

Understanding Intellectual Property (IP) And Why It Is Important To Protect It

The following information has been supplied by the Intellectual Properties and Companies Commission (CIPC) website. We suggest you get up-to-date information directly from CIPC regarding the **fees involved** when the appropriate time arises for you.

Original, new ideas, creations, inventions, art forms, designs, brands, processes and such like are valuable assets. By registering what you are in the process of or have already created, you are essentially protecting your right to have the time to exploit it before others are permitted to legally enter your field and compete. Intellectual property rights exist in many forms (music, books, paintings etc.) and have many of the same rights as ownership of actual physical property!

CIPC administers the IP domains in South Africa for trade marks, patents, designs, copyright (films only). In terms of legislation it is a requirement to file annual returns to verify whether your business is current, dormant or closed. This is done via the CIPC website and this is also where you notify the authorities of changes to Directors /Members, business name changes, and manage trademarks, patents and such like.

Licensing

Although you may be the original creator of the Intellectual Property, you may enter into a contractual agreement for a third party to own the rights and benefits from the opportunities and advantages which are being protected. Licensing grants permission by the owner of an IP right to another person or organisation to use it on agreed terms and conditions.

There are different types of licencing available. A franchise is a form of licence. “Assignment” is the outright sale of Intellectual Property. IP licensing gives the licensee the right to use (but not own) the copyright, patent, trade mark, design, technology, technical know-how or specific marketing skills to their advantage. They can use the IP right for a specified purpose, in a defined territory, for an agreed period of time. The licensee is paying for access to legal exclusivity. The value of the IP rights is negotiated and is based largely on the strength of the IP rights in the creation or invention.

Copyright ©

This is an exclusive right granted by law for a limited period to an author, designer, etc. for his/her original work. Unlike other forms of intellectual property, copyright does not need to be registered, except for cinematograph films.

The following works are eligible for copyright in South Africa :

- Literary works e.g. books and written composition novels.
- Musical works e.g. songs.
- Artistic works e.g. paintings and drawings.
- Cinematograph films e.g. programme-carrying signal that has been transmitted by satellite.
- Sound recordings.
- Broadcasts e.g. broadcasting of films or music.
- Programme-carrying signals e.g. signals embodying a programme.
- Published editions e.g. first print by whatever process.
- Computer programs.
- For a work to be eligible for copyright protection, it must be original and be reduced to material form.

What constitutes copyright infringement?

- Making photocopies for private use is not an infringement of copyright.
- Copying a public speech or a lecture does not constitute infringement.
- No infringement results if work is acknowledged when one is copying or citing from another author's work.

Generally, in respect of written material, the following guidelines apply :

Wherever possible, the author's permission should be sought to reproduce his/her work.

- If in an article, paper or speech, when referring to the work of another, it is required that details of the reference be provided in the form of the name of the author and details of his/her publication i.e. title of book or magazine, publisher, date of publication etc.
- If a "significant" section is reproduced, such as a chapter, then permission should be obtained.
- If only a small portion of the work is used, say a few sentences or a paragraph, and provided that an acknowledgement is made, permission is not needed.
- It is generally accepted that work that is being used in academic institutions, research or for private use may be reproduced.
- Copyright infringement does not occur if you copy a public speech or lecture, made for information purposes, or photocopy government publications for public usage.

The lifespan of copyright depends on the type of work protected :

- The copyright of literary works lasts for 50 years after death of the author.
- The copyright of computer programs lasts for 50 years after the first copies were made available to the public.
- For sound recordings, the copyright lasts for 50 years from the day the work was first broadcast.
- For films, 50 years from the date the film was shown.

Trademark Protection™

Your name is one of your most valuable business assets, so it's worth protecting. Trademarks protect names, words, logos and symbols that identify and distinguish products and services. When a trademark (brand name, slogan or logo) has been registered, nobody else can use this trademark, or one that is confusingly similar without the risk of legal action arising. A trademark can only be protected and defended under the Trade Marks Act 1993 (Act 194 of 1993) if it is registered. Registration results in a registration certificate which has legal status, allowing the owner of the registered trademark the exclusive right to use that mark. CIPC has a register of all trademarks which have been applied for in SA. A registered trademark can be protected forever, provided it is renewed every ten (10) years upon payment of the prescribed renewal fee.

Patents

This is the exclusive right granted for an invention (product or process) which provides a new way of doing something or a new technical solution to a problem. This protects the owner for 20 years from others making, using, exercising, disposing of or importing the invention. If patent protection is sought in other countries, individual patent applications need to be made for each respective country by filing several patent applications. Translation and patent attorney fees charged in different countries can be considerable and need to be budgeted for.

Exercise: Intellectual Property