



Australian Government

IP Australia

# Nanga Mai Arung

## *Dream Shield*

A guide to protecting  
designs, brands and  
inventions for Aboriginal and  
Torres Strait Islanders

PATENTS

TRADE MARKS

DESIGNS

PLANT BREEDER'S RIGHTS

Robust intellectual property rights delivered efficiently

P

TM

D

PBR

**Nanga Mai Arung is roughly translated 'Dream Shield'. The title was chosen with the help of Allan Madden, Elder of the Gadigal People, to express how managing intellectual property can help protect the brands, designs and inventions of Aboriginal business.**

Alison Page is an Aboriginal spokesperson on intellectual property (IP). She is an award winning designer, artist and cultural planner. A Tharawal woman from Sydney, Alison's work explores links between cultural identity, art and the built environment.

Alison has received an award from the International Federation of Interior Designers for design with an emphasis on social awareness and a National Jewellery Design Award for her range of Aboriginal jewellery, Diamond Dreaming.

As a regular panellist on the ABC's 'New Inventors' Alison is passionate about showcasing the best of Australian innovation and design.

Like many other small business owners, I've been creating intellectual property (IP) for years but never really understood how to protect it. It's been encouraging to discover real life stories of how managing IP can make your business stronger and more valuable.

The key message is simple, yet profoundly important. Look at what makes your business special — like your brand, design or invention — and make an informed decision about protecting it.

I hope this booklet and these stories help you on that journey.

Alison Page

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## What is intellectual property and why is it important?

Intellectual property or 'IP' is the soul of your business.

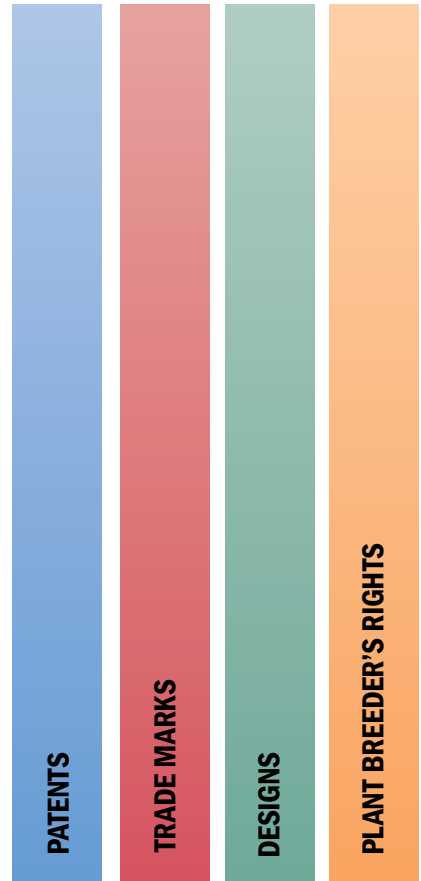
It's what sets you apart from the competition.

Anyone can copy an idea, but it takes skill to create great brands, designs or inventions. That's what your IP is - something new that may have commercial value

It's important to understand IP properly because it can help protect your culture and grow your business.

IP rights are like a shield and sword. The shield protects you from attack, and the sword helps you fight for more business.

In this publication we'll show you some real examples of how to protect and grow your IP. It's not rocket science, just a few key concepts and some tips on where to get help.



IP Australia is the Australian Government agency responsible for patents, designs, trade marks and new plant varieties. By granting IP rights and contributing to the improvement of the domestic and international IP systems, IP Australia is supporting Australia's economic development.

For more information about IP Australia visit [www.ipaustralia.gov.au](http://www.ipaustralia.gov.au)

## Types of IP and what they protect

There are a number of things we call IP.

Here's a good starting point to understand what protection you can get:

What's protected	IP right	What it means	How do I get the IP right
Words, slogans, a phrase, logos, pictures, colours, sound, scent, 3D shape, aspect of packaging or any combination of these	Trade marks	A trade mark 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
The way the product looks or as a design on a manufactured product	Designs	A design 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
Inventions or new processes	Patents	A patent 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
Art, literature, music, film, broadcasts or computer programs	Copyright	Copyright protects the owner's original expression 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.
Trade secrets, confidential information, circuit layouts or new plant varieties	Other	Other forms of IP rights can give creators certain rights and privileges, depending on the type of IP protection. This means the owner has the right to use, sell or license the IP.	It depends on the right. Often contracts are used for trade secrets.

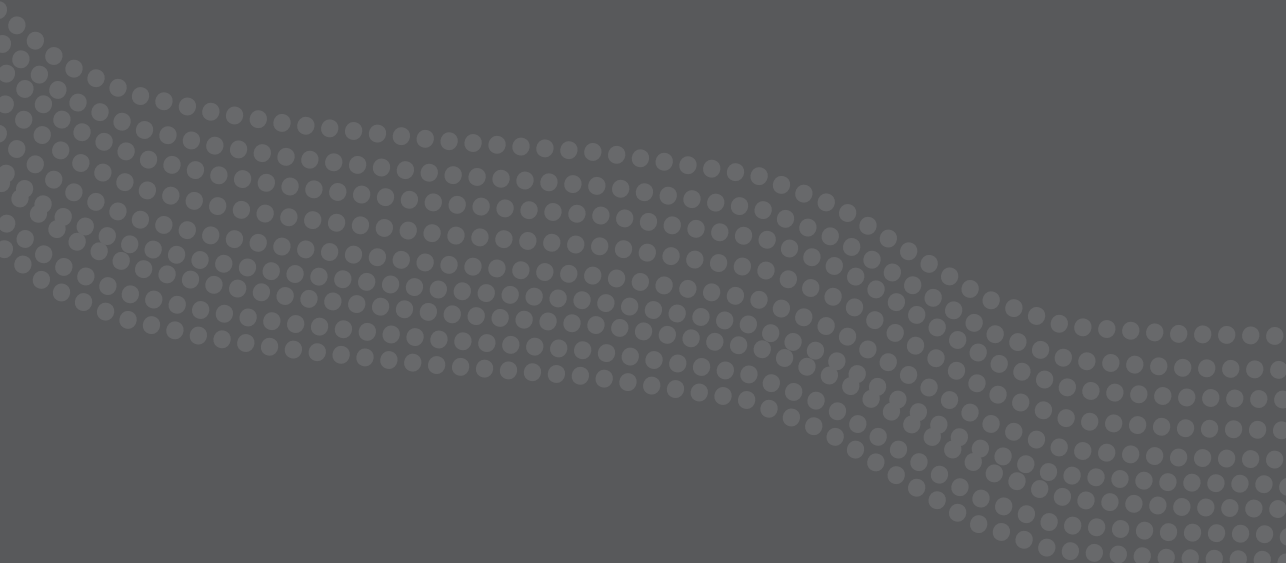
## Combined protection

Many different forms of IP can apply to the one item.

Take this example:

1. Tyre tread: registered design
2. Unique paint job: registered design
3. Rain sensing windscreen wipers: patented
4. Manufacturer's logo: trade marked
5. Eco-fuel system: trade secret
6. Driver's manual: copyright

Sometimes different forms of IP can overlap, such as copyright and design laws. To avoid forfeiting the right to register your design its wise to seek legal advice before showing others your work.







**1**  
Tyre tread:  
Registered Design

**2**  
Unique paint job:  
Registered Design

**5**  
Eco-fuel system:  
Trade secret

**6**  
Driver's manual:  
Copyright

**3**  
Rain sensing windscreen wipers:  
Patented

**4**  
Manufacturer's logo:  
Trade marked

## Top 5 tips for IP

IP rights are like the foundations of a building - they've got to be strong otherwise you'll have all sorts of problems down the track. There are some traps that can reduce your chance of getting an IP right which can weaken your business.

### Keep your idea secret

Don't tell people about your smart idea or show people your designs before you have protection otherwise you may forfeit your right to the idea or design.

Use a written confidentiality agreement if you need to talk to someone other than your legal representative about your idea. Even if you decide not to go ahead and protect your idea through formal IP registration, it is important to keep your idea a trade secret.

### Size doesn't matter!

Whether your business is large or small, IP is equally important. Thousands of small businesses use the IP system to protect their brand via trade mark registration, or their designs and inventions through registered Designs and Patents. Good IP management helps small business grow into larger more successful businesses.

### IP registration too expensive?

Protecting and registering your IP doesn't have to cost an arm and a leg! For most businesses the average cost to register a trade mark works out to be around \$42 per year\*.

### Stand up for yourself

Defending your IP rights is your responsibility. Whilst registration is invaluable in gaining ownership and protection of your IP, it's up to you to defend your IP rights. It is important that you consider what action you will take if someone copies your IP.

### Choosing a name

Business name registration may not give you any ownership rights to the name. A registered trade mark does provide this legal right.

Not all names can be registered as a trade mark. For example a geographic name or a common surname may be difficult to register. Similarly a trade mark must not be a sign that other traders may wish to use e.g. the word SOCKS for a sock retailer would be difficult to register as others would want to use the generic word socks to describe their goods.

\* based on the online filing fee for a single class registration

## IP and starting a business

When you're just starting out in business, you may not think you have any IP - but you could be wrong.

Apart from the name of your business do you have a secret recipe, unique service technique or new design? These things give you a competitive advantage and may be worth protecting.

You can choose to protect your IP by securing a patent for an invention, a design for the way a product looks or a trade mark for your brand, logo or name.

Alternatively, there are other strategies, such as keeping an invention secret or selling it quickly before your competitors can copy it.

### Avoiding IP trouble

If you don't consider IP before launching a business, you could accidentally copy someone's trade mark, patent or design. Smart new businesses ensure they do their IP homework before they start!

Before using or applying to register IP, make sure you do a search of IP Australia's databases to find and understand the rights of others and make sure you avoid infringing those rights.

### IP offers lots of benefits:

- It can protect aspects of your new business
- Be used for business growth
- Form a valuable asset

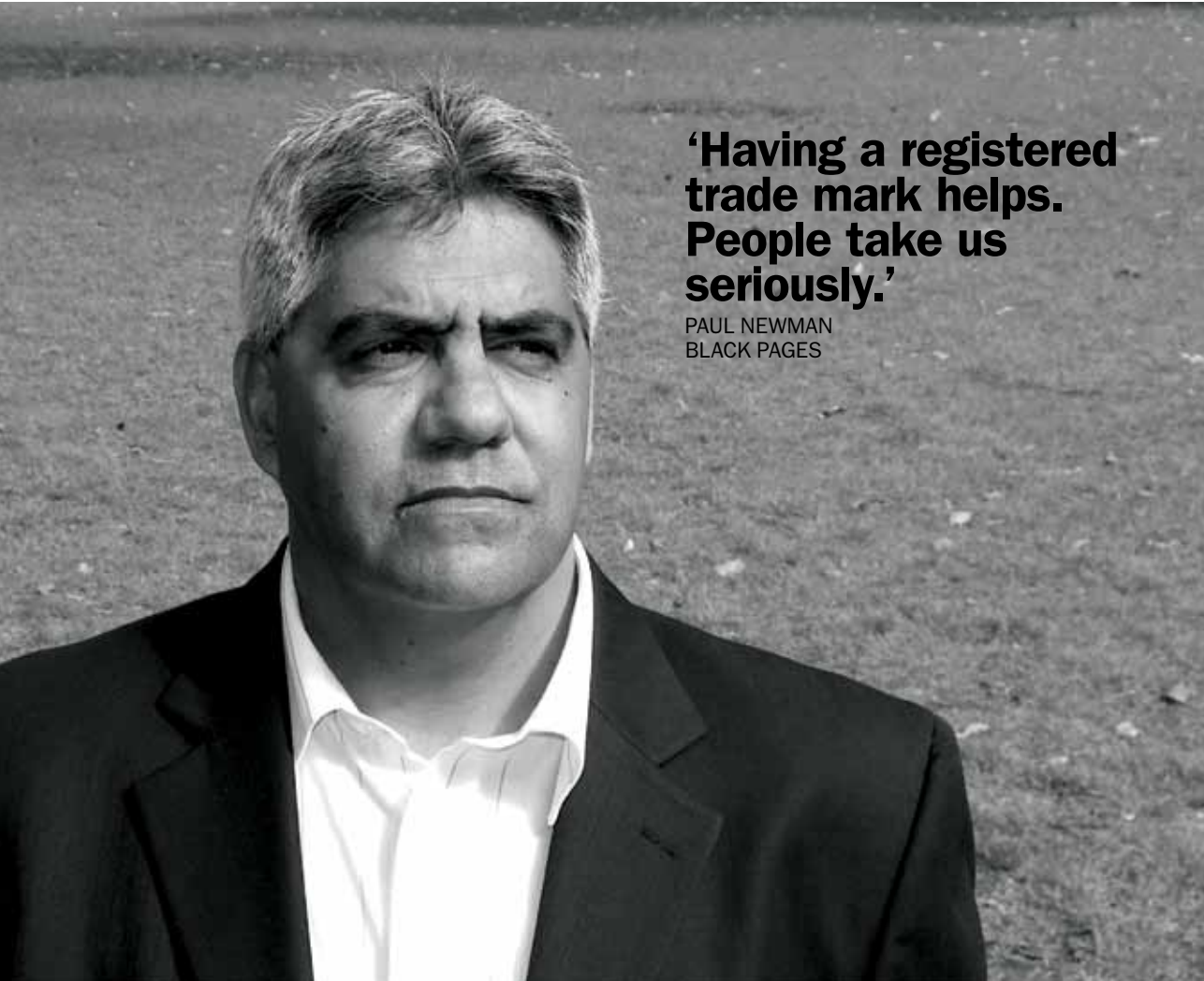
So take time to learn about IP from the start. An IP mistake early on in your business life can be very difficult to correct.

## DREAM SHIELD

- › THINK ABOUT IP
- › GET IT RIGHT FROM THE START, GET PROFESSIONAL ADVICE
- › PROTECT IT WITH A TRADE MARK, PATENT, DESIGN OR OTHER FORM OF IP
- › RESPECT OTHERS' IP

**Don't let  
competitors  
benefit  
from your  
hard work**





**‘Having a registered  
trade mark helps.  
People take us  
seriously.’**

PAUL NEWMAN  
BLACK PAGES



## Real story - brands

Black Pages is an Australian web-based Indigenous business and community directory. Paul Newman started the business in the 1990's and quickly recognised the importance of protecting his brand name, so he registered the trade mark 'Black Pages' with IP Australia.

As an Indigenous owned enterprise, the vision of Black Pages is to promote Australia's rich and vibrant Aboriginal culture and build community and socio-economic development for Aboriginal Australians. With over 3000 listings, the site offers a comprehensive database of business, government and community organisations.

**'When I started the business, one of my biggest challenges was getting people to accept that I was an Aboriginal businessman. Having a registered trade mark helps. People take us seriously.'**

By registering his trade mark, Paul sent a clear signal to the marketplace. He owns his IP and is prepared to defend it.

'We want to be recognised as an Aboriginal business,' says Paul, who comes from the Wiradjuri and Darug nations. Registering our trade mark makes good business sense. It gives us pride and tells a story about who we are. It gives us visibility within mainstream business.'



## **IP and protecting your culture**

Customers like real aboriginal products, especially at the higher end of cultural industries such as arts, design, eco tourism and bush foods. Cultural industries such as arts, eco tourism and bush food production are uniquely positioned to benefit from genuine brands.

If your trade mark shows its aboriginal origins or your products are unique to the land then IP management can help protect your culture and grow your business. The reputation of your goods or services is represented in your brand or trade mark. When your products are recognised as being genuinely Indigenous and of a high quality, then your trade mark is likely to become even more valuable.

Not all ideas or culture can be protected by IP law. If something is sacred and belongs to your mob forever, then make sure you keep it a secret.

Remember, knowing about IP and taking steps to protect it can help stop others from stealing your work.

## **DREAM SHIELD**

- › **KEEP YOUR IDEA OR DESIGN QUIET UNTIL YOU'VE GOT PROTECTION**
- › **IF YOU THINK ITS WORTH MONEY IP PROTECTION IS A SMART MOVE**
- › **GET HELP FROM AN IP PROFESSIONAL**
- › **SELLING OR LICENSING YOUR IP CAN CREATE INCOME FOR YOU**

## **IP and profiting from your new idea**

It's important not to tell others about your invention or design until you've protected it. If you've shown others your work you may not be able to patent your invention or register your design. The law requires patents and designs to be new, so keep it a secret.

Use confidentiality agreements if you intend revealing details of your IP to others before it has been protected.

Just because you've invented or designed something doesn't mean you should manufacture, market or distribute it yourself. Many successful businesses simply license their IP to others to get the greatest commercial return on their asset.

### **Questions to ask your adviser**

- What kind of protection do I need for this new idea?
- Is the idea worth commercialising?
- It is important to make sure that your IP has the potential to make money as well as discourage others from copying your idea.
- What is the process and cost involved in getting IP protection?
- What do I need to know about the laws relating to my IP?
- Am I fully protected? If not, why not?
- How do I prove I own the IP?
- What sort of records do I need to keep about my work?
- Are there any businesses that would be interested in licensing my IP?





**Shhhhh.....**

**Keep quiet about  
your new invention  
or design until  
you've got IP  
protection**

## Protect your idea - and profit

Here are some tips to help you protect your new idea:

### Think

Think about whether your idea or innovation is new or different. Designs or inventions must be new to be protected through formal registration.

### Research

The best place to start is to search the patents, trade marks, designs or plant breeder's rights databases found on IP Australia's website. They contain records of every registered IP right and from the results you'll be in a better position to know if your idea, design or brand is new.

### Money

Does your new idea really have the potential to make money? This is a very important question since the answer will determine if it's worth the effort and cost of IP registration.

### Experts

Talk to your business advisor about contacting a Patent or Trade Mark Attorney, or IP Lawyer. IP can be a complex area and if you're getting IP protection, it has to be strong. These people specialise in IP and can help you decide the best IP strategy for your business.

### Ownership

Make sure you can prove that you or your group own your innovation. IP Australia has an IP Audit tool available via the IP Australia website. The tool covers a range of ownership issues that can help determine if you own the IP.

### How

The application processes for trade marks and designs are relatively easy and you may wish to apply for these yourself. A patent application is more complex and it is recommended that you use the services of a Patent Attorney. Free information kits about Patents, Trade Marks, Designs and Plant Breeder's Rights are available from IP Australia.

Application forms for all IP rights are available from IP Australia's website.





## **‘You need someone on your side who can explain everything in plain English’**

CHRIS TREWIN  
300K ENTERPRISES

### **Real story - inventions**

300K Enterprises is an innovative Australian company which prides itself on creating products that not only save time and money, but improves safety in the workplace.

Founder and Wiradjuri man Chris Trewin came up with the idea for a quick easy way of changing industrial light bulbs while working on the mines in Western Australia.

### **‘Changing light bulbs in 40+ degree heat got me thinking- how can I do this faster?’**

Chris went to the drawing board and came up with the ‘Connex’, a plug and play electrical fitting designed for hot swapping industrial globes.

Built into the innovative housing is a connecting device allowing the fitting to be removed in under 60 seconds and without the need to isolate the circuit. The unique approach completely eliminates the risk of electric shock and allows all repairs on the light fitting to be undertaken in a workshop with minimal time spent in the field.



Chris and his business partner Bruce Christian realised their innovation could make a lot of money, so they decided to protect it with a patent, but they wanted to do it right.

‘You need someone on your side who can explain everything in plain English,’ says Chris. ‘Professional help cost me a bit, but was well worth it.’

They applied for a provisional patent, giving them 12 months to develop their business strategy before deciding on full patent registration. If their invention looks commercially viable, they can claim protection from the date the application was filed in Australia.

‘Patent protection was essential before I had to deal with designers and manufacturers. It pays to have a healthy dose of paranoia.’

**Protect  
and grow  
with IP**

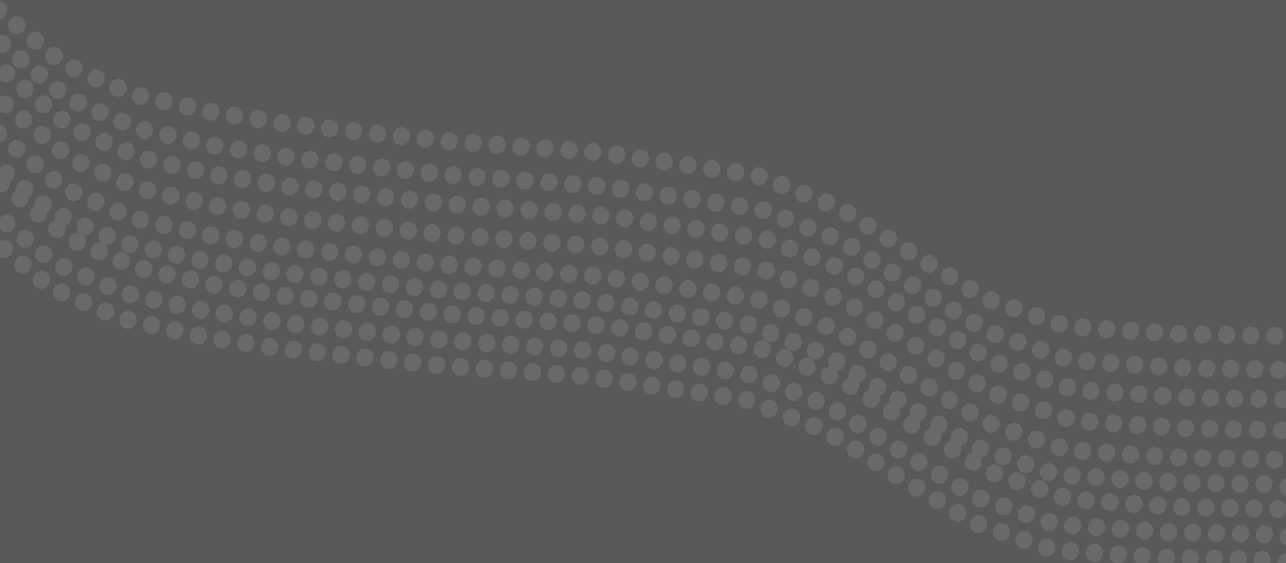


## **IP and buying a business**

When you buy a business, you buy more than the stock, machinery or property. You are also buying the IP and other intangible assets such as:

- patents
- trade marks
- domain names
- copyrights
- registered designs
- franchises and licences
- distribution agreements
- secret processes and formulas
- information databases, including client lists
- computer systems software
- core technology.

So make sure the seller transfers ownership of these business assets as part of the deal.



## Protecting against infringement

### Your rights

Letting others know that you have ownership of an IP right acts as a deterrent to would-be copycats. Think of it as a barbed wire fence around your brand or trade mark. But just like a barbed wire fence, trespassers may try to get around it.

In IP speak this means your IP is being infringed.

To take action against an infringer is called enforcement.

Protecting your business's image, unique products or processes is important for your business success and profits. You need to know your rights and be prepared to take action if they are infringed. It is wise to get help from a professional if you find someone illegally copying your IP.

A professional can also tell you about the costs and risks involved in IP enforcement action and give you advice on what you should do. It's worth remembering that there are many options available before taking legal action through the courts, such as sending a letter of warning or negotiation.

### Obligations and responsibilities

Although IP Australia administers the registration of trade marks, patents, designs and plant breeder's rights, it is not responsible for policing them. Remember – registered IP is a property right and as with all property rights, it is your responsibility as the owner to look after and defend it.

### Extent of your rights

When you apply to register your trade mark you must nominate your goods or services. If you expand into other products you should file another application for those.

Similarly, when you apply to register your design you must provide a drawing of the visual elements you wish to protect. If you change the shape of your product after registering your design you may lose your original protection.

If you purchase music or paintings, you do not own the copyright. You cannot make copies of the original work without the artist's consent.

## Maintaining your rights

IP rights have different lifespans. Patents can last 20 years, designs 10 years, and copyright lasts 70 years after the death of the author. In theory, a trade mark can last forever if the renewal fees are paid every 10 years.

If you own IP rights, keep track of important dates such as renewal dates and make sure your details are kept up to date on all registers in the countries where you have IP rights.

Check your IP regularly to make sure it suits the needs of your business. Don't sell or license IP unless you're certain you own it!

You should keep an eye on your competitors to check they are not infringing your IP rights. If you think someone else is unlawfully copying your brand, process, design or invention, you should talk to either your local Business Advisor, Economic Development Officer or an IP Lawyer.

Have an **up to date list of your IP** that is checked regularly. This will help you decide whether your IP assets should be upgraded, sold or retired.

# 'If my designs were copied, I'd be devastated'

ALISON PAGE  
DIAMOND DREAMING



Jewellery Images courtesy of Modial Neuman Jewellers





## Real story - designs

Creative souls, like Alison Page, rarely start a business to make money. Sure, it's nice to earn a living doing what you love, but Alison's inspiration is to see new space for Aboriginal art, stories and cultural expression.

Alison's passion for design extends from furniture and lighting, to architecture and jewellery

Like most designers, Alison knew her original creations were covered by copyright. But when it came to producing large quantities of a particular design, she needed professional help to get protection.

For works that are new and distinctive in the market place, Alison was advised to consider registering her designs with IP Australia.

Registered designs provide proof of ownership, and an important deterrent against copycats, especially if your work reaches a wide market.

Whilst there are costs involved in registering a design, it could be a smart investment if it means you can stop competitors from copying you.

### **'There's no shame in asking for professional help.'**

'Better to make an informed decision about protecting your work than to have it stolen.'









**Tread  
carefully**  
with traditional knowledge

## Send a signal

If you own IP, you can use words or symbols to tell others that there is ownership of the IP. Using this approach can be a strong warning to others if they have any thoughts of copying your IP.



The trade mark has been registered.

**TM**

The trade mark may not be registered but the owner is claiming it as a trade mark.



Copyright is being claimed over the work by the creator.

**Patent  
pending**

A patent application has been lodged to protect the invention.

**Registered  
design**

The way the product looks has been protected as a registered design.

## Real story - traditional knowledge

Aboriginal people have been living off the land for thousands of years. Ancient knowledge of plants and animals can be commercially valuable – but there are ethical, cultural and legal issues you need to be aware of

A few years ago, John Watson lost his finger hunting freshwater crocodiles in the Kimberly region. A long way from medical help, he used the bark from the Marjala plant to treat his wound.

Not only was it a great painkiller, but it got his local community thinking about its commercial potential.

The Jarlmadangah Burru Community initiated a research partnership with Griffith University, which led to a successful patent application. As equal partners in the project, the community stands to benefit commercially.

Community Chairman Mr William Watson said his people looked forward to the day when this traditional medicine was available around the world to help people suffering from pain.

**‘This medicine has been used by our people for many generations and the thought that it could soon be improving the lives of millions of people around the world fills us with pride.’**



The signing ceremony: (from left) William Watson, Andrew Loch, Anthony Watson, John Watson, Ron Quinn, Ned Pankhurst

## Planting the seed of protection

Indigenous communities particularly in regional and remote Australia have a unique understanding of native plants and their potential medicinal, cosmetic or nutritional uses.

This knowledge can sometimes be used to further develop these plant varieties to produce a new and improved variety that might possess more concentrated medicinal properties or increase fruit yield for harvesting.

A new plant variety can be protected by a Plant Breeder's Right (PBR).

You can't get a Plant Breeder's Right for a naturally occurring plant variety but the propagation of new varieties can be protected. The new variety does have to meet a range of criteria so it is important that you get advice from an accredited 'Qualified Person'. They will act as your technical consultant and can help you progress your PBR. (Contact details for Qualified Persons are on the PBR tab of the IP Australia website).

Ownership of a Plant Breeder's Right gives you the sole right to grow and sell the plant variety and to licence use to others who might wish to use the variety.



## Traditional knowledge

If you are developing IP from traditional knowledge, such as Indigenous medicines and biological resources, you may need to consider more complex legal and cultural issues.

These can include questions like; who should give proper consent? Are they fully informed and aware of all the issues? Have they been given enough time to make a reasonable decision? Also, what legal rights and economic benefits are relevant to Indigenous people when developing a commercial agreement?

Organisations including Desert Knowledge CRC and AIATSIS have developed protocols which cover issues such as:

- prior informed consent
- benefit sharing
- customary laws and privacy
- protecting Indigenous culture

For further information on traditional knowledge:

- [www.desertknowledgecrc.com.au](http://www.desertknowledgecrc.com.au)
- [www.artslaw.com.au](http://www.artslaw.com.au)
- [www.aiatsis.gov.au](http://www.aiatsis.gov.au)
- [www.australiacouncil.gov.au](http://www.australiacouncil.gov.au)
- [www.environment.gov.au/biodiversity/science/access/index.html](http://www.environment.gov.au/biodiversity/science/access/index.html)



## Where to go for more help

These organisations all have resources or programs that can help you make the right choices about your IP.

It's also worth investigating Government assistance that may be available. Industry associations also have some relevant programs and other support available.

Area of Help	Who can help	Contact Details
Patents, trade marks, designs and plant breeder's rights	IP Australia has a range of resources including: Application kits for designs, patents, trade marks and plant breeder's rights. Audio visual versions of case studies as featured in this publication Smart Start – a tailored product for small to medium-sized businesses	1300 651 010 <a href="http://www.ipaustralia.gov.au">www.ipaustralia.gov.au</a>
Aboriginal Knowledge and Intellectual Property Protocol	Desert Knowledge CRC	08 8959 6000 <a href="http://www.desertknowledgecrc.com.au">www.desertknowledgecrc.com.au</a>
Business support	Dept Education Employment & Workplace Relations (DEEWR) Indigenous Business Australia (IBA)	1300 363 079 <a href="http://www.deewr.gov.au">www.deewr.gov.au</a> 1800 107 107 <a href="http://www.iba.gov.au">www.iba.gov.au</a>
Copyright	Australian Copyright Council Attorney-General's Department Copyright Law Branch	02 9318 1788 <a href="http://www.copyright.org.au">www.copyright.org.au</a> 02 6250 6655 <a href="http://www.ag.gov.au">www.ag.gov.au</a>
Industry assistance	Council of Textiles and Fashion Industries of Australia Australian Fashion Council	03 9866 8962 <a href="http://www.tfia.com.au">www.tfia.com.au</a> 03 9866 8962 <a href="http://www.australianfashioncouncil.com">www.australianfashioncouncil.com</a>
Internet domain names	.au Domain Administration	1300 732 929 <a href="http://www.auda.org.au">www.auda.org.au</a>
Inventors Association	Contact the Inventors Association in your state or territory	<a href="http://www.inventors.asn.au">www.inventors.asn.au</a>
IP Audit	IP Explorer – a free tool to help you review the IP in your business	<a href="http://www.intellectualpropertyexplorer.com">www.intellectualpropertyexplorer.com</a>
IP Lawyers	Contact the Law Society in your state or territory Intellectual Property Society of Australia and New Zealand Licensing Executives Society of Australia and New Zealand	<a href="http://www.ipsanz.com.au">www.ipsanz.com.au</a> <a href="http://www.lesanz.org.au">www.lesanz.org.au</a> 03 9857 0311 1800 804 536
Patent and Trade Mark Attorneys	Institute of Patent and Trade Mark Attorneys of Australia	03 9857 0311 1800 804 536 <a href="http://www.ipta.com.au">www.ipta.com.au</a>



## **Dream Shield**

Winner of the Australian Marketing Institute's 2011  
National Award for Corporate Social Responsibility

Dream Shield video case studies  
<http://www.youtube.com/user/IPAustralia>

### **Reference Panel**

Graeme Boulton and Ron Morony, IBA  
Natalie Walker, AIMSC  
Neil Willmet, Willmet Consultants  
Dr Mark Rose, Deakin University

### **IP Australia**

Peter Willimott, Chris Hayward and Anthony Peterson

### **Production**

Carbon Media (an AIMSC certified creative agency)

This booklet is designed to help you understand intellectual property issues.

You should not regard this publication as an authoritative statement on the relevant law and procedure. You should also note that the requirements and fees may change from time to time. While we make every effort to ensure the information presented is accurate, you should check our website before making any application.

While we can't give you advice about your particular circumstances, we can provide general information and answer questions about our processes and fees. Commercial legal advice is best sought from a registered patent or trade marks attorney or experienced IP professional.

[ipaustralia.gov.au](http://ipaustralia.gov.au)



January 2012

