varying periods of time depending on its form.
- Enforcement takes place in the civil courts through the owner seeking a remedy against the transgressor(s).

Design rights

- Design rights protect the appearance/shapes of a product (such as the Coca-Cola bottle).
- The design must be fixed and original, not commonplace in a specific area (UK, EU, and selected third countries with reciprocal arrangements with the UK).
- There is an automatic right to the design right for 15 years but a registration process is available.
- Unregistered design rights exist for a shorter period than registered designs and the owner has to demonstrate that the transgressor deliberately copied the design (which can be difficult).
- Designs may be registered at the Patent Office (Designs Registry) under the Registered Designs Act 1949.
- The registered design allows the owner exclusive rights and use of the product in the UK. The exclusivity lasts for five years and may be renewed at five-year periods for up to 25 years.
- It covers two- and three-dimensional works.
- To claim for infringement of the registered design right, the owner merely has to show the transgressor's design is similar. They do not have to demonstrate intention to infringe the owner's right or direct copying of the design.
- Registration may be made to the Office of Harmonization in the Internal Market to give protection to the design throughout the EU. The protection only lasts for three years.

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Trademarks

- The Trade Marks Act 1994 protects the owner of any sign capable of being represented graphically which is capable of distinguishing goods or services of one undertaking from those of another.
- Trademarks may consist of words, designs, numerals, or the shape of goods/packaging.
- A registered trademark provides its owner with exclusive use of the mark.

- Enforcement may take place through the civil and criminal jurisdictions.
- Since 1 October 2007 it is possible to register a mark that is similar or the same as an existing mark (unless there is an objection).
- Registration can also be made to the Community Trade Mark giving protection throughout the EU.

Passing-off

- A common law action exists where a business/individual attempts to pass themselves or a product off as that of another business. Its aim must be to confuse/mislead the public.

Patents

- Protection is granted to inventions through a new way of making a product that has industrial application.
- Registration prevents others from using or selling the same product without permission. The protection lasts for five-year periods (to a maximum of 20 years).
- The owner of a patent is provided with a monopoly right to control the item.
- Mechanisms exist where a person may request from the Comptroller-General to license a patented invention (after three years following the grant of the patent).

Employees and independent contractors

- Generally, IP created by an employee in the course of employment will belong to the employer (although the employee may possess moral rights).
- IP created by an independent contractor/freelance worker is more complicated. The employer should establish an agreement with the contractor as to the ownership and exploitation of the IP.

Data Protection

- The GDPR have imposed significant requirements for data controllers and processors to protect and maintain the data of data subjects.
- The GDPR is given effect through the Data Protection Act in the UK.
- Those transgressing the law may be subject to fines and other forms of enforcement. This may apply to both the person and the business involved.

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Summary questions

Essay questions

1. Identify the ways in which the Trade Marks Act 1994 has liberalized obtaining a registered trademark? Are there any problems that remain?
2. Have the Patents Acts 1977 and 2004 effectively balanced the rights of the employer and employee in the ownership of inventions created by the employee?

Problem question

1. Sundeep has developed a new football boot that he considers to be a radical development and will improve players' performance. He seeks to protect his invention through a patent and seeks your advice on the registration process, the rights that registration will provide him, and how he may enforce the patent against transgressors.
2. You are approached by the following two parties for advice on possible breach of trademarks.
 - a. Sweet Perfume Ltd wish to sell a new perfume which is aimed at the high end of the market. To appeal to these customers it intends to use a distinctive, fancy bottle, in the shape of a pyramid and with the product name 'Cleopatra'. Fearing imitators, Sweet Perfume Ltd has requested advice as to whether the chosen product name and bottle shape may be registered as trademarks.
 - b. Super Quick Plc operates a national chain of replacement car tyre and exhaust centres. It trades under the registered name 'Super Quick'. Super Quick has noticed an announcement in the Trade Mark Journal that 'Rubbery Products Ltd' has applied to register the name 'Kwik-Fit' for a new brand of sheath contraceptives it is launching. Super Quick Plc wish to know whether this new application can be defeated.
 - c. Advise both parties.

You can find guidance on how to answer these questions **here** <https://oup-arc.com/access/content/marson6e-student-resources/marson6e-chapter-24-indicative-answers-to-end-of-chapter-questions?options=name>.

Further Reading

Books and articles

Property and land law

Clarke, S. and Greer, S. (2018) Land Law: Directions (6th Edition) Oxford University Press: Oxford.

IP resources

Norman, H. (2014) *Intellectual Property Law: Directions* (2nd Edition) Oxford University Press: Oxford.

Bergquist, J. and Curley, D. (2008) 'Shape Trade Marks and Fast-Moving Consumer Goods' *European Intellectual Property Review*, Vol. 30, No. 1, p. 17.

Intellectual Property Newsletter (1998) 'Intellectual Property when Transferring Businesses' *Intellectual Property News*, Vol. 21, No. 9, p. 5.

Jaeschke, L. (2008) 'The Quest for a Superior Registration System for Registered Trade Marks in the United Kingdom and the European Union: An Analysis of the Current Registration System in the United Kingdom, the Community Trade Mark Registration System and Coming Changes' *European Intellectual Property Review*, Vol. 30, No. 1, p. 25. ↩

Swycher, N. and Luckman, M. (1991) 'Buying Businesses: Intellectual Property Investigations' *PLC Magazine*, Vol. 2, No. 2, p. 21.

Data Protection

Ferris, K. (2014) 'Privacy, Expression and the World Wide Web. Shall we Forget?' 20(2) *Web JCLI* 2.

Websites, Twitter, and YouTube channels

<https://www.gov.uk/browse/business/intellectual-property> <<https://www.gov.uk/browse/business/intellectual-property>>

This Government website contains guidance on intellectual property rights relating to business.

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

@The_IPO

<http://www.youtube.com/user/ipogovuk> <<http://www.youtube.com/user/ipogovuk>>

The UK Intellectual Property Office. This is the government body responsible for registering IP rights in the UK and these resources contain valuable information regarding developments in the law, reports, newsletters, and so on.

<http://www.itma.org.uk/intro/index.htm> <<http://www.itma.org.uk/intro/index.htm>>

@ITMAuk

The Institute of Trade mark Attorneys. The institute seeks to ensure that all practising members possess the specialized knowledge and experience in trademark matters. It convenes lectures and seminars throughout Europe and provides details of recent cases and commentary on their implications.

<http://www.wipo.int> <<http://www.wipo.int>>

@WIPO

<https://www.youtube.com/user/wipo> <<https://www.youtube.com/user/wipo>>

The World Intellectual Property Organization is a specialist organization of the United Nations that promotes the effective use and protection of IP worldwide.

<http://www.cipa.org.uk> [<http://www.cipa.org.uk>](http://www.cipa.org.uk)

@TheCIPA

The Chartered Institute of Patent Agents is the professional and examining body for patent attorneys in the UK. The resources provide effective links to materials, advice, and educational development initiatives.

<http://www.legislation.gov.uk/ukpga/1988/48/contents> [<http://www.legislation.gov.uk/ukpga/1988/48/contents>](http://www.legislation.gov.uk/ukpga/1988/48/contents)

The Copyright, Designs and Patents Act 1988.

<http://www.legislation.gov.uk/ukpga/1994/26/contents> [<http://www.legislation.gov.uk/ukpga/1994/26/contents>](http://www.legislation.gov.uk/ukpga/1994/26/contents)

The Trade Marks Act 1994.

<http://www.legislation.gov.uk/ukpga/1977/37> [<http://www.legislation.gov.uk/ukpga/1977/37>](http://www.legislation.gov.uk/ukpga/1977/37)

The Patents Act 1977.

Online Resources

Visit the online resources [<https://oup-arc.com/access/marson6e-student-resources#tag_chapter-24>](https://oup-arc.com/access/marson6e-student-resources#tag_chapter-24) for further resources relating to this chapter, including self-test questions, an interactive glossary, and key case flashcards.

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Subscriber: University of Durham; date: 29 May 2025