

Intellectual Property for Business Series
No. 8

Insuring Innovation

A pocket guide to IP and insurance for SMEs

WIPO

Insuring Innovation

A pocket guide to IP and insurance for SMEs

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Foreword

I am pleased to present *Insuring Innovation: A pocket guide to IP and insurance for SMEs*. This guide offers small and medium-sized enterprises (SMEs) a practical introduction to insurance as a tool for managing intellectual property (IP) risks and pursuing commercial opportunities.

This publication forms part of WIPO's *Intellectual Property for Business* series. These guides are designed to help SMEs understand the importance of IP and the benefits they can derive from its use.

The guide accompanies the launch of the IP & SMEs Topical Dialogues, a WIPO initiative exploring the connections between IP and key business dimensions, including insurance, corporate governance, taxation and brand management. Each Dialogue will bring together businesses, policymakers, practitioners and academics, and will be complemented by a publication preparing the ground for informed discussion and providing a lasting source of practical guidance for SMEs.

This guide on IP and insurance addresses three practical questions: what IP risks businesses face, what protection insurance can realistically provide, and how sound IP management can help them obtain suitable cover. I hope it will serve as a useful reference for SMEs seeking to manage these risks and protect the value of their intangible assets.

Marco M. Alemán
Assistant Director General

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The guide was edited and designed by WIPO's Digital Engagement Service, led by Charlotte Beauchamp (Head of Publications and Design).

About this guide

Who this guide is for

This guide is for owners, founders and managers of small and medium-sized enterprises (SMEs) who want a plain-language introduction to intellectual property (IP) insurance: what it is, what it can realistically do for a business and how to approach the market. It assumes no prior knowledge of insurance or intellectual property law.

What this guide covers

This guide provides a concise overview of the practical side of IP insurance for SMEs:

- The different types of IP risk and the types of cover available for each
- The current insurance market and how it varies across regions
- How insurance can support commercial opportunities and enhance your business value
- Practical steps you can take to strengthen your position with insurers
- How artificial intelligence is reshaping IP risk and what it means for your business

This guide is not intended as a comprehensive treatment of the field, nor does it set out policy positions or recommendations.

The role of insurance in IP-backed financing, including credit risk and IP collateral protection insurance, is also not in scope for this guide. Although

such arrangements indirectly involve IP assets, they are primarily designed to mitigate financial risks associated with lending transactions, rather than risks arising directly from IP rights.

Disclaimers

This guide does not constitute legal, financial, or insurance advice. Readers should always seek independent professional advice before making decisions about IP insurance or any other insurance product.

Any insurers, brokers, or other providers named in this guide are included for informational purposes only. Their inclusion does not constitute an endorsement or recommendation of any particular provider or service, and the absence of a provider does not imply the opposite.

1. The growing value of your intellectual property

Fifty years ago, the value of a typical company could be found in its physical assets: buildings, land, equipment, machinery and stock on shelves or in warehouses. In 1975, intangible assets – intellectual property (IP), data, software, brand and proprietary know-how – only accounted for 17 percent of the market value of companies in the S&P 500.

Today, that number is around 92 percent.[1] Globally, the value of intangible assets held by the world's largest firms reached an estimated USD 97.6 trillion in 2025.[2] WIPO research has also found that investment in intangibles has consistently outpaced investment in physical assets since 2008, across 27 major economies.[3]

IP: your most valuable asset?

The shift to intangibles is also accelerating in middle-income countries, driven by the rise of digital business models, global value chains and knowledge-intensive industries.

Intellectual property (IP) lives at the center of this transformation. IP rights – patents, trademarks, designs, copyright, and trade secrets – allow companies to capture the value of their innovations, protect their brands, and build their competitive advantage. For many firms, particularly in pharmaceuticals, technology, and creative industries, IP is not merely one asset among many: it

1 Johnson, M. (2026). Ocean Tomo 2025 Intangible Asset Market Value Study. Ocean Tomo, 12 February 2026. Available at: https://oceantomo.com/insights/ocean-tomo-releases-2025-intangible-asset-market-value-study-results.
2 Brand Finance (2025). *GIFT™ 2025 Report*. Available at: https://brandfinance.com/insights/gift-2025-the-annual-review-of-the-worlds-intangible-value.
3 WIPO (2025). *World Intangible Investment Highlights 2025*. Available at: https://www.wipo.int/web-publications/world-intangible-investment-highlights-2025/en/world-intangible-investment-highlights-2025.html.

is the business. This is even more true for small and medium-sized enterprises (SMEs) operating in these spaces, where the value of what they have invented, built, or branded is often worth more than their equipment, premises and cash in the bank combined.

What are intangible assets?

Intangible assets are those that lack physical form but generate economic value for their owners. Intangible assets include inventions, creative works, software, databases, brands and organizational know-how. Many intangible assets are protected by IP rights.

The demand for IP insurance

Insurance is one of the ways that businesses protect themselves from financial loss from events that would otherwise fall on their own resources: damage to property, liability to others, or a disruption to their activities. With market values increasingly influenced by intangible assets, there is growing demand for insurance against the financial consequences of a dispute over IP, or against the loss of the value of IP. However, while stock market figures say that intangible assets make up most companies' value (92 percent) today, insurance mainly covers tangible assets such as buildings, vehicles and equipment (58 percent); the cover for intangible assets is only around 17 percent.[4]

This insurance gap is not a small or incidental risk. A single patent infringement case can cost hundreds of thousands, or even millions of dollars in legal fees alone. A WIPO survey of disputes in technology transactions put average legal costs at roughly USD 475,000 for a case in the firm's home courts and more than USD 850,000 abroad, with foreign proceedings lasting around three and a half years.[5]

4 Aon-Ponemon (2022). *Intangible Assets Impact Report*, EMEA Edition. Available at: https://www.aon.com/insights/reports/2022/2022-aon-ponemon-emea-report.

5 WIPO Arbitration and Mediation Center (2013). *Results of the WIPO Arbitration and Mediation Center International Survey on Dispute Resolution in Technology Transactions*. Available at: https://www.wipo.int/export/sites/www/amc/en/docs/surveyresults.pdf.

Large corporations plan for IP litigation as a cost of doing business and can even leverage disputes to their advantage. But SMEs rarely have the resources to defend themselves or bring their own suits against others. For a small company built around a piece of valuable IP, an infringement claim – even a meritless one – can be an existential threat.

The numbers

92 percent of the S&P 500 market value is held in intangible assets.

The world's largest firms held intangible assets valued at **USD 97.6 trillion** in 2025.

Investment in intangibles has grown **3.7x faster** than investment in physical assets since 2008.[6]

Only **around 17 percent** of potential losses arising from intangible assets are insured vs. **58 percent** of tangible assets.

6 WIPO (2025). *World Intangible Investment Highlights 2025*. Available at: https://www.wipo.int/web-publications/world-intangible-investment-highlights-2025/en/world-intangible-investment-highlights-2025.html.

2. Does insurance cover IP risks?

Insurance is the business of transferring the risk of financial loss from one party to another, in exchange for a premium. But not every risk can be transferred this way.

For a risk to qualify, three things generally need to be true:

1. The loss must be outside the insured party's control (randomness).

2. The loss must have a monetary value (quantifiability of the loss).

3. The party seeking cover must have a genuine economic stake in the outcome.

The first two conditions determine whether a risk is insurable at all; the third is what insurers call an "insurable interest". Together, the three conditions are what make a risk insurable.

By that test, most risks attached to a patent, trademark, design, copyright, or trade secrets are insurable in principle, though meaningful protection can be more difficult to access in practice. The market is still relatively small and concentrated with a few specialist providers, due to the unique nature of IP risk.

Covering the cost of a dispute

The most established IP insurance products available on the market cover the cost of a dispute. If someone accuses you of infringement, or you need to enforce your own rights against another party, your financial exposure comes in the form of legal fees, the cost of enlisting experts and possible damages or settlements.

Covering the potential loss of an asset's value

There is a much smaller and specialized market for IP insurance that covers you against potential loss of value of the asset. This can happen if, for example, a trade secret is stolen, a granted right is revoked after a challenge, or if a seller's promises about their IP in a sale turn out to be wrong. Here, the loss is the underlying worth of the IP asset itself. This is more difficult to insure, and practical availability for SMEs remains limited.

Types of IP insurance cover available

As an SME, you need to understand the types of IP risk you are facing. And you need to know how accessible available cover is for your business. Table 1 outlines the types of insurance cover currently available by risk type.

Table 1. Insurance cover by risk type

Risk type	What it covers	Who typically buys it	Accessible for SMEs?
1. Defense	Legal fees, expert costs, damages and settlements when you are accused of infringing someone else's IP	Any business using technology, branding, or content in the ordinary course of business	The most accessible, most established segment of the market
2. Enforcement	The cost of pursuing someone who has infringed your IP	IP-intensive firms with a right worth defending	Sold to smaller firms as an add-on to defense cover, subject to a merits test
3. Validity	Legal costs of defending a granted right against a challenge	Firms with registered IP facing (or anticipating) a challenge	Usually available as an extension to defense cover, rather than standalone
4. Value-based	Loss of the asset's own worth, through title defects, trade secret leaks, or IP warranties in a deal with a seller	Mostly larger firms, with narrow exceptions for trade secrets	Rarely available for SMEs

1. Defense cover: the most established option

Defense cover is triggered when someone else claims that your product, brand or content infringes their IP rights. This is the most mature and accessible part of the market for a good reason: even a weak or meritless suit requires a response, which costs money regardless of the outcome. This type of cover is

relevant for all businesses – not just those that are IP-intensive – because any company can become the target of a lawsuit.

Defense cover typically pays legal fees, expert costs, damages awards and sometimes settlement amounts, where the policy allows. This type of cover is available from a number of specialist insurers. Premiums and cover limits are generally set on a case-by-case basis depending on your sector, territory and claims history.

2. Enforcement cover: available as an add-on

Enforcement cover helps offset the expense of pursuing someone who is copying your product, using your brand, or infringing your patent.

Smaller firms usually buy enforcement cover as an addition to defense cover, rather than as a standalone product. In the United Kingdom, public guidance lists enforcement and defense together as a standard product that can be bought separately or combined. Specialist underwriters in the London and US markets offer enforcement cover to firms of all sizes. However, underwriting is more selective for larger programs and patent actions in the US, with lower limits in some products.

Before funding an enforcement action, the insurer will seek a legal opinion that the claim has a reasonable chance of success (above 50 percent or 60 percent) and is commercially justified. This is called a merits test. If you disagree with the insurer's view, most policies let you submit an independent opinion.

Money recovered from the other side in a lawsuit first goes to reimburse what the insurer has paid. However, the insurer does not take a share of the remainder as a litigation funder would. You will usually carry an excess and, under many policies, a co-insurance share of the costs.

In the European Union Intellectual Property Office's 2022 survey of SMEs owning registered IP rights, 15 percent reported an infringement. Fewer than a third of those went to court, citing lengthy proceedings (33 percent) and expensive legal fees (26 percent) as the most common reasons to not pursue a claim.[1]

Enforcement cover can change that statistic for SMEs, turning the legal right to exclude others from using your IP into an affordable tool to manage IP risk strategically.

1 European Union Intellectual Property Office (EUIPO) (2022). Intellectual property (IP) SME scoreboard 2022, 15 September 2022. Available at: https://www.euipo.europa.eu/en/publications/intellectual-property-ip-sme-scoreboard-2022.

The insurer must agree before any costs are incurred. The lawyer you use is subject to the insurer's approval or guidelines (some policies start with a panel).

These conditions typically apply to both defense and enforcement cover.

3. Validity cover: usually bundled in

A granted IP right is not necessarily a settled matter. Patents can be challenged, trademarks can be canceled, and a defendant facing an infringement claim will often attack the validity of the right being asserted against them.

The *legal cost* of defending your right's validity is generally insurable. Validity cover is often included as an extension of standard defense cover rather than sold separately. If a right is successfully challenged and struck down, the *loss in value* then falls into the value-based cover category below.

4. Value-based cover: rarely available for SMEs

Note: Cover for the value of an IP asset is rarely sold to SMEs. It is included here for completeness and awareness, as small businesses may still encounter it as part of a deal with a large enterprise.

Businesses can lose their IP value in ways that have nothing to do with a legal dispute. For example, a patent expires, a technology becomes obsolete, or a trademark loses its distinctiveness. These events are treated as ordinary business risks, and so are not insurable.

However, a handful of narrower products exist to cover a genuine, insurable loss of IP value:

Title cover

Title cover protects against the risk that your business does not own what you think it owns. For example, this could include an assignment from a founder or contractor that was never properly completed. Title cover is rare as a standalone product and is usually addressed as part of a wider deal.

Transactional cover

Transactional cover (often called warranty and indemnity or W&I insurance) protects the promises a seller makes about their IP during a sale or licensing deal. SMEs are more likely to encounter this as a seller in a transaction than to buy it directly.

Trade secret cover

Trade secret cover is when a trade secret's value is agreed upfront, and the policy pays out against that figure if it is stolen or leaked. This remains a niche product, but it shows that the model can work where a value can be fixed in advance.

Cover you may already hold

Cyber and media liability policies often provide some incidental IP protection, such as copyright or trademark claims arising from online content. This cover exists at the edges of IP insurance rather than as a dedicated product, and it should not be relied on as a substitute for full cover. AI exclusions are also now being added to these policies: see Chapter 6 for more detail.

How do insurers assess IP risk?

IP risks are different from the types of risks that standard commercial insurance products were designed to handle. This means that providers are usually highly specialized in IP, and underwriting involves significant manual effort to adequately assess how risks arise, how likely losses are to occur and how severe they may be. The following factors contribute to uncertainty around IP risk.

IP is difficult to value

A vehicle or a piece of machinery typically has a clean replacement cost. By contrast, most IP does not even appear on a company's balance sheet, because standard accounting rules generally only recognize IP that has been bought, not built. Companies may not have a full picture of their own IP internally, as information about ownership is scattered throughout contracts, licenses, policies and other legal and operational documents.

Disputes are not random

Insurance is built around the idea of accidents and unforeseen events: a fire, a theft, or an equipment malfunction. IP litigation is rarely accidental. The timing is often strategic: a startup in the middle of a funding round finds a competitor suddenly bringing a patent challenge, where the objective is not to win the suit, but to depress the startup's valuation while investors are running due diligence. The deliberate timing makes IP risk fundamentally different from the risks insurers are used to pricing.

There is an actuarial data gap

Insurance pricing typically relies on decades of loss data, looking at the frequency and severity of a large number of comparable past events to determine the level of risk. But most IP disputes settle privately, so there is little public record of how often they happen or what they cost. Since the loss data does not exist at scale, insurers may find it difficult to accurately assess the risk, and so tend towards caution with lower limits and higher premiums.

Losses can be very large and hard to predict

A car accident or a flooded stockroom has a bounded upper cost. By contrast, IP litigation can escalate quickly and unpredictably. Injunctions, escalating damages, or knock-on commercial harm on both sides of a dispute mean that the upper bounds of the potential losses are difficult to forecast in advance.

How do I find the right cover?

What does IP insurance not do?

IP insurance does not strengthen a weak IP right. It does not pay for customers or income lost while a dispute runs. It does not restore a secret once it has been published. And it does not replace the records of ownership and management on which every policy depends. IP insurance cover rewards a well-kept IP portfolio.

Before you approach the market, there are a few questions to ask to clarify the cover you need:

Are you worried about being *accused* of infringement, or about needing to *enforce* a right you hold?

Look at defense cover, with enforcement cover as a potential add-on.

Does your business hold a registered right (patent, trademark) that could face a formal challenge?

Ask about validity cover as an extension to defense cover.

Is your core value tied up in something that could lose its worth outside of a lawsuit, such as a trade secret or a core brand asset?

Look at value-based cover, but expect a narrower market and an in-depth conversation about valuation.

Do you already hold cyber, media, or general liability insurance?

Before assuming you have a gap, check your current insurance cover. Clarify whether a generative-AI exclusion has been added at renewal (see Chapter 6).

3. The IP insurance landscape

IP insurance is currently a small, bespoke market concentrated among a handful of specialist insurers. The cost of cover is typically on a case-by-case basis rather than a standard price list. The small number of insurers can make it harder to shop around. However, insurers in this space have a deep understanding of IP risk as a specialist area, rather than an afterthought bolted onto a general commercial policy.

IP is a small but growing insurance market

If IP insurance seemed too expensive or complicated a few years ago, it is worth another look today. The good news is that this market has become considerably more accessible over the past five years. Pricing has fallen substantially and entry thresholds have fallen. And at least one major insurer now offers a simplified product designed specifically for smaller businesses.

The main providers and brokers

A small number of specialist insurers write the bulk of standalone IP cover globally, including Tokio Marine Kiln, Arch Insurance, American International Group (AIG), AXA XL, Munich Re, Chubb, CFC Underwriting, and Intellectual Property Insurance Services Corporation (IPISC – a long-standing US specialist). Many operate through Lloyd's of London, which has historically been the main provider for this type of underwriting.

Most SMEs won't approach these insurers directly – your first real conversation about IP insurance is likely to be with a specialist broker or intermediary. You might be introduced by your patent or trademark attorney, who is frequently the first advisor to raise the question. The large global brokers – Aon, Howden, Marsh and Willis Towers Watson (WTW) – also place IP cover, and are the usual route for larger programs. The quality of your broker's IP expertise will shape your available options.

IP defense cover is more affordable

According to broker estimates, rates for IP defense cover have fallen by roughly 50 percent over the past five years. IP defense cover is now often cheaper than comparable cyber insurance.

Table 2 shows a pricing snapshot of defense cover, based on public guidance and published materials from insurers and brokers.

Table 2. Defense cover: approximate pricing ranges

	Smaller firms (policies sold to SMEs) – GBP*	Larger corporate programs – USD*
Limit of cover	100,000 to 1 million per policy	3 to 80 million (in one broker's program)
Annual premium	Roughly 1,000 to 5,000 **	About 1% to 4% of the limit; minimum premiums of around 15,000 with at least one specialist insurer
Excess (the first part of any claim, paid by you)	From about 1,000 on lower-limit policies	Negotiated per program; no public figures
Co-insurance (your share of the costs)	Under some policies, a percentage of the costs of a claim (10% with one US specialist***)	Negotiated per program
What moves the price	The territories covered (domestic is cheapest, then Europe, worldwide excluding the US, worldwide including it), the rights insured, the sector, claims history and the excess chosen. A formal valuation matters less than you might expect.	The same factors as for SMEs

Notes: * Figures are given in the currency of the underlying sources. Those for smaller firms are drawn from the UK market, where public guidance and specialist intermediaries for SMEs are most developed; those for larger programs from US and international programs. The orders of magnitude are similar in either currency. Table 2 is indicative only, as each policy is priced individually and no insurer publishes a tariff. Any quotation you receive will ultimately depend on the circumstances of your firm.
** As a rough indication, the UK Intellectual Property Office gives around GBP 1,500 for GBP 100,000 of cover for patents and less for other rights.
*** US specialist programs for smaller firms typically start from around USD 250,000 of cover, with an excess of at least 2 percent of the limit and co-insurance of at least 10 percent.

Sources: UK Intellectual Property Office (2026). *Guidance: Intellectual Property Insurance* (first published 2016, updated 2026). Available at: https://www.gov.uk/guidance/intellectual-property-insurance; CFC (2023). CFC introduces new IP solution for start-ups and SME businesses. 28 February 2023. Available at: https://www.cfc.com/en-au/knowledge/news/2023/02/cfc-introduces-new-ip-solution-for-start-ups-and-sme-businesses; UK specialist intermediary quotations (April 2026: about GBP 1,200 for GBP 125,000, GBP 4,500 for GBP 1 million); IPISC published terms (limits USD 250,000 to 10 million; retention 2 per cent minimum; co-payment 10 percent minimum); Marsh (2021). *IP Protect: Addressing the Intellectual Property Coverage Gap.* (Limits USD 3 to 80 million, premiums 1 to 4% of limit); Tokio Marine Kiln via Amwins (December 2021: minimum premium USD 15,000). https://www.amwins.com/resources-and-insights/market-insights/article/intellectual-property-q-a

There are two notable features of how pricing is set:

- **Valuation reports matter less than you might expect**

- Underwriters are usually more interested in your claims history, the jurisdictions you operate in, and your general financial standing than in a formal valuation of each of your IP assets.

- **Coverage is priced per risk**

- Pricing per risk means you should treat the figures cited in Table 2 as a starting point for a conversation, not as fixed prices. There is no standard price list. Each policy is written individually, often under delegated underwriting authorities. And the market is too small and varied to publish tariffs.

Enforcement and value-based cover are priced differently

The pricing snapshot in Table 2 applies to defense cover, which remains the most established and competitively priced segment of the market. Enforcement cover is usually bought as an addition to defense cover and often carries a co-insurance share. For patent actions in the US, it is priced and limited more selectively. Value-based products, where they exist at all, are priced individually around an agreed asset valuation rather than against any standard benchmark.

Your location affects your options

Where your business is based affects your access to available insurance options. Table 3 shows the current state of play for the IP insurance market.

The public schemes referenced in Table 3 are designed as bridges rather than permanent subsidies: the state carries part of the risk while insurers and firms build the claims experience that pricing depends on. The support is built to recede, with Japan tapering its subsidy after the first year, and China running its programs in three-year cycles.

Table 3. Current IP insurance markets worldwide

Region	State of play
United States (US)/London market	The most developed market, with the largest pool of specialist carriers and the most litigation data to draw on.
European Union (EU)	Smaller and more fragmented than the US/London market. The introduction of the Unified Patent Court has renewed policy interest in EU-wide insurance schemes, though nothing mandatory currently exists.
Republic of Korea	One of the most developed public systems in the world: government support covers 70% to 80% of premiums for technology-infringement disputes.
China	The largest public IP insurance system by scale, coordinated nationally and delivered through state-affiliated insurers, expanding rapidly under successive government plans.
Japan	Since 2016, this scheme has subsidized smaller firms' insurance premiums against overseas IP litigation. Government support has tapered over time: the state covers half the premium in year one, dropping to a third on renewal.
Singapore	Support focuses on disclosure infrastructure: a framework helping firms present their IP to lenders and insurers.

How to access cover if it is not available in your region

If you are based somewhere without a deep local market for IP insurance, you may be able to access the specialist expertise available in London or the United States via an extra step. There are two common routes: fronting arrangements; and local intermediaries.

A **fronting arrangement** is when a locally licensed insurer in your country issues your policy on paper but reinsures nearly all of the actual risk back to the specialist IP insurer overseas. The local insurer takes a fee for the service and holds very little of the risk itself.

A **local intermediary** may be authorized to bind cover directly on the overseas specialist's behalf. This is called a "coverholder" in the Lloyd's market.

In both cases, you are backed by the same specialist capacity as a business in London or New York. The main difference is who actually handles your claim, so be sure to ask your broker for more detail on whether you are dealing with a fronting arrangement or authorized intermediary.

How to approach a broker

IP is a specialized area, and each company's assets are different. There are some essential issues to consider when you approach a broker to discuss IP insurance.

As a useful first step, check the IP promises you have already made in your customer, supplier and licensing contracts. Knowing what you have signed up to is the best starting point for a conversation with a broker.

Your first broker conversation in five steps

1. Expect the conversation to move faster than it might have a few years ago.

Simplified SME products and falling rates mean this is a considerably more approachable market than its reputation might suggest.

2. Check the IP promises you have already made.

Look at your customer, supplier and licensing contracts. Knowing what you have signed up to is the best starting point for a conversation with a broker.

3. The broker's IP expertise matters.

Ask specifically about their experience placing IP cover. This is a specialist area, not a commoditized product where any generalist broker will do.

4. Be ready to explain your business, not just your IP.

Underwriters will want more than just a list of your registered rights. Your revenue, your sector and your territories may be considered more relevant than the formal value of your IP. However, at least one specialist underwriter (CFC) now gives an initial, non-binding indication from three data points: your company's legal name, your website and your revenue.

5. Ask where the policy's underwriter is based.

Your policy may be issued locally but backed by an overseas specialist insurer. Be aware that this is normal, but it can affect how quickly any claims will be dealt with.

4. Can IP insurance enhance business value?

IP insurance: more than a risk management strategy

Until you receive a threatening letter or email, it is easy to think you will never need IP insurance. But many SMEs encounter IP insurance for a different reason: someone outside the business asks for it, or something in the business lifecycle makes the risk suddenly visible. Insurers and brokers report that a growing share of inquiries are driven by customer contracts, investor requirements and deal activity, rather than the concerns about unexpected litigation.

IP insurance is more than just a protective strategy: it can be a commercial tool that actively enhances business value.

Signs that your business might need IP insurance

Even if a legal IP dispute never arises, IP insurance can help a business win a contract, close a funding round, complete a sale, or access finance. You might encounter IP insurance in the following instances. The examples in the box are examined in greater detail below.

Examples where IP insurance could be mentioned

- Accepting an IP indemnity in a contract
- Fundraising and investor due diligence
- Selling the business or licensing your IP
- Seeking investors
- Expanding into new markets
- Deterring an IP dispute

Accepting an IP indemnity in a contract

A customer, partner or distributor asks you to accept an IP indemnity. You make a contractual promise to cover the customer's losses if your product turns out to infringe someone else's IP.

Your existing contracts could contain IP indemnities that are uncapped or capped higher than you could afford to pay. An IP indemnity is a contractual promise to protect a customer if a third party claims that your product or service infringes its IP. It is increasingly common for large enterprises to ask technology suppliers, manufacturers and service providers to agree to this. These promises can be uncapped, or capped at a level well beyond what a small business could pay, so an obligation you signed in good faith can become one of your biggest financial exposures.

IP insurance can be extended to respond to this contractual liability, which turns an open-ended promise into a risk you can plan around. It can also make the difference between accepting a deal from a large client or walking away because you can't afford the risk.

Fundraising and investor due diligence

Before committing capital, investors examine the IP that underpins the company's value and any unresolved risk around it.

For technology, life sciences and other innovation-driven businesses, IP is often the core of what investors are backing. Insurance can offer reassurance that key IP assets can be defended and enforced without draining working capital that the business needs to grow.

The timing of a dispute matters here too. An infringement claim can arrive in the middle of a funding round, when an unresolved dispute can unsettle investors. Cover that pays for the defense puts you in a stronger position to respond calmly to investors' questions.

Selling the business or licensing your IP

You sell your business or license your technology. IP makes up a large share of what your business would be worth in a sale. The buyer or licensee will want clarity on ownership, validity and non-infringement.

When a company is sold or its IP is licensed, the seller gives warranties about ownership, validity and non-infringement. Warranty and indemnity (W&I) insurance can stand behind those promises. It is usually arranged on the buyer's side of the deal, but it can also benefit the seller by limiting how long and to what extent the founders stay exposed after completion.

Seeking investors

You are preparing to fundraise or apply for finance. You should expect investors or lenders to examine your IP closely to assess your business value and any risks.

When you apply for finance, lenders and investors weigh the risks around the IP that underpins your business. Cover for the cost of a dispute takes one of those risks out of their assessment.

Expanding into new markets

You are launching a new product or entering a new market. Some countries have a more litigious reputation than your home market, with different legislation around IP, rights and claims.

Moving into jurisdictions with higher litigation frequency and larger damages awards, such as the United States or Germany, may increase your exposure. Check that the countries you sell into are on your policy's schedule of territories: IP policies are written against named rights and named countries, and the United States is almost always a separate territory with its own price.

Deterring an IP dispute

As well as influencing how you operate your business, IP insurance can change how those outside your company behave. When your business can show it is able to fund its own defense, it becomes a less attractive target for weak or opportunistic claims. One study of a US insurance product aimed at claims by "patent trolls" (a colloquial term for companies that hold patents with the main goal of profiting from infringement claims) found that the patents named in the policy were asserted markedly less often once insurance cover was in place.[1] The evidence is limited, but it suggests that being covered can strengthen your bargaining position as well as your balance sheet.

1 Ganglmair, Helmers and Love, The effect of patent litigation insurance: theory and evidence from NPEs, *The Journal of Law, Economics, & Organization,* Volume 38, Issue 3, November 2022, Pages 741–773. Available from: https://doi.org/10.1093/jleo/ewab012.

5. Practical ways SMEs can manage IP assets

For many SMEs, the biggest obstacle to getting IP insurance is not the underlying risk: it is the paper trail. An insurer does not necessarily need a formal valuation of every single piece of IP you own, but they will need to understand how you came to own it, whether you rely on anyone else's rights, and what promises you have already made to customers and partners.

This is often difficult to address, as the information can be scattered across dozens of legal and operational documents throughout the business. A departed founder may have written critical code before the company was incorporated. A freelancer may have designed the logo without a signed assignment. An early version of the product may have absorbed a third-party tool or dataset with license terms that were never fully checked. None of this is unusual, and none of it necessarily makes a business uninsurable, but it does make it harder for an underwriter to understand the risk. And when an underwriter is faced with uncertainty, they generally price cautiously, restrict, or decline.

The good news is that this is the one part of the process that is fully within your control. You can't change how insurers price IP risk or how mature the market is in your region, but you can control how you document, track and manage your IP assets internally. It is also worth noting that none of this is a precondition for an initial quotation: insurers can usually give an indication for a straightforward risk from basic information about the business.

What do underwriters want to know?

Most underwriting conversations come down to four questions:

1. What do you own and how do you know you own it?
2. Do you rely on anyone else's IP, and on what terms?
3. What promises have you made to customers, partners, or investors?
4. How do you manage the risk around your IP day to day?

Everything in this chapter is about being able to answer those four questions with confidence: preparation is key for a productive conversation.

How do I build robust IP documentation?

While you don't need a forensic audit of every asset you have ever created, you do need a complete, working record that covers three key areas. Table 4 shows the IP documentation you need to have ready.

Table 4. IP documentation

Area	What to have ready
Portfolio	A schedule of your registered rights (patents, trademarks, registered designs) and key unregistered assets (trade secrets, proprietary code, brand assets), and the countries each one covers.
Ownership records	The chain of title behind each asset: assignments from founders or early employees, and especially anything built before incorporation or by freelancers and contractors.
Risk management framework	Policies and procedures that explain how you actively manage IP risk: how trade secrets are kept confidential, how renewal deadlines are tracked, how rights are actively maintained, and so on.

Start with the area that feels the least developed. For most early-stage companies, ownership records – particularly pre-incorporation work and contractor contributions that were never formally assigned – are often the weakest link in the chain.

What are insurers looking for?

Insurers are not looking for an airtight business, but certain issues will slow things down, narrow what is on offer, or increase your insurance premiums. These issues include:

- Known disputes or existing infringement allegations (not covered by before-the-event insurance)
- Unclear ownership of key IP
- Strong reliance on unlicensed third-party technology
- Adverse claims history
- Operating in a sector with an established pattern of IP litigation

None of these automatically rules out cover. However, **any existing disputes will be excluded from a new policy**, and the other factors will result in additional questions, specific exclusions, or a higher premium. Don't let your insurance underwriter discover an issue later: clear, early disclosure is always better! If your business is already in a dispute, there may be other routes you can pursue, such as after-the-event insurance against the other side's costs or litigation funding. However, these types of insurance fall outside the scope of this guide.

Your IP action checklist

1. Register what needs to be registered
Check that patents, trademarks and designs central to your business are filed in the territories where you operate or plan to operate.

2. Document your ownership chain
Track down assignments for pre-incorporation work, founder contributions and freelance or contractor output. Fix any gaps now, while relationships are still cooperative: this becomes difficult once a dispute is on the table.

3. Secure your trade secrets
Keep clear records of what is treated as confidential, who has access, and what steps you take to protect it (non-disclosure agreements, access controls, data classification procedures, and so on).

4. Get a fit-for-purpose valuation
Not every business needs a formal valuation report, but this is particularly useful if your business is built around a singular piece of valuable IP.

5. Check your existing insurance policies
Cyber, media, and general liability policies sometimes provide incidental IP cover. Know what you already have before assuming you are starting from zero.

6. Talk to a specialist broker
Come prepared with your portfolio, ownership records and a plain-language account of your business and IP value.

7. Check the territories on your insurance policy schedule
Make sure the countries you sell into are listed, and ask what each territory adds to the premium – including the US, if relevant.

8. Buy cover before a dispute arises
Most policies exclude known or pending disputes. If your business is already expecting a claim, you can still buy a policy, but that particular dispute will be excluded. Policies respond only to claims first made (defense cover), or infringements first discovered (enforcement cover), during the policy period.

6. Artificial intelligence: the new IP frontier

What does AI add to the IP landscape?

In a very short time, generative artificial intelligence (AI) has progressed from being a novelty to becoming a normal part of running a business. Understanding how AI tools work is essential to understanding the underlying risk. A generative AI model is trained on a very large body of existing material – text, images, code, video, audio – and learns patterns from it. When you provide it with a prompt, it produces new content based on those learned patterns. This creates two main risks.

First, when your business feeds its own material – code, designs, commercial plans, confidential documents – into an AI tool, you may be putting your IP at risk. Second, because the model was trained on existing material, the output it generates might closely resemble someone else's existing IP.

In some ways, these are not new problems: infringement and unclear ownership have always been central to IP risk. What is new is the speed and scale at which AI tools are proliferating these risks.

For a more complete picture of how AI is changing the IP landscape, see the WIPO resource list at the end of this report, including: *Learning Machines: An introduction to AI and IP for small and medium-sized enterprises.*

Is AI accelerating risks?

As Chapter 2 set out, potential losses in IP risk tend to fall into two broad categories: the cost of a dispute, and the loss of value of an IP asset itself. AI makes both these risks bigger, faster and harder to see coming. The risk runs in two opposing directions:

- **Input risk.** Every time you or an employee feeds material into an AI tool, you may be granting the provider a broad, sometimes perpetual license over it – and, if the material was confidential, you may have forfeited its protection as a trade secret. Most free and consumer-tier terms of service for AI tools grant the provider broad rights to use, store, or even train their models on what you input into their tools. Most SMEs don't have the resources to negotiate tailored agreements to protect their IP.

- **Output risk.** The output that an AI tool produces for you – text, code, an image, a design – could risk infringing someone else's existing IP rights. Also, there is a chance that you won't be able to establish clear ownership over the output yourself. Most consumer-tier terms of service do not promise exclusivity in outputs. Also, any legal risk that might arise from infringement is shifted squarely onto the user. Even if an AI provider's terms grant you the right to use outputs in commercial contexts, the question of whether AI-assisted work can be owned or copyrighted at all is still unsettled law in many jurisdictions.

How can I minimize IP blind spots?

Insurers price caution into what they can't clearly understand. AI sharpens this problem, because it can make ownership and provenance even harder to track. Many SMEs already use generative AI in some part of the business, and adoption tends to happen quickly and informally, without much of a paper trail.

Before AI touches anything that might become commercially important to your business, there are questions you need to answer with confidence to prevent AI-assisted work from becoming an IP blind spot in your business.

What are you putting in, and under what terms?

It is essential to know which tools your business uses, how they store and process your inputs, and what rights you may be signing away by using them. Bear in mind that AI providers usually treat free and paying users differently on this point, and commercial-grade agreements tend to come with stronger data protections.

What are you getting out, and can you show it is yours?

Where an AI-assisted output becomes commercially important, keep a record of the human judgment that shaped it, not just the prompt and the final result. This is what lets you demonstrate meaningful human authorship if that question is ever tested. As generative AI tools do not guarantee exclusivity and can also be inconsistent about citing their sources, it is also helpful to run your own originality checks on any outputs to make sure you are not inadvertently infringing existing IP.

Clear documentation and good governance are at the heart of a good mitigation strategy. A concise internal policy on acceptable AI use, an approved tool register, strong access controls and clear data classification can all help minimize IP risk in the age of AI.

Silent cover vs. actual protection

Many general liability, cyber and media insurance policies were written before generative AI existed. Some may respond to AI-related IP claims simply because nothing in the wording explicitly excludes it. This is sometimes called "silent" cover.

However, silent cover for AI-related claims may be slowly disappearing. In the US, standard-form exclusions for generative AI began reaching general liability renewals in 2026: one version removes precisely the "advertising injury" section where small firms' incidental IP cover usually sits. Elsewhere, insurers are adding their own wording, and each decides whether to attach it. The practical effect is that this silent cover could be removed at your next renewal, without necessarily being replaced by anything else.

A small number of AI-specific insurance products have started to appear. Some, like the Munich Re aiSure, are performance warranties that pay if an AI model fails to meet an agreed standard. However, they are not protection against infringement claims.

Other products extend existing cyber and technology liability policies to address AI-specific gaps more directly. The key takeaway is that, if a policy "covers AI risk", it is important to check specifically if that includes IP risks.

Some AI vendors also offer their own contractual protection: Microsoft and Google Cloud, for example, both commit to defend certain customers against

copyright claims arising from AI-generated output. These commitments are terms of the paid commercial services (not of free or consumer tiers) and apply only if the customer has implemented the vendor's required safeguards, such as content filters and documented testing. This means that your small firm on a standard commercial plan can rely on them, but only if you actively meet those conditions.

AI is helping to underwrite itself

The documentation challenge cuts both ways. Just as AI can make your IP harder to track, it is also starting to change how insurers assess risk in the first place.

Underwriting IP risk depends on information: what does a business own, what rights does it rely on, what promises has it made, and how exposed is it as a result? In practice, that information usually lives scattered across dozens of legal and operational documents, each written for a different purpose by a different party. Pulling a clear picture out of this material manually takes a lot of effort and specialist expertise, which is part of why IP underwriting has stayed slow, bespoke and concentrated among a small number of insurers.

AI is starting to change that: emerging tools can read large volumes of contracts and policies all at once and quickly structure findings into a single, legible document. Rather than a person working through each agreement individually – a process that could take weeks or even months – these tools can help identify patterns across a whole portfolio: ownership provisions, licensing restrictions, data usage rights, audit obligations and third-party dependencies.

To be clear, this process does not and should not replace legal or underwriting judgment, but it can make that judgment faster to apply, because the relevant information is easier to find.

This shift may matter more for smaller businesses than for large ones. Bigger companies have dedicated legal, risk and compliance teams, who organize and present this kind of information as part of their function. Most SMEs do not have that kind of resource, which has historically made it harder for them to be understood – and therefore priced fairly – by underwriters. Tools that can make fragmented information visible at lower cost may, over time, help narrow that gap.

Your AI action checklist

1. Map where AI already touches your business

It is important to know exactly where AI is being used and for what purpose, even if it is informal or peripheral to your main commercial activities.

2. Check your renewal terms for your cyber, media, or general liability cover

Ask your broker or insurer directly whether generative AI exclusions have been added, or if they will be in the near future.

3. Read the terms of the AI tools you use

This is particularly important around data retention, training use, and ownership of outputs. Remember that platform agreements can be different based on whether you are using a free, paid, or commercial tier.

4. Set a simple internal policy on acceptable AI use

Include a list of approved tools and clearly set out the kinds of confidential or sensitive information that should never be entered into them.

5. Keep a record of human input on AI-assisted works

This is critical for outputs that matter commercially to your business. Record the steps that went into editing, arranging and developing assets, and the human judgment involved at each stage.

6. Check if the vendor offers indemnity from infringement claims

If it does, confirm that you are on a paid commercial tier and that the vendor's required safeguards (content filters, documented testing) are switched on; otherwise, the promise will not apply to you.

7. Closing the IP insurance gap

IP insurance won't be the right tool for every SME in every circumstance. But for businesses whose value lies mainly in what they have invented, built, or branded, IP insurance can play a valuable role beyond an actual IP dispute.

Overall, the insurance market is moving: prices have fallen, products have simplified, and public schemes in several jurisdictions are providing bridges to cover for smaller businesses.

However, there is still a gap between the amount of IP risk that is *currently* insured and how much *could* be insured. This reflects a market that is continuing to adjust to the broader shift in where the value in a modern business lies: intangible assets, rather than physical ones.

SMEs can already find meaningful cover for the most common IP risk: the cost of defending against an infringement claim. Alongside this defense cover, enforcement cover is also commonly available, while value-based cover remains more difficult to access.

To access IP insurance, you must treat your IP the way you would treat any other business-critical asset: know what you have, understand what you have promised to others, and keep clear, complete records. This important groundwork is one part of the process that is fully within your control. Understanding your IP could help to open other opportunities to enhance your business in the future.

WIPO resources

WIPO (2026). Learning Machines: An introduction to AI and IP for small and medium-sized enterprises.

WIPO (2024). Generative AI: Navigating Intellectual Property.

WIPO (2024). Getting the Innovation Ecosystem Ready for AI: An IP policy toolkit.

WIPO (2020). Revised Issues Paper on Intellectual Property Policy and Artificial Intelligence.



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