

IP Guide to... Digital/New media industries

Digital media, electronic billboards, website adwords, the most cutting edge technology... how can this be protected by the oldest profession, the law?

The digital and new media arena is vast, exciting and continuously developing. It comprises the latest technology developments in advertising and news media, as well as many more creative ideas; for example: the online publication of pieces of art by museums.

This IP Guide provides you with a brief introduction into the IP rights available in this field. Unfortunately it cannot cover everything, so please consult the rest of this [website](#) for further information. As this is an ever-changing and developing arena, if you are in any doubt about your idea or invention, please consult a [lawyer](#).

The digital world

Just over a decade ago IP rights occupied the attention of only a few individuals in the world of media; for example, in relation to printing presses, celluloid film and analogue broadcasts. However, since then IP rights and particularly copyright have moved centre stage with the advent of digital technology, and as new technologies develop and business opportunities arise, IP rights are growing increasingly important.

Have you ever been at a sports game, the half time starts and the electronic scoreboard becomes an advertising magnet? This is an example of digital media advertising.

Digital/New Media is any form of electronic media that works using digital codes. New media extends the definition to encompass anything involving digital, computerised, networked or communication technologies. For the purpose of clarity, it is not analogue television programs or feature films, magazines, books or paper-based publications, but involves areas such as websites, computer multimedia and DVDs.

Due to the digital and computer element involved, the most common IP rights in this area are copyright and design rights. However one or more IP right may be attributed to Digital/New media products and these can include:

- Copyright
- Design rights
- Trade marks
- Database rights
- Patents
- Confidential information/Trade secrets

With any new product or invention it is worth going through each of these in turn to determine if it affects your product.

Copyright ©

Copyright protects original pieces of work from being copied without permission. The work must be the result of a person's skill, effort and judgement and cannot already exist. No protection is given when the creative thought is still in the creator's mind, so it needs to be put on some fixed medium. Copyright is an automatic right, and does not need to be registered in order to have effect.

Digital/New Media products can be protected by copyright in many ways. When a software program is used to create such a product, this software is protected by copyright. Software is recognised as a literary piece of work and is protected for the life of the author plus 70 full years after the death of the author.

As well as marking the program with ©+NAME + DATE, very often a programmer will write some unique comment lines throughout their program which do not affect the overall performance of the software. If authorship of the software is in dispute it is sometimes a useful tool to use them to try and identify the owner. However it is important to note that when computer source code is compiled and converted into object code, the comment lines do not appear in the object code. Some programmers may argue that their unique method of coding is their signature. This can be a difficult argument to prove in court and other methods to establish and protect copyright should also be used.

Sometimes the dispute as to who the owner is may arise between an employer and an employee or contractor. A programmer is the copyright author. However if the programmer is an employee, legislation states the employer is the owner.

Here, the author and the owner are different. If the programmer is an independent contractor then it will depend on the contract in place as to who owns the IP rights. The default position is that the contractor will own ownership of the source code, and the employer owns the use of the code.

Digital media can be used to create a movie from screen snapshots and this is also covered by copyright. However copyright also exists on the original versions of the screen snapshots. If you do not own this copyright, it is important for you to obtain permission from the owner to upload and use their snapshots or photos.

Due to the nature of copyright being automatically attributed, it may be difficult to prove when copyright commenced. Keeping dated copies of drafts and other related material is useful evidence to prove you are the copyright owner. Although there are several copyright registers in UK, you need to make yourself fully aware of all terms and conditions before using these facilities. For further information, see: [How to copyright your work](#).

Design

The old definition of a design right ('features of shape, configuration, pattern or ornament applied to an article by any industrial process') focused purely on protecting industrial design. This definition has been expanded and now includes images generated on computer screen displays, mobile phones, digital watches, digital cameras and so on. A computer program, which generates a shape as its outcome, is excluded from design right. However the shape generated is protected by design right, providing the other requirements for design right are met (eg novelty and individual character).

There are four types of design rights recognised in the UK, which can be categorised into either registered or unregistered, and UK or EU right. Please refer to other [areas](#) of this website for further details, and [consult](#) a solicitor for further information.

Integrated circuits or chips are used frequently in the design of Digital/New Media. Each chip is designed to perform a unique function by etching a pattern on it to make up its electrical circuitry. Such a pattern is known as topography and the topography is protected by design rights. The processes involved in the making of the chip are protected by patent law, which is discussed below.

Registered design rights stop someone producing something with the same overall effect: for example, even if the software creating it is different. This is a

very useful IP right in this area. For further information, please see the [Own-it Registered Design Factsheet](#).

Trade marks ®

A trade mark is a word, symbol or phrase used to identify a particular manufacture or producer of goods. In the realm of Digital/New Media, computer game characters may obtain their own trade mark. This will enable the owner of the trade mark to enter distribution and franchise agreements with other entrepreneurs who wish to create other products which incorporate this trade mark.

A trade mark may be registered in the UK or in other countries. For further details please see [What kind of sign can be a trade mark?](#)

Database rights

If your product includes a database, this database (and only the database) may be protected by using one or both of two rights. A database is a collection of information arranged in such a manner that the information is individually accessible.

The database may be protected as a literary work by copyright. The copyright protects the unique layout and reasoning used in the collection of items contained in the database.

It may also be protected under a database right. This protects databases which were created as a result of substantial investment and prevents unauthorised extraction and/or reutilisation of the contents. This right lasts for 15 years, or if it is published during that time, then 15 years from publication.

The items in the database cells: for example, a collection of poems, may have their own copyright. When gathering 3rd party items for your database it is important to ensure you are not infringing any copyright.

Patents

A patent can be a powerful tool that affords you the sole right to your technology/invention for a fixed period of time. This allows you to gain a market share and prevents others from manufacturing, selling or using the invention.

In the majority of cases, computer programs cannot obtain a patent in the UK. In certain rare circumstances if a program makes a technical contribution, then it

can be considered for an application for patent, but must satisfy all patent application criteria.

However there is more to Digital/New Media than computer programs. If your product is inventive it may be eligible to apply for a patent. Application for a patent is a long process. In order to apply you must show four basic requirements:

- It is in a field of technology;
- It is susceptible of industrial application;
- It must be new; and
- It must include an 'inventive step'.

For further information, see [What can be registered as a patent?](#)

Confidential information/Trade secrets

Digital/New Media is an exciting new area whose continued growth is reliant on the secrecy and confidentiality of ideas. It is important to remember that your product relies on the information being kept secret until it is ready to be launched in the market place. Where possible, organise the signing of a [confidential](#) or non-disclosure agreement with parties before discussing your ideas with them.

Finally...

Digital/New Media IP rights offer methods of protecting a company's assets. With the continuing development in this area this can be seen as a promising investment in the future of any business. Further research is advised in order to fully understand how to best protect your Digital/New Media idea.

Content supplied by Tanya Layng (non-practising solicitor, technology engineer, arbitrator and LawWorks Choices volunteer).