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AN EXPERT DISCUSSION

with **Sumi Nadarajah** on the intellectual property landscape in Ireland

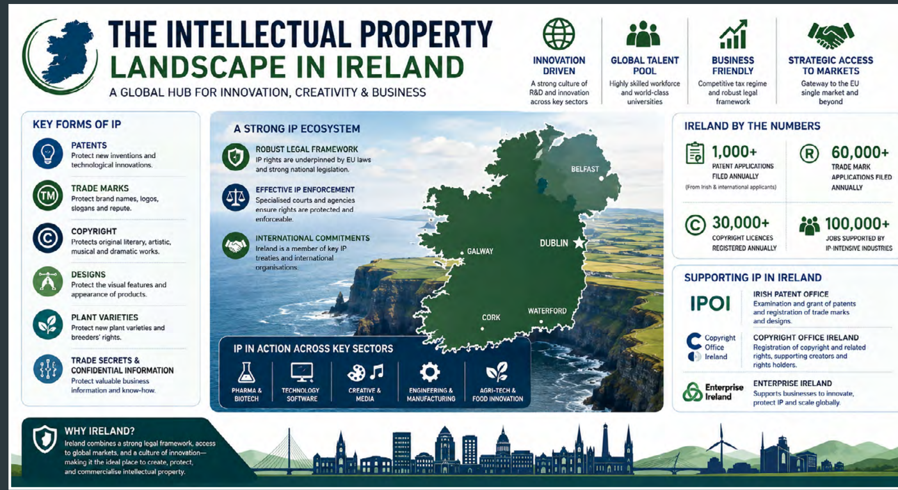
For businesses in Ireland, intellectual property has become a core commercial asset underpinning innovation, competitiveness and growth. As Irish companies scale internationally, adopt new technologies and operate in increasingly digital markets, the ability to identify, protect and strategically manage brands, inventions, designs, content and know-how can determine whether ideas translate into sustainable value. Against this backdrop, intellectual property is a critical area of focus for companies seeking to attract investment, defend market position and build long-term resilience in a fast-changing economy.

In this expert discussion, we talk with Sumi Nadarajah, partner at Dublin-based firm FRKelly. Involved in the full spectrum of IP law and protection, Sumi counsels foreign and domestic clients in the selection, clearance, prosecution and monitoring of Irish, UK and EU Trade Marks. She coordinates the worldwide IP portfolios of various leading Irish companies and also represents the trade mark interests of a broad range of SMEs and private individuals, specialising in the food and beverage, FMCG and packaging sectors. Sumi has significant experience in domain name matters with expertise in UDRP proceedings before WIPO.

Have there been any recent regulatory changes or interesting developments?

Since 2023, the Unitary Patent Court (UPC) has been operational across participating EU states. However, Ireland has not yet ratified the agreement because the Irish constitution requires approval by way of a referendum. In 2024, a proposed referendum was ultimately postponed. Ireland has still not joined. Upon ratification, Ireland would be covered by the European patent with unitary effect, allowing businesses to obtain patent protection across participating states through a single system and litigate before the UPC rather than multiple national courts. In addition to the obvious benefit of lowering litigation costs for multinational patent disputes faced by Irish companies, the UPC would also enhance Ireland's attractiveness to technology and life-sciences corporations.

At present, Irish companies will need to continue navigating patent litigation through national courts rather than benefitting from the streamlined, centralised UPC process. Recent UPC decisions have pointed towards the UPC's ability to determine infringement relating to non-UPC countries where there



is a sufficient connection to a UPC dispute – essentially the UPC "long-arm jurisdiction." If such a decision is upheld, it could indirectly affect Irish patent strategies until Ireland joins the UPC.

Recent European Commission consultations – The Counterfeit and Piracy Watch List and the Protection and Enforcement of IP rights in third countries – highlighted by the IP Department as being relevant to Irish rights holders. These are indicative that Irish IP policy attention in 2026 is strongly focused on international enforcement, online infringement, counterfeit marketplaces, and external trade-related IP risk.

What about notable cases or examples of new case law precedence?

In *Diesel SpA v The Controller of Patents, Designs and Trademarks and Montex Holdings Ltd* [2025] IECA 211, the Court of Appeal overturned the High Court and held that registration had to be refused where confusion would result under section 19, regardless of the opponent's conduct. This long-standing case reinforces the strict approach to confusion in Irish trade mark registration appeals and limits the scope for equitable considerations once the statutory test is met.

In *Yoplait v Danone / Nutricia* [2025] IECA 163, the Court of Appeal upheld, in modified form, an injunction preventing Danone's Irish launch of skyr products pending trial in a passing-off dispute, with the injunction reframed around passing off rather than "confusingly similar" packaging wording. A key takeaway in this dispute is that Irish courts remain willing to grant fast-moving interlocutory relief in branding and passing-off cases where market confusion and launch timing are central.

In *Sky v David Dunbar* [2025] IEHC 465, the High Court imposed a €30,000 contempt fine in copyright enforcement proceedings over an illegal IPTV service after finding deliberate breach of preservation orders. The defendant had also consented to judgment for €480,000 in damages for copyright infringement. This case highlights the increasingly strong stance on anti-piracy enforcement taken by the Irish courts.

Are there any new changes on the horizon and, if so, what implications do you anticipate?

Legislation such as The General Scheme of the Regulation of Artificial Intelligence Bill 2026 and The European Union (Artificial Intelligence) (Designation) Regulations 2025 are not IP-specific, but are likely to affect IP-related issues around authorship, training data, infringement risk, trade secret protection, and AI-enabled innovation governance

How does artificial intelligence affect intellectual property protection?

Artificial intelligence is both a friend and a foe to IP protection. On the one hand, it helps rights holders detect misuse more quickly and enforce their rights more effectively. On the other hand, AI creates new problems around copying, infringement, and ownership.

IP laws grant IP owners certain rights to exclude others. For instance, patent owners can prevent others from using their inventions without permission, and copyright owners can prevent others from copying their works without permission. These rights enable IP owners to be recognised and derive financial benefit from their creations, providing them with an incentive to invest their time, effort and resources into their intellectual creations. Traditionally, this has been one of the key justifications for IP laws. However, this reasoning does not apply to AI systems, which do not require an incentive to create.

Ownership of IP rights for AI-generated content is a complex issue. Traditional IP laws typically attribute inventorship to human creators. However, AI systems and tools, with their ability to autonomously generate inventive solutions, challenge this paradigm. Some argue that AI lacks the legal capacity to own rights, leading to varied opinions on who should be recognised as the rightful owner.

The main issues are who counts as the author or inventor, how training data is used, who owns AI-generated outputs, and how easily AI can produce similar content at scale. AI does not automatically weaken IP rights, but it does make poor IP management much riskier, so businesses need to keep clear records of human input, source materials, permissions, and ownership.

On a practical note, any Irish business using or licensing AI should review existing IP and technology documentation to ensure that AI-related risks are allocated clearly. Priority areas include ownership of outputs, permissions for input materials, confidentiality restrictions, warranties on non-infringement, audit rights and responsibility for third-party claims.

Good practice for Irish businesses utilising AI should include:

- An AI use policy governing approved tools, permitted use cases and restricted data categories.
- Enhanced monitoring for AI-assisted brand misuse, impersonation and counterfeit activity across digital marketplaces.

- Updated online terms or reservation language where the business wishes to limit text and data mining of protected content.

What are the biggest threats to intellectual property in the digital age?

Digital platforms make brand misuse, counterfeiting, and ownership confusion much easier to scale. The internet allows infringers global reach, while IP rights are still enforced country by country, so detection and enforcement are slower and more expensive. Online platforms also allow infringing content or counterfeit listings to reappear quickly even after takedowns.

How do copyright laws protect IP in the digital space?

In Ireland, anyone wanting to use copyright material generally needs permission from the copyright owner or a licence from the relevant collective management organisation. That is the legal basis for digital content licensing, platform permissions, and commercial reuse arrangements. Copyright protects digital IP mainly through the Copyright and Related Rights Act 2000, which gives the copyright owner exclusive rights to copy the work, make it available to the public, and make adaptations of it. Those rights apply to digital material such as website text, images, videos, software, sound recordings, databases, and other original works

What strategies can businesses use to protect their IP beyond the law?

Sometimes the best protection is speed and market position rather than formal rights. Continuous innovation, short product cycles, customer loyalty, strong branding, and careful licensing can reduce the commercial value of copying and keep businesses ahead of their competitors. Non-legal IP strategies could include:

- Regular IP audits and asset mapping.
- Online and market monitoring for infringement signals.
- Brand investment to stay ahead of copycats.
- Need-to-know access and cybersecurity controls.

What role do digital tools play in safeguarding IP?

Today, digital tools are very important in protecting IP. Measures like encryption, access controls, and digital rights management help prevent unauthorised access or copying before it happens. They are especially useful for protecting software, confidential information, media, product designs, and internal know-how shared or stored online.

Digital monitoring tools also help rights holders find infringement much faster than manual checks. In practice, these tools make IP harder to steal, easier to track, and quicker to enforce. However, they do not replace legal IP protection. The best approach is to use digital tools alongside contracts, staff training, and formal IP rights.

What are the key IP considerations before expanding into a new jurisdiction?

IP rights are territorial, so protection and risk must be checked on a country-by- country basis. Before entering a new market, a business should first confirm that its trade mark is available and that its product has freedom-to-operate from a patent perspective. These checks should be done before launch, not after. Early searches can uncover conflicting rights, bad-faith filings, or other local issues that may require a change of brand, a product redesign, or a different market-entry plan. It is also sensible to strengthen distributor, manufacturer, and licence agreements before entering the market.

How can trademarks, patents, designs, trade secrets, and copyrights reinforce brand positioning, scalability, and investor readiness?

Trademarks, copyrights, patents, and trade secrets all work together to protect and strengthen a brand, allowing it to stand out in a crowded marketplace. A strong IP strategy can increase brand recognition, enhance consumer trust, and offer a competitive edge that helps businesses grow. These IP assets help establish a business's position in the market by signalling

to consumers that the brand is unique and protected. They also serve as valuable assets that can enhance brand equity over time.

Trade indicators such as logos, names, and slogan can be protected by way of trademark registration which gives the owner exclusive rights and prevents these from being used by a rival with a view to confusing consumers. Similarly, patent registration can provide market exclusivity with regards to technological innovations, thereby protecting companies from being outdone by rivals replicating their inventions. Trade secrets preserve hard-to-copy know-how, and copyright protects code and content.

Together, these IP rights help a business grow more easily, make it harder for others to copy, and make it more attractive to investors because they turn intangible value into clear, manageable assets. Investors usually want to know whether a company's advantage is real, transferable and can be protected. A well-organised IP portfolio helps answer those questions. Strong IP can also improve valuation, create licensing opportunities, support strategic partnerships, and make due diligence smoother.

How frequently should organisations with a large patent portfolio assess their intellectual property and what are the best practice procedures for effective patent portfolio optimisation?

Regular annual audits, at the very least, are a crucial component of IP portfolio optimisation. Such IP audits can assist the business owner assess the relevance, value, and performance of its patents and trademarks, to ensure that its portfolio remains aligned with its business goals. One highly effective approach is strategic asset abandonment, where companies allow some patents or brands to lapse in order to focus resources on its higher-value assets. This strategy can greatly assist in reducing unnecessary cost and ensuring that its IP portfolio remains agile, relevant, and aligned with the company's core business objectives.

Effective IP portfolio management involves multiple stages, from idea capture and evaluation to strategic filings and collaboration with legal teams. It also involves focussing on minimising risks associated with IP infringements and seeking opportunities for monetisation through licensing and strategic partnerships. If a business seeks to maintain a strong market position and protect its innovations, a well-optimised patent and trademark portfolio is essential as it serves to supports business growth, drives innovation, and will provide it with a competitive advantage. The key is to focus on high-value patents and align its IP strategy with its business objectives to ensure that its patent and trademark portfolio remains a valuable asset.

All organisations which choose to protect their investment in IP face the challenge of portfolio optimisation. This is true irrespective of sector, geography or portfolio size. It is not unusual for organisations to experience overstocking of IP in some areas and understocking in others (i.e. too many or too few patents or trademark registrations). This imbalance means that your IP is failing to deliver full value for the money spent. The challenge is for the organisation to keep its IP strategy focused squarely on key commercial levers and to avoid being distracted by niche products or services that serve small markets with lesser revenue potential and that may absorb IP budget better allocated elsewhere. A good portfolio manager needs expertise, an attention to detail, knowledge of changes in law and a smooth working process. The trick is to be pragmatic, strategic, and efficient in managing the portfolio.

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How can IP be used to drive value in M&A transactions and how can the due diligence process assist in structuring transactions more effectively?

IP due diligence is an important part of any M&A deal, especially where the target's value comes from innovation, brand strength, or technology. Because many businesses depend heavily on intangible assets, reviewing their IP helps a buyer understand what the business owns, how much it is worth, and what risks may come with it.

A clear IP review helps the buyer know exactly what is being acquired and lowers the risk of disputes after the deal closes. Strong IP can also increase the value of a business by supporting higher pricing, licensing income, competitive advantage, and future growth. In some cases, it can even help with financing because IP may be used as security or as part of the company's investment story.

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Involved in the full spectrum of IP law and protection, Sumi counsels foreign and domestic clients in the selection, clearance, prosecution and monitoring of Irish, UK and EU Trade Marks. She coordinates the worldwide IP portfolios of a number of leading Irish companies and also represents the trade mark interests of a broad range of SMEs and private individuals, specialising in the food and beverage, FMCG and packaging sectors. Sumi has significant experience in domain name matters with expertise in UDRP proceedings before WIPO.

Originally hailing from Malaysia, Sumi joined FRKelly in 2005 after several years with a leading Dublin law firm. She was admitted to the Bar in England and Wales in 1997 and the Malayan Bar in 1998 and is now a non-practising member of both associations. Sumi was entered on the Roll of Solicitors (England and Wales) in 2003 and qualified as a Trade Mark Attorney in 2005. A contributor to the Irish chapter of The Manual for the Handling of Applications for Patents, Designs and Trademarks Throughout the World (Kluwer IP Law), Sumi is also extensively published in Lexology, WIPR, World Trademark Review and other publications within the retail sector in Ireland. She chaired the Copyright & Designs Committee of the Irish Association of Patents and Trade Mark Attorneys (APTMA) from 2015–2017 and held the office of Treasurer of this Association between 2020 – 2024, Vice President in 2025 and has recently been appointed as President of the Association.

She is also a member of the International Trademark Association (INTA), and has over the years been appointed as committee member of the Non-Traditional Trade Marks Committee, the Anti-Counterfeiting Committee, The Trade Mark Office Practices Committee. She currently sits on INTA's Law FIrms Committee. Sumi is a regular attendee of the INTA Annual Conference as well as the Asian Patent Attorney Association (APAA) annual meeting. She is often invited as a guest lecturer in the Law Society of Ireland and also tutors with the APTMA Education Committee.