

Game Legal - Help Guide

INTELLECTUAL PROPERTY

What is 'intellectual property', and why is it important to the gaming industry?

Intellectual Property

Intellectual property (**IP**) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.

IP is protected by laws which enable people to earn recognition or financial benefit from what they invent or create. To enjoy rights under protection of your IP, your idea must be expressed, or published, and be something new or original. Though your IP may be protected, you must enforce any claims of infringement against a third-party. Without protection (including with registration), your IP is open to theft or copying.

As such, applying for an IP right to protect your idea can be critical if you want to build a strong business, increase the value of your IP assets, and establish your presence in a market.

What are the different types of IP?

The recognised types of IP, able to be protected under various laws, in the IP system are:

- Copyright
- Patents
- Trademarks
- Industrial Designs
- Geographical Indications
- Trade secrets

Copyright

Copyright is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture and films, to computer programs (including video games), databases, ads, maps and technical drawings.

Patents

A patent is an exclusive right granted for an invention, which provides the patent owner with the right to decide how - or whether - the invention can be used by others.



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Trade Marks

A trademark is a sign, or commercial signature, capable of distinguishing the goods or services of one enterprise from those of other enterprises. A person in trade or commerce may apply to protect their commercial signature in a mark, including words, a figurative image or logo, colours, sounds, and designs.

Industrial Designs

An industrial design constitutes the ornamental or aesthetic aspect of an article. A design may consist of 3D features, such as the shape or a surface, or of 2D features, such as patterns, lines or colour.

Geographical Indicators

Geographical indications of origin are signs used on goods that have a specific geographical origin and possess qualities, a reputation or characteristics that are essentially attributable to that place of origin.

Trade Secrets

Trade secrets are IP rights on confidential information which may be sold or licensed.

What about video games?

Modern video games are in fact complex works of authorship, potentially composed of multiple copyrighted works, containing at least two main parts:

- **audiovisual elements** (including pictures, video recordings and sounds); and
- **software**, which technically manages the audiovisual elements and permits users to interact with the different elements of the game.

Reflecting this, Article 2 of the Berne Convention for the Protection of Literary and Artistic Works provides a solid basis for eligibility for protection of video games by copyright. The Australian *Copyright Act 1968* (Cth) protects authors of computer programs. Copyright is an automatic right upon publication of an original work that an author can exert via a declaration, including using the © symbol on published works. Game developers may also protect software via digital rights management software and technical protection measures.

Other IP aspects of a developer's business that should be considered to apply for protection of include trademark protection for brands and game titles, and potentially patent protection for inventions.

The above is information only and does not constitute legal advice. To discuss your unique IP needs, contact a lawyer skilled in IP in relation to the gaming sector, including Game Legal.



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