

## Ownership of Intellectual Property Rights

Intellectual property rights (IPRs), due to their nature as property rights, can be bought, sold or licensed. In order to ensure that such a transaction proceeds correctly, the first owner of the right needs to be identified. Moreover, the owner of an IPR is the person entitled to commercially exploit it, hence it is important to establish ownership in order to avoid disputes.

Provisions regarding first ownership of IPRs are quite complex and vary depending on the type of right. This means that a creation can give rise to a number of different rights and the owner of each may not be the same person or entity. Dehns can advise on all aspect of IP ownership, assignments and licensing. A summary of the various ownership provisions relating to IP created by UK residents is given below.

### Patents

The general rule is that a patent is owned, in the first instance, by the inventor. However, rights can automatically pass to anyone who is entitled to the inventor's rights at the time the invention is made, e.g. by contract or by virtue of employment. A notable situation is where an invention is made in the course of the normal duties of an employee, in which case the invention, and thus any resulting patent, belongs to the employer.

### Trade Marks

Registered trade marks are owned by the person or company that registered them. The owner of an unregistered trade mark is usually the person using the mark (subject to agreements to the contrary). The trade mark owner is therefore often not the same person/company as the owner of any copyright in the mark.

### Copyright

In general, the ownership of copyright is as follows:

- Literary, theatrical, musical or artistic works - the author/creator
- Films - both the director and the producer
- Sound recordings - the producer
- Broadcasts - the broadcaster
- Published works - the publisher

Exceptions to the above exist, e.g. when works are created by an employee in the course of their employment (in which case it generally belongs to the employer, subject to any agreement to the contrary) or when a work is commissioned (in certain cases, the commissioner may be considered to be the beneficial owner).

The above ownership of copyright relates to the right of the owner to exploit the work commercially and that rights can be assigned. Moral rights accorded to authors of literary, dramatic, musical and artistic works, film directors and performers may be waived, but cannot be sold or assigned.



## UK Design Right and UK Registered Designs

The designer is the first owner of any design rights, unless the design has been commissioned (in which case the person commissioning the design usually owns any design right) or the design is created by an employee in the course of his employment (in which case the employer is the first owner of any design right).

Ownership provisions for Community Registered and Unregistered Designs follow these rules, with the exception that the provision relating to commissioning does not appear in the regulations relating to European Community Designs. Nor is there any specific commissioning provision relating to patents or copyright, which can often apply to the same creation. It is thus generally advised that a contract is in place, rather than relying on the commissioning provision to determine ownership.

## Some Ownership Issues

There are various statutory provisions relating to ownership disputes which are beyond the scope of this information sheet. For example, there are often joint owners of one type of right (e.g. a patent) and/or more than one type of right existing in a single creation, each of which may have a different owner or joint owners. It is therefore recommended that those seeking to commercially exploit a creation seek advice on ownership issues.

Ownership of IP created by non-UK residents will generally be governed by the laws of the country in which the IP was created. Dehns can advise on ownership of IPRs in all jurisdictions.

There are many situations in which more than one of the above types of IPR may apply, for example software may be subject to both copyright and patent protection or a logo can be subject to artistic copyright and trade mark protection. In such cases, the first owner of each right may not be the same person or company and thus care needs to be taken, particularly when assigning or licensing rights. We can assist with such transactions, including drafting agreements.

## Further advice

If you require further advice on any of the above issues, please contact us at Dehns using the details below.

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