

Student and teacher educational resources

What has IP got to do with me?

Intellectual property (IP) allows people to control and be rewarded for use of their creative efforts. Without IP protection there would be little incentive or revenue available for research and development.

We see, touch, hear about and use IP protected products everyday and our language is littered with IP terms. Yo-yo, cornflakes, escalator, nylon and transistor were all originally trade marks. A dot before the abbreviation “com” used to only be part of a domain name. Now “dot com” is used for a successful ICT company or internet trader. Every time you see a movie you’ll be reminded that it’s a copyright protected dramatic work.

Trade marks, often referred to as “brands” or “logos”, are the most visible IP asset. These unique signs are designed to attract attention and used to develop customer loyalty. Ever thought of yourself as a walking billboard? Market research found that a person typically wears at least three branded products everyday. Your own brand experience could influence what and where you buy.

Copyright is an unregistered IP right you probably have. Copyright comes into existence automatically whenever an original idea is expressed in physical form. Copyright applies to poetry, articles, photographs, technical drawings, books, sound recordings, films, TV programmes, computer programs and other original literary, dramatic, musical and artistic works. There is no age barrier to owning copyright and there could also be more than one copyright owner in a work. Take a CD track where a number of artists collaborate to create the score and lyrics, record the music and produce the track.

Owners of IP assets have empowering legal rights which can stop or prevent unauthorised use. Even if you buy an IP protected product or service, the use of the technology, branding and end product (e.g. data, information, assembled kit or installed programme) can still be restricted by the associated IP rights. Activities like peer to peer file sharing and burning extra DVD ROMs is theft of someone else’s IP work or copyright piracy unless the owner has released them under a permissive licence.

How can I protect my creative work?

Marking

In New Zealand, copyright for original material is automatic; there are no fees to pay or forms to fill in. Copyright works can be marked with the internationally recognised copyright indicator: the © symbol followed by the copyright owner’s name and year it was first created.

Both registered and unregistered trade marks are protected in New Zealand. The TM symbol shows that a trader is using a sign as a trade mark. When a trade mark is registered, the ® symbol may be legally used against the trade mark.

IP owners can use other indicators to alert the public that an IP application has been filed or an IP right has been granted. Generally, the country or regional code is followed by the IP type abbreviation and allocated number, e.g. NZ Patent No. 123456. There are penalties for falsely stating that an IP right has been granted or is still enforce after it has lapsed or expired.

Registration

Trade marks for classes of goods and services, patents for new inventions, and new designs covering the aesthetic appearance of an article can be registered at the Intellectual Property Office of New Zealand (IPONZ). New plant varieties may be registered at the New Zealand Plant Variety Rights Office (NZPVRO) if the variety proves to be distinctive, uniform and stable.

Each country has its own set of IP laws. Information you find in a library or from the internet might be outdated or not relevant to New Zealand law. If you would like to learn more about overseas IP protection, please visit [World Intellectual Property Organization website](#).

Secrecy

Secrecy is important when considering protecting inventions, know-how and design aesthetics. Experimenting or trialling in public, pre-launch market research and taking orders before filing could invalidate a patent or design application.

Some creative ideas can be kept confidential. Trade secrets like the Coke® recipe are zealously guarded. No one has been able to discover the exact formula by analysing the commercially released drink (technical term= reverse engineering).

Enforcing IP rights

IP assets are personal property and it is up to the owner to decide how to benefit from and enforce their IP rights. Not all cases of unauthorised use end up in court. Many disputes are settled through private negotiations.

There are penalties for making unjustifiable threats. It is important to identify what assets you own and know your rights before sending a warning letter or threatening to sue.

IP law is complex. We recommend that you contact a patent attorney or lawyer specialising in IP if you need to enforce your own IP rights or you receive a warning letter from another IP owner.