

# Intellectual property

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Much has been written about Intellectual Property and the new regime in Guernsey but what does it really mean and why does it matter? Is optimistic talk about the potential benefits of the new IP laws justified or will it prove a promising idea that fails to meet its potential? In this article, Jason Romer of Collas Day explains what all the fuss is about and offers an opinion on what the future could hold for IP in Guernsey.



## Why Guernsey and IP?

Guernsey has a very strong reputation in the finance world. It has created an offshore centre of excellence in the fields of tax advice, accountancy, banking and supporting administrative and legal services.

“Guernsey plc” must now look to leverage these skills into other fields. IP promises to be one such field.

Increasingly, companies are recognising the value that they

have in their Intellectual Property. The Gowers report, published in the UK on 6 December, drew attention to the huge extent that listed company valuations had outstripped the growth in value of their real assets over the last twenty years. The difference is made up of intangibles such as IP.

Developing a regime in which companies can protect and commercialise IP fits the pattern of what Guernsey does already and complements its advisory capabilities.

## What exactly is intellectual property?

There are many definitions of intellectual property. One of the simplest that I have found refers to ‘creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce’.

Hence, if I write a book then I will have created copyright – there is copyright in this article for anyone thinking of copying it. If I invent some new machine, then I can apply for a patent. If I have a brand or image that everyone recognises as marking my product out from anyone else’s, then I can apply for a trademark for that logo or mark. This is why, for example, you could not set up a new internet search engine and call it ‘Goggle’. It is highly likely that this would infringe the registered trademarks of Google.

## Why do you need to register intellectual property?

IP is split into two different areas – registered and unregistered. Copyright is an example of an unregistered IP right. The copyright in this article arises automatically and does not need to be registered with anyone to gain protection. If someone copied this article, then I would have certain rights of protection without needing to go to some authorised organisation and ask it to register my article.

Perhaps of greater interest to Guernsey are the registered rights – trademarks and patents, for example. In order to get full protection for your invention or your brand, you need to register them in the country where you are seeking protection. The IP register for any country is like a register of cars, ships or houses – it is a list that identifies who owns which particular asset. If you go to the Greffe, you can find documents that show that you own your home in Guernsey. In the same way, if you go to the office of the IP Registrar, you will find that many international companies have registered their trademarks in Guernsey.

## Why is important that Guernsey has up to date laws to encourage IP exploitation?

A leading software manufacturer recently asked us to advise on whether their software licence agreements would be enforceable in Guernsey as they were looking to licence to a Guernsey company here.

Our advice was that although they may have a contractual right, they would not have statutory protection unless they registered their trademarks in Guernsey. It was also with some relief that we were able to tell them that Guernsey’s reliance on the old Copyright Act of 1911 that applied has recently ended. Understandably, this old Act did not consider the protection of software and it would have been somewhat embarrassing to have to tell the client that Guernsey did not even recognise the concept of copyright in software. This has all now changed and Guernsey has copyright protection (for software as well now) and, more generally, IP laws that are leading edge and internationally recognised.

## What’s the reaction been since the new laws were introduced?

Judging by Collas Day’s experience and the IP Register there has been a flood of interest about how these new laws can be used to protect

