

What is intellectual property?

Intellectual Property (IP) provides legal protection over a range of different forms of creativity and innovation, from books and films through to new inventions and new varieties of plants. IP allows a natural or legal person to hold property rights over the products of creativity and innovation, to control its use (for a limited time) and to be rewarded for its use. IP is a type of property that can be bought, sold, traded or given away.

A distinction needs to be made between IP and the physical object to which they relate. For instance, a new plant variety may contain a number of IP: a patent over a particular gene; plant breeder's rights over the variety itself; and a trade mark over the name of the plant.

At the international level IP is governed by a series of treaties administered by the World Intellectual Property Organization (WIPO) and the World Trade Organization, which oversees implementation of the Agreement on Trade Related Aspects of Intellectual Property (TRIPS).

Why have IP rights?

IP is considered an incentive for innovation and creativity and as a means to enable creators and innovators to make a return on their intellectual endeavour and economic investment. In order to ensure the social benefit of innovation, IP authorities need to ensure the optimum balance between:

- the need to promote and reward creation and innovation
- the need to ensure freedom of expression, the flow of information and access to technology

What is IP?

IP is a general term for various legal regimes including:

- Patents
- Plant Breeder's Rights
- Geographical Indications
- Trade Marks/Passing off
- Designs
- Breach of confidence/Trade secrets
- Copyright

Patents

A patent is a set of exclusive rights granted for a new and useful invention. Patent protection is dependent upon registration and requires disclosure of the invention to the public. To obtain a patent an invention must meet the criteria of novelty, usefulness, involve an inventive step (or be non-obvious), and be capable of industrial application.

Some countries specifically exclude some inventions from patentability. Under international law countries are entitled to exclude plants and animals other than microorganisms from patentability.

Patents provide owners with the right to exclude others from making, using or selling the invention or the process. In most jurisdictions a standard patent lasts for 20 years.

Plant breeder's rights

Plant breeder's rights (PBR) (sometimes known as plant variety rights) were developed as an alternative to patent protection on plants. Grant of a PBR is dependent upon registration of a new a plant variety. To be registered the variety must be distinct, uniform and stable. In addition, the variety cannot have been previously commercially exploited (ie it has to be 'new'). The owner of PBR has the exclusive right to produce or reproduce, offer for sale, sell and import/export propagating material of the registered variety. PBR lasts for a minimum of 25 years in the case of trees and vines, and 20 years in the case of all other varieties.

At an international level, PBR are regulated by the International Convention for the Protection of New Varieties of Plants (UPOV Convention).

There are currently two versions of UPOV in application. UPOV 1978 recognised two major exceptions to PBRs, the breeder's exemption to develop new plant varieties and the farmers' privilege to use harvested seed. Under UPOV 1991, PBR has been strengthened and the breeder's exemption does not extend to essentially derived varieties. National authorities are given the option to adopt a farmers' privilege.

Some countries (eg India) have adopted PBR laws outside of the UPOV system.

Geographical indications of origin

Geographical indications (GI) are used on goods that have a specific geographical origin. GIs may be place names or words associated with places. The goods are assumed to possess a quality, reputation or other characteristic that is due to their place of origin. Well known examples are 'Champagne' and 'Tequila'.

Counties do not protect GIs in the same way. For example, in Australia, GIs are restricted to wines and spirits.

Trade marks

Trade marks are 'signs' that make goods and services distinguishable from others. The sign may include a name, logo, word, slogan or symbol. Well known examples in food and agriculture are Fair Trade and PlumpyNut.

A trade mark registered under national is denoted with ®. Unregistered trade marks are denoted with ™. Protection of registered trade marks ® comes from relevant national intellectual property legislation. Unregistered trade marks ™ are protected by other laws such as the tort of passing off the law of unfair competition.

Trade mark protection can last forever if renewal fee payments are kept up to date.

Designs

Designs law provides protection for the visual appearance of goods. For example, the shape of

a rake or the tread pattern on a tyre. Design protection is dependent upon registration and is governed by specific legislation.

To be registrable the design must be new and distinctive. Once registered, a design is for a limited period of time.

Confidential information

Certain types of information such as chemical formulae and manufacturing processes are protected because they are kept secret. Registration is not required for this form of protection. This area of the law is known as trade secrets, confidential information or breach of confidence.

To maintain an action for breach of confidence it is necessary to show that the information is confidential; that it was imparted in circumstances importing an obligation of confidence; and there has been an unauthorised use of the information.

Copyright

Copyright protects creations in a range of fields including literary, musical, artistic, dramatic, film and broadcasting works. Copyright protection arises automatically on creation of a work and can be used to exclude others from reproducing, adapting, distributing, performing or displaying the work in public. To attract copyright protection, a work must be original and be reduced to material form. Copyright subject matter is governed by national copyright laws, which have been standardised through international law.

This fact sheet is only for information purposes, and to assist you in understanding your legal rights and obligations in a general sense. It is not tailored to any particular fact, situation or specific requirements, and must not be relied on as legal advice.

This Fact Sheet was prepared independently by the Australian Centre for Intellectual Property in Agriculture (ACIPA).

Further Fact Sheets are available on the ACIPA website <http://acipa.edu.au/fact-sheets.html>.