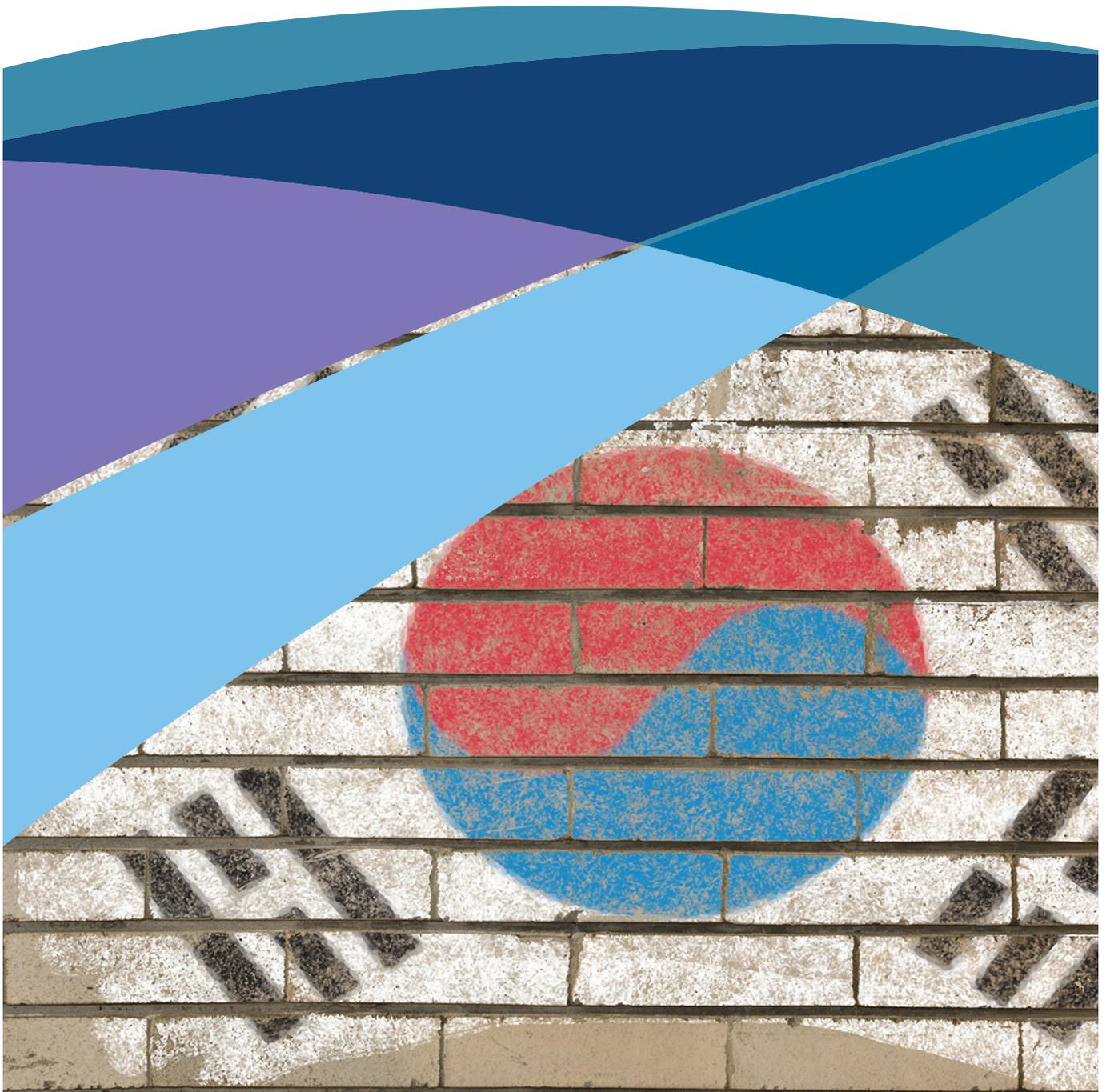




Intellectual
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Intellectual Property Rights In the Republic of Korea





Contents

Intellectual property rights in the Republic of Korea	3
What are intellectual property rights?	3
International considerations	3
Treaties and reciprocal agreements	4
Intellectual property rights - systems in the Republic of Korea	4
Copyright	4
Patents, utility models and industrial designs	5
Trade marks	5
Customs recordal	5
Unfair competition	5
Registering and enforcing intellectual property rights in the Republic of Korea	6
Enforcing IP rights in the Republic of Korea	6
Self-help considerations	7
Potential Problems Faced In the Republic of Korea And How To Deal With Them	7
Avoiding problems	7
Who should take responsibility for your IP protection?	8
Top tips for IP protection in the Republic of Korea	8
Where to get intellectual property help in the Republic of Korea	9



Intellectual property rights in the Republic of Korea

South Korea - officially the Republic of Korea - is one of UK Trade and Investment's priority high growth markets. Bilateral trade between South Korea and Britain now stands at more than £5 billion a year.

If you plan to do business in the Republic of Korea, or if you are already trading there, it is essential to know how to use, guard and enforce the rights you have over the intellectual property (IP) that you or your business own.

This guide explains about IP rights in general, and gives guidance on how to apply these principles in the South Korean market. It describes the issues you may face with IP infringement in South Korea, offers advice on how you can effectively tackle these, and provides links to sources of further help.

What are intellectual property rights?

Intellectual property (IP) is a term referring to a brand, invention, design or other kind of creation, which a person or business has legal rights over. Almost all businesses own some form of IP, which could be a business asset.

Common types of IP include:

- Copyright - this protects written or published works such as books, songs, films, web content and artistic works;
- Patents - this protects commercial inventions, eg a new business product or process;
- Designs - this protects designs, such as drawings or computer models;
- Trade marks - this protects signs, symbols, logos, words or sounds that distinguish your products and services from those of your competitors.

IP can be either registered or unregistered.

With **unregistered** IP, you automatically have legal rights over your creation. Unregistered forms of IP include copyright, unregistered design rights, common law trade marks and database rights, confidential information and trade secrets.

With **registered** IP, you will have to apply to an authority, such as the Intellectual Property Office in the UK, to have your rights recognised. If you do not do this, others are free to exploit your creations. Registered forms of IP include patents, registered trade marks and registered design rights.

International considerations

The Republic of Korea has been a World Trade Organisation (WTO) member since 1995. WTO member nations must include some IP protection in their national laws. This means that if you are doing business with South Korea, you will find some similarity between local IP law and enforcement procedures, and those in force in the UK.

Treaties and reciprocal agreements

The Republic of Korea is also a signatory to the following international IP agreements:

- the Paris Convention - under this, any person from a signatory state can apply for a patent or trade mark in any other signatory state, and will be given the same enforcement rights and status as a national of that country would be;
- the Berne Convention - under this, each member state recognises the copyright of authors from other member states in the same way as the copyright of its own nationals;
- the Madrid Protocol - this is a central system for obtaining a 'bundle' of national trade mark registrations in different jurisdictions, through a single application;
- the Patent Cooperation Treaty - this works in much the same way as the Madrid Protocol, but for patent applications.

South Korea is not a signatory to the Hague Agreement, which allows the protection of designs in multiple countries through a single filing.

Intellectual property rights - systems in the Republic of Korea

The Republic of Korea has been a member of the World Trade Organisation (WTO) since 1995. This requires member nations to establish intellectual property (IP) laws whose effect is in line with minimum standards. As a result, there should be few major differences between South Korea's laws and those of other developed countries.

Copyright

The Republic of Korea is a signatory to the Berne Convention on copyright. Its copyright legislation is based on the Copyright Act of 1957, known as the Korean Copyright Act.

Copyright is an unregistered IP right in South Korea, which means that you don't have to register copyright, but it is a good idea to do so in case of a dispute. Registration for all forms of copyright except computer software is made with the Ministry of Culture, Sports and Tourism. Software should be registered with the Ministry of Information and Communications.

As the Republic of Korea is a highly internet-savvy country, specific concerns over copyright include online piracy. Books are also widely copied, especially textbooks. In hardware, circumvention devices are available - for example, modified chips and game copiers that bypass technological protection measures.

Patents, utility models and industrial designs

South Korea's patent regulations are contained in the Patent Act and the Utility Model Act. Unlike in the UK, the Republic of Korea distinguishes between patents (sometimes called 'invention patents') and utility models (also known as 'minor patents').

A utility model can be granted for any device defined as 'the creation of technical ideas using the rules of nature'. An invention patent can be granted for devices and other inventions which are more highly advanced than this. Invention patents give protection for a maximum of 20 years, while utility models are valid for ten.

UK businesses are advised to consider applying for utility models in the Republic of Korea. It may be a good idea to apply to register a product as a utility model if your application for an invention patent is denied.

South Korean patent law operates under the 'first to file' principle - that is, if two people apply for a patent on an identical invention, the first one to file the application will be awarded the patent.

Industrial designs are covered by the Design Act. The law confers protection for a maximum of 15 years.

The Korean Intellectual Property Office is responsible for all aspects of patents, utility models and industrial designs.

Trade marks

Trade marks are regulated in the Republic of Korea under the Trademark Act. The system operates in a similar way to that in the UK, protecting designs, symbols, colours or other devices used to identify a business' products or services.

Registration takes around seven to ten months and a trade mark is valid for ten years, after which it can be renewed indefinitely for further ten-year periods.

The Korean script provides registration and enforcement difficulties for foreign rights owners, as different renditions for the same sound of a word are possible. This is a complex area and you will likely need local advice when choosing Korean brand or trade names.

Customs recordal

You can register - or 'make a recordal of' - your marks with the Korean Customs Service. This allows the local Customs offices to check and intercept infringing goods. Applying for a recordal is generally done through a lawyer or local attorney and costs about £250.

Unfair competition

The Unfair Competition Prevention and Trade Secrets Protection Act provides protection for rights owners in addition to the Acts covering each form of IP. This covers unfair practices including 'cybersquatting' and the infringements involving 'dead copies' of designs.

Registering and enforcing intellectual property rights in the Republic of Korea

To enjoy most types of intellectual property (IP) rights in South Korea, you should register them.

For patents (including inventions, utility models and industrial designs) individual registrations must be made in the Republic of Korea, but for rights other than industrial designs you can apply under the terms of the Patent Cooperation Treaty, which is usually easier and quicker.

For trade marks, you can either register within South Korea or use the Madrid Protocol to gain unitary rights under national or Community Trade Mark registration systems.

For copyright, no registration is required but registering copyrights with the copyright authorities is advisable.

'Priority rights' under the Paris Convention can help in the local registration of trade marks, designs and patents by allowing rights previously registered elsewhere to become effective in the Republic of Korea, if filed within a time limit.

Enforcing IP rights in the Republic of Korea

There are three levels at which you can enforce your IP rights in South Korea: mediation, civil action and criminal prosecution:

- **Mediation** - disputes over the enforcement of copyright are the responsibility of the Copyright/Computer Program/Layout-Design of Semiconductor Integrated Circuit Review and Mediation Committee. Patents, utility models, trade marks and industrial designs are handled by IP Dispute Committees. In both cases the decision of the committees is binding.
- **Civil action** - The Ministry of Culture, Sports and Tourism and the Ministry of Information and Communication are responsible for copyright actions. For patents, utility models, trade marks and industrial designs, the Korean Intellectual Property Office Tribunal handles all aspects of IP litigation in the first instance, with the Patent Court acting as an intermediate appeal court. There are also district courts in some of the larger cities with specialist IP knowledge. Injunctions and damages are available through civil litigation. Appeals can be made to the Korean Supreme Court.
- **Criminal prosecution** - IP rights owners can apply for prosecutions to be brought in the criminal courts. Penalties for IP infringements can be steep, although the process may be long and drawn-out.

There are also programmes to help identify genuine rights owners, including the Verified Rights Owner initiative, in conjunction with major brands and the Korean Intellectual Property Office, and online information helping people to distinguish between fake and genuine products. Customs has a direct role in enforcement, and may bring prosecutions when it detects IP abuse.

Self-help considerations

There are various things you can do to make it harder in general for infringers to copy your product. For example, you could:

- Think about the design of your product, and how easy it would be for somebody to reproduce it without seeing your original designs;
- When you hire staff, have effective IP-related clauses in employment contracts. Also make sure you educate your employees on IP rights and protection;
- Have sound physical protection and destruction methods for documents, drawings, tooling, samples, machinery etc;
- Make sure there are no 'leakages' of packaging that might be used by counterfeiters to pass off fake product;
- Check production over-runs to make sure that genuine product is not being sold under a different name.

Potential problems faced in the Republic of Korea and how to deal with them

South Korea's intellectual property (IP) laws are comprehensive, and the authorities and processes are becoming increasingly efficient. The protection offered to foreign and domestic rights owners is of a reasonably high standard.

As a member of the World Trade Organisation, the Republic of Korea is committed to certain minimum IP protection standards. This means that the IP environment in which UK businesses operate in South Korea should seem familiar for those used to practices in the UK. However, there are some obvious problems for IP rights owners operating in South Korea, including linguistic challenges and difficulties for people from the UK used to common law.

The internet has a massive role in the country's business and leisure - and in piracy. The Republic of Korea is one of the world's best electronically-connected societies, with higher internet speeds, to more people, than in most other developed countries. In IP terms South Korea is a victim of its own success - the scale of internet piracy is vast and the country's IP enforcement infrastructure struggles to keep up.

Avoiding problems

The most important way to avoid problems when defending IP rights in the Republic of Korea is to be prepared. To make sure that you can anticipate any potential issues, you should:

- take advice from Korean IP rights experts;
- consult publications and websites on Korean IP rights and protection in general;
- carry out risk assessment and due diligence checks on any organisations and individuals you deal with;
- take professional advice from other experts - eg lawyers, local diplomatic posts, Chambers of Commerce and the Korea-Britain Society;

- talk to other businesses already doing similar business in South Korea;
- consult agents, distributors and suppliers on how best to safeguard your rights;
- check with trade mark or patent attorneys to see whether there have been previous registrations of your own marks, or other IP, in the Republic of Korea;
- stick to familiar business methods - don't be tempted to do things differently because you're trading in a different country.

Who should take responsibility for your IP protection?

You should make sure that everyone in your business takes some responsibility for IP protection. Many businesses depend on the integrity of their IP, and it can often be one of their most valuable assets. So it should be given proper attention by both management and employees, as well as other businesses that you have relationships with.

It may be sensible to nominate a manager to have particular responsibility for understanding and protecting your IP rights. In businesses with legal departments, a legally-trained manager would be a good choice.

Top tips for IP protection in the Republic of Korea

The most important things you can do to protect your IP rights in South Korea are:

- stick to your normal business instincts;
- do as much as you can to prevent infringements in the first place - prevention is better than the cure;
- assess the risks of the market and make preparations;
- take self-help measures to protect your IP;
- make sure everyone in your business values its IP, including you;
- register your IP rights;
- create good relationships with organisations that can help you;
- consider mediation before defensive action.

Where to get intellectual property help in the Republic of Korea

Whether you're resident in and doing business in South Korea, or trading internationally with the country, there are a number of professional organisations that can offer you advice and support:

- The British Embassy in Seoul provides a full range of diplomatic, consular and business-related services. UK diplomats cannot intervene with Korean legal or administrative processes, but they may be able to keep a watching brief when cases are brought to Korean courts, or lobby on your behalf if progress is slow: <http://ukinrok.fco.gov.uk/en/>
- The British Chamber of Commerce in Korea (BCCK) offers advice for visiting and resident British business people and a chance to meet others through networking events: <http://www.bcck.or.kr/>
- The European Union (EU) Chamber of Commerce in Korea (EUCCK) helps and supports contacts between businesses based in EU member states and the Republic of Korea: <http://www.eucck.org/>
- The Korea-Britain Society (KBS) is based in Seoul and promotes friendship and understanding between Korea and the UK: <http://ukinrok.fco.gov.uk/en/about-us/working-with-korea/bilateral-relations/korea-britain-society>



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