

## Are you using protection?

Losing control of your intellectual property can certainly be bad for business. **Abigail Nathan** discovers how you can protect your most valuable asset by taking some simple precautions.

For something that is, by definition, intangible, intellectual property (IP) is one of the most valuable commodities a business can have. Lose control of your IP, and you could well find yourself out of business altogether. With this in mind, the law seeks to help businesses and individuals protect their most vital asset. But all the lawyers in the world can't help you if you are not proactive from day one.

So what is IP? At its most basic IP is "of the mind", says Bruce Arnold of research, analysis and strategies consultancy caslon.com.au. While it may not be physical, Arnold points out that "in many ways it's just as real — it has economic value, and for many people it also has a strong personal or even a spiritual value".

Clear as mud? Essentially, he explains, IP can be split broadly into two categories: copyright and industrial property. Copyright covers a broad range of things from art and literature to computer software, letters and emails. On the other hand, says Arnold, industrial property is "the stuff that's all around us". It can be anything from a disease-curing drug or technology to a colour (think Cadbury purple) or a specific design (think an iPod).

Indeed, the IP possibilities are infinite and limited only by one's imagination. And therein lies the danger — because if you don't identify and protect your business's IP first, there is nothing to stop others recognising the opportunities you missed, costing you money and recognition.

Varied protection is offered by the law and it's important to cover all bases and to be aware of the limitations. Arnold recommends getting your IP in order before you even start your business. Many financiers will demand an IP audit before they will concede to invest in any business. Such an audit will help you to identify not only what your IP is as well as which laws apply and what steps you need to take to ensure you are protected.

There are many myths about copyright, says Arnold, the most major one being that copyright law protects ideas. That, he emphasises, is not the case. What it protects is the expression — two people may have the same idea for a story, but it is the final creation that has copyright. In Australia copyright is automatic, lasting the lifetime of the author, plus a further 70 years. From the second the ink (or digital ink when it comes to online publications) hits the paper your work is copyright and protected under Australian law.

It is a common misconception that copyright no longer exists for anything published online, says Arnold. As a first step, he advises that anyone publishing online adds the copyright symbol (©) to the bottom of their work. Although unnecessary in Australia, it serves as a warning to people overseas that the content is protected.

Trademarks are a more complicated form of protection. While the law grants you protection, once you have completed registration the onus is on you

to protect your trademark. Your trademark can last forever, as long the registration is renewed every 10 years but, ironically enough, the biggest threat to your trademark is success.

Almost every company would like its brand to become a household name, but Arnold says companies need to beware of “genericide”. This occurs when it becomes commonplace to use the brand name to identify a particular product. For example, Aspirin, Band-Aid, and Cellophane all lost their trademarks when consumers began to use the brand name to denote any similar product. To prevent this, companies need to be on their toes and able to show the courts that they have worked against this scenario.

Patents are perhaps the most limited of all protection offered by the law, lasting a maximum of eight years for an innovation patent or up to 20 years for a standard patent. Consequently, competition in this area is stiff and secrecy becomes paramount to successful patent applications. It is essential to make sure you have your protection in place before you tell anyone about your invention or publish a scientific discovery as the patent office will refuse to grant your application if the details have already been made public.

While there are laws to protect you, there are also steps you can take to limit the risk to your IP. This may be as simple as using “secret” or “confidential” stamps to mark sensitive material or creating non-disclosure agreements and IP-specific clauses in employment contracts. At a security level, it could mean using swipe cards and passwords to access the building and facilities, and placing guards on the door. As well as providing you with some measure of protection, if someone does infringe your IP, it can help prove to the courts that you were proactive in preventing such a scenario.