



Intellectual
Property
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Intellectual Property Rights In India





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Intellectual property rights in India

India is one of Britain's priority overseas markets.

If you plan to do business in India, or if you are already trading there, it is essential to know how to use, guard and enforce the rights you have over the intellectual property (IP) that you or your business own.

This guide explains about IP in general, and gives guidance on how to apply these principles in the Indian market. It describes the issues you may face with IP infringement in India, offers advice on how you can effectively tackle these, and provides links to sources of further help.

What are intellectual property rights?

Intellectual property (IP) is a term referring to a brand, invention, design or other kind of creation, which a person or business has legal rights over. Almost all businesses own some form of IP, which could be a business asset.

Common types of IP include:

- **Copyright** - this protects written or published works such as books, songs, films, web content and artistic works;
- **Patents** - this protects commercial inventions, eg a new business product or process;
- **Designs** - this protects designs, such as drawings or computer models;
- **Trade marks** - this protects signs, symbols, logos, words or sounds that distinguish your products and services from those of your competitors.

IP can be either registered or unregistered.

With **unregistered** IP, you automatically have legal rights over your creation. Unregistered forms of IP include copyright, unregistered design rights, common law trade marks and database rights, confidential information and trade secrets.

With **registered** IP, you will have to apply to an authority, such as the Intellectual Property Office in the UK, to have your rights recognised. If you do not do this, others are free to exploit your creations. Registered forms of IP include patents, registered trade marks and registered design rights.

International considerations

India has been a World Trade Organisation (WTO) member since 1995. WTO member nations must include some IP protection in their national laws. This means that if you are doing business with India, you will find some similarity between local IP law and enforcement procedures, and those in force in the UK.

Treaties and reciprocal agreements

India is also a signatory to the following international IP agreements:

- the Paris Convention - under this, any person from a signatory state can apply for a patent or trade mark in any other signatory state, and will be given the same enforcement rights and status as a national of that country would be;
- the Berne Convention - under this, each member state recognises the copyright of authors from other member states in the same way as the copyright of its own nationals;
- the Patent Cooperation Treaty - this is a central system for obtaining a 'bundle' of national patent applications in different jurisdictions through a single application.

The Madrid Protocol, which allows a bundle of national trade mark registrations in different jurisdictions to be made through a single application, has not yet been brought into force in India. India is also not a signatory to the Hague Agreement, which allows the protection of designs in multiple countries through a single filing.

Intellectual property rights - systems in India

India has been a member of the World Trade Organisation (WTO) since 1995. This requires member nations to establish intellectual property (IP) laws whose effect is in line with minimum standards. As a result, there should be few major differences between India's laws and those of other developed countries.

Copyright

India is a signatory to the Berne Convention on copyright. However, it may be a good idea to register your copyright as doing so may help to prove ownership if there are criminal proceedings against infringers. In most cases though, registration is not necessary to maintain a copyright infringement claim in India. Registration is made, in person or via a representative, with the Copyright Office.

Internet piracy of films, music, books and software is an issue in India.

Patents

India's Patents Act of 1970 and 2003 Patent Rules set out the law concerning patents. As in the UK, there is no provision for utility model patents.

The regulatory authority for patents is the Patent Registrar within the department of the Controller General of Patents, Designs and Trade Marks, which is part of India's Ministry of Commerce and Industry. Patents are valid for 20 years from the date of filing an application, subject to an annual renewal fee.

India's patent law operates under the 'first to file' principle - that is, if two people apply for a patent on an identical invention, the first one to file the application will be awarded the patent.

Designs

The laws governing designs are the Designs Act 2000 and the Designs Rules 2001. Designs are valid for a maximum of ten years, renewable for a further five years.

Trade marks

India's trade mark laws consist of the 1999 Trade Marks Act and the Trade Marks Rules of 2002, which became effective in 2003.

The regulatory authority for patents is the Controller General of Patents, Designs and Trade Marks under the Department of Industrial Policy and Promotion. The police now have more robust powers in enforcing trade mark law, including the ability to search premises and seize goods suspected of being counterfeit without a warrant. But these powers are tempered by the requirement for the police to seek the Trade Mark Registrar's opinion on the registration of the mark before taking action. This adds to the delay and may result in counterfeit goods being removed or sold.

Trade names also constitute a form of trade mark in India, with protection, irrespective of existing trade names, for those wishing to trade under their own surname.

Because of the widespread practice of 'cybersquatting' - the registration in bad faith of marks by third parties registering domain names for certain well known marks in order to sell them to the original rights owners - it is advisable for rights owners to register their domain names in India as trade marks as soon as possible.

Registration takes up to two years. A trade mark in India is valid for ten years and can be renewed thereafter indefinitely for further ten-year periods.

Registering and enforcing intellectual property rights in India

To enjoy most types of intellectual property (IP) rights in India, you should register them.

For patents, individual registrations must be made in India, but for rights other than industrial designs you can apply under the terms of the Patent Cooperation Treaty, which is usually easier and quicker.

For trade marks, you should register them within India.

For copyright, no registration is required but registering copyrights with the copyright authorities is advisable.

'Priority rights' under the Paris Convention can help in the local registration of trade marks, designs and patents by allowing rights previously registered elsewhere to become effective in India, if filed within a time limit.

Enforcing IP rights in India

IP rights can be enforced by bringing actions to the civil courts or through criminal prosecution. India's laws governing all forms of IP set out procedures for both civil and criminal proceedings, as does the Competition Act.

A disadvantage of civil litigation is that you are unlikely to recover large damages, and punitive damages against an infringer are rare. However, if you have an identified infringer, it may be advisable to launch civil litigation, because if an interim injunction is granted the infringement can be halted pending the outcome of the case. Damages are routinely awarded in cases of copyright piracy and trade mark infringement (which come under criminal litigation); less so in patent cases. Over the years, however, decisions in favour of foreign companies against local infringers have demonstrated the judiciary's impartial approach.

As in other countries, the Indian Government brings actions in criminal cases, although in most cases actions follow complaints to magistrates or police authorities by rights owners. Criminal proceedings against infringers carry the prospect of much harsher remedies, including fines and imprisonment.

Mediation or negotiation with an infringer can also be effective as an alternative form of dispute resolution. The Civil Procedure Code provides for a formal mediation process.

Self-help considerations

There are various things you can do to make it harder in general for infringers to copy your product. For example, you could:

- Think about the design of your product, and how easy it would be for somebody to reproduce it without seeing your original designs;
- When you hire staff, have effective IP-related clauses in employment contracts. Also make sure you educate your employees on IP rights and protection;
- Have sound physical protection and destruction methods for documents, drawings, tooling, samples, machinery etc.;
- Make sure there are no 'leakages' of packaging that might be used by counterfeiters to pass off fake product;
- Check production over-runs to make sure that genuine product is not being sold under a different name.

Potential problems faced in India and how to deal with them

India's intellectual property (IP) legislation covers every significant aspect of the protection of IP. The regulations relating to all forms of IP have been amended or reissued in recent years, mainly in response to India's accession to the World Trade Organisation in 1995.

Although Indian IP law is thorough and generally comparable with European IP laws, there are still significant concerns over IP enforcement. A major cause for concern in enforcement is bureaucratic delay, with a backlog of cases at both the civil and criminal courts. This means that cases can run for five years or more. There is also a lack of transparency, particularly at a local level.

A significant feature of the IP environment in India is the large number of small players infringing IP rights. This means that seizures tend to be small, which requires a sustained and financially draining effort in order to make an impact.

An advantage for UK businesses operating in India is that the legal system is based on common law, as in the UK, so the fundamental processes are familiar.

Avoiding problems

The most important way to avoid problems when defending IP rights in India is to be prepared. To make sure that you can anticipate any potential issues, you should:

- take advice from Indian IP rights experts;
- consult publications and websites on Indian IP rights and protection in general;
- carry out risk assessment and due diligence checks on any organisations and individuals you deal with;
- take professional advice from other experts - eg lawyers, local diplomatic posts, Chambers of Commerce and the UK India Business Council;
- talk to other businesses already doing similar business in India;
- consult agents, distributors and suppliers on how best to safeguard your rights;
- check with trade mark or patent attorneys to see whether there have been previous registrations of your own marks, or other IP, in India;
- stick to familiar business methods - don't be tempted to do things differently because you're trading in a different country.

Who should take responsibility for your IP protection?

You should make sure that everyone in your business takes some responsibility for IP protection. Many businesses depend on the integrity of their IP, and it can often be one of their most valuable assets. So it should be given proper attention by both management and employees, as well as other businesses that you have relationships with.

It may be sensible to nominate a manager to have particular responsibility for understanding and protecting your IP rights. In businesses with legal departments, a legally-trained manager would be a good choice.

Top tips for IP protection in India

The most important things you can do to protect your IP rights in India are:

- stick to your normal business instincts;
- do as much as you can to prevent infringements in the first place - prevention is better than the cure;
- assess the risks of the market and make preparations;
- take self-help measures to protect your IP;
- make sure everyone in your business values its IP, including you;
- register your IP rights;
- create good relationships with organisations that can help you;
- consider mediation before defensive action.

Where to get intellectual property help in India

Whether you're resident in and doing business in India, or trading internationally with the country, there are a number of professional organisations that can offer you advice and support:

- The British High Commission, New Delhi offers advice on working with India, including details of cultural relations. It provides a full range of diplomatic, consular and business-related services:
<https://www.gov.uk/government/world/organisations/british-high-commission-new-delhi>
- The UK India Business Council (UKIBC) helps and supports British businesses with regard to trade with India:
<http://www.ukibc.com>
- UK Trade and Investment India has a range of online information on doing business in India:
<http://www.ukti.gov.uk/export/countries/asiapacific/southasia/india/doingbusiness.html>
- The European Union (EU) Chamber of Commerce in India helps and supports contacts between businesses based in EU member states and India: <http://www.euindiachambers.com>
- Local law firms in India can offer you legal advice and services specific to your business. The Chambers and Partners website offers a search facility listing Indian local law firms:
<http://www.chambersandpartners.com/Asia/Search/Location/110>



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