



Canadian Intellectual Property Office

Software and IP

November 21, 2022

Industry and Partnership Services (IPS)

IPS supports research collaboration between university investigators, companies, and other partners.



Identify and negotiate with potential partners



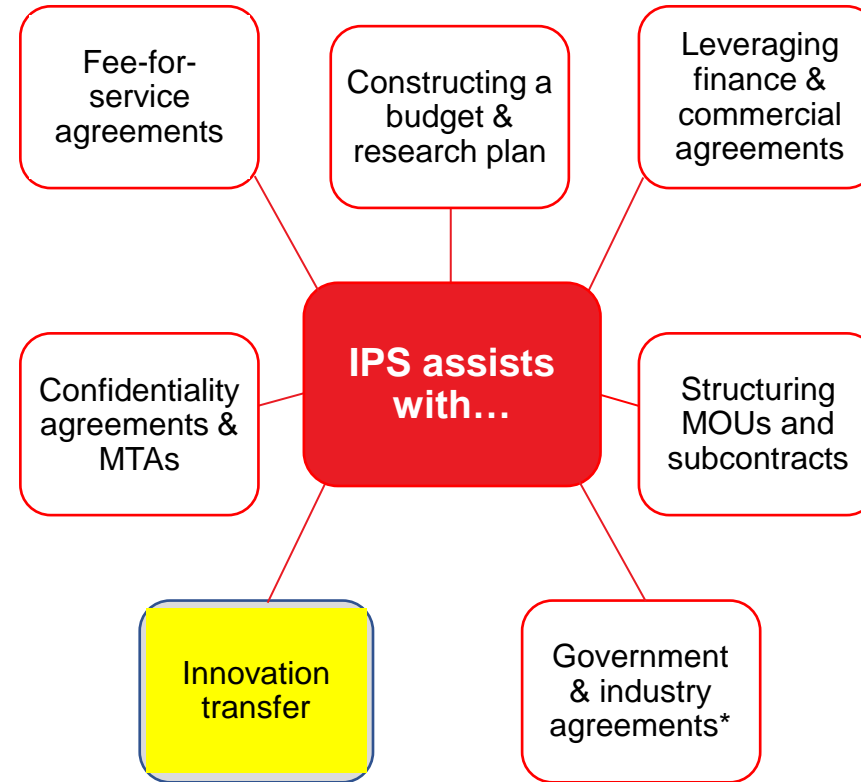
Leverage public funding with external capital and expertise



Provide IP advice (commercialization)



Structure a suitable arrangement



* Inclusive of NSERC Alliance, MITACS (except Globalink) & OCI.

The Canadian Intellectual Property Office (CIPO)

Timely delivery of quality IP services through operational excellence and a modern client experience



Foster innovation and competitiveness through leadership and education

Be a high-performing organization that is built for the future

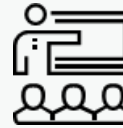
IP awareness and education services

We can help you understand

- What is IP
- How to identify your IP
- How to protect IP
- How to manage IP
- Where to find help



Resources on
www.Canada.ca/ip-for-business



Webinars, seminars



Meeting with an IP advisor

What we will talk about today

What do I need to do next?

What IP can protect my SW?

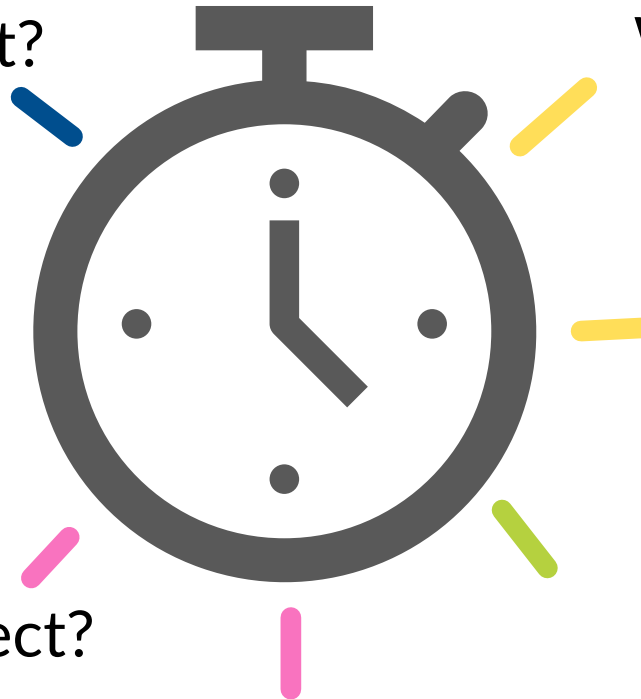
Who can help me?

How do I safeguard my IP protection?

What does a patent protect?

How do the IP rights work over time?

When is patent, copyright, trade secret, trademark, industrial design a good idea?



What is intellectual property (IP)?

Trademarks

Brands:

Words, logos, geographical indications, certification marks



Patents

Inventions:

New or improved products, machines, processes and compositions

Copyright

Creative works:

Literary, artistic and musical



Industrial designs

Unique visual features:

Shape, patterns, lines or colours of finished articles



Plant breeders' rights

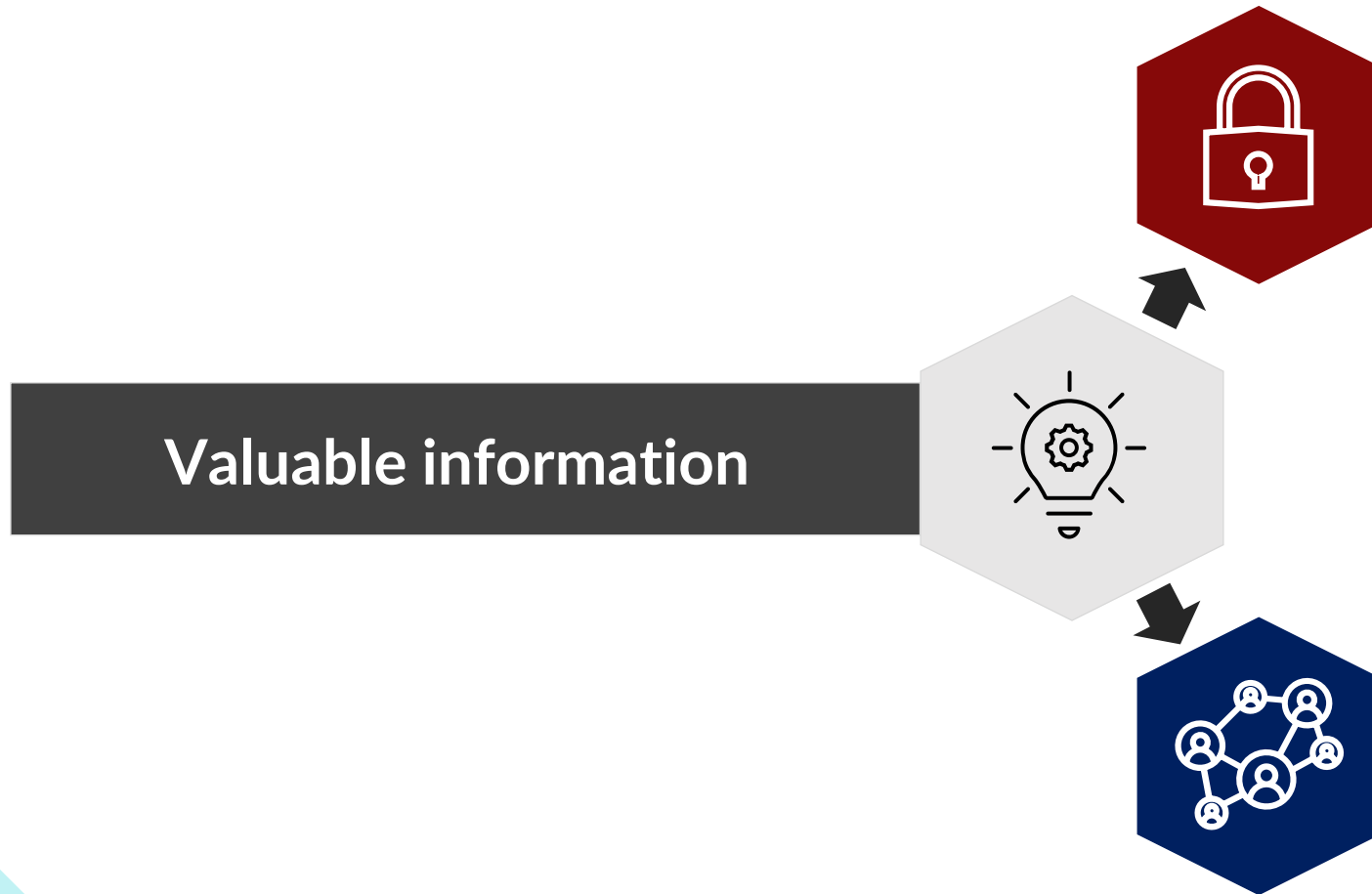
Varieties of plants



The form the idea takes



What is IP?



Trade secrets

Valuable information:

Data, lists, formulas, know-how

Non-traditional IP

Websites and domain names, trade names, social media accounts, customer lists, territory rights, publicity rights, traditional knowledge

Why protect your intellectual property?

- **To prevent copycats:**
 - a work that isn't protected by any IP rights belongs to the public
- **To collaborate:**
 - IP rights are a way to formalize and protect your contribution
- **To gain investors' confidence:**
 - IP is a business tool to manage risk
- **To gain access to markets:**
 - Securing IP rights can give you exclusive access to markets

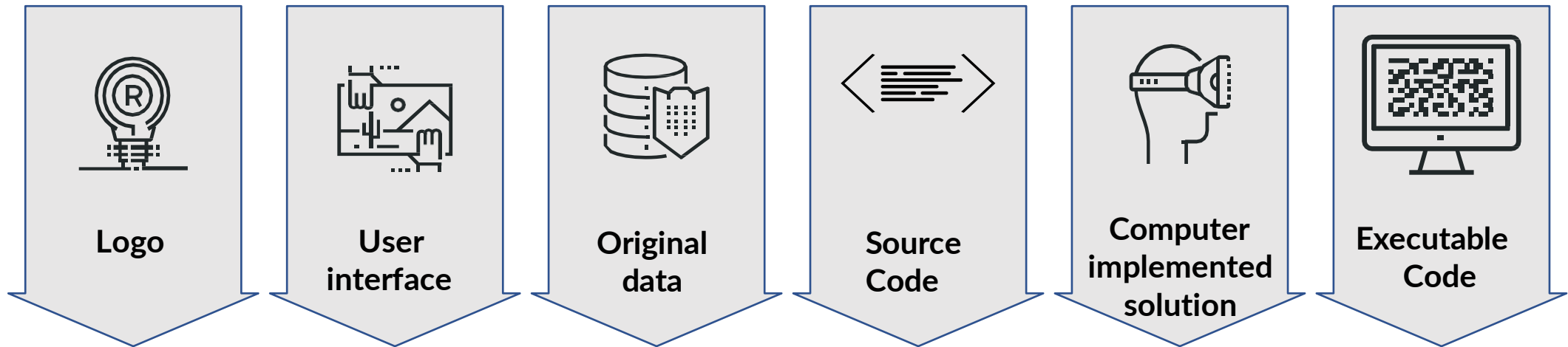
SMEs having higher awareness of IP or that hold formal IP are more likely to experience higher growth, expand their markets, and receive financing.

Use IP to unlock the value of your idea

- Grow your business : Part of the value of a startup is IP
- Work with your partners and clients
- Have an edge over the competition
- Secure your position in key target markets
- Help build reputation and goodwill
- Attract investors and secure financing
- Strategically achieve business goals



Possible IP rights in software components



Copyright

- Original work
- Automatic, optional registration
- 50 years+

Patent

- Inventions
- Examined
- 20 years

Trademark: Distinct, Examined

- 10 years +

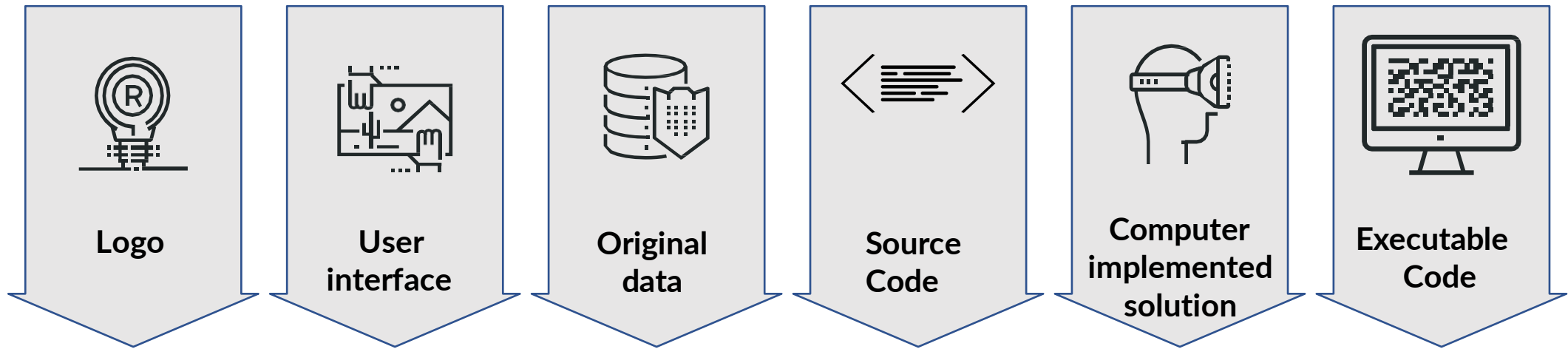
Industrial Design: Novel design

- Examined, Up to 15 years

Trade secret

- Information with business value
- Self-protect

Safeguarding IP in software components



Copyright

- Keep original copy
- Register ©
- Terms of license / contract

Patent

- Maintenance
- Terms of license/ contract

Trademark: Maintenance

- Terms of license/ contract

Industrial Design: Maintenance

- Terms of license/ contract

Trade secret

- Keep original copy
- Technological protection measures
- Terms of license / contract

Consider a portfolio of IP rights over time

Copyright

code, images, designs,

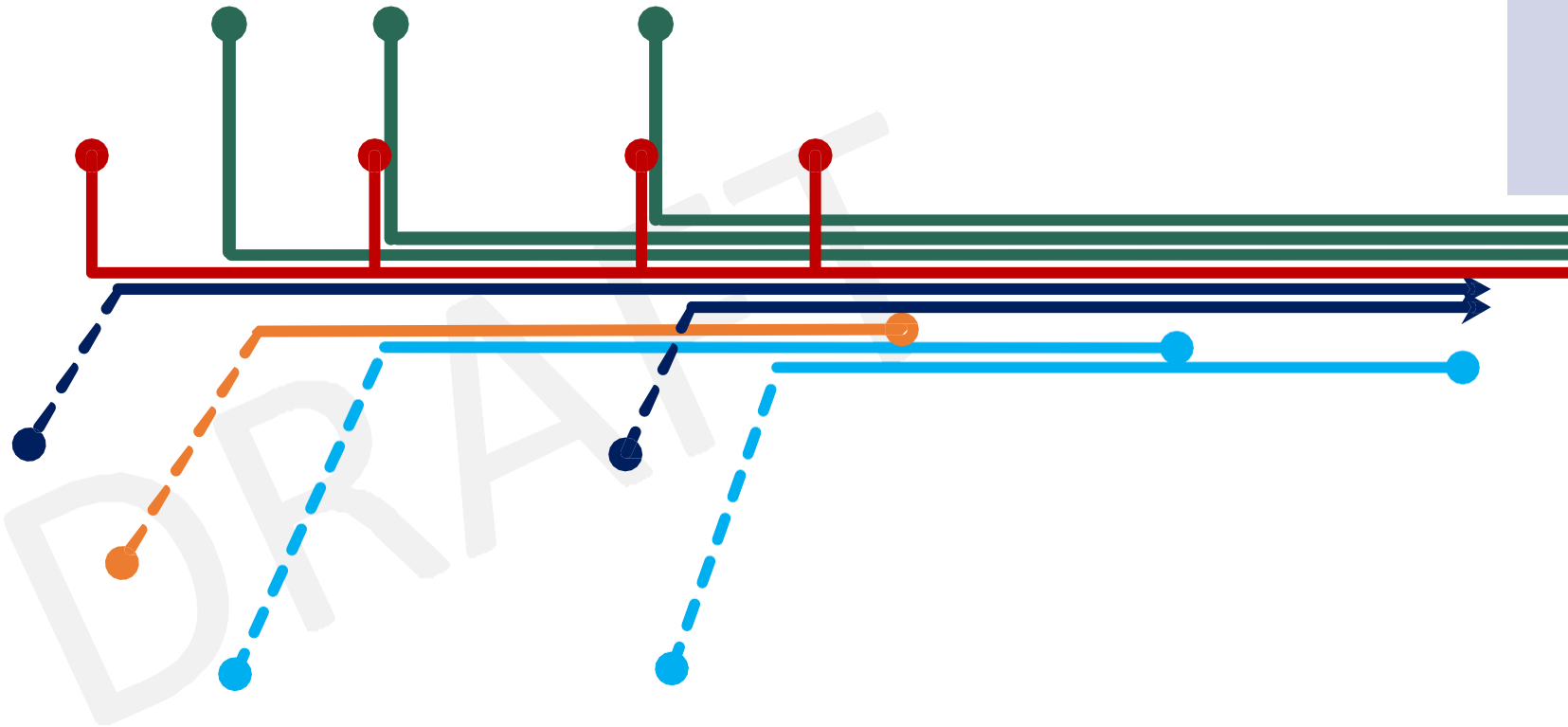
Trade secret

algorithms, data, code

Trademark: brand

Industrial design: GUI

Patent: core functionality



Copyright

Copyright can protect original literary and artistic works, including software programs, certain data collections, website text and web pages, and photographs or graphics.

Useful to protect the original works from unauthorized copying

- Does not protect the idea or functionality
- Does not protect “information” (collections of facts or raw data are not typically recognized)
- Some jurisdiction mean that the use decompiled code is “fair dealing” (for educational purposes)

Manage it: protection is automatic and international

- Registration is optional but some jurisdictions require registration to litigate
- Keep a dated copy / original for proof (limited protection for derived “similar” works)
- Many resort to Software as a Service as a mean to keep the code secret

Ensure you have IP or contractual rights to use the code

Trade secret

Trade secrets can be almost anything not in the public domain, including data collections, algorithms, machine learning processes and models, product specifications, and project data.

Useful as an alternative when other IP rights aren't a good fit:

- Valuable business information (data collections, lists, formulas, algorithms, training data)
- Before patent application, if the invention is not patentable, if it must/can be kept secret
- Does not protect against independent discovery

Manage it: self-managed protection mechanisms

- Depends on ability to keep secret (and difficulty to reverse engineer)
- Keep safe & secret, dated with limited, tracked access
- Manage with routines, technology, and contracts

Patent

A patent can protect some new, non-obvious, and useful creations in the field of computing.

Use to protect novel, inventive and useful technological solutions

- Typically, computer-implemented inventions describe a combination of cooperating elements (code, data) combined with a computer or device.
- Disembodied ideas, code or algorithm on its own, scientific principles or abstract theorems are not patentable.

Manage it: Know the patent rules and procedures

- Right to exclude others where the patent is issued
- Consider value over time
- Patent application will be made available to the public (usually within 18 months)

Trademark

A trademark can be a word, phrase, symbol, design, sound, or other sign for things like apps, computer programs, electronic or digital products, and online services.

Use to protect the brand in a particular context (goods or service)

- Registered: Nationwide exclusive right (limited to goods and service)
- Unregistered: Limited protection under common law

Manage it: Considerations

- First to file
- Consider potential value over time
- Use it or lose it
- No marking requirements in Canada (e.g. TM, ®)

Industrial design

A registered industrial design such as icons or graphical user interfaces, can be protected provided that they are applied to a finished article like a display screen.

Use to protect how something looks

- Registered: Nationwide exclusive right
- Does not protect functionality

Manage it: Considerations

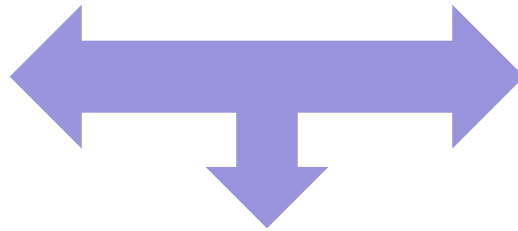
- First to file
- Novelty requirement
- Mark your industrial design (D)
- Some designs also registered as trademarks

Open source software

Open source software is when the code has been designed and released for the public to use, change and redistribute to anyone for any purpose.

Copyleft license

(e.g. GNU) allow almost anything *except* distributing closed source versions.



Permissive license

(e.g. MIT) allow making and distributing closed source versions.

Dual license

One free version (often copyleft) to learn and develop the code
One paid proprietary version without any redistribution of any adapted works

Open source software

Open source software is when the code has been designed and released for the public to use, change and redistribute to anyone for any purpose.

Open source is protected by copyright.
Read the license for the software – the rights attached to the software

There are over 80 different types of licenses

Manage OSS as part of your IP

- Include the OSS and the resp. licenses in your IP inventory
- Ensure the use of OSS is compatible with your IP strategy (commercial use, obligation to share)
- Establish approval process for the use of OSS
- Ensure updates are managed to ensure cyber security, avoid relicensing, parallel versions

Data permissions

Data ownership is complex.
Collection, storage, sharing and use may be subject to copyright and privacy law.

- **Training data sets** for AI / ML systems may be subject to copyright and/or other license terms to control how the data can be used.
- **Data** in the “public domain” such as websites usually has a terms of use. Avoid unauthorized data copying.
- **Collecting and storing data** about other people is subject to privacy law.
- **Sending data** such as commercial messages may be classified as SPAM.

Inform yourself before collecting, using or sending data
Control how your data can be used

CIPO Tools and resources

Factsheet

[Intellectual property rights in software in Canada](#)

Recorded webinar

[IP Talks: IP in practice: Computer software, AI and other tech patents](#)

[Podcast interviews](#)

Episode 5: **How to protect your videogames**

Episode 15: **How to protect training data used in the creation of AI systems**

Episode 16: **Best practices for using open source software**

Episode 20: **How traditional brands and IP rights are entering the metaverse**

Other tools and resources

- **Examples of Canadian IP rights for software:**
 - [Patents containing computer-enabled inventions](#)
 - [Trademarks used for software products and services](#)
 - [Industrial designs relating to display screens, icons, and graphical user interfaces](#)
- **WIPO: [Intellectual Property and Mobile Applications](#) including**
 - [Alternative Dispute Resolution](#) (ADR) processes for Mobile Apps disputes
 - Handbook on Key Contracts for Mobile Applications – A Developer's Perspective
 - Intellectual Property Toolbox for Mobile Applications Developers
 - Open Source for Mobile Apps
- **Open Source Software**
 - [Choose a licence](#): Useful to help developers to decide what licence to use or to have a general idea about the most used open source licences
 - [Snyk](#): Useful tool to help detect and identify open source content in code
 - [Open Source Guides](#): Guides and information regarding open source projects (how to contribute or launch one) or how to play a role in the open source community

We can help you locate expertise

IP professionals can help you answer questions:

Where in the world and how should I secure my IP rights?

Someone else has copied my idea, what should I do?

How much will it cost to secure IP protection?

Can I patent / trademark / register an industrial design or copyright (x,y,z)?

Who else is in this space and what's their IP?



THE CANADIAN
BAR ASSOCIATION

[Find a lawyer](#)



Intellectual Property
Institute of Canada

[Find an IP professional](#)



COLLEGE OF PATENT
AGENTS & TRADEMARK AGENTS
COLÈGE DES AGENTS DE BREVETS ET
DES AGENTS DE MARQUES DE COMMERCE

[Locate an agent near you](#)

IP awareness and education services

Contact CIPO if you would like us to :

- Show you what IP is
- Help you identify your IP
- Explain how to protect IP
- Show how to manage IP
- Show where to find help



Canada.ca/IP-for-business



[Contact an Intellectual Property Advisor](#)



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LinkedIn

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