WHAT IS IP?

Everyone who enters work in the New Blood Awards retains their IP. If a brand would like to move forward with your idea, they will need to enter into a negotiation process with you. To help make the rules around IP easier to understand, law firm Lewis Silkin has broken it down for New Blood entrants:

What are Intellectual Property rights and why do they exist?
'Intellectual property rights' help protect the results of an individual's creative or intellectual effort. In other words, when an individual (we will call them an 'author') creates something (the thing they create is known as a 'work'), the law grants them a right to control the 'work' that they produce and to prevent others from exploiting it without permission. In the present day, intellectual property rights have evolved into a small number of distinct categories or 'types' of intellectual property rights, namely: copyright and moral rights, trade marks, design rights, patents and confidential information. Different laws apply to each type of intellectual property right. In this guide, we will focus on copyright and trade marks.

What is copyright?
Copyright is simply the exclusive right of the author of an original work to use, control and exploit that work. Generally speaking, copyright can exist in any literary, dramatic, musical or artistic work, as well as in films, sound recordings, broadcasts, and in the layout (known as the 'typographical arrangement') of a published work. The copyright owner can:

- make an adaptation of the work (eg by translating it);
- sell the work (known as an assignment), or allow others to use it in various ways via licensing arrangements;
- perform, show or play the work in public (eg performing a play, or showing a video in public);
- communicate the work to the public by broadcast or electronic transmission (eg via TV or radio broadcasts; or via the internet).

What about 'ideas'?
It's important to note that copyright protects the recorded form of the author's work. It doesn't protect the underlying 'idea'. In other words, an author cannot own the copyright in an idea, but they can protect their expression of the idea. A script, photograph, film and so on are all capable of copyright protection, but if an author can simply describe the broad outline of an idea or concept to a friend or client during a meeting there isn't yet a copyright work which is capable of protection. The 'recorded' element could be in the form of putting pen to paper, recording the work electronically or any other similar method that creates a record.

Example 1:
Taking book designs as an example, anyone is free to design a book cover with a boy wizard on the front – provided it is not a direct copy of the actual appearance of Harry Potter's character, or a similar appearance to the Harry Potter character in the Harry Potter books/franchise along with similar story contents.

In other words, it is not possible to protect a mere idea (the idea of a boy wizard on a book design with story contents about being a student wizard), but it is possible to protect the expression of the idea (the actual appearance of Harry Potter's character and storyline in the Harry Potter books/franchise).

A book design in this example that is likely to be infringing would be a design with a boy wizard who has black hair, glasses and a distinctive facial scar, with the design labelling the book as 'The Boy Wizard and the Sorcerer's Gem', and contents about an English boy wizard with two friends called Rob and Hermie. Alternatively, if the character used on the design and in the story was a Brazilian boy wizard with the book labelled as 'Wilfredo the Wizard', who has curly purple hair, this is less likely to cause an infringement on the copyright.

Example 2:
Taking animation submissions as an example, anyone is free to design an animation with an animated ogre amongst its characters – provided it is not a direct copy or too similar to the big green ogre character, Shrek, as seen in the Shrek animation franchise.

In other words, it is not possible to protect a mere idea (the idea of a green ogre as an animated character), but it is possible to protect the expression of the idea (the actual appearance and depiction of Shrek's character). Establishing a claim for infringement is very fact specific and the merits of such will depend on the expression of the idea of a story about a big green ogre. Specific considerations could be if the ogre in the animation has a Scottish accent, wears the same or similar clothes, is it the same size and shape, has an outspoken American-accented donkey accomplice, or has other similar characteristics.

Example 3:
Taking a commercial ad campaign as an example, anyone is free to create a campaign about a postman who delivers letters and works for the Royal Mail. However, there would be copyright infringement if the advert was about the job of a postman who had a black and white cat called Jess, and is working in a town called Greendale for the Royal Mail, and the features of his character closely resembled the famous TV show and character Postman Pat. This advert may infringe a copyright. As with the previous examples, it is not possible to protect a mere idea (the idea of an ad campaign about a postman), but it is possible to protect the expression of the idea that is used in the ad campaign (the appearance and storyline of Postman Pat).

In practice, whether or not someone has copied a work or developed it independently will depend on the facts (and evidence) of each individual case, which again is why it is important for all creatives to keep accurate and, if possible, dated records of their creation and developmental process. It is not impossible that two creatives or brands could develop a very similar campaign. If an author cannot prove that someone has copied the work, then it may be difficult for them to prove their rights have been infringed. However, an inference of copying can be made if the author's work is in the public domain or has previously been shared with the other party. The burden would then be on the other party to prove that they didn't copy and/or it was independent creation.

What are the consequences of infringing copyright?
If an author believes their rights are infringed, they are entitled to take action through the courts. The courts may, if they agree that copyright has been infringed (and no exceptions or defences apply):

- grant an injunction to stop the current infringement and/or prevent further infringement;
- order the infringing party to pay damages or an account of profits to the author; and/or
- order the infringing party to deliver up the work to the author, or destroy the infringing copies.

In practice, suing a party for copyright infringement at court is uncommon and most allegations of infringement can be resolved without the need for legal action. The first step for an author would be to send a 'Letter Before Action' to the infringing party, putting them on notice of their rights and particularising the author's allegation of copyright infringement. The claimant party may ask for undertakings, which are contractual promises that the alleged infringing activity will cease and not occur again in the future.