

Intellectual Property & Aboriginal Business Development



What is Intellectual Property?

Intellectual property (IP) is your distinctive knowledge or original idea. In a business setting, intellectual property usually looks like an invention a trade mark, design or a brand.

In order to have legal IP protection your idea must be new or unique, which can often be difficult to determine.

However, applying for an IP right to protect your idea is really important in the process of building a business and is central to economic development. If your idea fits the criteria of IP Australia, your protection gives you a secure base,

ensuring your position in the market and allowing growth.

Your intellectual property can be registered at Intellectual property (IP) Australia. IP Australia protects intellectual property in the form of:

1. Patents
2. Trademarks
3. Designs
4. Plant Breeders rights.

Before registering your IP (which must fall into one of these four categories) you must complete a search to check that it is not already registered. This search, and the registering of IP can be made on the IP Australia database:

<https://www.ipaustralia.gov.au/>

Protecting your Idea and your Business – Important things to consider

- Be aware of publicity if you want to register your IP - it is important to not publish your patent or design until your ownership has been confirmed.
- Failing to consider IP before launching a business, could result in accidentally copying someone else's idea. It is important to search the IP database for your idea prior to registering or launching it to avoid IP infringement.
- Use confidentiality agreements if you intend revealing details of your IP to others before it has been protected.
- It is important to make sure that your IP has the potential to make money as well as discourage others from copying your idea.¹

¹ Intellectual Property Australia. (2017). *IP Explained*. Retrieved from <https://www.ipaustralia.gov.au/understanding-ip/getting-started-with-ip/ip-explained>



IP right	What's protected	What it means	How do I get rights
Trade marks	Words, slogans, a phrase, logos, pictures, colours, sound, scent, 3D shape, aspect of packaging or any combination of these	Identifies the particular goods or services of a trader as distinct from those of other traders. The owner has the exclusive right to use, sell or license the trade mark.	It must be distinctive and different to other marks for similar products or services. Apply to IP Australia
Designs	The way the product looks or as a design on a manufactured product	Protects the visual appearance of a product, but not the way it works. The owner has the exclusive right to use, sell or license the registered design here in Australia.	It must be a new design (which means the design can't have been disclosed to the public) and different to other designs already registered or in the market place. Apply to IP Australia
Patents	Inventions or new processes	Protects how an invention works or functions. The owner has the exclusive right to use, sell or license the invention.	Your invention can't have been disclosed to the market. It must be new, innovative and useful. Apply to IP Australia
Copyright	Art, literature, music, film, broadcasts or computer programs	Protects the owner's original <i>expression</i> of ideas, but not the ideas themselves. The owner has the exclusive right to use, sell or license the copyrighted work.	You get it automatically once you draw, record or write the work.
Plant Breeders Rights	New varieties of plants that are distinct, uniform and stable	Different combinations of IP rights can be used to add value to a single plant variety such as Trademarks and patents	Check your new plant variety meets the eligibility criteria, check it is not already registered. Apply to IP Australia

² Figure A: Types of IP and What is Protected

² Figure A. Types of IP and what is protected. Adapted [reprinted] from *Nanga Mai Arunga* (p. 7), by A. Page, 2012, Canberra: Australian Government IP Australia. Copyright 2010 by "Commonwealth of Australia".



Intellectual property and traditional Aboriginal knowledge

The Indigenous Advisory Committee (IAC), noted in a submission (2012) that there is significant complexity in protecting Indigenous knowledge systems through the intellectual property rights process that currently exists. The exploitation of Indigenous knowledge that has already taken place signals the huge gaps in the existing legal framework in Australia. Providing adequate and appropriate protection for Indigenous knowledge systems and cultural expression is an area of reform that requires attention³.

Promoting Aboriginal economic development without addressing IP protection, and considering risks, options and the values of the individual, could result in an economic development failing to create meaningful outcomes. This is because the gaps in legal protection can stifle community capacity to innovatively use knowledge systems without risk of knowledge or ideas being wrongfully appropriated by outside parties. Currently, the domestic legal framework allows traditional Indigenous Australian knowledge to be afforded the conditional right of "confidential information"⁴ however this right is elusive as Indigenous knowledge systems may be a body of information that is not recorded, and often collectively held by a group of people. Oral traditions or knowledge do not meet the requirements of the Copyright Act (1968)⁵ and so cannot be protected legally.

This is something to be aware of. If you are developing Intellectual property for economic development from traditional knowledge, such as Aboriginal medicines, oral knowledge and biological resources, you may need to consider more complex legal and cultural issues. AIATSIS has developed protocols that explore these issues which are listed below.

Further resources:

- [*AIATSIS - Intellectual property \(IP\)*](#)
- [*IP Australia - Guide to protecting Aboriginal business ideas*](#)
- [*AusTrade - Intellectual property laws*](#)

³ Indigenous Advisory Committee Secretariat. (2012). *Submission: Indigenous Cultural and Intellectual Property*. Canberra, Australia: Australian Government Publishing Service.

⁴ Indigenous Advisory Committee Secretariat. (2012). *Submission: Indigenous Cultural and Intellectual Property*. Canberra, Australia: Australian Government Publishing Service.

⁵ *Copyright Act 1968* (Commonwealth.) (Austl.). Retrieved from <https://www.legislation.gov.au/Details/C2014C00291>



Please note: while all care has been taken in the preparation of this document, it should not be seen as a substitute for independent consideration of the issues and/or legal advice on this subject. This document is current as of July 2017.
