



Focus on

# Protecting your Intellectual Property Rights

If you want to raise external finance to grow your technology business, it is vital to ensure that your Intellectual Property Rights (IPR) are properly protected.

## Key questions

At the outset, you need to ask the following of your business:

- Does it actually own the IPR it may think it owns?
- Is it entitled to use the IPR essential to the running of its business?
- Are its brands protected in the right markets?
- What steps does it take to protect new inventions?
- What are its policies on patents?
- Are there any ongoing IPR disputes?

## Financier due diligence

At the most basic level, checks will be made to ensure that the business owns or has licences for all the software used by it. With regard to bespoke software, it will be imperative to ascertain whether licences are affected by change of control clauses which may affect a future sale of the business.

Before releasing funds, a financier will underpin the results of its due diligence exercise either with warranties, other special provisions or by insisting upon steps being taken pre-completion to correct defects. Financiers will not just focus on the legal issues, but also on the technical elements of IPR ownership. A good example is the code in key software applications.

## Group or jointly owned IPR

If the software is used within a group it is important to ensure that there is an assignment licence in favour of the appropriate group company. With regard to jointly owned software, problems can occur because a co-owner is not necessarily free independently to exploit the IPR, to sue for infringement or to transfer ownership.

## Conclusions

In summary, owners of a business looking to raise external finance must make sure that the IPR is actively and properly managed and protected. Doing this will ensure that the IPR can be used to add real value to your business.

## Contact

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