

# Intellectual Property



## What is Intellectual Property?

Intellectual property (often referred to simply as IP) is **anything created by the ingenuity of a human mind.**

Intellectual Property is a term used to describe:

- an idea
- an invention
- a painting
- writings e.g. a book, a play, an academic work
- lyrics of a song
- a music score
- a sound recording
- a photos
- a video recording
- a logo
- a product design designs
- software
- and many other creations of the human mind

**It is very important to understand that IP is owned.** The law gives people who “create” a measure of protection over what they create. How would you feel if you made a brilliant discovery only to find someone else steal it? If people had no control over their own inventions, there would be no benefit in being an inventor.

Unfortunately, the laws protecting Intellectual Property are among the most frequently broken.

## Australian Legislation

There are three important Acts of the Commonwealth of Australia that pertain to protecting the rights of people who “create”. These Commonwealth Acts are:

- Copyright Act 1968
- Designs Act 2003
- Trademarks Act 1995

## Copyright Act 1968 (amended in 2006)

This act provides protection to any creator of Intellectual property (such as in the list above) provided the ‘artistic’ work was first created in

Australia and the creator is an Australian citizen. The protection exists for the life of the creator - plus 50 years. There is no need to register Copyright as it arises **automatically**.

## The Designs Act 2003

This Act determines what is a “registerable design”, who may file an application to register a design, and the period for which registration provides protection. See section below for definition of “design”.

## Trademarks Act 1995

This Act provides for the registration of trade marks and sets out and protects the rights deriving from registration. See section below for definition of “Trademark”.

## Ownership of IP

Determining ownership of IP can sometimes be difficult, and ownership disputes often end up in court.

The famous song “*My Sweet Lord*” written by George Harrison of the Beatles, is one such case (Bright Tunes Music Corp. v. Harrisongs Music (1976)). In this case the court found that George Harrison had unintentionally copied parts of an earlier song, “*He’s So Fine*”, composed by Ronald Mack in 1962, and recorded by a singing group called the “Chiffons”. The copyright of the music was owned by Bright Tunes Music Corp.

Intellectual Property is often owned by corporations rather than individuals. Section 35 of the **Copyright Act 1968** states that where a literary, dramatic, music or artistic work, is made by the author in pursuance of the terms of his or her employment by another person (includes corporations and associations), then the other person is the owner of the copyright.

However, the words “**as part of the terms and conditions of the employee’s work**” must be considered. Therefore, if an employee writes a book in their own time and not part of their contract for service, the employer has no claim to copyright.

## Transfer of Ownership of IP

The creator of Intellectual Property can transfer ownership and control of their creation to another

party if they wish. This is usually done by **selling** the intellectual property to another i.e. just the same as any other property.

### **IPAustralia**

The government agency that oversees laws regarding intellectual property in Australia is **IP Australia**. The agencies website is:

<http://www.ipaustralia.gov.au/>

### **Copyright**

Copyright is a legally enforceable right conferred by the Commonwealth Copyright Act 1968. It is an exclusive right of the author to reproduce, publish, adapt, perform and broadcast the work. Any infringement or threat of infringement of the right can be stopped or prevented by the copyright owner. In most cases copyright exists for the life of the author plus 50 years.

There is no need to register Copyright as it arises automatically. A copyright notice (©) is not required on a work to gain copyright, but it is an advantage. If the author uses this symbol followed by their name and the date (see example in footer of this page), then if a dispute over ownership arises, the person bringing the dispute will have to prove that their work has an earlier date.

### **Trademarks**

A trademark can be a letter, number, word, phrase, sound, smell, shape, logo, picture, aspect of packaging or any combination of these. It must be distinctive. It is used to distinguish goods and services of one trade from those of another.

Most large corporations have trademarks and they can be easily found on the packaging of the products they sell. The letters TM after any word or phrase, or logo denotes Trademark.

Under the Trademarks Act 1995, registration of a trademark lasts for 10 years. After that time it must be renewed for successive periods of 10 years on payment of the appropriate fee.

If a trademark is unregistered the owner can still take action if the trademark has been used in a way that has lead consumers to be deceived.

### **Designs**

A design is a product that is manufactured or hand made and has a **new or novel shape**.

Under the Designs Act 2003, a product can only be **registered** as a new design if it is **significantly different** to any previous product. Registration gives protection and rights to a monopoly of the design to the designer for up to 16 years.

### **Fair Dealing**

The Copyright Act 1968 contains provisions that allow *some* copying of literary, artistic and music work for certain purposes **for free** without infringing copyright. These provisions are known as **fair dealing** and cover:

- Criticism or preview
- Reproduction for purposes of judicial proceedings or legal professional advice.
- Research or study

The amount of work that is allowed to be copied under the **Fair Dealing** provision is **no more than 10%**.

### **Private Copying**

The Copyright Amendment Act 2006 makes it legal for a person to make copies of recorded music, or a book, or software, if they have purchased that intellectual property, and the copy is purely for their own private use. For example:

- Copying from TV and Radio to watch or listen at another time (but not to make collections).
- Copying books, photographs which you own onto a DVD
- Copying a CD which you own to MP3 format and use on an IPOD.

### **Playing music in public places**

All music performed or played from a recording in public places is governed by copyright law. There are often two copyrights in force:

1. The copyright in the music or lyrics
2. The copyright in the music recording

It would be impractical for people to obtain permission from the owner of copyright for each musical work they play.

Instead persons and/or businesses that use music must apply for a licence to the following organisations:

- **APRA - Australian Performing Rights Association**
- **PPCA - Phonographic Performance Company of Australia Ltd**