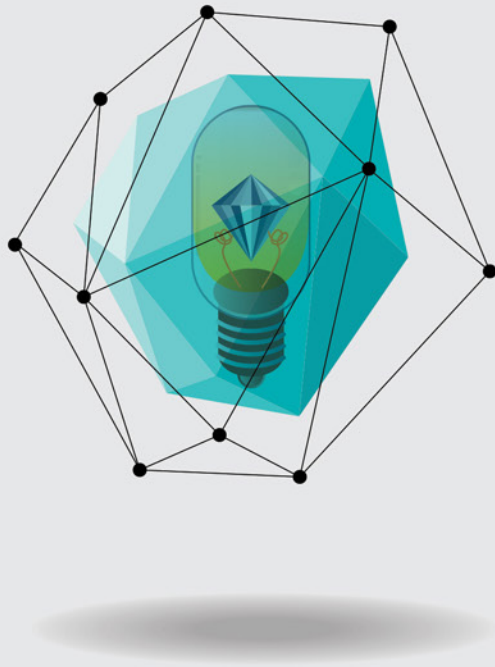


# MAKING BEST USE OF ALL YOUR VALUABLE ASSETS

How to manage your intellectual property using audits and assessment tools





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# Introduction

**A** long-standing business maxim says, 'If you can't measure it, you can't manage it'. This is as applicable to your intellectual property and intangible assets as anything else in your company. To manage your IP well, you have to know what it is, where it is, how it works, and whether it is doing the job intended. An IP audit, or similar form of assessment, gives you the baseline you need to get good practices in place.

This guide introduces you to the different levels of IP investigation—IP diagnostic, IP audit and IP due diligence—with an indication of when each one might be appropriate. It also sets out the nature and purpose of an intangible asset register which each of these activities can help you to create.

The guide is intended to be read in conjunction with others in this series, particularly those covering the different types of IP rights, developing an IP strategy and gathering IP intelligence.

A diagnostic can be viewed as a general 'health check' to ensure that a company knows what its assets are and how they are being used and maintained. An audit (a term borrowed from accounting) is a more detailed study that considers whether a business has the assets it needs in order to achieve its strategic objectives. Due diligence is an even more 'forensic' investigation of a company's IP that is often directed at risk assessment—particularly in terms of ownership and litigation.

If you have a good level of business knowledge and general understanding of IP rights and how they operate, you will probably be equipped to undertake the most basic level, the IP diagnostic, yourself. By contrast, IP audits usually benefit from being conducted by an external expert. Due diligence is invariably done by a specialist in order to ensure impartiality and is not covered in detail in this guide.

The main body of this guide focuses on IP audits, which are normally the most relevant and beneficial exercises to conduct (unless you are selling or listing your company, in which case you will need due diligence). It sets out the areas the audit should cover; what is generally involved and the preparations you may wish to make; the information you will need to provide; how you can expect to benefit; and how to build the results into an effective strategy.

Produced by IPOS International, these intellectual property management (IPM) business guides aim to deliver a suite of IP solutions for enterprises based on industry best practices. As the expertise and enterprise engagement arm of the Intellectual Property Office of Singapore (IPOS), IPOS International helps enterprises and industries use IP and intangible assets for business growth. Some of these engagements may be eligible for Enterprise Singapore (ESG) funding, such as the intangible asset audit and strategy development aligned with business goals. IPOS International's business portal [www.iposinternational.com](http://www.iposinternational.com) also contains case studies and videos of enterprises leveraging IP to gain a competitive edge in their innovations. Should you have questions on IPM matters or wish to speak with our Intellectual Property Strategists, do email us at [enquiry@iposinternational.com](mailto:enquiry@iposinternational.com) or call +65 63308660.



# Types of IP assessment



01

# 1. Types of IP assessment

## Why worry about things I can't see and touch?

**Y**our intellectual property, together with the other intangible assets that surround it, are likely to be the most valuable things your business owns—so it really pays dividends to look after them properly.

If physical assets like plant and machinery, real estate, vehicles or IT hardware are important to your business, the chances are you will have an inventory for all of them. You will be thinking about whether they are being utilised to their full potential, planning for maintenance or replacement and having measures in place to keep them secure.

However, many businesses do not take the same rigorous approach when it comes to looking after intellectual property (IP). It is generally because these types of asset, together with all other 'intangibles' are not physical things, so they are not 'front of mind' in the same way. Their value would not usually be represented on your balance sheet, and you are unlikely to be spreading their cost over their useful economic life.

At best, this is a missed opportunity. At worst, it places your business at unnecessary risk. That is because it is often the IP and intangibles you have created that form the lifeblood of your organisation. These are the things that protect your competitive advantage, market standing and distinctiveness and stop imitators encroaching into your space. If someone started walking off with your computers, you would notice pretty quickly—but what about your reputation?

*“An IP assessment is like having a 'health check' on all the non-physical things your business owns and uses”*

An IP assessment is a review of all the non-physical things your business owns and uses. It tells you what to do to ensure these assets are fit for purpose. If you ever want to sell or hand over your business, a lot of its value will depend on whether your IP and other 'intangibles' have been well managed.



## What types of assessment are available?

**J**ust as IP is unique (because no two companies will own the same thing), each IP assessment should be tailored specifically to your company. There are three main types of processes that go into varying levels of detail. Whichever

one you choose, it will reflect the IP position at a particular moment in time.

*“You can assess your intangibles in a number of different ways and in varying levels of detail”*



IP diagnostic

An IP diagnostic provides an overview of the company's intangible assets. It looks at what broad categories of IP you have (for example, do you own anything that is inventive that might form the basis of a patent application?). At this general level, the focus is on developing an appreciation of the key intangible assets owned by the business and where your IP management priorities lie.

This guide can help you to perform an IP diagnostic yourself, provided you already have a reasonable understanding of the different types of intellectual property and when they are useful. Other guides in this series can help fill in any gaps in your knowledge.



IP audit

An IP audit goes into each class of assets in considerably more detail. It will identify exactly what assets a company has and what it is engaged in developing. It will also establish where the company is in a strong position and where there are issues or opportunities.

Audits are usually best conducted by an external IP specialist to ensure that their findings are objective. A good audit provides you with specific, prioritised conclusions that form the basis for an action plan.



Due diligence

Due diligence involves an even more detailed and rigorous interrogation of your IP. It is conducted for a specific purpose such as an Initial Public Offering (IPO), fundraising, merger, acquisition, or some other transaction involving company IP. It will invariably need to be carried out by an independent, specialist legal or accountancy firm—otherwise, its findings will not be considered reliable.

Any of these processes may lead to the creation of an intangible asset register, briefly described in the following section.

# 1. Types of IP assessment

## Which type of assessment do I need?

The assessment process will examine your intangible assets in various levels of detail and may focus on different aspects (legal, practical or technical). Which one is best will depend on what you hope to achieve and the reason for the assessment.

Figure 1 provides an overview of the main reasons for considering an audit of some kind.

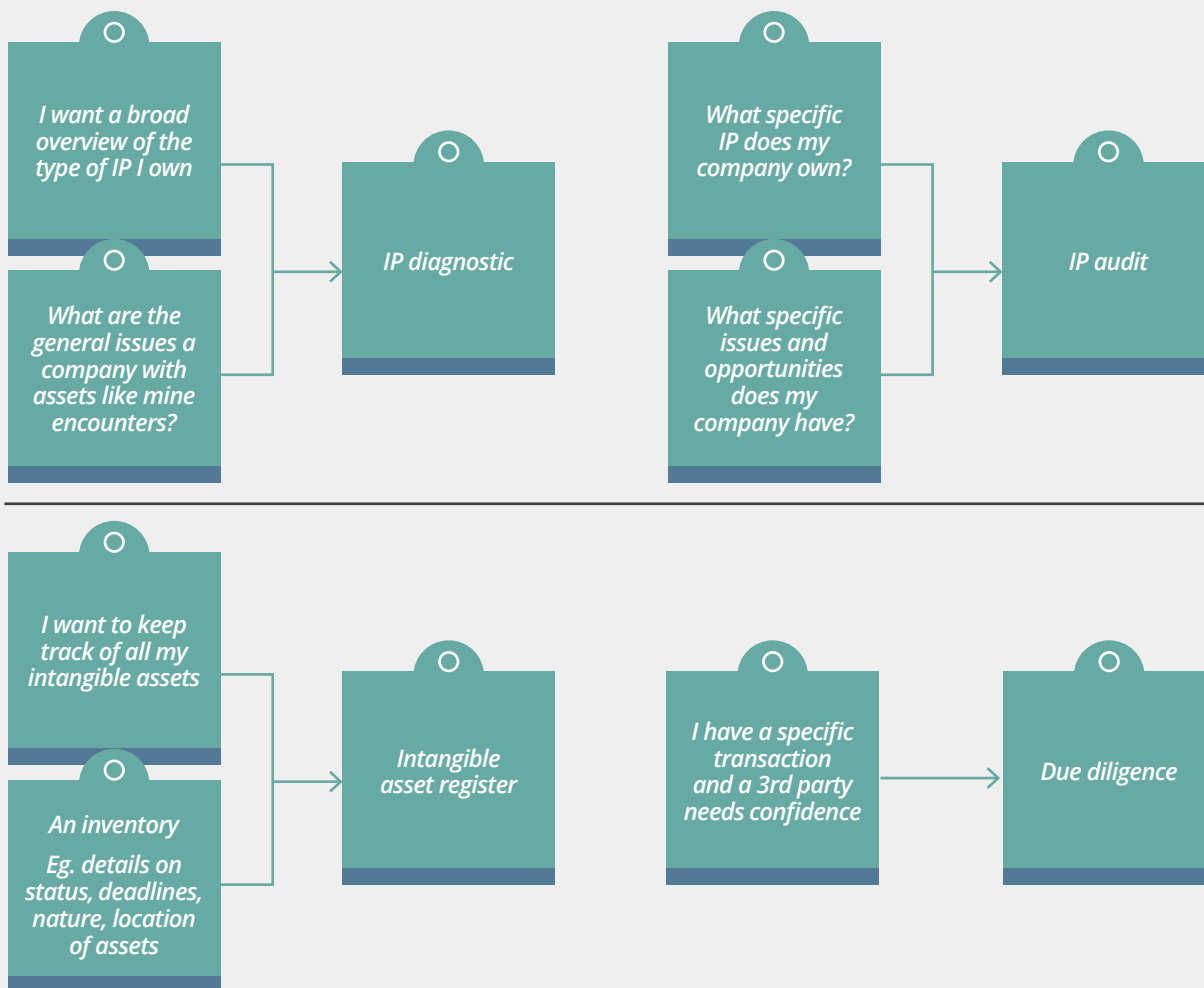


Figure 1. IP Assessment overview

It may be helpful to provide a direct comparison of the approach each of these assessments might take, using a specific example.


Via an IP diagnostic, you may establish that you have a logo that is used to advertise and promote your products, and that this is (or should be) covered by a trade mark. This provides a basis for you to make sure your mark is obtained and renewed when necessary and provides visibility of the countries and activities that are protected.



“IP diagnostic, IP audit and IP due diligence are terms to describe different levels of enquiry into the intangible assets you own and use”

In an IP audit, your logo and any associated trade mark protection will be examined in more detail. Ownership details will be checked to make sure an existing mark is correctly registered, or to see who owns any other marks that might be considered similar. An independent assessment will also be made to determine whether the scope of protection is appropriate (has protection been obtained in all the territories where it should be, and is the registration in the correct classes, given the current and future activities of the business?). If there are unregistered trading styles in use, official databases will be examined to determine whether they can be protected through registration.

During due diligence, the audit information will be supplemented with even more details. The legal status and ownership of the mark will be confirmed and the possibility that the mark may be open to challenge from a competitor will be examined.

 As part of performing an IP audit or during due diligence, it is also possible that a detailed intangible asset register will be produced. An intangible asset register usually takes the form of a spreadsheet that lists each asset you own in detail, along with some basic information about the asset. This is described in more detail later in the guide.

This guide explains what an audit typically contains, and provide templates that should enable you to conduct your own IP diagnostic (and create an intangible asset register if needed). It does not cover the due diligence process in detail.



## SUMMARY

The following may be helpful as a summary of the different types of assessment and the categories of asset that you may own as a business.

IP DIAGNOSTIC	IP AUDIT	DUE DILIGENCE	INTANGIBLE ASSET REGISTER
<ul style="list-style-type: none"> <li>• Can be done internally</li> <li>• Identifies types of assets</li> <li>• Focuses on creating a “baseline” assessment</li> <li>• Useful to highlight issues that need addressing and opportunities for improved protection</li> </ul>	<ul style="list-style-type: none"> <li>• Usually performed by an external specialist</li> <li>• Considers the company's current and future assets</li> <li>• Focuses on company priorities</li> <li>• Useful starting point for developing an IP strategy</li> </ul>	<ul style="list-style-type: none"> <li>• Always performed by an external specialist</li> <li>• Detailed assessment of individual current assets</li> <li>• Focuses on risks as seen from an external perspective</li> <li>• Useful in company sale and listing</li> </ul>	<ul style="list-style-type: none"> <li>• Can be created internally or externally</li> <li>• Detailed list of assets and their features</li> <li>• Focuses on the legal ownership and location of the assets</li> <li>• Useful for maintaining an inventory</li> </ul>



# Things you can do for yourself



02

## What sort of assessment might I be equipped to do in-house?

*“If you have good business insights, a working knowledge of IP and sufficient access to internal information, you’ll be able to conduct your own IP diagnostic”*

## What types of assets am I looking for in a diagnostic?

**A**s long as you, or members of your team, have a reasonably good working knowledge of intellectual property, you should be able to do the most basic level of assessment—the ‘IP diagnostic’—in-house.

Your level of basic IP knowledge should be the main determinant of whether you should conduct an initial diagnostic step yourself, or go directly to an external specialist. As a general guide, if you know what the different types of IP are and how they operate; if you have some understanding of how to search official IP databases; and (most critically) if you have a good overview of your business’s strategy and operations, then you probably know enough with the support of this guide.

In the process of compiling the diagnostic, your appointed ‘internal auditor’ will need to think about how to classify your assets (what categories they fall into). Once the types of IP that you own and use are captured and described, you can document any that are registered (when were they filed, what do they cover, when are they due for renewal) and ensure that someone within your team is responsible for monitoring them. You can also then list the types of non-registrable assets you have and which people or departments are responsible for looking after them too.

In the course of conducting an IP diagnostic, it is very likely that areas for improvement will be found. Even if you are not in a position to act on all of these immediately, they should still be recorded as they form valuable inputs to an IP strategy.

**T**here are a number of different ways of defining, describing and sub-dividing the non-physical assets that a company has. The important thing is to start with a broad sweep, so you don’t miss any opportunities to gain better protection or overlook any important threats to your business.

Intellectual property is the sub-set of intangible assets that has special protection in law. When considering how to categorise this wider body of assets, it’s important not to simply focus on the three main types of IP rights that can be registered (patents, trade marks and designs), but to also look at the various copyrights, contractual, non-contractual trade secrets and other rights that may be important to your business.

Accounting standards illustrate the breadth of things you might find. In particular, International Financial Reporting Standard (IFRS) 3 (that governs how multinational corporations account for assets obtained as a result of mergers and acquisitions) suggests five main headings for intangible assets and a representative set of contents for each one.

This is summarised in Figure 2.

## 2. Things you can do for yourself

IFRS 3 shows how wide-ranging an intangible asset assessment should be. However, it is important to note that even this lengthy list of categories may not cover all types of asset that may be found in a business, because it is limited to those that are underpinned by legal or contractual rights, or which are theoretically separable from the business that owns them.

<b>Marketing-related assets</b> <ul style="list-style-type: none"><li>• Registered and unregistered trade marks</li><li>• Internet domain names</li><li>• Trade dress (colours, shapes and packaging designs)</li><li>• Newspaper mastheads</li><li>• Non-compete agreements</li></ul>	<b>Technology-related assets</b> <ul style="list-style-type: none"><li>• Patents</li><li>• Computer software</li><li>• Unpatented technologies</li><li>• Breeding rights</li><li>• Databases</li><li>• Trade secrets, such as secret formulations, processes or recipes</li></ul>
<b>Customer-related assets</b> <ul style="list-style-type: none"><li>• Customer lists</li><li>• Order or production backlogs</li><li>• Customer contracts</li><li>• Other non-contractual customer relationships</li></ul>	<b>Artistic-related assets</b> <ul style="list-style-type: none"><li>• Plays, operas and ballets</li><li>• Books, magazines, newspapers and other literary works</li><li>• Pictures and photographs</li><li>• Video and audio-visual materials</li></ul>
<b>Contract-related assets</b> <ul style="list-style-type: none"><li>• Advertising</li><li>• Construction, service, delivery and supply contracts</li><li>• Licences and similar agreements</li><li>• Permits</li><li>• Franchising agreements</li><li>• Broadcasting and operating rights</li></ul>	

Figure 2. Typical assets that may be included in an IP assessment

## How should I structure my IP diagnostic report?

“The six headings shown here should act as a useful set of categories to help you find all the key intangible assets your business owns”

While you should tailor your report to suit your individual business needs, it is generally helpful to have a structure in mind to make sure you don't miss anything important. Experience suggests that six headings should be sufficient to spot the assets that matter most.

The IFRS headings provide useful pointers of where to look within your business in order to find intangible assets. It's likely that some will be 'owned' by your sales and marketing team, some by whoever looks after your creative or technical development activity, and some by the person responsible for legal matters. However, if you use them to compile the actual diagnostic, you'll end up putting assets with similar qualities under different headings. As one example, assets protected by copyright might be found under all five of them.

You can start with a simple list. Examples of possible categories or headings are as follows:



Registered IP rights



Copyright



Contract



Internal resources



External relationships



Approvals & endorsements

- **Registered IP rights**—either obtained or in progress—should have their own heading. There are statutory procedures to follow to maintain their protection so they require careful monitoring.
- **Copyright** should have its own heading because the assets it covers are so diverse and widespread. As well as creative assets like books, pictures and music, it includes software code, process maps, notebooks and marketing literature. The accompanying guides in this series contain further details on other things that fall under this heading.
- **Contracts** come next because these assets are binding commitments. Not all of them will be with outside parties; for example, employment contracts are very important in protecting IP rights.
- **Internal resources** provide a useful heading to record other things that are unique to you but are not (or are not yet) IP such as trade secrets and confidential trading records.
- **External relationships** consider all the dealings you have that are not contractual but nevertheless, contribute to your business model. These may include customer and supplier lists, for example.
- **Approvals and endorsements** can be used to record awards, permissions to trade, quality certification and other assets that are not necessarily unique to your business but help customers have confidence in your company.

## 2. Things you can do for yourself

When you are compiling a diagnostic report, it is important to consider all the intangible assets available to the company. You should also consider assets you have acquired (which might be through buying another business), assets you do not own but nevertheless use (for example, under licence) and assets you have created but are not using (there may be commercial opportunities in these unexploited assets also).

### Can I use my diagnostic to create an intangible asset register?

**W**hile you are in the process of categorising the types of asset your business has and uses, you may find yourself going into some detail on the identity of the individual assets themselves. If this happens, you will already be part of the way to creating an intangible asset register.

*“An asset register makes it easier for you to retrieve data on any IP or intangible you own, and can help you to formulate IP policy”*

You are especially likely to get drawn into the detail if you have a wide product range with distinctive styling or features. It may also happen if you have an extensive catalogue of copyright-protected assets (like musical compositions, photographs, drawings or articles).

In this case, your ‘internal auditor’ should be well placed to start creating a detailed intangible asset register—in essence, a list of all the IP and intangibles the company owns, when they were created, who created them, their status and where they are located (using electronic file links, for example).



This thorough level of understanding can be very helpful in developing an IP strategy or policy because it gives you clarity regarding the assets that you are trying to nurture, protect and exploit commercially.

You can use the same headings as those proposed for the IP diagnostic to sort your assets into types. For each individual one, it is good practice to record some details of its name and description together with the date of creation, inventor’s identity and the basis of the rights to use it. If a legal document (e.g. an assignment, licence, IP right or other contracts) is associated with the asset, then a link or reference to this document should be included to indicate where it is located.

Figure 3 provides an extract from an imaginary register to show you the level of detail that might be required.

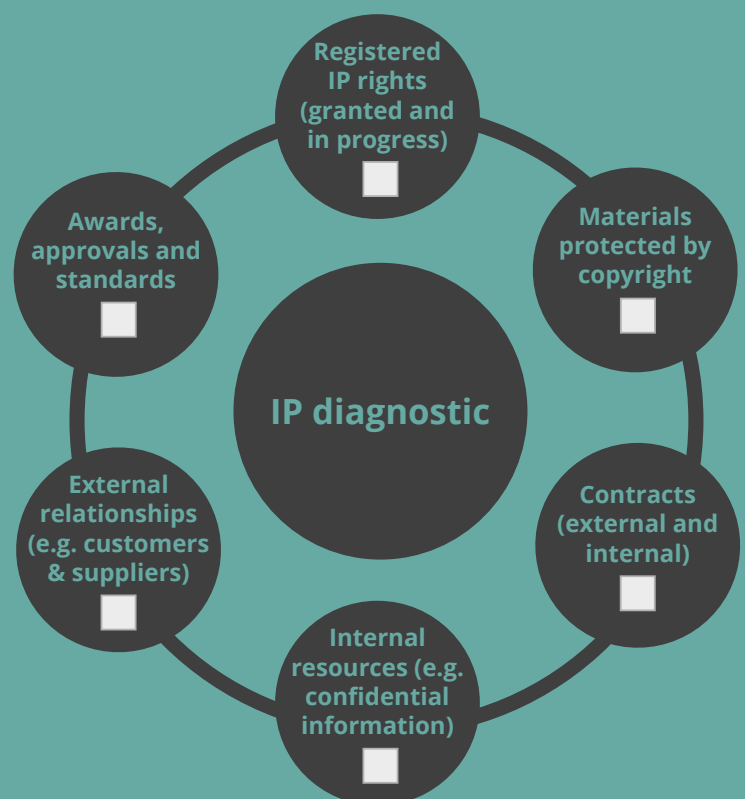
ASSET	DATE CREATED	DESCRIPTION	WHERE LOCATED/ STORED	TYPE	ORIGINAL IP CREATOR & OWNER	RIGHTS VIA
Photos of team on away day	4th June 2016	Photographs used on website and in marketing materials	F Drive	Copyright	Event Photos SG	Contract (assignment signed 20th June 2016)
Trade Mark SG 12334334 Classes 9 and 35	16th March 2014	Company logo in greyscale	SG TM SG 12334334	Trade mark	Internally owned. Drawn by employee	Employment
Service agreement	8th February 2016	Key contract with XXY to supply our services	Filing cabinet 1 Drawer 2	Contractual	Internal	

Figure 3. An extract from a sample IP asset register



## SUMMARY

The following summary provides a simple reference to the categories you may wish to consider when compiling your own IP diagnostic report.





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