

Protecting your intellectual property internationally



export
finance
australia

Protect your intellectual property with Export Finance Australia

Export Finance Australia is the Government's export credit agency. We provide financial solutions to help Australian business take on the world. Working across a range of industries for more than 60 years, we understand domestic and global markets.

We also know the opportunities and challenges you may be facing when it comes to accessing finance.

Why intellectual property matters to businesses

Your intellectual property (IP) is the proprietary knowledge of your business.

It could be a new invention, innovative design, distinctive brand or a combination of all three. Whatever form it takes, your IP is one of your most important business assets. That's why you should protect it from being copied and used by other individuals or businesses.

While you may have already protected your IP in Australia with trade marks and patents, these protections don't extend beyond Australian shores.

This guide provides essential information on how to secure your IP at home and internationally, so you can start your export journey with confidence.

This guide will help you understand:

- › the key risks when exporting, [Pg. 3](#)
- › how to protect your IP internationally, [Pg. 4](#)
- › how to decide on the right IP strategy, [Pg. 6](#)
- › how to defend your IP, [Pg. 8](#)
- › considerations for your IP export checklist, [Pg. 9](#)
- › the support available to help you. [Pg. 10](#)

What are the risks?

There are two main risks you need to consider when exporting goods or services.

1 Having your product copied without permission

The main risk for businesses entering a new market is that your product or brand could be copied.

If you don't have IP protection in place, you'll have little authority to prevent or redress this – even if you have IP protection in Australia.

This not only risks you losing traction and market share – if the third party's product is not up to scratch, it could also undermine your product's reputation.

Risk example

A third party could reverse engineer your product and sell it under its own label or copy the whole offering, right down to its packaging and logo.

2 Infringing a third party's IP

When you take your product or brand internationally, you may also be at risk of infringing on another party's IP. This could be a genuine situation where the IP is already in use in that market.

This could prevent you from selling your product in that country, and open you up to legal challenges if you do.

To avoid the risk:

- › do your research,
- › seek professional advice,
- › identify your IP,
- › get permission from source material,
- › maintain ownership records.

If you want to know more about the risks you need to consider when exporting, visit the [IP Australia](#) website.

How to protect your IP internationally

Maintaining confidentiality is key

If you have a new invention, it's critical to keep it quiet until the required protections are in place. In Australia, a grace period applies (under certain circumstances) to public disclosure, as long as you apply for a patent within 12 months, but many other countries don't have this provision.

In situations where it's necessary to disclose details of your IP, a Non-Disclosure Agreement is essential. It's recommended to seek legal advice from someone who not only understands IP law, but who can also help ensure the agreement is enforceable in your target country.



Types of IP protection

There are a range of solutions you can use to protect and enforce rights to your IP at home and abroad. Here are the **four main protections** you should know:



Trade marks

A trade mark distinguishes a business's products or services from another.

- › It's an important part of brand protection and is used to distinguish between your products or services and those belonging to your competitors.
- › A trade mark is not just 'a logo'.
- › It can be a letter, number, word, phrase, sound, smell, shape, logo, picture, movement, aspect of packaging, or a combination of these.
- › Before applying for a trade mark, you should check the requirements, including whether another brand is already using a similar mark.
- › A trade mark gives you the right to use, license or sell to others.
- › A trade mark does not cover business name, company name or domain names.
- › A trade mark registration makes it easier to protect your rights and lasts up to 10 years.



Patents

A patent is a legally enforceable right for an invention that could be a device, substance, method or process. For your application to be successful, your invention must be new, useful and inventive.

Standard patent

- › Must be new, involve an inventive step and must differ from existing technology.
- › Gives you long-term protection and control over your invention.
- › Lasts for 20 years (or up to 25 years for pharmaceutical substances).

Innovation patent

- › Short-term protection – up to 8 years.
- › To be considered if your invention does not meet standard patent requirements.

The Australian Government is phasing out the innovation patent. This means:

- › 25 August 2021 is the last day new innovation patents could be filed,
- › innovation patents filed on or before 25 August 2021 will remain in force until their expiry. This will ensure current rights holders are not disadvantaged.



Design rights

A design right protects the overall visual appearance (shape, colour, configuration, pattern, ornamentation) of new and distinctive products.

A design right aims to protect the visual appearance of a whole product that:

- › is manufactured or handmade,
- › is produced on a commercial scale.



Plant breeder's rights

Plant breeder's rights (PBR) are exclusive commercial rights for a registered variety of plant.

PBR protection applies for 20 years for most plant species and 25 years for vines and trees.

PBR gives you exclusive rights to:

- › produce or reproduce the plant material,
- › condition the plant material for the purpose of propagation (conditioning includes cleaning, coating, sorting, packaging and grading),
- › offer the plant material for sale,
- › sell the plant material,
- › import and export the plant material,
- › stock the plant material for any of the purposes described above.



To learn more about the different types of IP protection, visit the [IP Australia](#) website.

Deciding on the right IP strategy

The solutions you choose to protect your IP in foreign markets will need to reflect your broader business strategy, at home and abroad.

Aside from the cost of filing registrations in multiple countries, your IP rights will also need to be asserted and maintained, which could result in significant legal, administrative and translation costs.

Here are **five considerations** when developing your IP strategy:

1

Define your target countries

- › Your target countries are where you see the most potential for your business. This may depend on population and national wealth, cultural fit or established use of similar products.
- › Consider using international registrations systems like the Patent Cooperation Treaty or the Madrid Protocol, which streamline procedures for obtaining registration in multiple international jurisdictions if those territories are members. These systems allow you to file applications for protection in numerous countries using one application, in one language and paying one set of initial fees in a single currency.
- › Decide whether you want to manage distribution yourself or outsource to local distributors. Consider ensuring you maintain control of your trade mark in international markets through confidentiality agreements, appropriate contracts and licensing the rights to your IP to trusted partners to manufacture and distribute in specific markets.

2

Do your research

- › Search for products and brands that are similar to yours and check to see if there are IP protections in place to avoid infringing those rights.
- › Check that any brand names and trade marks are appropriate for your export markets and can be effectively translated into the relevant languages.
- › Look into the IP arrangements that apply in your target countries.

3

Choose your solutions

- › Consider which elements of your IP are most valuable. For example, your design, patent or trade mark.

4

Understand the costs

- › Rank your markets in order of priority, and decide how much you're prepared to invest upfront.
- › Remember to factor in attorney's costs and translation costs, or the cost of a challenge to your registration.
- › If you licence your IP to distributors, consider whether they should be responsible for monitoring and enforcing your rights in the territories where they will operate.
- › Seek guidance from export finance professionals like Export Finance Australia. We could work with your business to find the right solution to support your international business goals.

5

Enlist expert advice

- › IP protection can be complex, especially internationally, so we encourage you to seek advice from an experienced IP legal professional.



If you need finance to support your IP strategy, we could help. Visit [Export Finance Australia](#) to learn more.

Case Study:

Oz Varieties

With our support, Western Australia-based Oz Varieties was able to continue to fund its blueberry breeding program and build on its Australian IP revenue.

The blueberry story started in 2006, when Roger Horak, Founder of Oz Varieties, met Dave Mazzardis, who had bred the Oz Peach varieties and had already been working on his blueberry genetics. Roger invested in a blueberry breeding program with Dave who focused on developing new varieties of blueberries that would thrive in new low chill environments around the world.

The business model is based on the intellectual property (IP) of the new varieties of blueberries that are being developed and sold on a royalty fee basis to blueberry farm operations around the world, including Chile, Peru, Morocco, Mexico, Australia, Europe and the US.

“Our main challenge has been how to increase our income stream from our fruit production to further invest in developing new blueberry varieties that will continue to bring royalty income to Australia,” explained Roger.

The business started looking at the latest machinery available that would substantially increase blueberry production output at its packing facility, enabling it to better meet the burgeoning demand for blueberries in its key markets and fund its plant breeding program.

Having found the machines, the business needed asset finance to purchase them. With their asset finance contact unable to provide the support needed, Oz Varieties contacted Export Finance Australia.

Finance support

Our finance enabled Oz Varieties to purchase new packing machines, taking its production efficiency from 70 – 80 per cent to as high as 98 – 99 per cent.

“There’s an extra 30 per cent of fruit that we are now earning income on. Every year that 30 per cent will make a massive impact on funding our plant breeding program and increasing royalty returns to Australia,” said Roger.

We could provide tailored financing solutions such as **loans, bonds and guarantees** to support your export goals.

See how we helped [Oz Varieties](#)



“Being able to export our IP and take it global is critical in making our plant breeding program viable.”

Roger Horak
Founder, Oz Varieties

Defending your IP

Even with the best protection in place, you may still need to defend your IP or resolve a situation where you are infringing on someone else's.

Taking legal action

If you choose to take legal action to defend your IP, you'll need to be able to prove that:

- › your IP protection is still in force and you own the rights,
- › the infringing product or trade mark is actually infringing,
- › the infringing third party made their product without a licence or your authority.

The evidence you need to prove your rights and infringement may vary depending on the country you are enforcing it in.

Administrative enforcement

In some countries, there may be an option to handle the matter without legal action.

For example, in China, there is an administrative enforcement option that requires lower levels of evidence. This is often a more affordable option than legal action, but only if you have IP protection registered in that country.

Joining forces

It can pay to be pragmatic and look for a commercial outcome, instead of seeking legal action or enforcement.

For example, if someone is claiming you are infringing on their IP, you could consider working together under a cross licencing agreement. This could give you access to a bigger market under someone else's trade mark, which could be a good outcome.

For more information, visit the [IP Australia website](#).

Your export IP checklist



Here's a handy checklist of questions to consider when making your export IP plan:

- Is your product or brand eligible to be protected under IP law?
- Is your packaging part of your product's value? Have you protected its design or aspects that could be registered as trade marks?
- What are your target markets? Are they covered by international registration systems like the Patent Cooperation Treaty or the Madrid Protocol?
- What is the value of your trade mark, design or product features to your business?
- What is the risk of failing to protect your IP if someone uses it without permission in a way that devalues your reputation?
- What is your budget for protecting your IP?
- Would using your idea for IP in your target markets infringe on an existing IP protection in those markets?
- Do you have non-disclosure agreements for offshore manufacturers and distributors?
- Have you consulted an IP lawyer with connections in the countries you want to export to?
- Have you considered registering trade marks for the local language version of your brand?

Support available

Want more information?

We've developed a range of export-related **eBooks**:

- Developing your export strategy
- Managing your export cashflow

Visit: exportfinance.gov.au/ebooks



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Export Finance Australia

The Australian Government's export credit agency, providing finance solutions to Australian exporters including businesses in an export-related supply chain.

Visit exportfinance.gov.au

Call **1800 093 724**

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IP Australia

The Australian Government agency that administers IP rights and legislation relating to patents, trade marks, designs and plant breeder's rights.

Visit ipaustralia.gov.au



World Intellectual Property Organisation (WIPO)

WIPO is the global forum for IP services, policy, information and cooperation. They are a self-funding agency of the United Nations, with 193 member states.

Visit wipo.int



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The Australian Government's trade and investment agency, providing you with practical advice, support and insight into many of the countries to which you're looking to attract visitors from. Austrade provides information and advice to assist Australian companies to reduce the time, cost and risk associated with growing your international business, as well as Export Market Development Grants (EMDG) to support your export growth.

Visit austrade.gov.au

Discover how Export Finance Australia could help your business take on the world.

As Australia's export credit agency, we offer options by working with your bank to provide supplementary finance or support when your bank may be unable to help.

To find out more about how we could help your business, go to exportfinance.gov.au or call 1800 093 724.

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