

RAINEY COLLINS LAWYERS

IP Audit: A “One-Two-Three” for SMEs

If you don't know you have it and if you don't know its value to your business then you can't effectively manage, improve or exploit it. So if you are in business an audit of your intellectual property (IP) makes good business sense.

How is it done? Simply follow this ONE-TWO-THREE to audit your IP:

ONE: Identify and understand all the IP relevant to your business

Identifiable IP

A. Identify readily identifiable IP. Assets falling into this category will include:

- Registered trademarks, copyrights, designs or patents owned by the business.
- In-house work manuals.
- Database(s).
- Franchise Agreements (if any).
- Publications.
- Product/process know-how.

B. Determine who owns them.

C. If they are registered, consider whether or not they remain registered and enforceable. Make sure you are clear about how to maintain registered IP.

Agreements with third parties

D. Identify all agreements between the business and third parties.

- Employment agreements.
- Contracts with independent contractors.
- License agreements – to and from third parties, including cross-licenses.
- Assignment agreements.
- Maintenance agreements.
- Distribution agreements.
- Non-disclosure agreements.
- Non-competition/Restraint of Trade agreements.
- Government contracts.
- Joint development/venture agreements.
- Consulting agreements.
- Technology transfer agreements.
- Sponsored research agreements.

E. Consider who benefits from each agreement? Make sure you understand the full implications of the benefits and obligations contained in each.

F. When do they expire? Consider how your business will be affected when they are no longer in place.

IP affected by External Factors

G. Identify IP affected by external or market forces. Assets falling into this category will include:

- Goodwill.
- Business Branding – a collective asset which will include registered and unregistered marks, copyright etc.
- Product (including services) brands.
- Client lists.
- Regulatory approvals if applicable.
- Product certifications if applicable.
- Marketing and advertising programmes.

TWO: Put a value on each

H. *Give each aspect an importance rating.*

A good question to ask is “what would happen to my business if I don’t have the item?”

I. *Value each aspect in dollar terms.*

A good question to ask is “how much will it cost to replace if the item was lost to the business?” Also consider the expected income to come from it, for example in the next five years.

THREE: Consider whether your IP is being used effectively

J. Consider the maximum benefit that could be derived from each item, either financially or for business operation, and ask yourself whether you are using it effectively. An objective view-point might be necessary.

Next Steps?

Plug the gaps and rectify any uncertainty. Register and/or formalise your IP arrangements to gain evidence of ownership. The value of your business could rely on it.