

Why IP? A briefest of histories – In spite of their very modern connotations the various Intellectual Property rights have long and disparate histories which can only adequately be recounted in a lengthy book rather than a website. The following account is an attempt to summarise their development and should not be a substitute for historical research.

Copyright, put simply, is the right to copy, the roots of which can be traced back to pre-date the development of printing technology. Copyright in works came to the fore during the development of early publishing. The publishing freedoms that came with the development of moveable type and the printing press were curtailed by Henry VIII who, in 1529 established a system of privileges, and controls were imposed on printing by the government and the Stationers' Company. Members of this body had the right to print and copy their books in perpetuity and this right came to be known as "copyright". This system eventually collapsed resulting in widespread piracy. The Statute of Anne of 1709 sought to protect authors and legitimate publishers and their works, and is recognised as the world's first copyright statute. After numerous developments and re-definitions, copyright law in the United Kingdom is now governed by the Copyright, Designs and Patents Act 1988 (as amended), incorporating a much broader definition of works that are subject to copyright. One very important distinction between copyright and other IP rights is that in the UK and many other jurisdictions there is no registration apparatus. Copyright normally arises on creation of the work.

Trade Marks are the means by which businesses identify themselves and their products or services and thereby distinguish themselves and their products or services from competing businesses and products or services. As early as Roman times it was common for artisans' products and traders' premises to bear an impression of the maker's or owner's mark or initials and the use of merchants' marks on silver articles could be found from early medieval times in Britain and the continent. Trade marks represent the quality of the businesses that own them, and thereby protect the reputation and goodwill of those businesses. Enforcement of trade mark rights can be traced to the early 17th century, but the system became unsatisfactory because owners were forced to prove ownership virtually every time an infringer appeared. A system of registration was introduced in the United Kingdom in 1875 with the Trade Marks Registration Act. After numerous revisions and amendments the Trade Marks Act 1994 was introduced with new concepts and up-dated definitions, and implemented the European Community Directive to approximate the laws of member states relating to trade marks. Registration has made enforcement of trade mark ownership immeasurably easier, but has not replaced the common law system of *passing off* which is still used in tandem with infringement claims in legal proceedings. The advantage of the doctrine of *passing off* as opposed to registered trade mark infringement is that, as a case law based doctrine it does have a capacity that enables the courts to develop the doctrine more readily than a system which is framed in legislation over which the courts have no control.

Patents are the means by which inventions are protected, and grant the inventor (or his company) a monopoly in the invention for a period of twenty years (provided it is renewed every year from the fifth year). The rationale behind a patenting system is to encourage research and development (and the investment in such research and development) thereby enabling a reward for their efforts and investment. Patents trace their origins back to the granting of rights to artisans in the fourteenth century to practise their trade by way of open letters bearing the King's Great Seal. However, monopolies were still distrusted because of the scope for abuse, and formal recognition of such monopolies did not occur until the passing of the Statute of Monopolies of 1623. Patents played a hugely important role in the course of the industrial revolution but the patent machinery became ever more cumbersome, and reform only commenced with the Patent Law Amendment Act of 1852. Novelty searches were introduced in 1902 imposing a more exacting standard for the grant of a patent. Today, patent law is governed by the Copyright, Designs and Patents Act 1988.

Registered Designs are intended to protect physical features, decorative features and surface decoration of articles of every application (for example, a pair of sunglasses or a part of a motor

vehicle). The law relating to this area is relatively young and the development of a branch of law relating to designs did not commence until the passing of the Designs Act of 1787, legislation very much driven by the industrial revolution of those days. That statute granted a two month monopoly in designs in respect of linens, cotton, calicoes and muslins. There have been numerous revisions and reforms of the applicable statute law culminating with the introduction of the Community Design and a new regime governing UK designs.

The law of confidence (also currently known informally as *confidential information*), relates to a myriad collection of secrets which may be commercial, industrial, state or even personal in nature. Briefly this area gives protection to anything that is not within the public domain. Its development started from multiple origins depending on the type of information concerned (the courts of equity played an important part in that development and many attribute its principal origins to equity), although it did not seem to develop until the early to middle of the nineteenth century. It is based on a duty arising from circumstances where essentially the information protected possesses confidential characteristics and has been revealed in confidential circumstances. Breach of this duty gives rise to a potential liability for breach of confidence.

IMPORTANT

The contents of these pages are intended for general information only. This information does not and cannot constitute legal advice. The situation will differ in each case and depends entirely on its own circumstances. It is emphasised that the reader, when faced with one or more of the circumstances outlined above (or any other question relating to IP) should obtain specialist professional advice that will address his or her own particular case and circumstances.

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