

The Rose Book Annex A

Knowledge Assets classes and types

Annex A

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- A.1 This Annex sets out more detail on the main categories of IP likely to be used to protect Knowledge Assets in a public sector context. Some are specific to particular areas of the public sector, such as the agricultural rights protecting plant varieties and foodstuffs, whereas some, like copyright, will be applicable to every department and their public bodies. For more information on IP in the public sector refer to the GOTT guide to Managing Intellectual Property and Confidentiality.
- A.2 Not all assets are protected by IP rights, other statutory and common law regimes may apply, and these are discussed at the relevant place below.
- A.3 IP rights can be broken down into two categories: registered rights which must be the subject of a formal application to the Intellectual Property Office or related national or international organisation; and unregistered rights which arise automatically.
- A.4 It is not the case that if material is eligible for protection via an IP right, that this is always the most appropriate path for that asset.
- A.5 More than one IP right or other mechanism of legal protection may cover a particular asset, and more than one Knowledge Asset may be involved in a product or service which you wish to make use of.
- A.6 What follows is not a substitute for seeking professional legal or commercialisation advice, either within the public sector or via external suppliers.

Category	Types of Knowledge Asset	Relevant IP rights and other methods of protection
Information	Data and other information	Database rights; copyright; Crown copyright; NDAs; contract; trade secrets
Innovation	Inventions and designs	Patents; designs; plant varieties
Creative	Texts, videos, graphics, software and source code	Copyright, performers' rights, and designs; Crown copyright
Reputational	Brands and services	Trade marks and other badges of origin; goodwill
Know-how	Expertise such as project management, process efficiency, ways of working	Know-how could be associated with any or all of the IP rights, but is not usually protectable in itself, other than by trade secrecy and keeping confidentiality.

Table 1.A: Categories of Knowledge Assets and relevant IP rights and protection

Information

A.7 IP rights are limited monopolies granted for various reasons, including to reward a creator, and to incentivise contributions to the body of public knowledge. They do not protect mere ideas, facts or truths, despite the huge value that we know data and information has in the information age. Under this heading will be discussed the rules around public sector information, as well as data and its means of protection and exploitation.

Public Sector Information

- A.8 The public sector information regime sets out particular terms on which certain types of information may be used by public bodies. These rules are applicable to copyright works and databases, and should be read in conjunction with the notes on those IP rights elsewhere in this annex.
- A.9 Any information, whatever its medium including print, digital or electronic, and sound recordings produced, held or disseminated by a public sector body is considered public sector information. This includes an enormous range: corporate information such as reports and financial data, codes of practice, public records, statistics, still and moving images, press releases, publication schemes, and so on. If a public sector body holds the copyright for information it produces, holds or disseminates within its public task, then that information is in scope of the Public Sector Information regime.
- A.10 Many public sector bodies make their information available for re-use under an open licence such as the Open Government Licence and are encouraged to do so. Accessible information which is produced, held or disseminated by the public sector body must be made available for re-use (unless it is otherwise restricted or excluded). The default is to set charges at marginal cost. In some cases, for example for online or digital information, this cost may be nil.
- A.11 There are certain exceptions to the marginal cost default. Bodies whose overarching business model is a self-sustaining commercial one (like a Trading Fund) can continue to operate in this way. In other cases, there has to be legal or binding rules or common administrative practice in place for public sector bodies to charge re-users to cover the costs of collection, production, reproduction and dissemination of information, together with a reasonable return on their investment.
- A.12 Public sector bodies need to be clear what their public task is, because this determines what information falls within scope of the Public Sector Information regime.

- A.13 For more guidance on these rules, including how to create a statement of public task, refer to guidance produced by The National Archives:
 - <u>http://www.nationalarchives.gov.uk/information-management/re-using-public-sector-information/re-use-and-licensing/</u>
 - <u>http://www.nationalarchives.gov.uk/information-management/manage-information/</u>
 - <u>http://www.nationalarchives.gov.uk/documents/information-management/links-between-access-and-reuse.pdf</u>

Data

- A.14 The public sector collects and processes huge amounts of data in the course of ordinary business, and sometimes this data can prove to have value outside of its original purpose. Sometimes this is non-personal data, such as a list of contractors operating in a certain field, but other times the public sector collects personal data, such as that held and managed by the Driver and Vehicle Licensing Agency.
- A.15 The Public Sector Information regime does not trump the requirements of other data protection legislation. It does not apply to any personal data that is not available under access legislation such as the Freedom of Information Act, nor to personal data that may be accessible but cannot be re-used due to data protection.
- A.16 Personal data may be accessible (for example, in a public register or by a request under access legislation) but that does not automatically make it re-usable. Any subsequent use or re-use of any personal data must be lawful under data protection legislation, which controls how personal information is used. It will require a valid legal basis and be fair to the data subject(s) by complying with the data protection principles.
- A.17 The public sector body is responsible for complying with data protection legislation when making information available for re-use. After permission to re-use has been given, the re-user is responsible for complying with the data protection legislation.
- A.18 Any publication of personal data will normally be done under an Act of Parliament, such as the statutory provisions for a public register. Re-users of this sort of personal data must consider carefully the lawfulness of their proposed re-use for which they would be the data controller. Public sector bodies making personal data available by other means must put a proper, legally enforceable data sharing agreement or data controller / processor relationship in place or could be committing a data breach.
- A.19 For more on data protection, refer to guidance provided by the Information Commissioner's Office.¹

¹ <u>'Guide to data protection'</u>, Information Commissioner's Office, 2019.

- A.20 When formulated into a database or combined with other datasets within a database, and at that stage it may acquire certain characteristics including protection via two IP rights:
- A.21 First, databases can be protected by copyright. This automatic right lasts from the point the work is created until 70 years after the death of the creator and prohibits third parties from copying or distributing the database without authority of the owner of the copyright.
- A.22 The eligibility requirement for copyright is that the database must have had some creative input by the author in the selection and arrangement of the contents of the database ("originality") to qualify for protection, and this can be a barrier to protection.
- A.23 There is also a separate right called the 'database right'. It provides for a limited term of 15 years' protection from the point of creation of a database, or a further 15 years if published within this time. There is no originality requirement, and the right therefore serves to incentivise investment in databases without creative input, but in which there has been a substantial investment.
- A.24 Crown database rights of both sorts vest in the Keeper of Public Records, from whom permission can be sought to exploit the rights.

Trade Secrets

- A.25 Trade secrets constitute valuable business assets. They can be used alongside IP rights, or as an alternative to them, to provide competitive advantage in the marketplace. They come in various forms and consist of a wide range of confidential information such as commercial data, technological information and product information.
- A.26 In the UK, trade secrets are protected by contract and/or the common law of confidence.
- A.27 A trade secret can last forever, so long as it is not disclosed. They can be seen as a weaker form of protection than patents because more care should be taken over the secret reverse engineering is not unlawful, and if the information leaks, it can't subsequently be protected.
- A.28 It is important to have procedures and contractual safeguards in place when dealing with Trade Secrets. This will ensure the secret is only disclosed to those who have a real 'need to know' and not inadvertently disclosed to third parties.
- A.29 Because there is no formal registration process, in contrast to a patent, a trade secret is free, and lasts forever. But once a trade secret is in the public domain, even accidentally, it can't be made secret again and nor can it subsequently be protected by a patent, so its value is effectively lost. This makes commercial deals involving trade secrets much less straightforward than, say, those involving a licence to a patent, where the patent is already on a public register for all to see.
- A.30 When it is necessary to discuss matters considered to be Trade Secrets, a Non-Disclosure agreement (<u>NDA</u>) should be used. This agreement is legally binding and legal action could be taken if a party breaches the terms of the agreement by disclosing any information.

Innovation

- A.31 This category is most relevant to public bodies involved in highly innovative activity, such as public sector laboratories, and departments heavily involved in technical procurement and infrastructure projects. However, innovation can arise in unexpected places, so it is not confined to these areas.
- A.32 Relevant IP rights include patents and designs, as well as more specialised rights such as plant varieties. Knowhow and trade secrets are highly relevant here, but are discussed separately due to their cross-cutting nature.

Patents

- A.33 A patent is a way to reward inventors for their efforts, granting them exclusive rights to exploit their invention for up to 20 years, in exchange for disclosing how the invention works on the public register. After those 20 years elapse, anyone is free to exploit the technology.
- A.34 A patent should only be sought if:
 - the invention is new check for similar ones by searching published patents, the internet and trade publications
 - the invention is not 'obvious'
 - · the invention is not specifically excluded from patent protection
 - the invention is capable of being made for example you couldn't patent a method of time travel because that is not possible
 - you have budgeted for the time and money required by the application process, and have thought about the lifetime cost of the asset
- A.35 It is preferable to use Espacenet or an official patent register for searching. Take particular care over search terms used, and especially avoid disclosing the invention in its entirety when undertaking the searches.
- A.36 Certain things are not capable of being patented, such as discoveries, scientific theories, mathematical methods, creative works, and computer programs (refer to software on page 17).
- A.37 The application process is not straightforward:
 - it usually needs professional support only 1 in 20 applicants are successful without this
 - it typically costs in excess of £4000 at the time of publication depending on the technical field
 - it usually takes around 5 years, though accelerated processing can be requested.
- A.38 If you get a patent, you'll also have to pay to renew it each year. There can also be costs associated with legal action if you need to defend the patent.

- A.39 When considering whether to patent an invention, you might need to tell people about your idea, project or work outcomes or your commercial opportunity to explore a collaboration, contract an external expert or get advice. You may need to share details with a team internal to your organisation or potential external collaborators.
- A.40 If you need to share confidential information with someone who is external to your organisation and is not already covered by a contract of engagement an option to protect confidentiality is to use a non-disclosure agreement (NDA). Consider at the outset when you need to use an NDA. It may be that in your initial conversations you can avoid disclosing confidential information.
- A.41 As a civil or public servant, you do not need an NDA to be in place to talk to other civil or public servants in the course of your work, but you should always mark any materials with a relevant security marking to ensure any documentation is handled and shared appropriately. As well as being marked appropriately, there should be due consideration of what information needs to be shared and for what purpose. It is also important that civil and public servants receiving confidential information are made aware of their responsibilities for managing and looking after it.
- A.42 If you do need to talk to people outside your organisation about the details of a potential patent you will need an NDA in place, or you may not be able to patent your invention.
- A.43 When you've checked that a patent is right for you, you should find a patent attorney or advisor. They will:
 - help you prepare your application correctly you can't add in additional information later
 - give you the best chance of being granted a patent
- A.44 There are 8 steps if you apply for patent protection in the UK through the Intellectual Property Office.



- A.45 A patent attorney or other legal advisor will be able to help you through the application process and it is strongly recommended that you instruct one.
- A.46 Applications for patents for inventions that may impact upon national security are subject to special provisions. These provisions provide for information pertaining to the patent not to be published or communicated to specified people or groups of people, ensuring that the technology remains secret.
- A.47 Patents are usually exploited by the rightholder themselves; by licensing the right to use the patent to a third party; or by selling the patent outright.
- A.48 Licence of right it is possible to indicate on the face of the patent via the Intellectual Property Office that all-comers will be granted a licence on request, in exchange for a halved renewal fee.
- A.49 Compulsory licences these arise in instances where demand for access to a patented invention is not being met, in which case an application can be made to the Intellectual Property Office, who have discretion to grant non-exclusive licences on reasonable terms, or declare the patent to fall within the 'licence of right' system.
- A.50 Freedom to operate obtaining a patent is not the only relevant consideration in commercialising a technology. Care and consideration should also be given to what other rights exist which could restrict the ability to fully exploit the technology. This is called freedom to operate, and there are various strategies for managing this, including:
 - · careful searching for related technologies that may restrict freedoms
 - · acquiring or licensing-in such rights as are needed to secure that freedom
 - defensive publication preventing third parties from restricting operational freedoms by publishing technical information that you do not wish to patent, thereby preventing them from also doing so
- A.51 Cross-licensing companies operating in the same technical field, particularly those with heavy patenting activity, sometimes come to an agreement whereby they grant licences to one another for the use of their patented technology, thereby giving both a greater operational freedom.
- A.52 Crown use certain rights to use patents are reserved to the Crown (subject to a royalty payment). In practice this means the Crown may not be refused the right to certain uses of third party patents, and compensation will be paid accordingly.

A.53 Ownership – In an employer-employee relationship the employer usually has ownership and entitlement to secure patents for any invention made by an employee in the course of normal duties. So, inventions made by, for example public sector scientists or research staff, would usually be employer-owned. However, the Patents Act sets out the limits of the employer's ownership rights, where the invention is outside of the course of the employee's duties. There is a provision entitling an employee to make an application to the Intellectual Property Office for additional compensation where the employer-owned patent is of 'outstanding' benefit to the employee. In practice this has resulted in surprisingly small payouts, having regard to the relative weight of the 'idea' versus the infrastructure and investment required to make it profitable.

Designs

- A.54 Designs protect the appearance of a product. There are different ways of protecting a design in the UK: registered designs, supplementary unregistered design and UK unregistered design (also known as "design right").
- A.55 A registered design provides the following protection:
 - protects 2D and 3D appearance of a product (shape and decoration)
 - gives you the right to prevent others from using it for up to 25 years you have to renew your registered design every 5 years
 - makes taking legal action against infringement and copying more straightforward
 - · protects graphical user interfaces, icons and webpages.
- A.56 You will need to apply to the Intellectual Property Office to protect a registered design. It is also possible to protect a design in the UK by applying for an international design at the World Intellectual Property Organisation. A patent attorney or other legal advisor or IP professional will be able to help you through the application process and it is strongly suggested that you instruct one.
- A.57 To register your design, it must:
 - \cdot be new
 - not be offensive (for example feature graphic images or words)
 - be your own intellectual property
 - not make use of protected emblems or flags (for example the Olympic rings or the Royal Crown).
 - not be an invention or how a product works.

A.58 A supplementary unregistered design (SUD) provides the following protection:

- protects 2D and 3D appearance of a product (shape and decoration)
- automatically protects designs for 3 years after disclosure. Gives you the right to prevent others from copying your design during that time
- · protects graphical user interfaces, icons and webpages.

A.59 UK unregistered design provides the following protection:

- protects the shape and configuration (how different parts of a design are arranged together) of objects it does not protect 2D aspects of a design.
- automatically protects designs for 10 years after a product is first sold or 15 years after it is created - whichever is earliest
- · gives you the right to prevent others from copying your design
- licence-of-right provisions apply, including compulsory licence-of-right in the final 5 years of the duration of the right
- · does not protect graphical user interfaces, fonts, typefaces and webpages
- A.60 All types of design rights can be exploited by the proprietor, or licensed or assigned to third parties. Criminal sanctions are available for intentional copying of a registered design.

Plant variety rights

- A.61 Only likely to be of very specialised interest, plant variety rights can be granted for newly bred, discovered or developed a plant varieties, including genetically modified varieties.
- A.62 To be eligible, a new variety must be:
 - · distinct have different characteristics to other plants of the same species
 - \cdot uniform all plants in the variety must share the same characteristics
 - stable it remains unchanged after 'repeated propagation', such as reproduction from seeds, cuttings, bulbs or other plant parts
- A.63 A right can be registered in the UK if already registered it in a different country. UK cover will be backdated to the start of the protection first granted.
- A.64 For more information refer to <u>https://www.gov.uk/guidance/plant-breeders-rights</u>

Creative assets

A.65 By volume, the majority of Knowledge Assets created by central government departments and their public sector bodies will be text-based, protected by copyright or Crown copyright. The Intellectual Property Office is the policy lead for the copyright framework, and The National Archives is the policy lead for the use of Crown copyright material. Central government departments and their public sector bodies may also create designs and further details around design protection can be found at paragraphs 54-60. It is a responsibility of a department's accounting officer to ensure their department is meeting its obligations in relation to copyright.²

Copyright

- A.66 Copyright protects material such as literary works, artistic works, software and databases, and stops others from using such material without permission. Performers also have their rights protected in relevant works such as films and sound recordings.
- A.67 Copyright gives its owner the right to exclusively control and exploit their creative works, prohibiting third parties from:
 - copying it
 - · distributing copies of it, whether free of charge or for sale
 - renting or lending copies of it
 - · performing, showing or playing it in public
 - making an adaptation of it
 - putting it on the internet
- A.68 Copyright protects the expression of, not the idea behind a work. For example, the text and illustrations in a manual are protected, but not the ideas expressed in it.

² <u>'A Permanent Secretary's Guide to Copyright'</u>, The National Archives.

- A.69 The copyright works a central government department or their public bodies could be creating include:
 - literary works: These include anything that can be written, spoken or sung. As well as works traditionally associated with copyright, such as books, poems, song lyrics, screenplays and magazine articles. It also covers, for example, technical manuals, parts lists, tables, catalogues and other marketing literature, instruction manuals, web pages, computer programs (whether source or object code and including preparatory materials showing the program design) and the text of presentations, speeches, journal and newsletter articles are all literary works.
 - artistic work can include not only paintings, photographs, sketches, drawings, sculptures, engravings and other artwork traditionally associated with copyright, but also technical drawings, diagrams, charts, maps, logos paintings, manufacturing drawings, models, buildings and the like, collages, and multimedia programs.
 - layouts includes the format of a newsletter, catalogue, newspaper or book.
 - recordings can include sound and film recordings, such as videos of a seminar, or a recording of a speech. The soundtrack on a video or film is considered part of the film.
 - copyright can subsist in either terrestrial or satellite broadcasts. Great care
 is required when negotiating over broadcast rights with broadcasters if a
 public sector body works in partnership with them (for example to record
 or broadcast Inquiry proceedings). Most broadcasters act for themselves in
 respect of their copyright. The main exception is with reference to educational
 recording off-air by educational establishments. You will usually need
 permission from the owners of copyright in the content of a broadcast as well
 as the broadcast itself, such as music, films, sound recordings and literary
 works. If the rights are not correctly set out from the beginning, public bodies
 can be in a weak position to carry out public functions without considerable
 licensing cost.
 - musical works include scores, words, parts and arrangements of music.
 - dramatic works include plays, dance such as ballets, mime and operas, choreography, and screenplays.
- A.70 All parts of the public sector create and use original, creative works in day-today business. For example, a civil or public servant may commission, design, or use written words or images or videos for a website or publications such as leaflets, newsletters, articles. Some may handle parts lists, tables, manuals, labels, drawings, diagrams, sketches, blueprints, maps, photographs, brands and logos. They may compile or use supplier or stakeholder lists, or other databases.

- A.71 It is important to distinguish between copyright in works created by Crown employees, and other types of work, such as those created by contractors or other third parties. The former is given the special name 'Crown copyright' and has different rules, as set out separately on <u>page 15</u>.
- A.72 A work does not have to be novel, aesthetically pleasing or of artistic merit to be protected by copyright, but it does have to be the result of someone's own intellectual creation.
- A.73 If third parties are commissioned to create copyright works for a department, it is vital to agree on who will own the copyright before the work is created. The creator will own the copyright unless agreed otherwise in writing. Some commission work only to later find out that the creator still owns the copyright, meaning they are limited in how they can use it.
- A.74 In the UK copyright is an automatic right which comes into being as soon as a qualifying work is created. As such, there is no formal registration and no fees to pay.
- A.75 Generally, the duration of copyright is usually for the life of the creator, plus 70 years from the end of the calendar year in which they died.
- A.76 However, different terms of duration apply for some types of copyright work, and certain older works may be subject to different rules.

Type of work	How long copyright usually lasts	
Written, dramatic, musical and artistic work	70 years after the author's death	
Sound and music recording	70 years from when it's first published	
Films	70 years after the death of the director, screenplay author and composer	
Broadcasts	50 years from when it's first broadcast	
Layout of published editions of written, dramatic or musical works	25 years from when it's first published	

Table 1.B: Copyright duration

- A.77 Copyright can come into Crown ownership by means of assignment or transfer of the copyright to the Crown, such as under a commissioning contract or subsequent assignment. Copyright in a work which has been assigned to the Crown is "Crown-owned", but does not become Crown copyright, and remains subject to these rules regarding duration.
- A.78 Once copyright has expired, anyone can use or copy the work.
- A.79 When publishing material, you should mark work with the copyright symbol © and the year of creation, noting that the work is subject to Crown copyright and the OGL (if appropriate). Whether you mark the work or not doesn't affect the level of protection you have, but it serves as a marker to others that the right is in force, and helps them find who to approach for a licence.
- A.80 Public sector bodies should be very clear in any contractual and licensing relationships to whom copyright belongs.

Crown copyright

- A.81 Most information produced, held or disseminated by Crown bodies is covered by Crown copyright. The National Archives provides the following overview of Crown copyright for central government departments and their public bodies: <u>https://www.nationalarchives.gov.uk/documents/information-management/</u> <u>crown-copyright-an-overview-for-government-departments.pdf</u>
- A.82 A full list of Crown bodies is available on the National Archives' website
- A.83 In contrast to regular copyright, Crown copyright in a literary, dramatic, musical or artistic work lasts for 125 years after it was made, or if it is published within 75 years of creation, it lasts for a further 50 years from that date.
- A.84 Most Crown copyright information is available under the OGL, which liberalises re-use of public sector information. The OGL v.3 is independently assessed as fully compatible with the Creative Commons Attribution licence (CC-BY v 4.0) but for Crown bodies the OGL should always be used. <u>http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/</u>.
- A.85 The Keeper of Public Records at The National Archives administers Crown copyright (and database rights). In some cases, Crown copyright licensing responsibility is delegated to Crown bodies, provided they confirm that Crown copyright information will be licensed in accordance with the 2015 Regulations and the principles set out by HM Treasury in Managing Public Money (or the relevant equivalent for devolved administrations). The Keeper has issued a general delegation of authority for licensing of material the supply of which lies outside the public task of the holding body, provided certain conditions are met. This is outside the scope of the Re-use of Public Sector Information Regulations and in line with the recommendations in Annex 6.2 of Managing Public Money on Charging for information.

A.1 <u>https://www.nationalarchives.gov.uk/information-management/re-using-public-sector-information/uk-government-licensing-framework/crown-copyright/delegations-of-authority/licensed-material/</u>

- A.86 Mixed rights situations are generally to be avoided, though sometimes it is possible to avoid clashes where both bodies operate interoperable licences. As a preference, Crown copyright would take precedence over other copyright. In managing assets, other bodies may be asked to assign their copyright to the Crown.
- A.87 In contractual matters, the Crown is regarded as a single legal entity. This means that a department does not require a formal licence to re-use copyright material originated by another Crown body.
- A.88 Depending on the IP clauses in procurement contracts (see <u>Annex D</u>) or by other assignment, copyright works created by others should be assigned to the Crown and similarly held by the Keeper. For Knowledge Assets that comprise 'Crown' rights, their transfer between departments is unproblematic, but where Knowledge Assets are to be transferred from a Crown organisation to, for example, a non-departmental public body or independent spin-out, a formal transfer of rights may sometimes be required. See instructions on <u>copyright</u> <u>assignments</u> from the National Archives.
- A.89 In practice, there are often alternatives to assignment and a deliberately high bar for the Keeper to make an assignment. Rights in freely-available works may be made available in any case under the Open Government Licence. The Keeper will also need to be satisfied that HM Government is unlikely to have any need of the rights asset in the future.
- A.90 For more information on Crown copyright, see: <u>http://www.nationalarchives.gov.</u> <u>uk/documents/information-management/crown-copyright-an-overview-for-</u> <u>government-departments.pdf</u>

Software and source code

- A.91 Copyright protects computer programs and code on the same terms as a literary work. As discussed above, this protection does not extend to the ideas underlying the code, and therefore a competitor could create a program that achieved identical results, using entirely different code, and would not infringe. For this reason, patents are sometimes sought to protect these Knowledge Assets. However unlike in the US, where the rules are more permissive, in the UK computer programs and mathematical formulae are excluded from patentability.
- A.92 The Intellectual Property Office's practice is that a computer program that provides a technical contribution will not fall under the exclusion, as it is more than a computer program as such. Although an invention involving a computer is undoubtedly "technical", the mere presence of conventional computing hardware does not of itself mean the invention makes a technical contribution. This is not a straightforward assessment, and professional advice should be sought before deciding to seek patent protection for a computer program. Some of the pros and cons of the two approaches are set out below:

Software protection	Pro	Con
Patent	 strongest protection publication means competitors can easily determine the scope and identify if they need a licence 	 difficult and expensive to obtain and maintain the right expensive and complex to litigate with multi-jurisdictional issues short duration
Copyright	 free and automatic low threshold for protection lasts longer databases also covered doesn't prevent creation of competing software – fewer competition issues. 	 'weaker' right competitor can write a program of identical effect without infringing lack of formalities can lead to disputes when insufficient records kept

Table 1.C: Software patent vs. copyright

Reputational assets

- A.93 This category is relevant to public bodies trading in products or services, perhaps via a commercial arm.
- A.94 Relevant IP rights include trade marks, armorial bearings such as coats of arms and other insignia, as well as special types of protection for foodstuffs.

Trade marks

- A.95 Trade marks are used to distinguish the goods and services of one entity from those of another. They can be made up of words, logos or a combination of both and can even include multimedia marks and sounds.
- A.96 They protect specific goods and services. They allow the owner to prohibit the use of their mark by third parties, as well as challenge the registration or use of similar marks which could lead to consumer confusion. They are therefore used to protect the product and brand identities of companies.
- A.97 An IP attorney should be approached to assist with registering a trade mark. A guide to trade mark registrations is available from the Intellectual Property Office: <u>https://www.gov.uk/guidance/trade-marks-manual/new-applications</u>
- A.98 A trade mark could be used by a central government department or public body to help customers find and recognise their brand or service, or it could be licensed out to franchisees who are going to take on the commercial activity. Licences can be registered at the Intellectual Property Office, and this is recommended for business certainty and auditing purposes.
- A.99 A trade mark registration authorises you to apply the registered trade mark symbol (®) to your mark to show that you are the owner of the mark and warn others against using it. Note that trade mark protection and the use of this symbol varies across jurisdictions, so consult an IP attorney if you are looking to trade abroad. Misuse of this symbol in the UK, such as applying it to marks which are not so registered, is a criminal offence.
- A.100 The UK trade mark registration process takes around four months, providing no opposition is received. Once granted, the right lasts for ten years, and is renewable indefinitely.
- A.101 Should you choose not to register your trade mark, your logo may still be protected as an 'unregistered' trade mark, granting you a more limited form of protection. Some put 'TM' against such a mark in place of the 'R' symbol.

- A.102 The reason unregistered marks might be regarded as a more limited form of protection is the relative difficulty of enforcing your rights without a registration. To be successful in such an action requires evidence that:
 - the owner of the mark has built up goodwill associated with the mark
 - there has been misrepresentation regarding the mark by the defendant
 - · this has caused harm to the claimant
- A.103 Certification and collective marks are a particular subset of the trade mark system:
 - Certification marks are used not by the proprietor of the mark but instead by his authorised users for the purpose of guaranteeing to the relevant public that goods or services possess a particular characteristic or quality. The proprietor's mark certifies the presence of the characteristic and will authorise the use of the mark to anyone who can demonstrate that the goods and services for which it will be used have that characteristic.

Collective marks are used as an indication to the relevant public that goods or services originate from a member of a particular association. It is therefore a sign of membership.

A.104 Trade marks which are not used in the course of trade within 5 years of registration are vulnerable to revocation for non-use. This is of particular relevance in the public sector, since it may seem logical to apply for a trade mark to protect a public sector brand name, but that organisation may not be 'trading' under trade mark law. This can in turn lead to difficulties enforcing rights against entities misusing public sector branding. There are various strategies to mitigate the 'use in the course of trade' issue, including registering a government mark as a registered design, and using government branding on commercial goods. Specific advice should be sought via The Government Office for Technology Transfer.

Armorial bearings

- A.105 Things such as coats of armour, heraldic badges, State emblems and flags are treated as distinct from trade marks. There is an international registry of such devices which prevents many from being registered as trade marks.
- A.106 The Royal Arms are Royal 'devices' and as such are protected by law from commercial misuse. It is an offence under section 99 of the Trade Marks Act 1994 for a person to 'use in connection with any business the Royal Arms [...] in such manner as to be calculated to lead to the belief that he is duly authorised to use the Royal arms' without permission from the Lord Chamberlain's Office and Cabinet Office. Furthermore, unless consent has been given, section 4 of The Trade Marks Act 1994 prohibits the registration of any mark which contains Royal arms, Royal crowns, a representation of Her Majesty or other members of the Royal family or any other signs which may lead a person to believe that goods or services marketed under such a sign would have received Royal patronage or authorisation.

A.107 If you want to include the word 'Royal' in the name of a company you will need to contact the Constitutional Settlements Unit at the Cabinet Office which has the ultimate sanction over the use of Royal Crests on public sector and legislative documents and use of the word 'Royal' in place names such as Royal Borough of Kensington and Chelsea. For further information please contact the Constitutional Settlement Unit at: royalnames@cabinet-office.gsi.gov.uk

Geographical indications

- A.108 Of interest primarily to central government departments or public bodies dealing with the food chain, geographical indications (GIs) are marks used on products from a particular place, which have qualities or a reputation based upon their originating from that place. An example might be West Country Farmhouse Cheddar, or English Wine.
- A.109 These rights fall into two categories: Protected Designation of Origin (PDOs) where the product must be made entirely within the region, and Protected Geographical Indications (PGIs) for which only part of the production process takes place within the region.
- A.110 More information on GIs is available from DEFRA who lead on this policy. <u>https://www.gov.uk/guidance/protected-geographical-food-and-drink-names-uk-gi-schemes</u>

Know-how

- A.111 Know-how refers to practical knowledge about how to do something. It is the expertise built up by scientists and engineers; the formulae and methodologies that are not eligible for patent protection; simple information about how best to do something, which may differ from published sources.
- A.112 It might be something related to, but not part of, an IP right, such as specialist knowledge required to operate a machine. Know-how might also be something entirely separate from IP rights, such as the competitive advantage inherent in having a more efficient business model than a competitor.
- A.113 Know-how might encompass material which could go on to be protected by IP, such as a patentable invention before the patent application has been made. Sometimes this does not take place because the 'holder' of the know-how (the employee) does not regard the know-how they have built up to be particularly 'inventive'. This is a view that should be challenged.
- A.114 When included in a commercial contract or partnership, know-how should be treated as a trade secret, and protected with contractual agreements.
- A.115 This is often just as valuable as registered rights and other methods of protecting IP, and can be a way to open doors to the better management of Knowledge Assets.

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