



INTELLECTUAL
PROPERTY
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→ Intellectual Property

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LEADERS IN ENTERPRISE
AND FINANCIAL EDUCATION



MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT
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What is Intellectual Property?

Intellectual property (IP) is the umbrella term for 'creations of the mind'. IP assets, like trade marks for marketing goods and services, patents for new inventions, and registered designs for eye-appealing product design features, have associated legal rights that allow people to control and be rewarded for their creative efforts. IP rights can be bought, licensed and sold.



How can you help your Young Enterprise Scheme (YES) students?

■ IP capture

You can ask how IP fits into their business plan at the first team meeting. Several IP assets can be tied up in the one product or used when providing a service. The IP Asset Guide Sheet can help identify newly created IP. There's also a useful Checklist that highlights other project issues, and a general Glossary of IP terms.

Secrecy can keep IP protection options open. You might need to curb student and staff enthusiasm to promote a new design or invention. To get a valid patent or registered design, the invention or design must be new and not obvious over what's known or used in New Zealand before the application filing date. This could affect the timing of market research, sales promotions, publicity and other activities like school presentations, YES Innovation Hub progress postings or entering other competitions.

The YES Student Study Guide includes a Confidential Disclosure Agreement that may be used to guard against public disclosure when they need outside assistance. However, the best course of action is to file a New Zealand patent or design application before releasing information to another party, even under a Confidential Disclosure Agreement.

IP law is complex and it's best to get help from a patent attorney. You can find a patent attorney in your area from the New Zealand Patent Attorney Register available on the Intellectual Property Office of New Zealand (IPONZ) website: www.iponz.govt.nz.

■ IP awareness

Encourage your students to find out more about IP. Warn them that every country has its own set of IP laws. IP information retrieved from the worldwide web or library might not apply in New Zealand, or the information could be outdated. A wealth of commercial intelligence can be

found by searching the online databases: www.business.govt.nz/companies/ – company name and director searches; www.iponz.govt.nz – trade mark, patent, design, and plant variety right searches. From these databases you can: find out information about potential business partners; see what competitors have filed and registered; and read accepted patent specifications to learn how other inventors have solved the same or a similar problem.

■ IP commercialisation

Students must respect the IP rights of others. Clearance checks should be made before market launch to confirm that branding and advertising material like photographs, clipart and music is available to be used. Licences may be required.

Products, tags, labels, packaging and promotional material can be marked with the appropriate IP indicators. This will let competitors and potential business partners know about the status of IP protection. If an application has been filed at the IPONZ, the allocated number can be used to retrieve information from the New Zealand Patent, Trade Mark, Design or Plant Variety Rights Register.

Promotional material shouldn't include any misleading or false statements like the product is waterproof when it's only water resistant. Students might like to find out more about what is allowed in advertising by visiting the Commerce Commission of New Zealand website: www.comcom.govt.nz.

Before your students' "YES Company" is wound up, they can consider selling or giving away company IP assets. IP rights can be assigned to some in the team wishing to continue the business or to a new owner. Commercial information like customer and supplier contacts can be passed onto next year's YES students. Some of the students may even be willing to act as peer group mentors.

Disclaimer:

The information provided in this IPONZ information pack is intended to be used as a general guide and does not represent legal advice. IPONZ and the Ministry of Business, Innovation and Employment (MBIE) do not accept any responsibility or liability for any action taken in reliance on the information in this guide or for any error, inadequacy, deficiency or flaw in or omission from the information provided. All readers who ignore this disclaimer do so at their own risk.

Intellectual Property (IP) Asset Guide sheet

Creation	IP Type	Government Authority/ Business Consultants
Company legal identity	Company name (Limited liability company registration)	Companies Office www.business.govt.nz/companies/ Lawyer Accountant
Internet address	Domain name	Commissioner of Domain Names www.dnc.org.nz
Sign that identifies a trader's goods or services	Registered trade mark [®] Unregistered trade mark [™]	www.iponz.govt.nz Patent attorney
Invention	Potential patent Copyright Trade Secret Confidential information	www.iponz.govt.nz Patent attorney
Product design	Copyright Registered design Trade mark	www.iponz.govt.nz Patent attorney
Technical and marketing information	Know-how Confidential information	Patent attorney
Business reputation	Goodwill earned from trading	Patent attorney Accountant
Advertising	Copyright (artwork, text, music, broadcasts etc) Trade mark	www.comcom.govt.nz www.iponz.govt.nz Patent Attorney Advertising agent

YES Project Co-ordinator Checklist

■ Planning

- Confidentiality issues discussed by team
- Business plan signed off by the Young Enterprise Trust

■ Research & Development

- Reporting system devised to capture potential IP assets before testing or market research happens
- Copyright indicator is placed on all drawings, prototypes and photographs (© owner(s), year it was created)

■ Marketing

- Design or patent application has been filed (if applicable)
- 'Go to market' clearance check conducted (trade mark search, licensing agreements in place, copyright ownership sorted)
- Trade mark application has been filed (if applicable)
- Labelling in place and checked (copyright indicator, correct trade mark status symbol TM or [®], no false or misleading advertising)

Glossary

■ Assignment

An assignment is a sales contract transferring ownership of IP rights in the listed IP assets, from the current owner (assignor) to the new owner (assignee). An assignment must be signed and dated by the parties and their witnesses.

■ Company name

A company name is the legal identity of an enterprise.

■ Confidential Disclosure Agreement

A Confidential Disclosure Agreement (CDA) clarifies what information is to be kept confidential, who owns it (the proprietor) and to whom the owner has agreed to disclose it (the recipient). CDAs can be used to guard against public disclosure while an invention is under development or when entering into discussions with a potential business partner. CDAs are also known as secrecy, non-disclosure and confidentiality agreements.

■ Copyright

The term 'copyright' refers to a bundle of exclusive rights conferred by the New Zealand Copyright Act 1994 for original works. There is no formal registration of copyright in New Zealand. Copyright protection comes into existence automatically every time an original work is created. There can be a number of copyright layers in a work. For example, a piece of original music could have copyright protection for the lyrics, score and sound recording; and a product design could have copyright protection in the 2D drawing and the visual appearance of the 3D article.

■ Design Registrations

A registered design protects eye-appealing product appearance in terms of shape, configuration, pattern and ornamentation applied to the manufactured article. It gives the owner the exclusive right to make, import, sell or license the design for up to 15 years. Design registration doesn't cover functional aspects of the design unless those aspects contribute to the product's eye appeal. Functional design features may be protected by a patent.

■ Domain name

A domain name is an internet address. Domain names must be registered with a service provider to be valid and usable.

■ Franchise

A franchise is a business established or operated under a franchise agreement. An IP owner who has a high-profile business (the franchiser) can team up with another enterprise (the franchisee) who will bring in expertise of their own or financial resources to provide goods or services directly to the consumer. The franchiser will ensure, through the supply of technical and management skills, that the franchisee maintains quality and other standards in relation to the use of the trade mark under which the franchise operates. The franchise agreement usually requires certain standardised features like a uniform trade dress.

■ Intellectual property (IP)

Intellectual property is the umbrella term for 'creations of the mind'. IP assets include patents for new inventions, trade marks for identifying a trader's goods or services, designs for eye-appealing product features, and copyright for original works.

Disclaimer:

The definitions provided in this Glossary are intended to be used as a general guide and not as a legal definition.



Glossary (continued)

■ IP Indicators

Copyright: The internationally recognised copyright indicator uses the © symbol followed by the name of the copyright owner and the year the copyright work was first created. Although not required by law, it is a good idea to include a copyright indicator or statement on a work.

IP Registers: Every IP asset that has been entered on an official register can be found by its unique number. Products, tags, labels, packaging and promotional material can be marked with the appropriate IP indicators.

General format = country code + IP type + allocated number

Examples: New Zealand patent application → NZ Pat. Ap. No. 765432; New Zealand registered design → NZ Des. No. 98765; New Zealand plant variety right application → NZ PVR Ap. No. 34210.

■ IP Infringement

IP infringement is the unauthorised use of an IP owner's IP rights. IP infringement includes illegal activities like peer-to-peer file sharing without the copyright owner's permission; copyright piracy of music and films, selling a patented invention that wasn't made by the New Zealand patent owner or their authorised licensee; and using an identical or similar-looking/sounding brand to a competitor's trade mark.

■ IP Symbols

® = registered trade mark

™ = trade mark

© = part of the copyright indicator

■ Joint Venture

A joint venture is a business relationship that involves two or more enterprises pooling their resources for a common purpose. Often, one partner contributes technology or know-how and the other partner contributes financially or brings expertise to the project. The joint venture can be registered as a limited liability (Ltd) company or operate under licensing and Confidential Disclosure Agreements to ensure that the use of one another's IP rights is controlled and reciprocally compensated.

■ Licence

A licence is a contract where the IP owner (licensor) gives permission to a licensee to use but not own the IP assets under agreed terms and conditions. Terms may include a time limitation and market territory restriction. Conditions may include quality testing and royalty payments. Terms and conditions need to be negotiated. There is no model licence and it is important for the two parties to get independent legal advice.

■ Patent

A patent is an exclusive right granted by the government for a new invention. The owner of the patent (the patentee) may exclude others from commercialising the invention as claimed for up to 20 years.

■ Patent Attorney

A patent attorney is a person who has qualified and registered as a patent attorney. Registered patent attorneys can prepare patent specifications for IP owners and provide legal advice on IP issues.

■ Patent Specification

A patent specification is a written description of an invention, often including drawings and tables, to show how it is made and works. In New Zealand, a patent application can either be filed with either 1) a provisional specification or 2) a complete specification. A provisional specification broadly describes the invention and how to perform it. A complete specification accurately describes the invention and the best method of carrying it out, and ends with one or more claims that define the scope of the invention. If filing option 1 is chosen, a complete-after-provisional (CAP) specification must be filed within the set deadline to keep the application alive.

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Glossary (continued)

■ PCT

PCT stands for the Patent Cooperation Treaty. It allows applicants from member countries to file a single international application as a first step towards gaining a family of national and/or regional patents selected from the contracting states. New Zealand is a member country/contracting state and the Intellectual Property Office of New Zealand (IPONZ) is a PCT Receiving Office (RO) where PCT applications can be filed. For an up-to-date list of contracting states, please visit www.wipo.int/pct/en/.

■ Plant Variety Right

The grant of a plant variety right (PVR) gives the owner the exclusive right to sell plants and propagating material of the protected variety. The full term of a PVR is 20 years in the case of non-woody plant varieties and 23 years for woody plant varieties, providing the annual renewal fees are paid. The term starts from the date of grant.

■ Trade mark

A trade mark is a unique sign that identifies and distinguishes one trader's goods or services from those of other traders in the same or a related market. Trade marks can include words, logos, colours, sounds, smells – or any combination of these, as long as they can be graphically represented. Once a trade mark is registered, the ® symbol may be legally used against the trade mark. A ™ symbol indicates that a trader is using a sign as a trade mark but does not indicate whether the sign is registered.

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Find Out More

■ How do I find out more about patents, trade marks and designs?

Please visit the IPONZ website: www.iponz.govt.nz, call 0508 4 IPONZ (0508 447 669) or email info@iponz.govt.nz. The World Intellectual Property Organization (WIPO) website: www.wipo.int/sme/en/ contains information on international IP protection. Professional assistance is available from a registered patent attorney. A full list of registered patent attorneys is available on the IPONZ website.

■ How do I find out more about plant variety rights?

Please visit the IPONZ website: www.iponz.govt.nz, call 0508 447 669 or email info@iponz.govt.nz.

■ How do I find out more about copyright?

Please visit the IPONZ website: www.iponz.govt.nz and Copyright Council of New Zealand website: www.copyright.org.nz.

■ How do I find out more about company names?

Please visit the Companies Office website: www.business.govt.nz/companies/, call 0508 COMPANIES (0508 266 726).

■ How do I find out more about 'Dot NZ' domain names?

Please visit the Office of the Domain Names Commissioner website: www.dnc.org.nz or email info@dnc.org.nz.

■ How can I find a patent attorney?

The list of registered New Zealand patent attorneys is available on the IPONZ website: www.iponz.govt.nz. If your students are interested in becoming a patent attorney, more information can be found on the IPONZ website and New Zealand Institute of Patent Attorneys Inc. website: www.nzipa.org.nz.