

Netherlands Enterprise Agency





Your digital innovation: control, ownership and licensing

The key points of interest concerning intellectual property when innovating with software

A publication of the Netherlands Patent Office for entrepreneurs who need to know about intellectual property rights for digital innovations, for commercial use and free or open-source licences

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Introduction

Who really owns a data bank? Can you apply for a patent for software? With the rise of a whole host of digital innovations, the questions about them also keep mounting. In this brochure we tell you about the most common areas of concern regarding intellectual property (IP).

Whether you write your own code or use someone else's code available through open source, in both cases you face the question of who the real owner is. But this question is also pertinent to technological developments, creative work, data and data collections. So it's good to ask, who owns the intellectual property rights and what rules has the owner imposed on other users?

General concepts cannot be protected, but detailed elements of your innovation or business often can be. Intellectual property laws allow you to prohibit others from using your creation, data or invention without your permission. There are different kinds of protection for protecting different kinds of property:

- Technological developments can be protected with a patent or trade secret. One might think here of combinations of hardware with sensors and software.
- Creative work, trademarks and designs can be protected with copyright, trademark rights and design rights. Source code is also understood to be creative work (text, in this case), and can be protected with copyright. Brand rights are vested in brand names and logos, but also in distinctive icons and pictograms. Copyright can be vested in a graphical user interface, but also in design rights for static images.
- Data, data collections and information are crucial for many digital products and services. Trade secrets often play a major role here, but data bank rights are sometimes also possible.

Why would you want IP rights? Mostly for one or more of the following reasons:

- Monopoly. You want to harvest the economic fruits of your intellectual work and investment of time, money and mental effort. This is possible if you are the only one who sells your product or grants licences. But you have to be capable of handling infringement by others.
- Licences and collaborations. You want to encourage others to use your protected work, but under your own conditions. When it comes to open innovation and open source, setting conditions for the use of knowledge, code or data is a key area of concern. Reason enough to give it extra attention in this brochure.
- Value creation. You want to increase the value of your business among potential investors and buyers.

These reasons can easily be combined, for example by choosing paid licences for commercial use and free licences for personal, non-profit and academic use.

In the digital world, you may easily be active globally. This also has an impact on how you approach IP, for example you might need to:

- Put together your own portfolio of IP rights and forms of protection on an international scale.
- Keep an eye on the IP of others (and so prevent them from infringing) on an international scale.
- Take action in the case of infringement on an international scale. The location of an offence may be disputable, for example because data has been stored on different servers. Moreover, the rights of the infringer and owner of the IP may vary in different countries.

This brochure is Part 1 of our explanation regarding IP and digital innovation, offering a broad look at key areas of concern and options for protection. **Part 2 deals specifically with patents for digital innovations, focusing on the topic of computer-implemented inventions.** In this second part, we address such things as the question of when you should apply for a patent for digital developments.

Open innovation and open source

Are you a software developer who participates in open innovation or open source? Then take time to think about intellectual property. Because it is not always the case that developments are freely available under open innovation and open source. Therefore pay close attention to contracts and licensing conditions.

'Closed innovation' means that the total development process took place within the bounds of one single organisation. With 'open innovation', ideas may have come from either outside or within an organisation. Networks of businesses, start-ups, research institutes, universities and suppliers share information. The technologies they develop may likewise be brought onto the market from outside or within the organisation. Reasons to choose open innovation are, for example, the flexibility of highly skilled personnel, the growth of venture capital and the speed of development.

Codify agreements when choosing open innovation

When it comes to open innovation, IP can target the sharing of knowledge instead of simply being the defence mechanism of a monopoly. Collaboration and cooperation are central, as in the case of joint creative development, and expressed in issuing licences or the sale of IP. But if a partner has invested a lot in a development, there is a big chance that they will not simply release it without payment. By laying down agreements in advance, partners can make use of each other's knowledge during the joint project under specific conditions. Agreements must also be reached about the period after the partnering ends. In the case of open innovation, this often leads to licences that grant access to complementary technologies. Thanks to IP rights protection, therefore, boundaries are set regarding access to each other's knowledge, technology and creative works. These protective frameworks strengthen mutual trust between the partners.

How open is open source?

With open source, developers make their work (like source code) available to others who can view, link, share, copy and change it. Linux is a good example. Just because others can use such work does not necessarily mean that it can be freely used without any further conditions. Open source licences, or more properly 'Free and Open Source Software' (FOSS) licences, actually force users to adopt certain behaviours and conditions based on the IP rights of the licenser. In the case of source code, the creator holds the copyright and therefore can decide what conditions to set in publishing and reproducing the code. These rights are therefore deployed in a different manner than most people realise. Likewise, the word 'free' in FOSS does not necessarily mean that the licences are free of charge (even if they often are), but refers instead to the freedom offered to the users. Just as with 'closed source' software, users of open source software must often accept the conditions of the licence. Further, alongside the open source licence (whether or not free of charge), certain paid services may be offered, such as consultancy, support or guarantees.

Patents and open source protections are not by definition mutually exclusive. Sometimes application can be made for a patent for a piece of underlying technology, while the source code is made available through open source. But be sure to read the conditions of use closely, because it sometimes happens that applying for patents for systems based on open source software is ruled out.

'Copyleft' is a well-known licensing form for source code. Everyone who changes the code and shares it with others must share the new source code under the same conditions as applied to the original code (possibly without charging licensing fees for it). 'Copyleft' therefore deals with the right to change and distribute IP with the same rights for derivative work as for the original work.

It is important to make a clear distinction between public domain and FOSS. Work in the public domain is free of all rights because authors have waived their rights or because the rights have expired with the passing of time. Under FOSS, rights are licensed for use, provided the user keeps to the imposed conditions.



Source code	Public domain	Open source software			Proprietary or
open or closed source		Permissive (incl. Apache, BSD, MIT)	LGPL (Lesser General Public License)	Copyleft, incl. GPL (General Public License)	closed source
Use and copying	Yes	Yes. Sometimes under certain conditions, e.g. the developer is not liable	Yes. Within your own code you can link to codes with a LGPL license (open source libraries)	Yes	No
Changes	Yes	Yes. Sometimes under certain conditions	Yes, but watch out for the conditions (incl. mandatory sharing of the code)	Yes, but watch out for the conditions (incl. mandatory sharing of the code)	No
Distribution of software	Yes	Yes. Sometimes under certain conditions, e.g. citing the developer	Yes. Your own code is linked to code with an LGPL license	Yes, but watch out for the conditions	No
Mandatory sharing of source code	No	No. Changes to software can even be treated as closed source	Yes, if it's about changing code with an LGPL license. In that case, the changed code has to be made available under the same LGPL license.	Yes. The original license allows changes and distribution of the code. The new code must receive the same copyleft type of licensing, including the availability of source code.	No
Conclusion	Lots of freedom, including the option to change software and then treat it as closed source	Minimal limitations for use, changes and distribution. Often requires citing the original author	Others are allowed to link with your software, but if there are changes to code with an LGPL license, you are required to share the new source code.	Conditions impose limitations; new (derivative) source code must be made available to others who can change and distribute it.	No actions are allowed without explicit permission. Often you have to pay for this.

Table 1: Software can be in the public domain, but also open source or closed source. Below you will find options for use, with sample licenses.

Overview of protection options

Below you will find each of the different protection options for digital innovations with the subjects they protect: technologies, creative work, distinctive characteristics and data.

They often overlap. For instance, software is considered a technology, but source code is seen as creative text and falls under copyright.

Table: Overview of the different protection options for digital innovations.

Subject:	Protection	Owner of what?	Examples
Technology, code and digital innovations		Technological innovations of products and processes	Hardware, machinery, robotics Occasionally software (incl. algorithms and artificial intelligence) or a combination of software and hardware
	Patents		
	Ĺ	of a technique/technology that provides an economic advantage	electronics, digital encryption
	Trade secrets		
	C	Code as creative text (not the underlying technique/technology)	Source code
	Copyright		
Creative work, trademarks and designs	Ô	Creative work that is original and contains a discernible personal mark of the maker	Designs, text, photos, logos, lay-outs, source code, graphic user interface, animations
	Copyright		
	Trademark rights	Distinctive, distinguishing (not descriptive) signs or markers for products or services	Names, logos, icons, sound marks, pictograms, moving signs, multi-media marks, holograms (see <u>examples</u>)
	No.	New, distinctive designs (distinguishable on the market and not technically determined)	Design of casings for equipment, static graphic user interfaces (see page 13)
	Design rights		
Data and data collections, information		Preserving the confidentiality of information that provides an economic advantage	Customer data, supplier data, research data, material specifications, production methods
		Collections of data in coarchable databases	Database with data on homos, second, hand says
		The rights protect against copying or illegitimate use of a database	the weather
	Database rights		
	C	The content and/or the structure of a database when this refers to creative work	Database with texts or images, a database structure or filter system
	Copyright		

Protection options explained

Here we briefly explain each of the different protection options for digital innovations.

2	Patents
What will you own?	Technological innovation of a product and process
How do you get it?	You have to apply for patent rights; in the Netherlands you apply at the Netherlands Patent Office.
Period of validity	A maximum of 20 years as long as the maintenance fees have been paid.
Application costs, without patent attorney or lawyer	Starting at \in 220 in the Netherlands, but using the services of a patent attorney is recommended.
Application costs, with patent attorney or lawyer	Roughly estimated at \in 5.000 to \in 10.000 in the Netherlands. Over time, the international costs can rise by thousands of euros per country.
Further information	english.rvo.nl/patents

The holder of a patent can prohibit others from copying or imitating an invention, selling it, or doing anything else with it for commercial purposes. A patent applies to an invention, in other words a technological solution to a technological problem. The patent system offers protection options for inventions that include software, if the software contributes to a 'further technical effect' that goes beyond the 'normal' operations of a computer. Patent applications for an invention with software may entail certain challenges, but is rather common. One might think here of an algorithm for data compression or a training method for artificial intelligence. These are often referred to as 'computer implemented inventions', i.e. inventions that are applied to a computer.

With software there is often an additional challenge in proving that the invention provides a technological solution for a technological problem. The invention must also meet the following 3 requirements, which are standard for patents:

- Novelty: your invention must not have been made public anywhere in the world by anyone, not even by you;
- **Inventive step**: your invention must not be something obvious to a professional;

• **Industrial applicability**: your invention is a technological innovation of a product or process that can be implemented in practice in the way described in the patent.

Part 2 of our brochure on digital innovation focuses specifically on patents for 'computer implemented inventions'. The main question here is: when can you apply for a patent for software?

By searching patent databases, you can learn about the kind of things others requested patents for in order to get a better idea of what is possible in your situation. The Netherlands Patent Office can help you with a free orientation to the patent databases.

(i) When is a patent on software inappropriate?

A lot of software consists of an application of existing technologies using a unique source code. Although source code as text is perhaps something new, the technology behind it in many cases is not. The source code is then seen as a creative text with copyright, but in general software is not an invention for which you can request a patent.

	Trade secrets
What will you own?	Information that gives a business an economic advantage over the competition. This information is not generally known and is subject to confidentiality.
How do you get it?	By actively keeping commercial information secret by means of certain measures
Period of validity	As long as it is kept confidential.
Acquisition costs, without patent attorney or lawyer	While a trade secret itself costs nothing, the measures to keep it secret do cost time and money. You may not always need a lawyer right away.
Acquisition costs, with patent attorney or lawyer	Charges for confidentiality measures are for example ICT security, training employees, documenting the information and setting up contracts
Further information	business.gov.nl/regulation/trade-secret-protection

A trade secret is confidential business information that gives your company a commercial advantage over the competition. For example, know-how, software, production methods, process parameters and customer data. Information may legally qualify as a trade secret if it meets the following conditions:

- the information is not known to the parties that usually deal with this type of information;
- the information gives you a commercial advantage;
- you have taken reasonable measures to ensure your information remains secret.

There is no official registration for trade secrets. However, you can document your trade secret using a date stamp. You can obtain a date stamp by depositing your documented trade secret with a civil-law notary or as an <u>i-DEPOT</u>. But blockchain technology can also supply a date stamp. It is crucial to implement confidentiality measures early if you want to maintain a trade secret. You can only take legal action against a violation of a trade secret in the event of demonstrable unlawful acts, such as breach of contract or industrial espionage. Examples of confidentiality measures are: restricting access to the trade secret, encryption of files, confidentiality clauses in employment contracts and contracts with business partners.



C	Copyright
What will you own?	Creative work that is original and contains a discernible personal mark of the author
How do you get it?	Automatic when created in the Netherlands. In other countries, registration is sometimes required. But even if registration is not required, it is advisable to be able to demonstrate authorship and date of creation, for example by publication or use of an i-DEPOT
Period of validity	In many countries for 70 years after the author's death.
Acquisition costs, without patent attorney or lawyer	Free
Acquisition costs, with patent attorney or lawyer	Usually unnecessary for acquiring this right.
Further information	Types of Patents and IP Rights: Copyright (rvo.nl) or business.gov.nl/regulation/copyright

Copyright protects 'works of literature, science or art'. Copyright is held by the author, in many countries for 70 years after that person's death. Only the maker of the work has the right to make the work public and to reproduce it. Copyright is acquired automatically at the time the work is created. The protection applies all over the world, but each country explains it in terms of its own laws. Examples of work on which copyright can be vested include: creative texts, which also often include source code for software, designs, images, photos and lay-outs.

There is no official registration for copyright in the Netherlands. In order to enforce it at a future date, it is important that you can prove who the author was and when the work was made. Therefore, you can supply the material evidence yourself. For software, version management systems like <u>GitHub</u> are very useful, especially when collaborating. Publication or deposit in an <u>i-DEPOT</u> can also form material evidence. Any developer who creates the same work must be able to prove that he or she did not copy it from the original author. Otherwise the courts will assume that the later developer copied the software from the original author.

(i) No protections for technologies or concepts underlying source code

Copyright does not protect the technological solutions and underlying algorithms that go with software inventions. It does protect the creative expression of the work, thus the source code or the image itself. General concepts are also not protected by copyright. For instance, an app with discount coupons for local businesses is a concept that cannot be protected. Copyright can be vested in source code, but someone else is allowed to develop the same concept using a different code and design.

i Outsourcing creative work

In many cases, the development of software and other creative work is outsourced to external parties. The external parties then automatically receive copyright for the work. Even if you ordered the work and paid for it. In the case of freelancers, the rights thus accrue to the freelancer, unless otherwise (contractually) agreed. Copyrights can be transferred or licensed. Moreover, many people are often involved in making a creation at the same time, or several people further elaborate a work created by someone else. Unless agreed otherwise, copyright will then be assigned to the different authors, each being assigned the rights for the part that person created.

(i) Conditions for open source software

Open source software is, in principle, protected by copyright. Licenses regularly set specific conditions, such as listing the name of the author, marking changes to the source code or making modified source code available. See pages 3 and 4 for more information about open source, public domain and closed source.

(i) Annotation software

When as a developer you want to be able to check the use or re-use of your software, consider adding annotations to your source code. For example, by inserting (unnoticeable) data into the source code that are strictly intended to reveal copies of the code retrospectively.

(i) Copyright to the original content and structure of a database

Sometimes copyright is vested in the original structure of a database, insofar as this is a creative work and not determined by technical requirements only. In order to verify whether this is the case for a specific database, it's advised to consult a specialised lawyer.

Incidentally, there's no requirement that the data in the database fall under copyright, if, for example, we are not dealing with a creative work but something like measurements. If creative work is involved, such as images or texts, copyright may be vested in the contents of a database. A distinction is thus made between the contents and the structure of a database.

(i) Copyright to a selection of data

Copyright can also be vested in a selection of data, if this concerns a creative work. Often these are collections of works, such as top-100

lists. Copyright may also apply to datasets on which someone has carried out an extensive selection procedure that was not determined by technical requirements.

	Trademark rights
What will you own?	Distinctive and distinguishing signs or characteristics of products and services
How do you get it?	By application (in Benelux countries, apply to BOIP)
Period of validity	Renew every 10 years; in principle its infinite
Application costs, without patent attorney or lawyer	From € 244 in the Benelux countries, depending on, among other things, the number of categories of products and services to which the trademark will apply. Using the services of a trademark attorney is recommended.
Application costs, with patent attorney or lawyer	Indicative price: € 800 for Benelux countries or € 2.000-€ 3.000 for Europe
Further information	All about trademarks Benelux Office for Intellectual Property (boip.int)

The majority of trademarks are word marks or images (logos) for companies and products. Software may have its own trademark name and logo. Under certain conditions, different kinds of multi-media may also be regarded as trademarks, such as sound, film, holograms or animations (movement). A trademark must not be descriptive, i.e. it may not be a description of the type of product you are selling. 'Apple' cannot, therefore, be protected as a trademark name for apples, but it can be used as a trademark for computers. A trademark must avoid the likelihood of confusion. So protection covers more than just the exact spelling of a brand name or the exact copy of a logo.

(i) Classes of trademarks

You apply for a trademark for each kind of application or class according to the Nice Classification (established in Nice in 1957). Examples of frequently used classes for digital products (wares) and services are classes 9 and 42. Class 9 is for data processing equipment, computers, digital data carriers and software, among other things. Class 42 is for technological services, computer design and software development.

(i) Differentiate trademark rights from brand name rights and domain registration

Be careful not to confuse a registered trademark with a brand name. The right to a brand name protects the name of a company. It is validated by a company using its name in business transactions, within a certain region. Information about brand names can be found at <u>www.kvk.nl</u>.

A domain name for a website is issued to the person who applied for it, but in the case of confusion may sometimes be demanded by the owner of a pre-existing trademark or brand name. Information about domain names can be found at <u>www.sidn.nl</u>, and other sites.

M	Design rights
What will you own?	New, distinctive designs (distinguishable on the market and not technically determined)
How do you get it?	By application (in Benelux countries, apply to BOIP)
Period of validity	A maximum of 25 year (renew every 5 years from the application date)
Application costs, without patent attorney or lawyer	Starting at € 150 for the Benelux countries. Using the services of a patent or trademark attorney is recommended.
Application costs, with patent attorney or lawyer	Indicative price: for Benelux countries € 400 to € 1.200, and for Europe € 700 to € 2.000 (for the first 5 years)
Further information	Designs Benelux Office for Intellectual Property (boip.int)

With design rights you protect static images of applications, such as the control systems for games. The design of casings for equipment and the appearance of other articles of use can also be protected by such rights. The design may be distinguished by such things as the shape, colour or material of which it is made. Design rights apply to one or both of the following:

- two-dimension drawings, such as a graphic user interface or website lay-out; three-dimensional designs, e.g. casings for electronic equipment.
- The item must have a new look that is distinctive and which has not been determined by the technology. This is because technical functionality does not fall under design law but under patent law.

	Database rights
What will you own?	Data in a database (protection against copying or illegitimate use). The structure of a database can be protected with copyright.
How do you get it?	Automatically, without registration, but dependent on a high-level of investment
Period of validity	15 years from time of creation, publication or substantial update
Acquisition costs, without patent attorney or lawyer	Free of charge, but the database requires an investment for which the producer bears the risk
Acquisition costs, with patent attorney or lawyer	Not usually necessary

A database is a searchable collection of data that has been ordered in a systematic way. The files are separate elements that can be searched independently of each other. Some examples would be databases with information about properties, books or flight data. Database rights are suitable to situations whereby the data can be accessed by third parties, such as a website for job vacancies or second-hand cars. In the case of such databases the data is not confidential, while it is likely that a great deal of effort went into its collection, verification and presentation.

Someone who makes a considerable investment in a database can use database rights to prohibit others from:

- Requesting a substantial part of your database;
- Repeatedly requesting smaller portions of your database;
- Reusing a substantial part of your database.

Database rights are acquired automatically at the time the database is created. You do have to be able to demonstrate that you have made a considerable investment in the acquisition, control and presentation of the contents, for example by ordering and presenting the data in a certain way. For this investment you as producer have taken on risk. The database may also not be a by-product of other business activities. Others may generate their own databases with similar data, as long as this data was legitimately acquired.

There can be substantial differences in database rights in different countries, but in the EU this is centrally regulated for (digital) databases. Protection lasts for up to 15 years after completion or publication of the database. When an existing database undergoes a great number of either qualitative or quantitative changes (again with considerable investment), the 15 year period starts again. In the US, database protection is much more limited.

Real-life example: does the Chamber of Commerce (CoC) have database rights to the trade register?

In 2021, the District Court of Midden-Nederland handed down judgment on whether the CoC (KvK in Dutch) holds database rights on the trade register. The decision revolved around answers to two questions.

The first question was: could it be sufficiently demonstrated that substantial investment had been made in the acquisition, control or presentation of the contents of the database? The answer was 'yes'. Compilation and management of the trade register is the main activity of the CoC and therefore not a by-product.

The second question was: can the CoC be designated as the producer as defined in the Databases (Legal Protection) Act. In order to be considered the producer, the one who has made a substantial investment in the database must also be the one who bears the risk for that investment. The purpose of the law is to stimulate investment. This was not the case with the Chamber of Commerce. The CoC does not bear financial risk for investment in the trade register because under law the costs of the CoC that cannot be paid from its own income are covered by the national government. Secondly, the CoC does not need to be stimulated to invest because it is performing a task that has been codified in law.

Conclusion: the CoC is not the producer as defined by the Databases (Legal Protection) Act, which means that is does not hold database rights to the trade register.

Patent or trade secret protection?

For technological developments it is often difficult to decide whether to choose to apply for patent or trade secret protection. This is certainly the case with software, because in many cases it is possible to keep the source code or the operation of the software out of the public domain while the product is in use. Sometimes it is also possible to shield hardware and only allow distribution under secrecy protection. Depending on your business case, trade secret protection may be a good option.

Table 2: Patent or trade secret protection for a technological/digital invention?

	Patents	Trade secrets
How does it work?	When you have been issued a patent, you can prevent others from making commercial use of your protected invention. You have to identify and deal with infringements yourself.	Confidential company information remains secret and 'reverse engineering' is difficult. Others can therefore not make use of the information. You have to identify and deal with infringements yourself.
In which countries does it apply?	You apply for patent rights for an individual country or region by means of national or international procedures.	The courts in different countries approach it differently. The EU endeavours to forge agreements between Member States.
How much does this kind of protection cost?	A rough indication is € 5.000 to € 10.000 for an application to the Netherlands Patent Office, including a patent attorney and submission charges. The timing and the costs of international patents depends to a great extent on the procedure you choose. The costs of international protection can rise to thousands of euros per country, spread over a number of years. Maintenance taxes (per country/region) increase over time.	While a trade secret itself costs nothing and there is no registration, trade secret protection measures do cost time and money. One might think here of ICT security, documentation, training staff, employment contracts and forging agreements with business partners.
From what date does it apply?	Patent rights are only valid after the patent has been issued. In the Netherlands, this is usually 18 months after application. You are allowed to make the invention public at the time of submitting the application. You can then use the term 'patent pending' and warn potential infringers of the patent application.	Immediately when the information has been created, if it meets the conditions. Documentation including the date is important as evidence to prove what you had in hand at any given moment. Also be able to show how the information subject to trade secret rights has been managed.
How long does protection last?	A maximum of 20 years, on the condition that the taxes have been paid (per country or region)	There is no time limit. It expires when the information is made public.
How do you prove a violation?	In determining alleged Infringement, the claims of the patent are examined. Your chance of success depends on the contents and quality of the patent. And on your financial resources. The process often starts with negotiations between the parties, followed by arbitration or mediation. If it comes before the courts, you are recommended to engage a patent attorney or lawyer.	For alleged violations you have to be able to prove that the other person committed an unlawful act. You can do this by submitting solid documentation of your trade secrets and your trade secret measures, such as workshops for employees, security measures and contracts. It may be a good idea to engage a lawyer.
What happens if it is made public?	If the technology of the invention is made public before the application date, patent protection is no longer possible (because it is no longer new). Publication after the patent application has been submitted is usually not damaging. Please note: a patent application is usually published after 18 months.	When confidential information is made public, it puts an end to any trade secrets. You are in a position to take legal action if you can prove that an unlawful act was committed.
What happens if later on another person develops the same thing?	Whoever submits a patent application will, in principle, be the first to acquire the rights. The patent holder can make commercial use of the invention while also preventing others from doing so. If you already used the invention before the date of the patent application behind closed doors, the 'right of prior use' will sometimes be applied (see the adjacent column with trade secrets).	Imagine that another person comes up with your trade secret, not by stealing it but by developing the same invention, and then receives a patent for it. You can keep using the invention in the Netherlands, if you can prove that you already used it before the date of the patent application behind closed doors. It may be that the commercial exploitation and further developing of the invention is restricted. This is called 'right of prior use'.

Real-life examples: digital technologies as intellectual property

Digital technologies are being rolled out at a fast rate. What kinds of intellectual property rights can be applied to specific technologies and how can they be used? Here are a few examples.

Data and databases: choose a strategy

In 2006, Clive Humby's statement, 'Data is the new oil', caused quite a stir. Since then, many companies have earned their revenue primarily by exploiting data, provided they know how to turn raw data into usable information. But determining who owns the intellectual property rights often remains difficult. A company that collects or creates data is not necessarily the owner of that data. It often depends on the contracts involved. There are methods that make transactions with data possible:

- 1. Intellectual property rights, sometimes database rights, but particularly copyright may be applicable to data. To read more, see the explanations on pages 9 and 11.
- 2. Contracts can lay down what a party can and cannot do with data. Be sure that you also include the possibility of transferring the data to others.
- 3. The holder of the data can choose to keep back certain data as a trade secret.

The methods above can be used (also in combination) in order to maintain control of the data or to clarify who holds the rights and who has access.



Metaverses: make adjustments to intellectual property

A metaverse is a virtual world where user representatives ('avatars') interact with each other, attend events or buy products. In some metaverses, brand names and advertising are visible. When brands offer products for sale in a digital world these may fall into different categories than when offering physical products for sale. Brand registration for tennis balls is often requested under class 28, for example (Games & Sporting Goods). For the digital equivalent, it can be said that it does not belong under sporting goods, but as a digital product in a different class (such as class 42 for technological services).

Graphical User Interface: put together a portfolio

Many products have an integrated Graphical User Interface (GUI). One might think here of such things as refrigerators, watches and medical equipment. A GUI has a technical functionality, but also intuitive and aesthetic elements. The software is concealed from view, but the GUI is a visual point of interaction between the user and the machine. The following protection options are available for a GUI:

- Trade secrets can be applied to both software and data.
- Design rights are applicable to static images within applications (such as control systems). Design rights are less suitable to environments and backgrounds (environmental design) that are constantly subject to change. Registration has limitations, namely a maximum number of images in order to demonstrate different transitions.
- Copyright offers better protection for moving environmental design under the protections for audiovisual works. In such cases, the total impression is taken into account. Further, copyright can often be vested in software source code as creative text. But it is also possible to apply copyright to other creative work, such as designs, lay-outs and scripts.
- Trademark rights are not only applicable to brand names and logos, but also for example to distinctive icons, pictograms and all kinds of digital multi-media (even holograms).
- Patents are relevant when there is a new and inventive technological solution for a technological problem. For instance, information about medical equipment that supports doctors performing surgery or when making decisions about treatment.

Contacting the Netherlands Patent Office

Do you have any questions about protecting your innovation after reading through this brochure? The Netherlands Patent Office is happy to discuss the possibilities with you. We not only register Netherlands patents, we also provide general information about intellectual property free of charge. The Netherlands Patent Office is the ideal independent sparring partner for small and medium enterprises who are interested in IP rights for their technological innovation.

The patent advisors at the Netherlands Patent Office (RVO) provide the following services:

- A sparring partner who helps you make strategic choices about your IP portfolio, tailored to your specific situation (also for software).
- Advice that makes IP work for you, giving you a distinctive position in the market.
- Suggestions on how to gain a durable competitive advantage and enhance value creation using IP.

- Explaining what is useful to put in your patent and what would be better kept secret.
- Helping you decide what you want to research in databases yourself and what you would rather outsource to commercial parties (such as a Freedom to Operate (FTO) analysis and the interpretation of claims). And what to watch out for when you outsource this work.
- Customised support in searching patent databases with technical subject matter.
- Help in searching for the latest information in patent registers. Where is a specific patent in force?
- Explaining how procedures are intertwined and how much they cost.

We do not write your patent application nor do we tell you what you should file. You may hire a patent attorney for these tasks.

What	What	Where
Workshops and webinars	Sign up for our free workshops, webinars and presentations. Some are in Dutch and some in English.	Take a look at our <u>event calendar</u> for a complete listing.
Help in searching patent databases	The Netherlands Patent Office can give you support in searching patent databases. For instance, by giving you insight into developments in the field of your innovation or the field of your competition.	Arrange for free personalised provisional patent <u>search</u> by visiting our website or contacting our Public Information Department.
Talk to a patent advisor	Our patent advisors are there to answer your questions about intellectual property rights, both digitally and on location in your region. We do this confidentially.	Arrange a free meeting with one of our patent advisors by contacting our Public Information Department.
Public information	The staff in our Public Information Department are there to answer your questions on work days between 8.30 AM and 5.00 PM.	Call 0031 88 402 4002 or send an email to: octrooicentrum@rvo.nl. Or visit our website: english.rvo.nl/ patents.

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