

## Intellectual Property

### The concept

Intellectual Property rights, commonly referred to as IP rights, allow individuals or corporates to protect and exploit their commercially valuable creativity and innovation in the same way as physical property.

In recent years the concept has been aggressively developed by the US legal system to encourage the creation of valuable ideas and protect them from theft.

### How it works

IP laws contain a variety of exclusive rights in relation to the form or manner in which ideas or information are expressed or manifested, and not in relation to the ideas or concepts themselves. They are designed to protect varying forms of subject matter, which in some cases overlap.

The term 'intellectual property' refers to the specific legal rights which authors, inventors and other IP holders may hold and exercise, rather than the intellectual work itself.

### The main types of IP

- Copyright protects original works of ownership fixed in a physical medium of expression, for example books, films, music, art work, photographs and software. This gives the copyright holder the exclusive right to control the copying or adaptation of such works for a certain period of time
- A patent is a grant issued by the government giving an inventor the right to exclude others from making, having made, using, leasing, offering to sell, selling or importing an invention. It gives the holder an exclusive right commercially to exploit the invention for

a certain period of time (typically 20 years from the filing date of a patent application). Patents are normally granted for new and improved products and processes with potential commercial application.

- Trademark protection covers the branding which distinguishes the products or services of one business from those of another business. Essentially, trademarks are the brand names and associated imagery that promote competition by giving products corporate identity and marketing leverage
- An industrial design right protects the appearance, style or design of an industrial object, which could include textiles or furniture
- A trade secret is an item of confidential information concerning the commercial practices or proprietary knowledge of a business. It is what gives its owner a competitive advantage and can cover a wide range of information including chemical compounds, machine patterns, customer lists and software
- Image rights can deliver substantial commercial and tax benefits to celebrities and sports people. It gives the individual the exclusive right to control commercial use and exploitation of their image, voice and likeness. The key is to obtain informed tax and legal advice at an early stage in order to assess whether the potential benefits are sufficient to justify the establishment of an image rights company.

Today there is a growing tendency among businesses to regard these rights as strategic assets, which are important in the battle to win customers.

Careful management, legal protection, tax planning and financial exploitation of IP are becoming increasingly important.

## The benefits of IP

IP rights are private property rights: the owner can decide how to exploit or benefit from the IP.

The ownership of IP rights generally gives rights for the exclusive use of the property by the owner. If someone else uses the IP without the owner's permission, it usually amounts to infringement, which can have legal consequences for the party breaching the IP rights.

If the owner does not want to use the material protected by IP rights, or they want to profit by allowing others to use it, they may license its use. Whatever the IP right, the owner can decide whether or not to license it, or even sell it.

When considering how to benefit from IP, it is important to consider such issues as confidentiality, enforcement of rights and insurance.

## Exploitation

Ensuring the most tax efficient means of exploiting a client's intellectual property offers numerous tax planning opportunities. The key to this success is identifying a piece of intellectual property before it has acquired any significant value. ILS arranges the sale or assignment of this property to an offshore structure. At the same time we may establish a number of structures which are licensed to profit from the property's earning ability.

These structures may take advantage of various double tax treaties to allow ILS's clients to enjoy the best possible ultimate return from their creative abilities. The exact structure used will depend on where the intellectual property was originally domiciled, and where it is to be ultimately exploited. Advice on royalty and franchising structures registering IP rights usually goes hand in hand with a more tax efficient structure. Our team can arrange to register IPR in any appropriate jurisdiction and advise on suitable structures.

## What ILS can provide

ILS has gained significant experience in advising and administering IP related structures for clients which usually take the form of some of the following:

- Formation of companies and trusts
- Use of our service companies as intermediaries
- Assistance with contracts
- Invoicing and accounting
- Administration
- Director and secretary services
- Registered office facilities
- Opening of bank accounts
- Physical office facilities

*Please note that ILS (Isle of Man) Limited does not offer tax advice. If you are not professionally qualified to give tax advice, we will be happy to make an appropriate introduction.*