

Protecting Intellectual Property in the United States:

A Guide for Small and Medium-Sized Enterprises in the United Kingdom

This toolkit was developed to inform U.K. small and medium-sized enterprises (SMEs) about protecting their intellectual property (IP) within the United States (U.S.) and the tools available to help them. As IP rights are territorial, there may be differences in how your IP rights are protected in the U.S. as compared to the U.K.

According to the World Intellectual Property Organization (WIPO), the term "intellectual property" "refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce." In the U.S., there are several types of intellectual property, which include **patents**, **trade marks**, **copyrights**, and **trade secrets**. Patents allow their owner to determine who can make, use, or sell an invention. Trade marks allow their owner to communicate the source or origin of a product or service to consumers. Copyrights provide their owner with the ability to determine who can reproduce or distribute a work, publicly perform and display a work, or prepare derivative works. Trade secrets protect confidential business information. Certain plants, industrial designs, and regulatory data may also be protectable in the U.S. Each type has different attributes and criteria for protection, so it is important to seek legal counsel. An intellectual property attorney can help you identify, protect, and enforce your IP rights in the U.S.

PATENTS

A utility patent protects a new and useful process, machine, article of manufacture, or composition of matter, or any new and useful improvement thereof. To obtain a patent in the U.S., the inventor must file a patent application with the United States Patent and Trademark Office (USPTO), which includes (1) a written document comprising a description and claims, (2) drawings when necessary, (3) an oath or declaration, and (4) filing, search, and examination fees.

Patent protection lasts 20 years from the date of filing, and maintenance fees are required at 3.5, 7.5, and 11.5 years from the date of the patent grant. [All USPTO fee schedules may be found here](#).

In the U.S., protection for industrial designs is also provided under the patent system. Find more information on types of patent protection in the U.S. and on international filings under the [Patent Cooperation Treaty](#) (PCT) (covering patents), and [Hague Agreement](#) (covering designs).

TRADE MARKS

A trade mark or service mark is a word, phrase, symbol, or design, or a combination thereof, that identifies and distinguishes the source of the goods or services of one party from those of others. You can establish common law rights in a mark based solely on use of the mark in U.S. commerce; however, obtaining a federal trade mark registration for a mark used in commerce provides significant advantages. You can file a trade mark application online with the USPTO.

A U.S. trade mark generally lasts as long as the trade mark continues to be used and is defended against infringement. To keep a registration alive, the registration owner must file required maintenance documents at regular intervals. [USPTO fee schedules may be found here](#).

More information from the USPTO about international protection under the [Madrid Protocol may be found here](#).

COPYRIGHT

Copyright in the U.S. protects “original works of authorship” from the time the works are created in a fixed form. An application for copyright registration can be submitted online to the U.S. Copyright Office.

Although registration is not required for protection, it offers many benefits, including a public record of the copyright claim, prima facie evidence of the validity of the copyright when registration is made before or within five years of publication, and the possible recovery of statutory damages and attorney’s fees and costs in successful copyright infringement litigation for timely filed applications. To register a work, you must submit a completed application form, the applicable filing fee, and a nonreturnable copy or copies of the work to be registered.

In general, the term of copyright is the life of the author plus 70 years after the author’s death (or last surviving author’s death if a joint work). For works made for hire and anonymous or pseudonymous works, the duration of copyright is 95 years from publication or 120 years from creation, whichever is shorter. (Works created before January 1, 1978, have special rules of duration). Filing fee schedules for copyright registration are available on the [U.S. Copyright Office website](#).

TRADE SECRETS

Trade secrets are protected in the U.S. as long as the information is a secret, has commercial value, and reasonable steps are taken to protect the information. What is a “reasonable effort” to protect a trade secret may vary depending on the nature of the information you wish to protect. For businesses, implementing an effective trade secret policy is advisable.

RECORDATION WITH CUSTOMS

A federally registered U.S. trade mark or copyright can be recorded online through an electronic application with the U.S. Customs and Border Protection (CBP). The recordation may be helpful in detecting infringing goods coming into more than 300 U.S. ports. Recordation fee schedules, along with instructions for filing electronically, are available at the [CBP website](#).

ENFORCEMENT OF IP RIGHTS

U.S. law provides for civil, criminal, and border enforcement of IP rights. The USPTO and partner agencies provide online tools and information for how to protect and enforce intellectual property rights, but rights holders should seek legal advice from a licensed attorney.

In the U.S., the IP rights-holder is responsible for civil enforcement of its rights. It can also report IP theft online through the National Intellectual Property Rights Coordination Center. The [reporting form can be found here](#), along with more information.

ONLINE RESOURCES

Electronic applications, fee schedules, applicable regulations, and additional training and education are available through the U.S. government at these sites:

[United States Patent and Trademark Office](#)

[GIPA IP Training and Education on all Topics](#)

[United States Copyright Office](#)

[United States Customs and Border Protection](#)

[United States Department of Agriculture](#)

[United States National Intellectual Property Rights Coordination Center](#)

[Stopfakes.gov tutorials and further resources](#)

This toolkit and other information may be found at www.uspto.gov/IPtoolkit

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