

Intellectual property rights

What is intellectual property?

Intellectual property refers to creations of the mind: inventions; literary and artistic works; and symbols, names and images used in commerce. So, intellectual property consists of products, work or processes that you have created and which give you a competitive advantage.

There are 3 subcategories of intellectual property:

- *Industrial property*: inventions (patents), trademarks, industrial designs, new varieties of plants and geographic indications of origin
- *Artistic work protected by copyright*: original literary and artistic works, music, television broadcasting, software, databases, architectural designs, advertising creations and multimedia
- *Commercial strategies*: trade secrets, know-how, confidentiality agreements, or rapid production.

Unfair competition

Unfair competition, as a general rule, is any act or practice carried out in the course of industrial or commercial activities contrary to honest practices. The decisive criterion is - contrary to honest practices.

It is not easy to find a clear-cut and worldwide definition of what constitutes an act contrary to honest practices. Standards of 'honesty' and 'fairness' may differ from country to country to reflect the economic, sociological and moral concepts of a given society. Therefore, the notion of 'honesty' has to be interpreted by the judicial bodies of the country concerned. Conceptions of honest practices established by international trade should also be taken into consideration, especially in cases of competition between organisations in different countries.

Unfair competition includes the following aspects:

- *disorganization of competitor activity* (obtaining, use and publication of information about competitors and their business secrets without the consent of competitors, destruction of competitors' external advertising media, negative effects on competitors partners and customers);
- *direct discrediting of competitor* (distribution of false, inaccurate or distorted data about competitors in the way of unfair and unethical advertising);
- *indirect discrediting of competitors* (incorrect comparison of your products and competitor's products);
- *parasitic competition* (arbitrary use of foreign brand, copy of the goods, their packaging or design);
- dumping (if the purpose of dumping is to squeeze out of the export market local producers to dictate the own rules in this market later).

In general it is possible to classify unfair business practices into three broad categories:

Acts causing confusion

- An act or practice, in the course of industrial or commercial activities, that causes, or is likely to cause, confusion with respect to another's enterprise or its activities, in particular, the products or services offered by such an enterprise constitutes an act of unfair competition. Even the likelihood of confusion having a detrimental effect comparable to actual confusion constitutes an act of unfair competition and this widely enlarges the scope of protection. For instance, a trademark, whether registered or not, or a product's appearance may lead to confusion. Appearance of a product includes packaging, shape or other non-functional characteristic features of the product.

Acts that are misleading

- A misleading act can create a false impression of a competitor's product or services leading to the consumer, acting on false information, suffering financial damage. Misleading acts can take the form of a statement giving incorrect indications or allegations about an enterprise or its products or services. For example, misleading statements concerning the manufacturing process of a product may relate to a product's safety and create a false impression.

Acts damaging goodwill or reputation

- Reducing the distinctive character, appearance, value or the reputation attached to a product could damage another's goodwill or reputation. For instance, any act that dilutes the effect of a trademark is considered unfair as it could destroy the originality and distinctive character of a trademark.

World Intellectual Property Organization (WIPO)

Established in 1970, the World Intellectual Property Organization is an international organization dedicated to helping ensure that the rights of creators and owners of intellectual property are protected worldwide, and that inventors and authors are therefore recognized and rewarded for their ingenuity.

As part of the United Nations system of specialized agencies, WIPO serves as a forum for its Member States to establish and harmonize rules and practices for the protection of intellectual property rights. WIPO also services global registration systems for trademarks, industrial designs and appellations of origin, and a global filing system for patents. These systems are under regular review by WIPO's Member States and other stakeholders to determine how they can be improved to better serve the needs of users and potential users.



SHAKE UP START UPS

Many industrialized nations have intellectual property protection systems that are centuries old. Among developing countries, however, many are in the process of building up their patent, trademark and copyright legal frameworks and intellectual property systems. With the increasing globalization of trade and rapid changes in technological innovation, WIPO plays a key role in helping these systems to evolve through treaty negotiation; legal and technical assistance; and training in various forms, including in the area of enforcement.

WIPO works in close cooperation with governments, with intergovernmental and non-governmental organizations, and with multiple public and private sector stakeholders worldwide to help them realize the benefits of the international intellectual property system for society.

WIPO cooperation activities take many forms, including:

- assisting individual countries and regions to use intellectual property for economic development;
- coordinating with intellectual property offices to develop technical infrastructure to share work, data and knowledge;
- cooperating with member states to build respect for intellectual property;
- building multi-stakeholder partnership platforms to address global challenges.

One of WIPO departments - The Department for Transition and Developed Countries - is responsible for providing support to improve the participation of Central European and Baltic States, Central Asian, Eastern European and Caucasian countries, as well as some Mediterranean countries, in the international intellectual property system. The Department also works to ensure these states share in the economic and social benefits of innovation and creativity. This is achieved in many ways, including by improving opportunities to make the most of creative and innovative potential, and by enhancing foreign investment and technology transfer activities.

How to protect intellectual property?

It is possible to protect the intellectual property by means of the intellectual property rights (IPR) laid down by the WIPO. The form of protection depends on the type of intellectual property:

- **patents** - allow you to stop third parties from making, using or selling your invention for a certain period depending on the type of invention.

Why are patents necessary?

When an invention is created, its author can apply for a patent to a Patent Office. A patent is the legal document that describes the invention and grants a property right to the inventor(s) or their successor(s). A patent is an exclusive right granted for an invention – a product or process that provides a new way of doing something, or that offers a new technical solution to a problem. A patent provides patent owners with protection for their inventions. Protection is granted for a limited period, generally 20 years.



Patent protection means an invention cannot be commercially made, used, distributed or sold without the patent owner's consent. Patent rights are usually enforced in courts that, in most systems, hold the authority to stop patent infringement. Conversely, a court can also declare a patent invalid upon a successful challenge by a third party. A patent owner has the right to decide who may – or may not – use the patented invention for the period during which it is protected. Patent owners may give permission to, or license, other parties to use their inventions on mutually agreed terms. Owners may also sell their invention rights to someone else, who then becomes the new owner of the patent. Once a patent expires, protection ends and the invention enters the public domain. This is also known as becoming off patent, meaning the owner no longer holds exclusive rights to the invention, and it becomes available for commercial exploitation by others.

What can be patented?

To be patented an invention should be new i.e. not a simple and obvious extension of what existed before. Neither must it be obvious to people skilled in the given technical field, but it must involve an inventive step. Lastly, it should be useful or have an industrial application. An invention cannot be solely theoretical but must have the potential to be put into practice. For instance, if an invention forms part of a product or constitutes the product itself, then the product must be capable of being made.

Innovations falling into the following classes cannot be patented:

- inventions contrary to law and order;
- discoveries, scientific theories, mathematical formulae;
- aesthetic creations, plans, principles and methods, rules of games;
- information, computer programs 'as such';
- animal species, plant or animal production processes;
- surgical or therapeutic methods of treating human or animal bodies and methods of diagnosis.

An important point is that prior disclosure of an invention means that it cannot be patented. Therefore, if an invention has to be disclosed to a third party, maybe in order to carry out experiments, the inventor should first sign a confidentiality agreement with the third party before disclosing information.

How is patent granted?

The first step in securing a patent is to file a patent application. The application generally contains the title of the invention, as well as an indication of its technical field. It must include the background and a description of the invention, in clear language and enough detail that an individual with an average understanding of the field could use or reproduce the invention. Such descriptions are usually accompanied by visual materials – drawings, plans or diagrams – that describe the invention in greater detail. The application also contains various "claims", that is, information to help determine the extent of protection to be granted by the patent. Patents are granted by national patent offices or by regional offices that carry out examination work for a group of countries – for example, the European



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Patent Office (EPO). Under such regional systems, an applicant requests protection for an invention in one or more countries, and each country decides whether to offer patent protection within its borders. The WIPO-administered Patent Cooperation Treaty (PCT) provides for the filing of a single international patent application that has the same effect as national applications filed in the designated countries. An applicant seeking protection may file one application and request protection in as many signatory states as needed.

- **trademarks** - protect the name of your product by preventing other business from selling a product under the same name.

Why are trademarks necessary?

A trademark is a distinctive sign that identifies certain goods or services produced or provided by an individual or a company. Trademark protection ensures that the owners of marks have the exclusive right to use them to identify goods or services, or to authorize others to use them in return for payment. The period of protection varies, but a trademark can be renewed indefinitely upon payment of the corresponding fees. Trademark protection is legally enforced by courts that, in most systems, have the authority to stop trademark infringement. In a larger sense, trademarks promote initiative and enterprise worldwide by rewarding their owners with recognition and financial profit. Trademark protection also hinders the efforts of unfair competitors, such as counterfeiters, to use similar distinctive signs to market inferior or different products or services.

Representation of trademarks

Most trademarks have a visual sign to distinguish them; this can be virtually any kind of sign and it is impossible to list them. A sign can be made up of words, letters and numerals, devices, coloured marks, combination of letters, or three-dimensional signs.

- words: this includes names, family names, forenames, nicknames, geographical names, as well as any other words or set of words, whether invented or not, and even slogans.
- letters and numerals: a sign could consist of one or more letters, one or more numerals, or a combination of letters and numerals
- devices: these can be drawings or symbols
- three-dimensional signs

How is a trademark registered?

First, an application for registration of a trademark must be filed with the appropriate national or regional trademark office. The application must contain a clear reproduction of the sign filed for registration, including any colors, forms or three-dimensional features. It must also contain a list of the goods or services to which the sign would apply. The sign must fulfill certain conditions in order to be protected as a trademark or other type of mark. It must be distinctive, so that consumers can distinguish it from trademarks identifying other





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products, as well as identify a particular product with it. It must neither mislead nor deceive customers nor violate public order or morality. Finally, the rights applied for cannot be the same as, or similar to, rights already granted to another trademark owner. This may be determined through search and examination by national offices, or by the opposition of third parties who claim to have similar or identical rights.

- **copyright** - informs others that you (as the author) intend to control the production, distribution, display or performance of your work. Copyright is granted automatically, with no need for formal registration. You can start using the copyright symbol immediately.

Why are copyright laws necessary?

Copyright laws grant authors, artists and other creators protection for their literary and artistic creations, generally referred to as “works”. A closely associated field is “related rights” or rights related to copyright that encompass rights similar or identical to those of copyright, although sometimes more limited and of shorter duration. The beneficiaries of related rights are: performers (such as actors and musicians) in their performances; producers of phonograms (for example, compact discs) in their sound recordings; and broadcasting organizations in their radio and television programs. Works covered by copyright include, but are not limited to: novels, poems, plays, reference works, newspapers, advertisements, computer programs, databases, films, musical compositions, choreography, paintings, drawings, photographs, sculpture, architecture, maps and technical drawings. In most countries, a work is protected during the author’s lifetime and after their death their heirs inherit the copyright. In general, the rights last for approximately 70 years after the death of the author before falling into the public domain. Within Europe the duration of these rights was harmonised by an EC Community Directive and the same duration is now also granted in the USA.

Copyright laws, like other IP laws, aim to stimulate and foster individual creativity and disseminate it widely by making it available to the public. Such laws also answer the need to protect against unlawful use of a work as they provide the grounds to bring an infringement action before the courts if the rights are violated. Entitlement to a monopoly right of exploitation constitutes a valuable asset for the holder as it gives them the exclusive right to exploit a protected work.

The creators of works protected by copyright, and their heirs and successors (generally referred to as “right holders”), have certain basic rights under copyright law. They hold the exclusive right to use or authorize others to use the work on agreed terms. The right holder(s) of a work can authorize or prohibit its:

- reproduction in all forms, including print form and sound recording;
- public performance and communication to the public;
- broadcasting;
- translation into other languages;
- adaptation, such as from a novel to a screenplay for a film.

