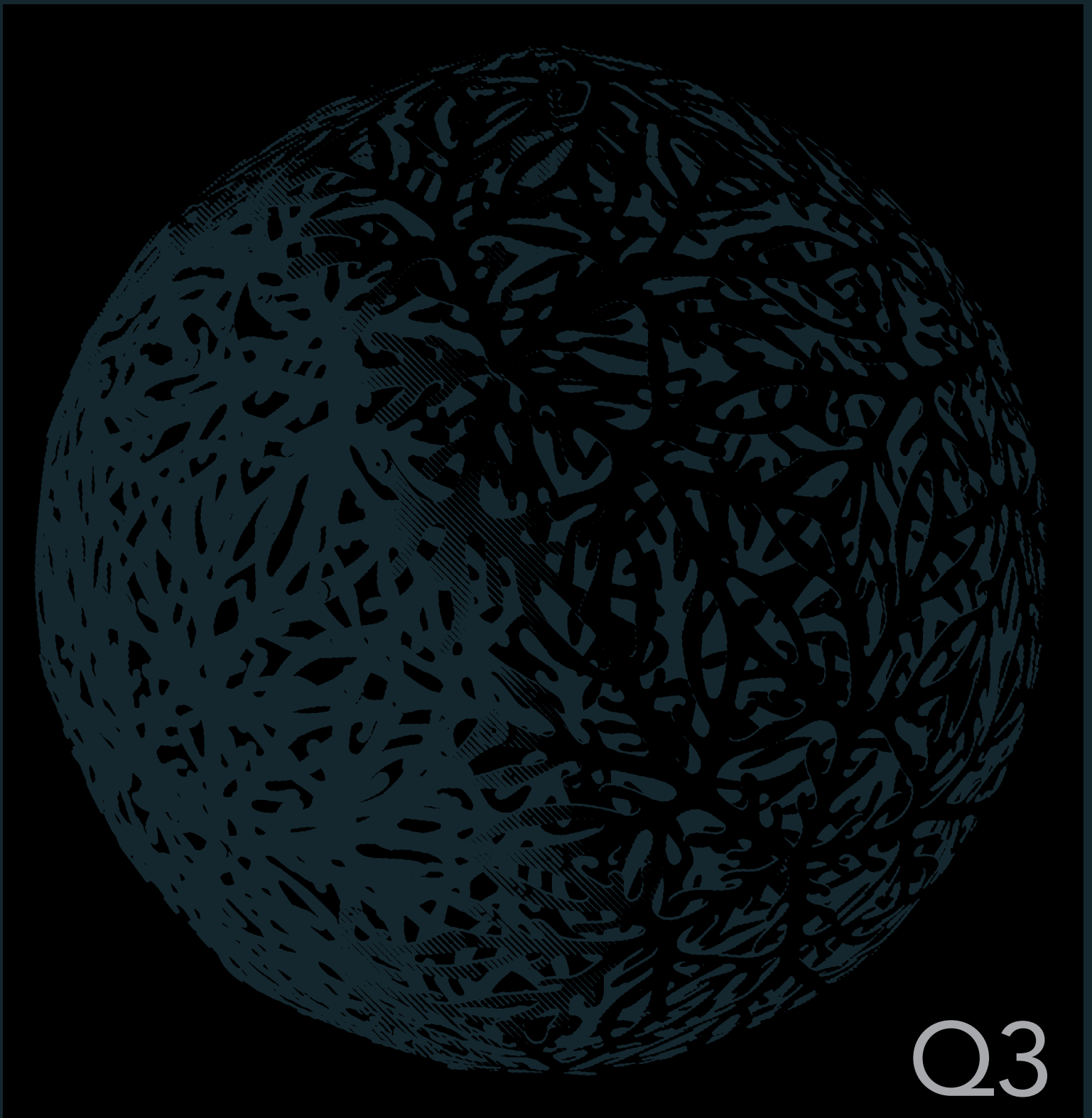


# SUPERYACHT DESIGN

INTERIORS ■ DESIGN ■ EXTERIORS ■ ARCHITECTURE ■ SPACE



Q3

# IP = YOUR BEST BUSINESS ASSET

What became clear during the Design Summit is that much of the audience had little or no idea of the legalities surrounding intellectual property. Mark Brown, a partner with the specialist IP and technical law firm Bristows, was present at the conference and SYD invited him to provide the following legal guide for the benefit of our readers.

If you or your company is involved in the creative process of designing or engineering the whole or any single part of a yacht, it is almost certain that you are creating intellectual property rights (IPRs) for your business, some spontaneously and others once registered. They apply to every aspect of a yacht, from its overall shape and design to its engine and functional components, its accessories and interior decor, fabrics and furnishings. The purpose of this article is to summarise the sorts of UK and European IPRs your business could well have and how they may be properly protected and exploited for maximum commercial gain.

## Unregistered IPRs

There are, of course, useful IPRs which cannot exist unless designers and engineers register them at official IP registries. However, not all is lost if you have not thought of registering, because there are some highly effective IPRs that do not require registration and many designers may not be aware they already have.

### Copyright

Directly applicable to designers and engineers, original “artistic” and “literary” works recorded in any form—whether fixed on paper or on a computer or as a 3D model—are protected under UK copyright law against being substantially copied or shown to the public and against any adaptation being made. By “original”, the author must have created the work through his own skill, judgment and individual effort and not copied from other works. No formalities are needed.

An “artistic” copyright work includes a graphic work or a 3D model, irrespective of artistic quality, such as engineering and design drawings and diagrams, charts or plans, or similar work even if stored in the memory of your computer. Your company logo could also be copyright protected. “Literary” copyright works may include design specifications used in the manufacture of industrial articles, reports, servicing procedures and instructions for use and maintenance of yachts, regardless of literary merit or style.

Copyright most often lasts the life of the author plus 70 years from the end of the calendar year of his death.

Where work is done by an employee in the course of his employment, the employer will be the first owner of copyright in the work, subject to any agreement to the contrary. In the case of a work commissioned by a third party, the contractor will own the copyright even though the commissioner of the work has paid for the work to be done.

It is therefore essential to deal with the position on copyright up front in order to avoid potential problems later, ideally by taking an assignment of all present and future rights, easily inserted in your terms and conditions, but also easy to miss where individual contract staff are taken on.

### Unregistered Design Rights (UDRs)

Like copyright, these rights arise automatically and take two forms: UK UDRs, and Community UDRs extending across the European Union. UK UDRs protect against the copying of your original (i.e. not commonplace) design of any aspect of the shape or configuration (internal or external) of the whole or part of any article. So this includes the copying of just one small element of your whole design, even if the rest is completely different. UK UDRs last 10 to 15 years depending on when the product is made available for sale or hire.

Community UDRs protect against the use by others of a new design of individual character through copying the appearance of the whole or part of a product resulting from features of, in particular, the lines, contours, colour, shape, texture and/or materials of the product itself or its ornamentation. This gives a wide protection covering surface decoration too. These rights last three years.

### Passing Off

If a person uses your goodwill and reputation in your brand to misrepresent to someone else—perhaps to a potential client such as a yacht owner—that his services are in fact those of your business, and your business suffers as a result (e.g. damage to your reputation or lost business), that amounts to an unlawful use of your reputational IPR, for which you would be entitled to a remedy (see Remedies below).

### Confidential Information

There is a wide range of intangible “intellectual property” which does not attract IPR protection as such but, subject to certain limits, can nevertheless be protected by contract (such as non-disclosure agreements), or by being implied because of the circumstances of disclosure or the special relationship between the parties concerned (such as employer and employee). Such information can include formulae, processes, business methods, financial and statistical information customer lists, business plans, know-how and trade secrets.

## Registered IPRs

Registered IPRs can truly enhance your business asset base and revenue stream. Firstly, they can give you full monopoly rights preventing others from using your designs, trade mark or inventions—even if done entirely independently—and are easier to enforce. Secondly, the registrations are good proof of your ownership of the rights and can enhance your commercial goodwill and the value of your IPRs as assets. In particular, they are easier to buy, sell, mortgage, or license to others compared to unregistered IPRs. Thirdly, they can last longer than unregistered IPRs.

### Registered Design Rights (RDRs)

The process of obtaining an RDR is relatively short and inexpensive. RDRs include UK and Community design rights and confer an exclusive right to use them and to prevent any third party from using them without the holder's consent. The use covers making, offering, putting on the market, importing, exporting, or using a product to which the design is applied, or stocking it for any of these purposes. RDRs last for up to 25 years.

### Registered Trade Marks (RTMs)

Your business trademark make up its brand: the signs used to differentiate your goods and services from those of others. They can therefore be valuable commercial assets, especially if you register them. You may primarily win new contracts because of the reputation you have built up in the quality of your services, represented by your trademark—usually your trading name, but it can include designs, slogans, shapes and colours. It is possible to have UK and European-wide or ‘Community’ RTMs. They are renewable indefinitely.

Registration, which is relatively inexpensive, gives the right to sue for trademark infringement any person who uses an identical or similar mark in connection with identical or similar goods or services without authorisation, where the use has caused or is likely to cause confusion. Unlike passing off, there is no requirement to prove reputation or goodwill.

### Patents

Patents are about innovative functional and technical aspects of products and processes, of which many are part of a functioning yacht. Patents are therefore concerned with how things work, what they do, what they are made of, or how they are made. The technology does not have to be complex. Always be careful not to disclose your invention to the public before applying for a patent or the rights could be lost. A patent gives an inventor the monopoly right for up to 20 years to stop others from making, using or selling an invention without his or her permission.

## Remedies

If others use, copy or exploit (sometimes entirely independently) your IPRs without your permission, they are infringing those IPRs which entitles you to a wide range of remedies from the court. Often, it is not necessary to go to court and those remedies may be requested and given by agreement. They include: an injunction or binding agreement not to infringe your IPRs in the future; deliver up to you or destroy all infringing copies and articles; pay you damages or account to you for the profits made from the infringing activity.

## Commercial Exploitation of IPRs

IPRs can be licensed in a wide variety of ways, and such licences are often limited by territory and by particular channels of distribution. Properly managed, a licensing policy can maximise potential revenues. IPRs can also be sold as assets or even mortgaged to raise funds. IPRs are not just about preventing others from ‘stealing’ your creativity. As designers, architects or engineers, aesthetic and technical, to say that the source of your income lies in each new contract as it comes in might only be partly right. Your IPRs from previous work, once identified, may be undervalued and under-exploited as assets and as a source of passive repeat revenue. With timely expert guidance, your business's IPRs could be a golden key that unlocks substantial commercial value to your business.

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