

## Introduction to Intellectual Property Rights

This document has been prepared by Ukie Associate Member, Harbottle & Lewis. It provides a brief introduction to the intellectual property rights available under English law and has been prepared in light of the applicable legislation in force as at June 2015 which may be subject to change, possibly with retrospective effect. This document is intended to be used as an introductory guide only, is not an exhaustive review of the subject matter and does not constitute legal advice from Harbottle & Lewis.

Right	What is it?	How is it created?	How long does it last?	How is it relevant to games?	Quick facts and common misconceptions
Copyright	Copyright is a right which subsists in original literary, artistic, dramatic and musical works, sound recordings, films and broadcasts. It is basically a right not to be copied.	Copyright is created automatically when a work which meets the relevant requirements is created by a qualifying person. There is no need for registration.	<p>The duration of protection depends on the type of work.</p> <p>Copyright in literary, dramatic, musical or artistic works (which are the most common) exists for the life of the author plus 70 years.</p> <p>The duration of the copyright in sound recordings, films and broadcasts is more complicated and is dependent on a number of differing factors which are beyond the scope of this note.</p>	<p>Copyright can potentially protect (and, conversely, be infringed by) many different aspects of a game. Examples of literary works include source code, product descriptions, manuals and scripts.</p> <p>Examples of artistic works could include physical/digital artwork, logos, textures and GUIs.</p> <p>Cut scenes could contain musical works or sound recordings, as well as being protected as film works.</p> <p>Broadcast copyright could subsist in the live stream of an eSports event.</p>	<p>There is no legal requirement to mark the work with a © symbol (although this is often done by copyright owners to draw attention to the fact that copyright subsists in the work).</p> <p>Copyright is infringed by copying the whole or a substantial part of a work without the owner's consent. This is always a qualitative test. So-called rules like "if you make 'X' changes to a picture, you should be OK" are often misleading.</p> <p>The fact that you have paid for the creation of copyright material (for example artwork) by a third party does not necessarily mean that you own the copyright in that material.</p>

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Trade Marks & Passing Off	<p>A trade mark is a distinctive sign that is capable of differentiating goods and services of one business from those of another.</p> <p>Trade marks can either be registered or unregistered.</p> <p>Unregistered trade marks can sometimes be enforced by relying on the law of 'passing off'.</p> <p>Registered trade marks, as the name suggests, are trade marks that are registered with a trade mark registry (for example the Intellectual Property Office in the UK).</p> <p>There are many advantages to registration, for example:</p> <ol style="list-style-type: none"> <li>1. Enforcing a registered trade mark against an infringer is easier than relying on passing off.</li> <li>2. A registered trade mark is an asset, which can be transferred, sold or licensed more easily. The ownership of registered trade marks can also be attractive (or in some cases essential) to potential investors, buyers or licensees.</li> <li>3. Registration allows you to use the symbol next to your trade mark, which serves as a notice to competitors and would-be infringers that the mark is registered. This can have a useful deterrent effect.</li> </ol>	<p>Unregistered trade marks are protected automatically, provided that the owner of the unregistered trade mark has generated enough 'goodwill' by using the unregistered trade mark in business and the use of the unregistered trade mark by a third party is likely to mislead consumers as to the origin of the third party's goods or services.</p> <p>Although registered trade marks must be applied for on a country-by-country basis at the relevant trade mark registry, there are ways of obtaining equivalent protection in several countries at once (for instance by applying for a Community Trade Mark).</p> <p>There is a fee payable for registration and renewals.</p>	<p>The duration of protection for unregistered trade marks is potentially unlimited provided the unregistered trade mark remains in use by its owner.</p> <p>Similarly, the duration of protection for a registered trade mark is potentially unlimited, provided the registered trade mark remains in use by its owner and its registration is renewed when required by the relevant trade mark registry (typically every 10 years).</p>	<p>Trade marks and the law of passing off can be used to protect (among other things), names of characters, logos, brand names, the 'look and feel' of packaging and, in some circumstances, game titles.</p>	<p>Although it is a very useful tool in tackling infringers, a registered trade mark does not give the owner the absolute right to use that trade mark in respect of all goods and services. On the contrary, trade marks can only be registered in relation to specified goods/services in respect of which the owner intends to use that trade mark.</p> <p>If the owner of a registered trade mark does not use its trade mark for a continuous period of five years, the registration of that trade mark can potentially be wholly or partially revoked.</p> <p>A "TM" symbol is used to indicate that the trade mark is unregistered. An symbol can only be used in respect of a registered trade mark (and using it for an unregistered mark is a criminal offence).</p>

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Patents	<p>A patent is a monopoly right that is granted for a fixed period of time to an inventor of a novel invention, which involves an inventive step, is capable of industrial application and is not specifically excluded by the law. This monopoly right is granted in exchange for the disclosure of the patentable invention to the public.</p>	<p>Patents must be applied for on a country-by-country basis at the relevant patent registry (for example, the Intellectual Property Office in the UK).</p> <p>Although the monopoly right afforded to the owner of a patent is generally limited to the country in which the patent is granted, there are ways of extending this monopoly right to more than one country at once.</p> <p>A patent application is an important document which sets out the scope of the invention claimed. It is a very detailed document and must be carefully drafted.</p> <p>There is a fee payable for registration and renewals.</p>	<p>Patents can be renewed on an annual basis for a maximum of 20 years from the date on which the relevant patent application was first filed at the relevant patent registry.</p>	<p>The law relating to what is and is not patentable is complicated and so it is advisable to speak to a professional before taking any substantive steps.</p> <p>Examples of inventions which may be patentable include hardware and certain game mechanics. A patent for the latter could be useful in tackling the growing issue of game cloning.</p> <p>Computer programs as such are excluded from patentability, but innovative technical features of those programs may be patentable.</p>	<p>It is important to remember that patents can only be granted for inventions that are “novel”. It is therefore crucial not to disclose your invention to anyone until an application has been filed (conversations with legal advisors are normally confidential and will therefore usually be exempt from this rule).</p> <p>A patent is a true monopoly right, meaning that it can be infringed unintentionally, even if the party committing the infringing act did not do so intentionally and/or was not aware of the patent’s existence.</p> <p>Patents only protect novel inventions which involve an inventive step, are capable of industrial applicability and are not specifically excluded by the law. They cannot, for example, be used to protect any kind of literary, dramatic, musical or artistic work or any kind of aesthetic creation whatsoever (which may be protected by copyright or design right instead).</p>
Confidential Information	<p>Confidentiality is a legal principle developed to prevent a person who has received commercially sensitive information from taking unfair advantage of it.</p>	<p>Protection arises automatically provided the information has the necessary quality of confidence and is disclosed in circumstances which impose an obligation of confidence on the person receiving the information.</p> <p>It is useful to have a written agreement with the recipient of any confidential information which identifies the information to be disclosed and sets out the recipient's obligations in respect of such information.</p>	<p>Information can be protected indefinitely by confidentiality as long as the information remains confidential, although the rules are different (and complex) in relation to information held by departing employees.</p> <p>Proceedings for breach of confidentiality can generally be issued up to 6 years from the time the confidential information in question was misused.</p>	<p>The following could be protected by confidentiality: knowhow, business methods, source code, algorithms, trade secrets and customer lists.</p>	<p>Strictly speaking confidentiality is not an intellectual property ‘right’ in the same way as those listed above, but it can be very useful in protecting things which might otherwise fall between the cracks of other intellectual property rights.</p> <p>In practice, however, demonstrating that information has the necessary quality of confidence and enforcing your rights through a claim for breach of confidentiality can be very difficult and so should not be relied upon as a primary source of protection.</p>

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Design Right	<p>Design right protects the physical shape and appearance of products.</p> <p>A Design right can either be registered or unregistered.</p>	<p>Unregistered designs arise automatically when a design which meets the relevant requirements is created by a qualifying person. There is no need for registration.</p> <p>Registered designs must generally be applied for on a country-by-country basis at the relevant design right registry (for example, the Intellectual Property Office in the UK).</p> <p>Although the rights afforded to the owner of a registered design are generally limited to the country in which the design is registered, there are ways of extending these rights to more than one country at once.</p> <p>There is a fee payable for registration and renewals.</p>	<p>UK unregistered designs are generally afforded protection for 10 years after the design is first sold (subject to some exceptions).</p> <p>Unregistered European Community design right affords protection for 3 years.</p> <p>Registered designs are afforded protection for up to 25 years, but must be renewed every 5 years.</p> <p>It is possible for several different types of design right to subsist in the same product at the same time, which can be confusing. If in doubt, it is advisable to speak to a professional advisor to work out the scope of protection.</p>	<p>Design right can potentially be used to protect the external shape and appearance of things like hardware, packaging, and merchandise.</p> <p>It may also be used to protect GUIs (graphical user interfaces).</p>	<p>Designs are infringed by 'copying'.</p> <p>As with copyright, a design commissioned from a third party will not necessarily automatically belong to the party which commissioned and paid for it.</p>

### What should I do next?

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