

Briefing Note: IP Protection for Websites & Apps

As commerce becomes ever more "digital" the development of new and innovative software applications for desktop and mobile devices inevitably generates valuable Intellectual Property (IP) rights. All too often though, the intangible nature of websites and Apps has led to misconceptions surrounding whether and how those IP rights can be protected. Whilst this can be a more challenging field for securing effective IP protection - e.g. as compared to physical products and methodologies - many strategies are in fact available.

Here at Cameron Intellectual Property, we pride ourselves in developing creative solutions for protecting Intellectual Property in this field.

1. Copyright is Important, but has its Limitations.

Copyright protection arises automatically in the UK upon creation of an original "literary work", including software code and screen content. There is no registration system, and no costs associated with securing copyright protection. However, copyright may only be asserted where its ownership can be demonstrated and *actual copying* can be proven. Copyright protection is narrow in scope and, for example, does not protect general concepts which may underpin a website or App. For these reasons, you should try to avoid relying solely on copyright protection.

2. Does Your Website Include Third Party Content?

It is essential to ensure that you actually own the copyright in all aspects of your website or App; or that you have the legal right to use any copyright owned by a third party, e.g. by way of a licence. If a third party (e.g. a web-developer) has been commissioned to create aspects of your website or App then you should ensure that ownership of all IP rights are legally transferred to you. The use of third party photographs within websites without permission is a very common and potentially expensive pitfall.

3. What About Patents?

In many parts of the world, including the UK and Europe, it is only possible to obtain patent protection for software implemented inventions which have a "technical" effect and which solve a "technical" problem. Even the most innovative websites and Apps - which may employ sophisticated mathematical algorithms - tend to solve administrative or business problems and so, are excluded from patentability. However, if software interacts with hardware to address a "technical" problem then a patentable invention may arise.

4. Protection of Graphical User Interfaces (GUIs).

Whilst the underlying software code may be considered to represent the most "clever" bits of a website or App, the most valuable aspects from a customer perspective may actually be the aesthetics of the graphical user interface (GUI). For example, the design of individual icons and the overall screen layout can be important distinguishing features worthy of protection. Whilst copyright may play a part, more effective protection may be possible via the registered design system.

5. Design Protection for GUIs.

The legal definition of a “design” is: “*the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation*”. In the context of a website or App, the product may be an icon or overall screen layout. Protecting those features via the registered design system provides an exclusive monopoly right enforceable against any third party which uses the same designs (or ones which gives rise to the same “overall impression”) without permission, irrespective of whether direct/deliberate copying occurs. Importantly, *intentional* copying of a registered design is now a criminal offence in the United Kingdom meaning that it is a more powerful form of protection than copyright.

6. What About Animations?

It is often assumed that the registered design system may only protect static content on a website or App. However, a little known fact is that it is often possible to protect dynamic content by presenting successive images of, e.g. an animated on-screen icon.

7. What About Trade Marks and Domains?

The protection of brand names (e.g. including words and logos) associated with a website or App should be considered as part of an overall IP strategy. A trade mark registration provides a *monopoly* right on which can be legally enforced against competitors using the same branding, or branding which is confusingly similar. Registering a web domain does not provide any trade mark protection.

The above information is provided for background information only and should not be considered as legal advice. This information is based on the situation within the UK only.