



What is intellectual property?



WIPO

WORLD
INTELLECTUAL PROPERTY
ORGANIZATION

What



Please note:

This booklet
is *not* intended
as a substitute
for legal advice.



What is IP?



- Intellectual property (IP) refers
- to **creations of the mind** – everything from **works of art to inventions, computer programs to trademarks and other commercial signs.**

IP covers a vast range of activities, and plays an important role in both cultural and economic life. This importance is recognized by various laws which protect intellectual property rights.

IP law is complicated: there are different laws relating to different types of IP, and different national laws in different countries and regions of the world as well as international law.

This booklet introduces the **main types of IP** and explains how the law protects them. It also introduces the work of the World Intellectual Property Organization (WIPO), the United Nations agency dedicated to making IP work for innovation and creativity.

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Creativity and inventiveness are vital. They spur economic growth, create new jobs and industries, and enhance the quality and enjoyment of life.

Why does IP matter?

The progress and well-being of humanity depend on our capacity to come up with new ideas and creations. Technological progress requires the development and application of new inventions, while a vibrant culture will constantly seek new ways to express itself.

Intellectual property rights are also vital. Inventors, artists, scientists and businesses put a lot of time, money, energy and thought into developing their innovations and creations. To encourage them to do that, they need the chance to make a fair return on their investment. That means giving them rights to protect their intellectual property.

IP rights

Essentially, intellectual property rights such as copyright, patents and trademarks can be viewed like any other property right. They allow the creators or owners of IP to benefit from their work or from their investment in a creation by giving them control over how their property is used.

IP rights have long been recognized within various legal systems. For example, patents to protect inventions were granted in Venice as far back as the fifteenth century.

Modern initiatives to protect IP through international law started with the *Paris Convention for the Protection of Industrial Property* (1883) and the *Berne Convention for the Protection of Literary and Artistic Works* (1886).

These days, there are more than 25 international treaties on IP administered by WIPO. IP rights are also safeguarded by Article 27 of the *Universal Declaration of Human Rights*.



Different types and categories of IP

IP is often divided into two main categories:

Industrial property includes patents for inventions, industrial designs, trademarks and geographical indications.

Copyright and related rights cover literary, artistic and scientific works, including performances and broadcasts.

Striking a balance

The intellectual property system needs to balance the rights and interests of different groups: of creators and consumers; of businesses and their competitors; of high- and low-income countries.

An efficient and fair IP system benefits everyone – including ordinary users and consumers.

Some examples:

- The multibillion-dollar film, recording, publishing and software industries – **which bring pleasure to millions of people worldwide** – would not thrive without copyright protection.
- The patent system rewards researchers and inventors while also **ensuring that they share their knowledge** by making patent applications publicly available, which helps stimulate more innovation.
- Trademark protection discourages counterfeiting, so businesses can compete on a level playing field and **users can be confident they are buying the genuine article.**

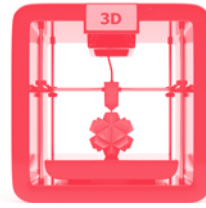
Patents

- Patents were one of the first types of
- intellectual property to be recognized in modern legal systems. Today, patented inventions pervade every aspect of life, **from electric lighting** (patents held by Edison and Swan) **to the iPhone** (patents held by Apple).

By patenting an invention, the patent owner gets exclusive rights over it, meaning that he or she can stop anyone from using, making or selling the invention without permission. The patent lasts for a limited period of time, generally 20 years. In return, the patent owner has to disclose full details of the invention in the published patent documents. Once the period of protection has come to an end, the invention becomes *off patent*, meaning anyone is free to make, sell or use it.

In this way, the patent system aims to benefit everyone:

- Firms and inventors can maximize profits from their inventions during the patent protection period.
- This rewards them for their effort and so encourages more innovation, which in turn benefits consumers and the general public.
- Disclosure of the invention adds to the body of public knowledge, enabling and inspiring further research and invention.



What can be patented?

An invention can be defined as a product or process that offers a new way of doing something, or a new technical solution to a problem.

To qualify for patent protection, an invention must be of some practical use and must offer something new which is not part of the existing body of knowledge in the relevant technical field (what lawyers call the *prior art*). But these requirements of *utility* and *novelty* are not enough; the invention must also involve an *inventive step* – something

non-obvious that could not just have been deduced by someone with average knowledge of the technical field.

Furthermore, the invention must not fall under *non-patentable subject matter*. Patent laws in many countries, for example, exclude scientific theories, mathematical methods, plant or animal varieties, discoveries of natural substances, commercial methods and methods of medical treatment (as opposed to medical products) as not generally patentable.

Obtaining a patent

Like most IP rights, patents are *territorial*: protection is granted within a country under its national law.

Different countries have somewhat different laws, but generally in order to gain protection, an inventor or firm will need to file an application with a patent office **describing the invention clearly and in sufficient detail** to allow someone with an average knowledge of the technical field to use or reproduce it. **Such descriptions usually include drawings, plans or diagrams.**

The application also contains various *claims*, that is, **information to help determine the extent of protection to be granted** by the patent. The application will then be examined by the patent office to determine if it qualifies for protection.

Patent rights and enforcement

Patent owners have the exclusive right to commercially make, sell, distribute, import and use their patented inventions within the territory covered by the patent during the period of protection.

They may choose to make, sell or use the invention themselves, let someone else make or use it for a fee (known as *licensing*), or sell the patent outright to someone else who then becomes the patent owner. Or they may decide not to use the patented invention themselves, but to stop their competitors from using it during the patent period.

If someone else uses a patented invention without the patent owner's permission, the patent owner can seek to enforce the rights by suing for patent infringement in the relevant national court. Courts usually have the power to stop infringing behavior and may also award financial compensation to the patent owner for the unauthorized use of the invention.

But a patent can also be challenged in court, and if it is judged to be invalid, for example because the court decides it is insufficiently novel, it will be struck down and the owner will lose protection in that territory.



National, regional and international protection

Inventors and firms must decide in which territories they want patent protection. Each patent office usually charges fees for filing and processing applications, plus periodic fees for maintaining a patent once it has been granted.

The cost of dealing with different national legal systems can be high, as laws and practices can vary widely and applicants will usually need to pay for representation by an authorized patent agent in each country.

Several groups of countries have developed regional patent systems that help reduce these costs, for example the African Regional Intellectual Property Organization (ARIPO). Under most of these systems, an applicant requests protection for an invention in one or more countries in the group, and each country then decides whether to offer patent protection within its borders.

WIPO administers the **PCT System**, an international system that allows applicants to request protection under the *Patent Cooperation Treaty* in as many signatory states as they wish through a single application.

Industrial design

- Industrial design rights cover
- those elements of a product that are **aesthetic or ornamental** – the way it looks and feels.

These aesthetic aspects can be hugely important in the modern economy. Nowadays consumers face an enormous choice of products, including many that offer the same basic functionality. So they will tend to choose the one with the design they find most attractive within their price range.

Industrial designs are applied to a wide variety of industrial products and handmade goods: cars, telephones, computers, packaging and containers, technical and medical instruments, watches, jewelry, electrical appliances, textile designs, and many other types of goods.



What designs can be protected?

Industrial design law only protects those aspects of a product that are ornamental; its technical features may be protected by patent, if they meet the requirements for patent protection.

A design may consist of three-dimensional features, such as the shape or surface of an article, or two-dimensional features such as patterns, lines or color.

To qualify for protection as an industrial design under most national laws, the design must be new and show a degree of originality or individuality, meaning that it is not identical or very similar to any previous design. Moreover, it must be capable of being produced industrially, so unique artworks are not covered.

designs

Industrial

Industrial design rights

Industrial design rights entitle the right holder to control the commercial production, importation and sale of products with the protected design.

As with most other forms of IP, owners can exploit design rights themselves, or license or sell them to others, and can sue in the relevant national court to prevent infringement of their rights. This means that owners have a fair chance to recoup their investment in design, encouraging such investment.

Industrial design rights last for a limited period. This varies among countries, but the maximum period of protection in a country will be at least ten years. In many countries, owners need to renew their registration every few years if they want to keep the design protected for the maximum possible period.

Different national design laws

Industrial designs are protected in different ways in different countries. In most cases, a firm or designer will need to register their design in order to protect it, but some countries also give limited protection to unregistered designs, and in some countries protection is by means of “design patents”.

In certain countries, some industrial designs may be regarded as artistic works covered by copyright. This can be advantageous to the right holder because the term of protection for copyright is much longer than for a registered design.

In some countries it may also be possible to protect designs using national laws against unfair competition.

Obtaining protection

Industrial design rights are territorial, so designers or firms may need to deal with many different national systems if they want protection in many countries. However, regional systems exist for some groups of countries.

WIPO administers the **Hague System**. Under the *Hague Agreement Concerning the International Registration of Industrial Designs*, applicants can file a single international application covering up to 100 designs in as many signatory states as they choose.



Trademarks

- A trademark is a **sign capable**
- **of distinguishing** the goods or services of one enterprise from those of other enterprises.

Trademarks have been around for many years. In ancient times, artisans would sign or mark their work to prove they had made it. Gradually, laws evolved to protect such marks.

These days, trademarks are essential to business. They take many forms and identify a huge array of goods and services. Enterprises spend enormous amounts of time and money developing their brands and trademarks.

Legal protection allows the owner of a mark to control who uses it. This means that enterprises can develop and promote their goods and services without having their reputation undermined by counterfeiters, and consumers can rely on trademarks being genuine.

marks

Different types of trademark

All sorts of signs may be used as trademarks – words, letters, numbers, symbols, colors, pictures, three-dimensional signs such as shapes and packaging, holograms, sounds, even tastes and smells.

To be eligible for registration, the basic principle is that a trademark must be **distinctive**, so it cannot just be a generic description of the product or service. Nor can it be identical (or very similar) to a trademark already registered or used for that type of product or service.

Trademarks are not just used to identify the goods and services of a particular enterprise. There are also *collective marks*, each owned by an association and used by its members. For example, professional associations of accountants, engineers and architects often use this kind of mark. And there are *certification marks* which show that a product or service complies with certain standards, such as Ecolabels for products with reduced environmental impacts.

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Protecting trademarks

The best way of protecting a trademark is to register it. Owners of a registered mark have the exclusive right to control who uses it: they can use it to identify their own goods or services, or license or sell it for someone else to use.

To register a mark in a territory, the applicant needs to submit a reproduction of it to the trademark office plus a full list of the goods or services to which it would apply. As well as being sufficiently distinctive and not conflicting with any existing mark, the mark must not be misleading or deceptive or violate public order or morality.

Once a trademark has been granted, the owner can sue in the relevant national court if it is infringed by someone else. Equally, a trademark owner could face a legal challenge from a third party arguing that it is too similar to their own mark.

A trademark will only be granted for a limited period – in most countries, ten years – but the mark can be renewed as many times as the owner wishes on payment of additional fees, provided it is still being used, so in practice a trademark can be protected indefinitely.



National, regional and international protection

Like most IP law, trademark protection is territorial. However, regional and international systems have developed to make it easier to obtain trademark protection in many countries.

WIPO offers international registration under the **Madrid System**. By filing a single application, users can obtain trademark protection in as many of the countries that have joined the System as they wish. There are also online tools that allow users to search trademark registers and help them manage renewal of their marks in different territories.

Geographical indications

- A geographical indication is a **sign**
- **used on products that have a specific geographical origin** and possess qualities or a reputation that are due to that origin.

There are lots of examples of geographical indications – often food and drink, such as Roquefort cheese from France, Darjeeling tea from India and Tequila liquor from Mexico.

Consumers buying products with geographical indications want to know that the goods do indeed come from the place in question and conform to relevant standards, so there need to be some controls on the use of geographical indications to protect their valuable reputation.

There are different laws protecting geographical indications and different systems of recognition in different countries, so international law is developing ways to strengthen protection across national boundaries.

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Different types of geographical indication

In order to function as a geographical indication, a sign must identify a product as originating in a given place, and the qualities, characteristics or reputation of the product should be essentially due to that place of origin.

This is often the case for agricultural products, because they are influenced by their local climate and environment, but geographical indications may also be used for industrial products where a region has a strong manufacturing tradition and reputation, for instance Swiss watches.

Appellations of origin are a type of geographical indication. In some jurisdictions, appellations of origin are protected more strongly than other geographical indications.

Protecting geographical indications

There are three main ways to protect a geographical indication:

- through special on geographical indications laws – so-called *sui generis* systems;
- using collective or certification marks; and
- methods focusing on business practices, including administrative product approval schemes.

Countries often use more than one of these different approaches, and different approaches may involve differences with respect to important questions, such as the conditions for protection or the scope of protection.

However, *sui generis* systems and collective or certification mark systems are similar in that both set up rights for collective use by those who comply with defined standards.

Essentially, such rights allow legitimate producers – those whose products come from the area in question and meet all relevant standards – to use the law to stop a geographical indication being used on goods produced elsewhere, or to a different standard.

Geographical indications and trademarks

In some respects, geographical indication rights are similar to trademarks. Right holders can prevent infringing use of the geographical indication, and potentially the right lasts forever – although periodic re-registration of collective or certification marks may be required.

However, there are also important differences between these two types of sign. A trademark is used by a company to distinguish its goods and services from those produced by others, and the owner can prevent anyone else from using the mark. Furthermore, a trademark can be sold or licensed.



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International protection

A geographical indication guarantees to consumers that a product was produced in a certain place and has certain characteristics that are due to that place of production. It may be used by all producers in the relevant place who make products that share certain qualities relating to that place, and it cannot change ownership.

As with other types of IP, international law has developed to complement and reinforce the protection offered in different national and regional jurisdictions.

International recognition of appellations of origin and “indications of source” dates back to the *Paris Convention* of 1883. More recently, the agreement on *Trade-Related Aspects of Intellectual Property* (TRIPS) included some further provisions to prevent the misuse of GIs.

In addition, WIPO administers the international **Lisbon System**. This used to apply only to appellations of origin, but the *Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications*, adopted in 2015, extended the System to make it possible to register other geographical indications internationally too.

Copyright and related rights

- Copyright, or authors' right, is a legal
- term used to describe the rights that creators have in their **literary, artistic and scientific works.**

Copyright covers an enormous range of works – not just books, music, paintings, sculpture and films, but also computer programs, databases, advertisements, maps and technical drawings, among other things. There are also rights related to the copyright of the creators that protect the interests of those closely associated with copyrighted works, including performers, broadcasters and producers of sound recordings.

Copyright is protected by a mixture of national and international laws. These recognize the cultural and social importance of creative endeavor as well as its considerable economic value.

The underlying aim of copyright law is to strike the right balance between the interests of content creators, developers and investors and the public interest in being able to access and use creative content.

What works does copyright cover?

Copyright applies to the creative **expression of ideas** in many different forms – text, still or moving pictures, sound works, three-dimensional shapes such as sculptures and architecture, reference works and collections of data.

National copyright laws rarely provide an exhaustive list of everything that is covered. However, copyright does *not* generally cover ideas themselves, procedures, methods of operation, or mathematical concepts.



What rights does copyright provide?

Copyright includes both **economic and moral rights**. Essentially, *economic rights* involve the right to control the distribution of a work. In other words, a copyright owner can stop anyone from copying or using a work without permission – including, for example, by translating it, reproducing it, performing it or broadcasting it.

Exactly how the owner enforces these rights will depend on the national laws of the country concerned, but countries often provide a mixture of civil and criminal penalties for copyright infringement.


Copyright also includes certain *moral rights* of the creator – including, among others, the right to be acknowledged as the author of a work and to prevent it from being altered in a way that might damage the creator's reputation.

Transferring and trading copyright

Generally, economic rights can be transferred and divided. A right owner may agree to let someone use a work under certain conditions (*licensing*), or they may give or sell the rights to someone who then becomes the new owner (*assignment*). And if a copyright owner dies, their heirs or successors will inherit their economic rights.

It is very common for rights to be transferred. For example:

- Book authors, music composers and recording artists often license or assign rights to publishers in exchange for payments known as **royalties**.
- In many countries, creators can license or assign their rights to **collective management organizations** which will monitor how works are used and collect payments from users on the creator's behalf.
- Copyright owners may choose to give away their work for free, or to let other people use it freely based on certain conditions. For example, they may allow use based on standard Creative Commons licenses.



In many countries, moral rights cannot be traded or transferred, but a creator may sometimes agree to waive or refrain from exercising them.

Copyright and the public interest

Copyright serves the public interest by helping to ensure that creators can earn a fair reward for their work, thus encouraging further creative endeavor, and by making sure that works are properly acknowledged and respected.

The law also recognizes that in certain circumstances, known as *copyright limitations and exceptions*, copyright restrictions should not apply. For example, many countries

allow for copyrighted books to be adapted without the rights owner's permission to create versions that are accessible to people with visual impairment or other physical disabilities that make it difficult for them to use ordinary printed copies. There is now support for this exception under international law through the *Marrakesh Treaty* of 2013, administered by WIPO, which also provides for the cross-border exchange of accessible books.

Furthermore, the economic rights within copyright only last for a limited period, the so-called *term of copyright*. Once this term has expired, a work enters the *public domain*, meaning it is free for anyone to use. Moral rights are term-limited in some countries and perpetual in others.

National and international copyright law

There are different national laws on copyright in different territories, as with other forms of intellectual property. However, international law establishes certain minimum standards of protection:

- Copyright arises as soon as a work is created. There is no need for a creator to register a work or complete any other *formalities* in order to gain protection (though some countries do operate voluntary copyright registration schemes).
- Countries are required to protect most copyrighted works throughout the life of the creator and for at least 50 years after the creator's death.

- International law means that copyrighted works are generally protected in most countries, not just the country in which they were created.

These minimum standards are guaranteed by a series of international treaties administered by WIPO. States that have joined these treaties can provide more than the minimum protection – for example, a longer copyright term – but they cannot provide less.

Related rights

The law also protects the rights of certain people or groups who are involved in creative work but do not qualify for copyright protection in many jurisdictions, including performers such as singers and actors, broadcasting organizations, and organizations such as record companies that

produce sound recordings. These are known as *related rights* or *neighboring rights*, because they are related to copyright.

The protection offered is similar to copyright. Generally, right owners can stop people from recording, communicating or broadcasting their work without their permission. However, the term of protection is usually shorter than copyright; in most countries, it lasts for 50 years from the date of the performance, recording or broadcast.

New challenges

Copyright law has to evolve to deal with new technologies and cultural practices. For example, digital technologies make it possible to make and transmit near-perfect copies of works at little cost. In 1996, two new international agreements, the

WIPO Copyright Treaty (WCT) and the *WIPO Performances and Phonograms Treaty (WPPT)*, were concluded in order to help protect copyright and related rights in the Internet age. And in 2012 the *Beijing Treaty on Audiovisual Performances* was adopted to protect the related rights of audiovisual performers.

But other challenges remain. How can the traditional cultural expressions of people in developing countries best be protected in a globalizing economy? Is 3D printing adequately covered by copyright law? What is the best way of ensuring that musicians and artists receive proper payment when their works can be accessed online anywhere in the world?

WIPO helps countries develop common responses to the evolving challenges.

The World Intellectual Property Organization

WIPO is the global forum for intellectual property services, policy, information and cooperation. It was founded in 1967 and became a specialized agency of the United Nations in 1974.

There are four main elements of WIPO's work.

Shaping international rules

WIPO helps to develop and implement international law on intellectual property. As we have seen, most IP law is limited to a particular national jurisdiction. International law is crucial to facilitate protection across national boundaries.

There are now more than 25 international IP treaties administered by WIPO, and negotiations are ongoing to deal with new challenges.

WIPO provides a neutral environment in which different countries can come together to negotiate new rules, striking a fair balance between different interests.

Delivering global services

WIPO delivers international filing and registration services. We have mentioned many examples in this booklet: international patent filing under the PCT System, international trademark registration under the Madrid System, industrial design registration under the Hague System and registration of geographical indications under the Lisbon System. WIPO also provides arbitration and mediation services to help resolve IP disputes.

WIPO charges fees for these services. In fact, it

earns more than 90% of its income through such fees. This is unusual for an international organization. Most international organizations are funded by their member states – in other words, by those countries' taxpayers – whereas most of WIPO's budget is paid for by the people and businesses who use its services.

Cooperating with countries and partners to make IP work for development

An important part of WIPO's mission is to help all countries use and benefit from IP laws and protection systems. Many of WIPO's member states already have very sophisticated and longstanding national IP systems, but some developing countries are working to build this capacity.

Providing information and shared infrastructure

WIPO aims to be a comprehensive and impartial source of information on global IP issues. This booklet is just one of many WIPO publications – there are also books, magazines, economic studies, statistics and many other reference works.

WIPO has also developed infrastructure for accessing and sharing knowledge, including enormous databases of patents, brands, trademarks, appellations of origin and IP legislation.

Visit the WIPO website to access a wealth of information: www.wipo.int.

World Intellectual Property Organization
34, chemin des Colombettes
P.O. Box 18
CH-1211 Geneva 20
Switzerland

Tel: +41 22 338 91 11
Fax: +41 22 733 54 28

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External Offices visit:
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