Intellectual Property Office

Intellectual Property Office is an operating name of the Patent Office

vitae
realising the potential of researchers

IP for research:

Unlocking the potential of your intellectual property

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What is IP?

Intellectual Property, or IP, is the term given to the products of original intellectual or creative activity. IP is a creation of the mind, intangible but still valuable. Examples of IP include:

- *Inventions*
- *Product designs*
- *Creative works: stories, songs etc*
- *Brand names*

Intellectual Property Rights (IPR) are the legal rights that exist in those products and creations. IPR allow the holder to exercise a monopoly on the use and exploitation of the item for a specified period. Some rights are automatic, others you need to apply for. In the UK, the government body that oversees Intellectual Property rights is the Intellectual Property Office (IPO). Its responsibilities include:

1. *Setting IP policy*
2. *Educating businesses and consumers about IP rights and responsibilities*
3. *Supporting IP enforcement*
4. *Granting UK patents, trade marks and design rights*

Why do we have IP and IPR?

- *To enable people to earn recognition or a financial return from what they invent or create*
- *To foster an environment in which creativity and innovation can flourish*
- *To enable people to protect their intellectual property*

There are different types of IPR. The main types are:

Registered Rights: these need to be applied for

- *Trade marks*
- *Patents*
- *Registered design rights*
- *Plant varieties*

Unregistered Rights: these are automatic

- *Copyright*
- *Unregistered trade marks*
- *Unregistered design rights*
- *Trade secrets and "know-how"*

With registered rights, this is fairly clear – there is a patent, or not. It can be harder to prove with copyright, for example, so keeping records is important, even before you decide to use your intellectual property.

Any one product may be covered by a range of IP rights, depending on the components. A mobile phone, for example, may have the following types of IPR:

- *Trade marks: the brand name, the product name, the start-up tone*
- *Patents: data-processing methods, operating system; operation of the user interface*
- *Copyright: the software, user manuals, ringtones, images*
- *Designs: the form, the arrangement and shape of buttons, the position and shape of the screen*
- *Trade secrets: technical know-how that is kept in-house and provides a commercial advantage.*

Why should **IP matter** to researchers?

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IP was worth £207 million to UK universities in 2017/18. This was roughly 5 times what they spent on protecting IP and allowed them to use the income to further research efforts.

If the IP were not protected this income would disappear, with serious impact on the UK's research contributions.

IP cuts both ways: not only do you have the right to protect your own IP, but you also have a responsibility to respect others' IP.

So even if you don't plan to protect your IP, you need to be aware of how you can legally use that of others.

It is also worth bearing in mind that if your work is funded by a third party such as a research council, they may place conditions on how your outputs can be used and should be licenced. Always check with them if in doubt.

Worldwide academic impact

Innovative methodologies, equipment, techniques, technologies and cross-disciplinary approaches

Training highly skilled researchers

Contributing to the health of acedemic disciplines

Enhancing the knowledge economy

Improving teaching and learning

Academic impacts

Improving health and well-being

Wealth creation, economic prosperity and regeneration

Enhancing the research capacity, knowledge and skills of public, private and third sector organisations

Changing organisational culture and practices

Enhancing the effectiveness and sustainability of organisations, including public services and businesses

Attracting R&D investment

Improving social welfare, social cohesion and/or national security

Commercialisation and exploitation

Enhancing cultural enrichment and quality of life

Environmental sustainability, protection and impact

Evidence based policy making and influencing public policies

Increasing public engagement with reserarch and societal issues

Economic + social impacts

Copyright

Copyright protects your work and stops others from using it without your permission. You get copyright protection automatically - you don't have to apply or pay a fee.'

The IPO

Copyright protects written works, amongst other things. This includes such things as theses and journal articles, but also computer code, blogs and some databases. There are some exclusions to copyright protection, for example it does not protect things like company names (which would normally be protected by a trade mark), as simple words or phrases are unlikely to be original enough for protection.

Copyright is exactly what it says: it provides the owner with the right to prevent copies of the work being created, distributed/performed in certain ways - whether copying all of a work, or a substantial part of it. It does not protect the ideas expressed in the work. That would need to be done in other ways, e.g. via a patent. So, you can't copy someone else's computer code without permission, but you can achieve the same ends using your own version of the code.

What does copyright cover?

- *Literary Works*
  e.g. books (including textbooks), newspapers, journals, poetry, song lyrics, text of lecture or speech
- *Dramatic Works*
  A work capable of being performed
- *Musical Works*
  includes all aspects of songs and instrumental pieces, including melody, harmony and rhythm
- *Artistic Works*
  irrespective of artistic quality, these are protected if original photos, paintings, sculptures, illustrations, diagrams etc. Includes works of artistic
- *Films*
  Moving images produced by any means
- *Sound Recordings*
  a recording of sounds, from which the sounds can be reproduced whether musical or not (e.g. recorded interviews, recordings of birdsong)
- *Broadcasts*
  transmission of visual images, sounds or other information
- *Published Editions*
  how the work is laid out, also known as typographical arrangements
- *Databases*
  whether paper or electronic if they are original in the selection and arrangement of data. There is also a separate, shorter database right (15 years), which requires there to be substantial investment in obtaining, verifying and presenting the data.

What can't be copyrighted?

- *A title because it is unlikely to qualify as original - which is why there are duplicate titles of books, films etc*
- *Facts, data or information are not protected, such as news or histories, although the way the facts have been expressed may be*
- *Names are unlikely to qualify as original - although these can be protected as trademarks, e.g. Coca Cola™, McDonalds™*
- *Methods or systems are unlikely to be protected unless written down as a literary work. However, these might be open to protection by patents.*

Who owns copyright?

Usually, the first author or creator - or their employer if produced in the ordinary course of their employment, depending on the contract. Or the creator can sell their copyright to another person or organisation.

This is particularly important for researchers, as the normal default legal position in the UK is that an employer owns any IPR, including copyright, created by an employee in the course of their employment. Some academic institutions waive this right in some circumstances, but it is important to check the policy at your institution and in your employment contract. Even where you retain the copyright, the institution may have a licence to reuse it as they see fit. It is also worth checking what the terms are in any copyright produced within a collaborative project. Usually, the Library services staff and/or the Technology Transfer Office or equivalent will be able to advise.

Copyright usually lasts for 70 years after the death of the creator, which explains the commercial value of copyright in films, books, art and music in particular. There are some exceptions:

- *Publishers' rights:*
  25 years
- *Sound recordings:*
  70 years from first publication
- *TV & radio broadcasts:*
  50 years from first broadcast
- *Films:*
  70 years from the death of the last person from the director, composer of the score, author of the screenplay and scriptwriter

Some content may contain multiple forms of copyright. For example, a film may have different copyright attached to, for example, the screenplay, the script, the music, and the videography. It's important to bear this in mind to ensure you are getting the right permissions to use content.

Copyright is an unregistered right in the UK and in most other countries, meaning it doesn't need to be listed or officially recorded to be protected.

However, to claim the ownership and prevent others from using the content, the owner must be able to demonstrate ownership. This can be tricky so there are a number of copyright registers where creators can register their work so they can prove ownership if needed. They are not, however, obliged to do so and as they do not provide any additional legal protection you should consider whether they are necessary.

As a researcher, you need to be aware of your own copyright, and also that of others. Unless you can rely on a copyright exception or you already have a licence from the rights holder, you cannot publish your work if it contains a third party's copyright (whether text, images, artwork, diagrams etc) without permission from the copyright holder. If in doubt, check with your Library services team.

There are a number of copyright exceptions which will be useful in research. There is a specific research and private study exception, although this would only be for the research itself and would need separate consideration for publishing results. Short quotations from the work of others, or providing criticism and review, are likely to be covered by the relevant copyright exception, but need to take into account the concept of "fair dealing". This is a legal term used to determine whether a use of copyright material is lawful. There is no statutory definition of fair dealing - it will always be a matter of judgement. The question to be asked is: how would a fair-minded and honest person have dealt with the work? You will also need to ensure you acknowledge the rights holder appropriately. Again, best to check with your Library services team.

What can I do with my copyright?

You can:

- *Copy the work*
- *Issue/sell copies*
- *Rent or lend it*
- *Perform, show or stage it*
- *Adapt it*
- *Transfer ownership*

If there is more than one rights holder in the work - for example, you co-author a journal article or chapter - you would need permission from the other rights holder(s) before doing these things.

What if I want to let people use my copyright?

Copyright owners can use licences to assert their copyright while allowing others to reuse their content, subject to certain conditions. It is up to you to decide what conditions to place on the licence.

Many researchers like the structure of Creative Commons licences, depending on what types of use you want to permit. Just bear in mind that once someone has started to use your copyright under a Creative Commons licence, they retain that right even if you cancel the licence.

Another option is open source or open access, which involves sharing content free of charge and free of most copyright and licensing restrictions. Open Source is specifically for software. Open access is the term usually used for publishing research, making it available freely, either immediately on publication or after an embargo period for some journals. Open access is usually a condition of publication for research which has public funding (e.g. through a research council), but you may decide to make your work available on open access principles even if the research was privately funded.

How do I use someone else's copyright?

With any copyright work, you should check the licensing conditions attached to it to see if it is permitted to use it in your research. Website terms and conditions may also limit how a work can be used. If the licence does not allow your specific use, you may still be able to use a copyright work if it qualifies under a copyright exception. For example, there is an exception for research and private study, and a separate exception to allow text and data mining for non-commercial research.

However, if you then wanted to publish your research with the work in it, you would need to use it under licence or otherwise obtain permission from the rights holder.

The licence you might choose to attach to your own work will depend on the funding conditions for your research, as well as your institution's and your personal attitudes on how your work should be usable. Even if you decide to limit how much people can use your copyright work under licence, they can still use it under the copyright exceptions (see above).

Patents?

A patent is a legal title which grants the holder the exclusive right to prevent others from making, using or offering for sale, selling or importing a product that infringes the patent without authorisation, in the countries in countries for which the patent was granted, and for a limited time (up to 20 years). In return for this protection, the holder has to disclose the invention to the public.

In order to be patented, an invention must be:

1. *'New' or 'novel'. This means that the invention is not known anywhere in the world prior to the filing date. It cannot have appeared in any publication, at a conference, in an online discussion or anywhere else*
2. *Inventive. This means that it cannot be obvious to a person skilled in the field - it needs to take the concept an unexpected stage further*
3. *Capable of a real industrial application - it has to be possible to make it and for it to perform the function claimed in the application.*

There are some exclusions that cannot be patented:

1. *A discovery (as opposed to an invention), a scientific theory or mathematical method*
2. *A literary, dramatic, musical or artistic work (they can be copyrighted instead)*
3. *A scheme, rule or method for performing a mental act, playing a game or doing business, or a computer programme**
4. *The presentation of information*

* In the UK, patents are generally not available for computer programmes, mathematical methods and business methods, but they may be eligible for protection if they make a "technical contribution". For example an algorithm used for forecasting the stock market is unlikely to be patentable as its application is a business method which is excluded from patentability and there is no technical contribution. An algorithm used for controlling industrial processes in a factory does however make a technical contribution. Always check with your Technology Transfer Office/Knowledge Exchange team or equivalent.

Why would I want to patent my product?

You might not be interested in the commercial benefit of your product, but other people might be. And at the least, you - or your employer - may need to cover the costs of the invention and creation of the item. If you don't patent it, someone else may be able to benefit commercially from your invention. A patent gives you the right to stop others from using or commercialising your invention, and to claim damages if they do to; it also gives you the right to let others use it under agreed terms.

It is worth considering the cost/benefit of a patent, as a patent filing incurs a significant fee. Is there a market for your invention? What will it cost to bring it to market? Will you need technical/business/financial assistance to commercialise it?

Another option if you don't want to patent your invention, but also don't want anyone else to patent it, is to publish. This makes the idea available to everyone to use, but means they cannot patent it.

Patents have the societal benefits of:

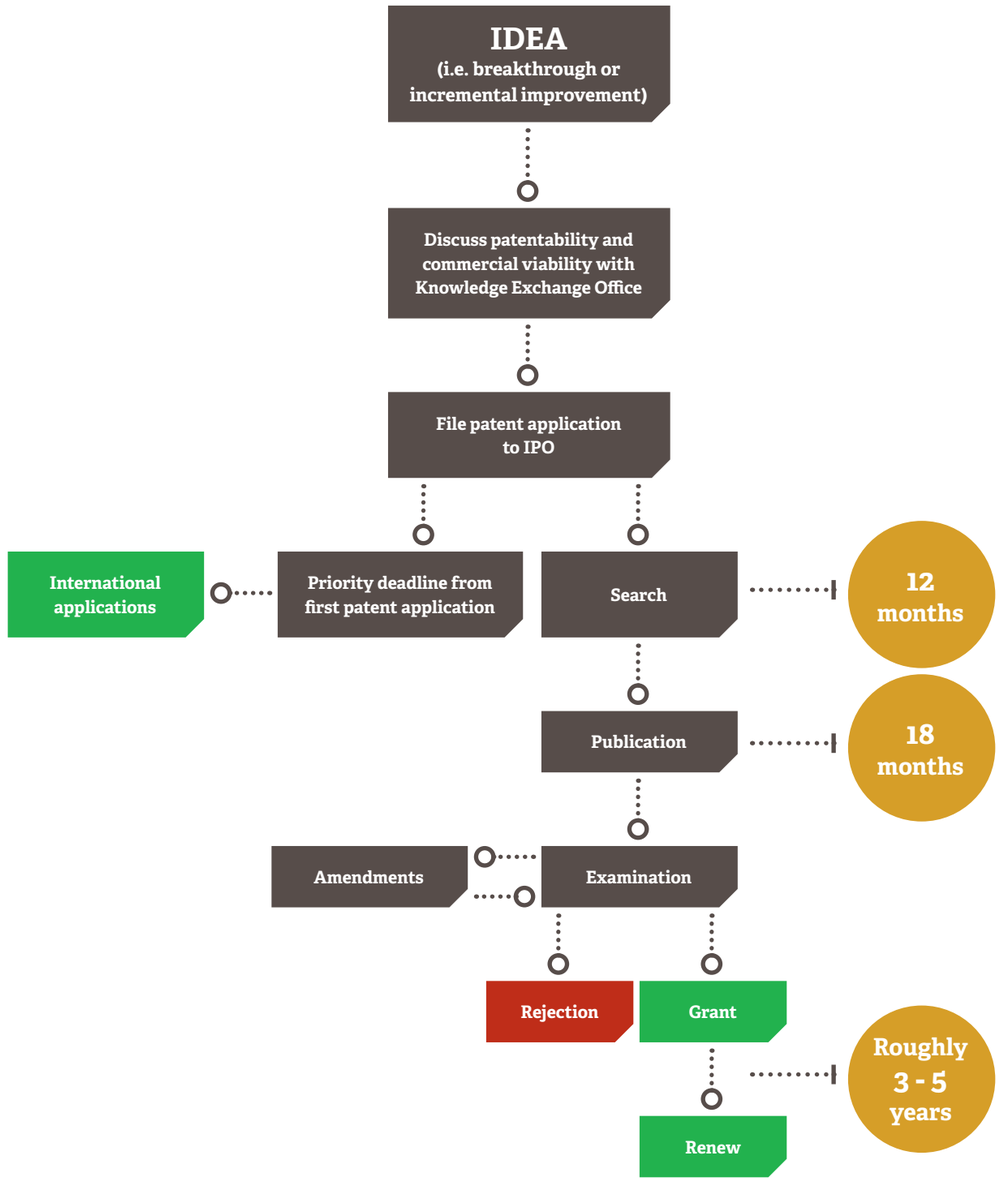
- *Encouraging innovation so that better products can be made and better production methods can be used for the benefit of all,*
- *protecting new innovative companies so that they can compete with large established companies, in order to maintain a competitive economy,*
- *learning the details of new inventions so that other engineers and scientists can further improve them, and*
- *promoting technology transfer, for example from universities to industry.*

Dos and Don'ts of protecting a patentable invention

- *DO get a non-disclosure agreement signed before sharing the details (e.g. with a potential collaborator)*
- *DO seek professional advice early – either from your university, or a patent attorney (details available from CIPA*); on whether it is patentable, whether it has already been filed, and whether it is worth filing*
- *DO consider who will own the patent: what are the rights according to your employment contract?*
- *DO file for a patent before sharing more widely*
- *DON'T publish your idea in any format before filing for the patent, whether written, or verbal.*
- *DON'T sell or advertise any products incorporating your invention before filing*

* The Chartered Institute of Patent Attorneys (CIPA) is the professional body for patent attorneys in the UK. They maintain a list of practicing professionals and also offer advice.

Patent Process



Design Rights

A registered design gives you the legal protection to prevent others from using it for up to 25 years (renewed every 5 years). It can protect any aspect of your design, for example the product's shape and/or its decoration. It relates to the appearance of an object rather than its technical principles or purpose.

Registered design protects the complete appearance of a product, including lines, contours, colours, shape.

The new UK supplementary unregistered design protects the shape and/or ornamentation of a designs for a period of 3 years once disclosed. Disclosure for both the UK design right and supplementary right must take place in the UK.

Unregistered design rights protect the shape or configuration of a marketable (or potentially marketable) product, and are used to prevent unauthorised copying of an original design.

What can or can't be considered as a design right?

Your design must be:

- *New*
- *Relate to:*
  - *Appearance*
  - *Physical shape*
  - *Configuration/arrangement*
  - *Decoration*
- *Be your own intellectual property, not something created by someone else*

Your design must not be:

- *Offensive*
- *Protected emblems or flags (e.g. the Olympic rings, or the Royal Crown)*
- *Be an invention, as that would need a patent*

Trademarks

Trademarks distinguish the goods and services of one trader from another. They can take many forms: words (Coca-Cola™), slogans ("Just do it"™), logos (the apple with a bit from it), shapes (the golden arches), colours and sounds (the Intel™ Inside tone).

Trademarks are registered for specific goods and services within classes. It is possible for others to register identical or similar marks if in a different, unconnected class. You can find details of the classes on the IPO website.

For example, the term "POLO" is registered by different entities under different classes, including confectionary, clothing and vehicles.

A trademark can be protected forever but it must be renewed every 10 years, for a fee and with proof it is still being used. If in any doubt, professional advise may be obtained from a trade mark attorney.

Brands

A brand is how a company chooses to represent itself, and can be made up of IP assets (like a logo), communication with the public – the advertising they use – and the names of products and services.

Where can you find out more about IP and its application in research?

www.crackingideas.com/third_party/IP+for+Research
an online resource hub which hosts a range of resources and links for researchers to better understand the commercialisation process relating to their work. It includes a series of 6 quick guides on:

1. *IP in knowledge exchange*
2. *IP rights*
3. *Management & development of IP*
4. *Collaborative research*
5. *Spin-out company formation*
6. *Licensing*

Welcome to IPO's online training tools.

These have been designed to help you:

- *Understand how IP works and what can be protected using patents, copyright, trade marks and designs.*
- *Understand how to manage and use IP*
- *Consider IP within business planning*
- *Best leverage IP to protect investments and products*

The tools are designed for businesses, business advisors, students and lecturers, although they will be helpful for anyone learning how to manage or use IP . . .

They are free to use and once you have registered, you will have access to the following resources:

IP for Research

Explore the library of materials available and find the guidance most relevant to you.

Login or register to access

IP Tutor

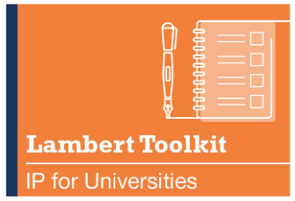
An interactive, CPD accredited e-learning tool helping students understand intellectual property rights.

Login or register to access

IP Tutor Plus

The following resources have been designed to support lecturers and those engaging with students.

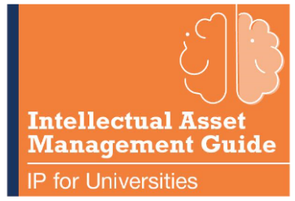
Login or register to access



Lambert Toolkit

A set of model agreements and a guide for university to business research collaboration.

Login or register to access



Intellectual Asset Management Guide for Universities

Guidance that helps university management set IP strategies that maximise the impact of the intellectual assets developed at their institution.

Login or register to access

IP Healthcheck

Every business will own some form of intellectual property, but do you know how to protect these assets?

The IP Health Check online tool is free to use and will help you answer these questions.

Login or register to access

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