



DL001E

Primer on Intellectual Property

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Module 01 – Introduction

Introduction to the IP Primer (DL 001)

1

This short self-learning Primer is designed to provide you with a quick overview of intellectual property (IP) and the reasons why it is considered an important economic and cultural asset in today's life and economy.

2

DL-001 is also intended to introduce you to the Academy's curricular distance learning courses, which range from a comprehensive "General Course on Intellectual Property", to more specialized courses for those who wish to learn more about specific IP subjects.

3

By presenting, fundamental aspects of intellectual property in a succinct and easily accessible way, DL-001 will hope to constitute an effective introduction to this subject matter, and will stimulate your interest in pursuing further readings and studies in this field.

Study Note: Reading the contents of DL-001 should take you around 2 hours to complete.

What is Intellectual Property?

The history of the human race is a history of the application of imagination, or innovation and creativity, to an existing base of knowledge in order to solve problems or express thoughts.



Image Source: Freepik

From early writing in Mesopotamia, the Chinese abacus, the Syrian astrolabe, the ancient observatories of India, the Gutenberg printing press, the internal combustion engine, penicillin, plant medicines and cures in Southern Africa, the transistor, semiconductor nanotechnology, recombinant DNA drugs, and countless other discoveries and innovations, it has been the imagination of the world's creators that has enabled humanity to advance to today's levels of technological progress.

Protection of intellectual property is ensured not only at the national but also at the international level. The World Intellectual Property Organization (WIPO) administers more than 20 treaties about intellectual property.

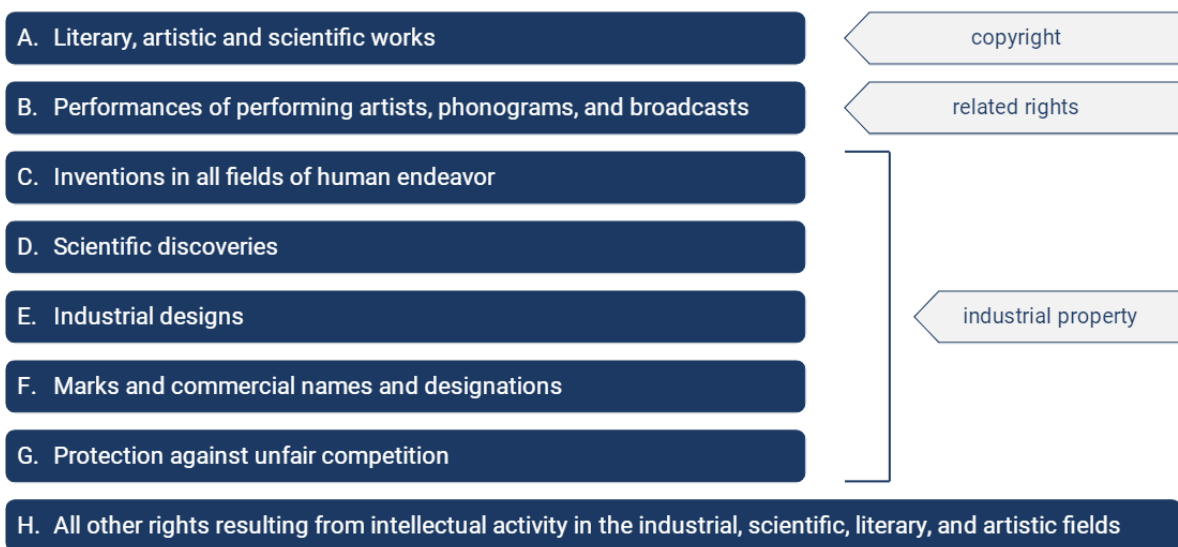
You may find other references at:

http://www.wipo.int/about-wipo/en/what_is_wipo.html

<http://www.wipo.int/treaties/en/>

What types of intellectual creations can be the subject matter of IP?

It is generally understood that IP includes rights relating to the following:



Module 02 – Copyright

What is copyright?

Copyright aims at providing protection to authors (writers, artists, music composers, etc.) on their creations. Such creations are usually designated as “works”.

What is covered by copyright?

Works covered by copyright include, but are not limited to, literary works such as novels, poems, and plays; reference works such as encyclopedias and dictionaries; databases; newspaper articles; films and TV programs; musical compositions; choreography; artistic works such as paintings, drawings, photographs and sculptures; architecture; and advertisements, maps and technical drawings. Copyright also protects computer programs.



Image Source: Unsplash

- Copyright does not however extend to ideas, but only to the expression of thoughts.
- For example, the idea of taking a picture of a sunset is not protected by copyright.
- Therefore, anyone may take such a picture.
- But a particular picture of a sunset taken by a photographer may be protected by copyright.

In such a case, if someone else makes copies of the photograph, and starts selling them without the consent of the photographer, that person would be violating the photographer's rights.



Image Source: Unsplash

Do you need to accomplish any formalities in order to be protected?

Copyright protection is obtained automatically without any need for registration or other formalities. A work enjoys protection by copyright as soon as it is created.

However, many countries provide for a national system of optional registration and deposit of works. These systems facilitate, for example, questions involving disputes over ownership or creation, financing transactions, sales, assignments, and transfers of rights.



Image Source: Pexels

What types of rights does copyright provide?



What are the economic rights covered by copyright?

Under economic rights, the creators of a work can use their work as they see fit. They can also authorize or prohibit the following acts- in relation to a work:

- **reproduction** in various forms, for example in a printed publication or by recording the work in cassettes, compact disks or videodisks, or by storing it in computer memories;



Image Source: Pexels

- **distribution**, for example through sale to the public of copies of the work;



Image Source: Pexels

- **public performance**, for example by performing music during a concert, or a play on stage;



Image Source: Pexels

- **broadcasting and communication to the public**, by radio or T.V, cable or satellite;



Image Source: Freepik

- **translation** into other languages;

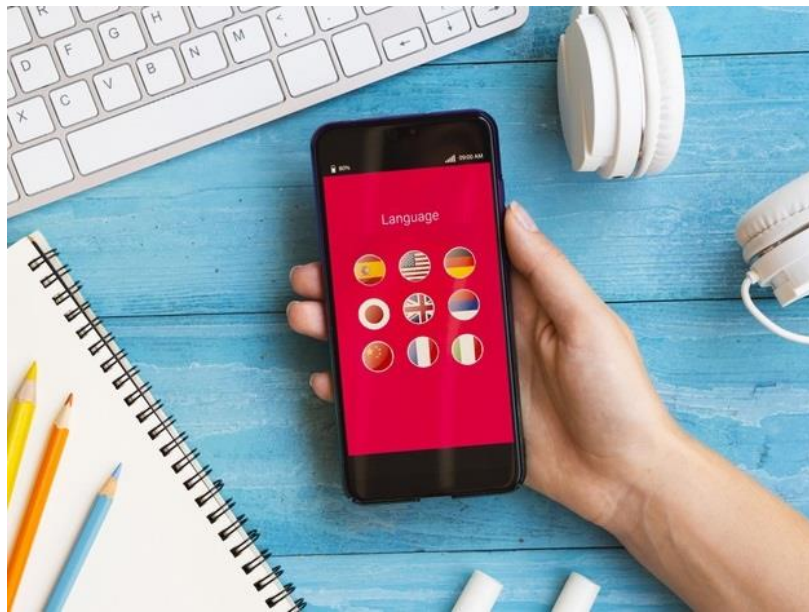


Image Source: Freepik

- **adaptation**, for example by converting a novel or a play into a screenplay for a film;



Image Source: Pexels

Recent international developments also allow for works to be protected in the context of the Internet. The WIPO Copyright Treaty (WCT), concluded in 1996, addresses the challenges posed by today's digital technology, thus ensuring adequate and effective protection for copyright owners when their works are disseminated through new technology and communications systems, such as the Internet.

What rights do moral rights cover?

Under moral rights, the author may claim:

The right to have authorship recognized on the work.

The right of the creator to have their name mentioned as the author, in particular when the work is used.

The right to integrity of the work

The right to object to the work being modified, or being used in contexts that may cause harm to the reputation or honor of the author.

How are economic rights exploited?

Many creative works protected by copyright require financial investment and professional skills for their production and further dissemination and mass distribution. Activities such as book publishing, sound recording or film producing are usually undertaken by specialized business organizations or companies, and not directly by the authors. Usually, authors and creators transfer their rights to these companies by way of contractual agreements, in return for compensation. The compensation may take different forms, such as lump sum payments, or royalties based on a percentage of revenues generated by the work.



Image Source: Pexels

Many authors do not have the ability or the means to manage their rights themselves. They often resort to collective management organizations or societies which provide for their members, the benefits of the organization's administrative and legal expertise and efficiency in collecting, managing, and disbursing royalties. These royalties are obtained from the national and international use of a member's

work on a large scale, by, for example, broadcasting organizations, discotheques, restaurants, libraries, universities, and schools.

How long does copyright last?

Copyright has a time limit: it **usually** lasts for the **life of the author and 50 years after their death**.

This rule, which is shared by the majority of countries, has been established by the Berne Convention for the Protection of Literary and Artistic Works.

Once the term has expired, the work is in the "public domain". Thereafter, everybody will be free to use the work, without obtaining a specific authorization from the copyright owner.

However, the Berne Convention allows to provide for a longer period. In order to know what period of protection applies to a work in a particular country, it is advisable to read the national copyright legislation of that country.

To what extent can you use someone else's work without getting permission?

Copyright is subject to limitations and exceptions, which take into account social, educational and other public policy considerations.

International treaties, as well as national laws, allow to freely use limited portions of a work for certain purposes, such as news reporting, or making quotations in a way compatible with fair practices, or by way of illustration for teaching.

Such cases of free use may vary from country to country and it is advisable to revert to the national law of that country, in order to verify whether advantage can be taken of such a possibility.

Why protect copyright?

Why protect copyright?

- Copyright contributes to human creativity by giving creators incentives in the form of recognition and fair economic rewards.
- Under this system of rights, creators are assured that their works can be disseminated without fear of unauthorized copying or piracy.
- This in turn helps increase access to the works and enhances the enjoyment of culture, knowledge, and entertainment all over the world.



Module 03 – Related Rights

What are related rights?

Related rights provide protection to the following persons or organizations:

Performers (actors, musicians, singers, dancers, or generally people who perform), in their performances



Image Source: Unsplash

Producers of sound recordings (for example, cassette recordings and compact discs) in their recordings



Image Source: Unsplash

Broadcasting organizations, in their radio and television programs

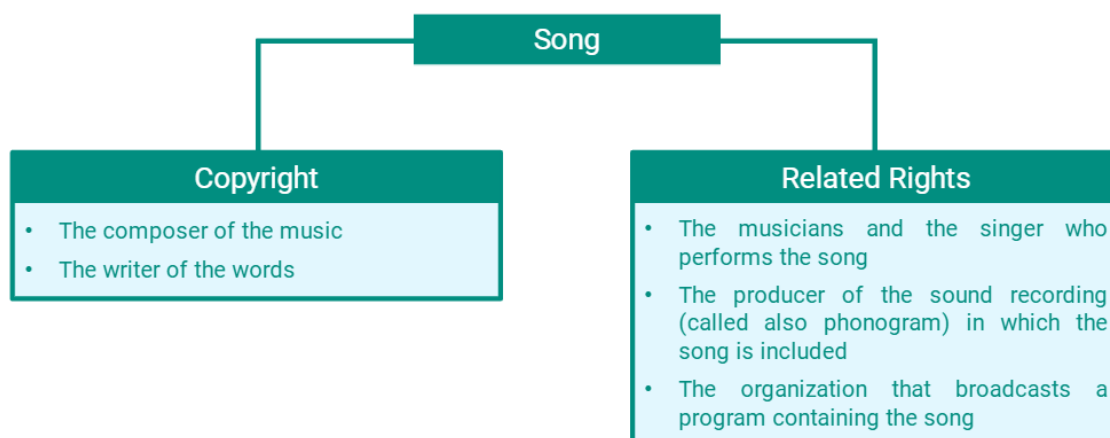


Image Source: Unsplash

Sometimes, these rights are also referred to as neighboring rights.

Is there a distinction between related rights and copyright?

Copyright and related rights protect different people. Copyright protects authors of works.



What are the rights granted to the beneficiaries of related rights?

National laws differ as to the extent of rights which are provided to performers, producers of sound recordings or broadcasting organizations. Different international treaties address this issue, such as the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations; the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), as well as the WIPO Performances and Phonograms Treaty (WPPT).

Performers, in general, enjoy economic rights to prevent fixation, broadcast and communication to the public of their live performances.

Some national laws, as well as the WPPT, also grant performers the rights of reproduction, distribution, and rental of their performances fixed in phonograms, along with moral rights against unreasonable omission of their name, or modifications to their performances included in a sound recording, if such modifications are likely to harm their reputation.



Image Source: Unsplash

Producers of sound recordings (also called phonograms) enjoy mainly the right to authorize or prohibit the reproduction and distribution of their sound recordings by others.

Furthermore, the WPPT ensures that producers of phonograms, as well as performers of works contained therein, are adequately and effectively protected when the sound recordings are disseminated through new technology and communications systems, such as the Internet.

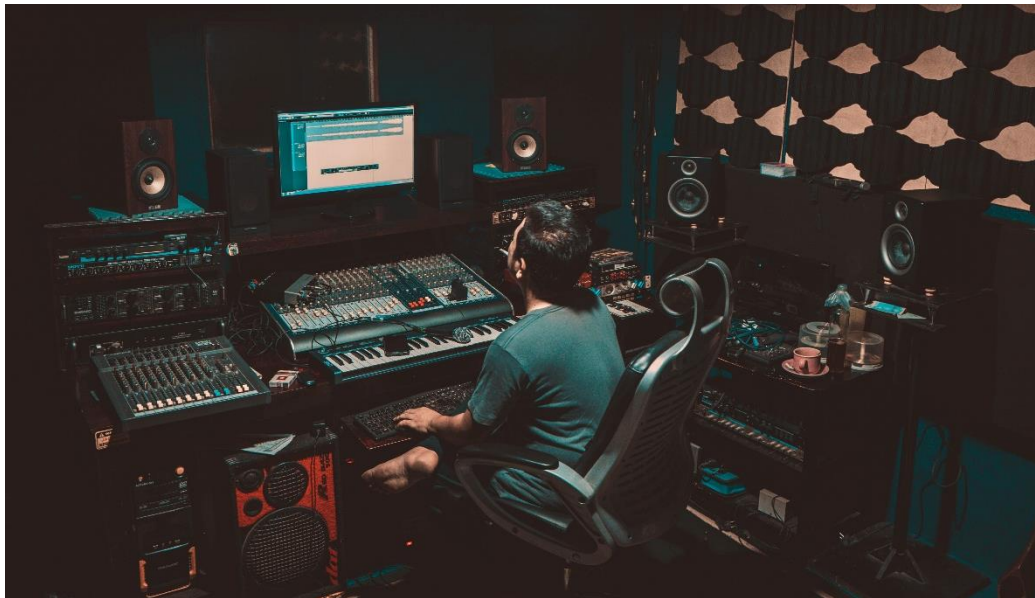


Image Source: Unsplash

Broadcasting organizations are provided the rights to authorize or prohibit re-broadcasting, fixation, and reproduction of their broadcasts.

Related rights are subject to the same exceptions as for copyright, which would allow anyone to make free use of the performances, sound recordings or broadcasts for certain specific purposes, such as quotations, and new reporting.

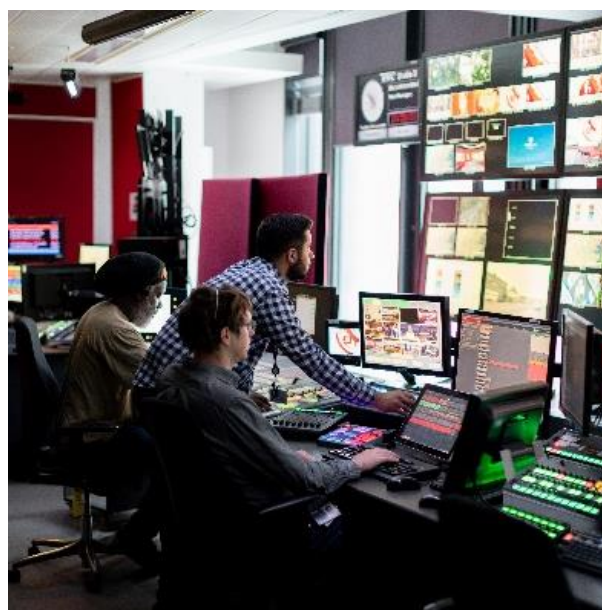


Image Source: Unsplash

Why protect related rights?

Why protect related rights?

- Performers are protected by reason of their creative contribution.
- Producers of sound recordings deserve protection because of the creative input as well as technical and financial resources needed to bring the recording to the public.
- Likewise broadcasting organizations have a justified interest in protecting their technical and organizational skill in programs from acts of piracy.



Module 04 – Trademarks

What is a trademark?

A trademark is a **sign** that is used to **identify certain goods and services** as those produced or provided by a specific person or enterprise. Hence, it helps to distinguish those goods and services from similar ones provided by another.

“DELL” is a trademark that identifies goods (computers and computer related objects).



Image Source: Unsplash

“CITY BANK” is a trademark that relates to services (banking and financial services).



Image Source: Pexels

What kind of signs can be used as trademarks?

Trademarks may consist of:

- Word (e.g. Kodak) or a combination of words (Coca-Cola);



Image Source: Unsplash

- Letters and abbreviations (e.g. EMI, MGM, AOL, BMW, IBM);



Image Source: Unsplash

- Numerals (e.g. 7/11);



Image Source: Unsplash

- Names (e.g. Ford, or Dior) or abbreviations of names (e.g. YSL, for Yves St-Laurent).



Image Source: Unsplash

- Drawings (like the logo of the Shell oil company, or the Penguin drawing for Penguin books);



Image Source: Unsplash

- Three-dimensional signs such as the shape and packaging of goods (e.g. the shape of the Coca-Cola bottle or the packaging for the Toblerone chocolate).



Image Source: Freepik

- Combination of colors or single colors (e.g. the orange color used for ORANGE telephone company).

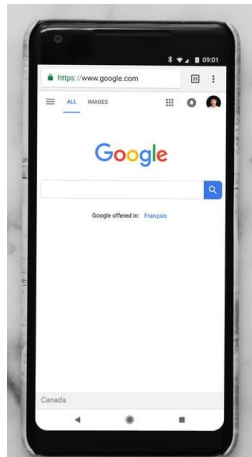


Image Source: Unsplash

- Non-visible signs, such as music and fragrances.



Image Source: Pexels

In all cases, the trademark must be **distinctive**: it must be capable of distinguishing the goods or services with which it is used.

A name which is purely descriptive of the nature of the goods and services that are offered may not constitute a valid trademark.

For example, Apple may serve as a trademark for computers but not for actual apples.



Image Source: Pexels

However, a given trademark may not be distinctive from the outset, but may have acquired distinctive character or “secondary meaning” through long and extensive use.

What types of trademark exist?

In addition to trademarks identifying the commercial source of goods or services, several other categories of marks exist.

Collective Marks

Collective marks are marks used to distinguish goods or services produced or provided by members of an association. Collective marks are marks used to identify the services provided by members of an organization (e.g. UAW for United Auto Workers).

Certification Marks

Certification marks are marks used to distinguish goods or services that comply with a set of standards and have been certified as such (e.g. The Woolmark symbol to show that products are made from 100% wool and comply with performance specifications set down by the Woolmark Company. It is registered in 140 countries and is licensed to manufacturers who are able to meet these quality standards in 67 countries).

What function does a trademark perform?

Trademarks may perform different functions. In particular they:

Help consumers identify and distinguish products or services

Enable companies to differentiate between their products

Are a marketing tool and the basis for building a brand image and reputation

May be licensed and provide a direct source of revenue through royalties

Are a crucial component of business assets

Encourage companies to invest in maintaining or improving quality products

May be useful for obtaining finance

How is a trademark protected?

The most common and efficient way of protecting a trademark is to have it registered.

Trademarks are territorial rights. This means that they must be registered separately in each country in which protection is desired. Note that, unless a given trademark is protected in a specific country, it can be freely used by third parties.

Moreover, trademark protection is in general always limited to specific goods and services (unless the trademark in question is a well-known or famous trademark). This means that the same trademark can be used by different companies as long as it is used for dissimilar goods or services.

Almost all countries in the world maintain a Register of Trademarks, at the appropriate trademark office.

Registration is not, however, the only way of protecting a trademark: unregistered trademarks are also protected in some countries, but in a less reliable form.

What kind of protection is provided by a trademark?

A trademark owner is given the exclusive rights:

1

to **use** the trademark to identify their goods or services

2

to **prevent others from using** and marketing the same or a similar trademark for the same or similar goods or services

3

to **authorize others to use** the trademark, (e.g. by franchising or licensing agreements) and in return for payment.

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. The application must also contain a list of goods or services to which the sign would apply.

The sign must fulfill certain conditions in order to be protected as a trademark or another type of mark:

- it must be **distinctive**, so that consumers can distinguish it as identifying a particular product, as well as from other trademarks identifying other products;
- it must **not be deceptive**, that is, it should not be likely to mislead the consumers as to the nature or quality of the product;

- it should **not be contrary to public order or morality**;
- it should **not be identical or confusingly similar to an existing trademark**. This may be determined through search and examination by the national office, or by the opposition of third parties who claim similar or identical rights.

How long is a registered trademark protected for?

The period of protection varies (it is **usually 10 years**), but a trademark **can be renewed indefinitely** on payment of the corresponding fees.

How extensive is trademark protection?

- Almost all countries in the world register and protect trademarks.
- Each national or regional office maintains a Register of Trademarks, which contains full application information on all registrations and renewals, thereby facilitating examination, search, and potential opposition by third parties.



Image Source: Freepik

- The effects of such a registration are, however, limited to the country (or, in the case of a regional registration, countries) concerned).
- In order to avoid the need to register separately with each national or regional office, WIPO administers a system of international registration of marks.
- This system is governed by two treaties, the Madrid Agreement concerning the International Registration of Marks (Madrid Agreement), and the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol).
- A person who has a link (through nationality, domicile, or establishment) with a country party to one or both of these treaties may, on the basis of a registration or application with the trademark office of that country, obtain an international registration having effect in some, or all of the countries of the Madrid Union.

What are well-known marks and how are they protected?

Well-known marks are marks that are considered to be well-known by the relevant sector of the public in the country in which protection is sought. Well-known marks benefit from stronger protection than marks in general:

they may be protected even if they are not registered in a given territory, and

they may be protected against confusingly similar marks that are used on dissimilar goods or services, whereas marks are generally protected against confusingly similar marks if used for identical or similar products.

For example, let us consider a trademark such as Mercedes Benz. Normally the company that owns the trademark would be protected against unauthorized use of the mark by third parties with respect to the products for which the mark has been registered. To the extent that Mercedes Benz is a well-known trademark, protection would also be available for unrelated goods. So that if another company decides to use the trademark in relation to other goods such as, say, men's underwear, it may be prevented from doing so.



Image Source: Pexels

What is a domain name and how does it relate to trademarks?

Domain names are Internet addresses, and are commonly used to find websites. For example, the domain name "wipo.int" is used to locate the WIPO website at www.wipo.int.

Domain names may be made up, sometimes, of a trademark. In such case, it may happen that the person who has registered the domain name has done it in bad faith, as they are not the owner of the trademark under which the domain name has been registered. This activity is referred to as cybersquatting.

It is important to know that many national laws, or courts, treat as trademark infringement the registration of the trademark of another company or person as a domain name.



If this happens, the person who has chosen the trademark of another as a domain name may not only have to transfer or cancel the domain name, but may also have to pay damages or a heavy fine.

It may be interesting for you to know that if the trademark of your company is being used as a domain name by another individual or company, you may take action to stop such misuse of the rights of your company.

In such a case, an option would be to use WIPO's online procedure for domain name dispute resolution at: arbitrator.wipo.int/domains.

This WIPO website includes a model complaint as well as legal index to the thousands of WIPO domain cases that have already been decided.

Why protect trademarks?

Why protect trademarks?

- The basic rationale for protecting trademarks, whether through registration or not, is twofold.
- First, it provides business people with a remedy against unfair practices of competitors, which aim at causing confusion in the consumers' minds by leading them to believe that they are acquiring the goods or services of the legitimate owner of the trademark, whereas in fact they are acquiring an imitated product, which furthermore may be of lesser quality. The legitimate owner may hence suffer from loss of potential customers, as well as harm to their own reputation.
- The second rationale flows from the first, namely to protect consumers from those unfair and misleading business practices.
- In addition to those two arguments, a further one is gaining more and more prominence. This is that a trademark is often the only tangible asset that represents the investments made in the building of a brand.
- Where, for example, a business is sold, or companies merge, the question of brand evaluation becomes an important issue. The value of companies may depend to a large extent on the value of their trademarks.

Module 05 – Geographical Indications

What is a geographical indication?

A geographical indication is a sign used on goods and stating that a given product originates in a given geographical area, and possesses qualities or reputation due to that place of origin.

Geographical indications may be used for a variety of products, such as agricultural products like,; cheese (e.g. “Roquefort” produced in that this region of France), olive oil (e.g. “Tuscany” for olive oil produced in a specific region in Italy), or tea (e.g. “Darjeeling” tea , which is grown in India). They are very often associated with wines and spirits, such as “Scotch Whisky” which originates in Scotland.

The use of geographical indications is not limited to agricultural products or alcoholic beverages. They may also highlight specific qualities of a product which are due to human factors that can be found in the place of origin of the products, such as specific manufacturing skills and traditions. That place of origin may be a village or town, a region or a country.

An example for the latter is “Switzerland” or “Swiss,” which is perceived as a geographical indication in many countries for products that are made in Switzerland and, in particular, for watches.



Image Source: Freepik

What is the difference between a geographical indication and a trademark?

Trademark

A trademark is a sign used by an enterprise to distinguish its goods and services from those of other enterprises. It gives its owner the right to exclude others from using the trademark.



Image Source: Unsplash

Geographical Indication

A geographical indication tells consumers that a product is produced in a certain place, and has certain characteristics that are due to that place of production. It may be used by all producers who make their products in the place designated by a geographical indication, and whose products share typical qualities.



Image Source: Pexels

How is a geographical indication protected?

A geographical indication is protected in accordance with national laws in various ways, such as:

laws against unfair competition;

consumer protection laws;

laws for the protection of certification marks or collective marks; or

special laws for the protection of geographical indications or appellations of origin.

In essence, unauthorized parties may not use geographical indications if such use is likely to mislead the public as to the true origin of the product.

Applicable sanctions range from court orders preventing the unauthorized use, to the payment of damages and fines or, in serious cases, imprisonment.

How are geographical indications protected at the international level?

A number of treaties administered by WIPO provide for the protection of geographical indications, most notably the Paris Convention for the Protection of Industrial Property of 1883 and the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration of 1958.

Why protect geographical indications?

Why protect geographical indications?

- Geographical indications are understood by consumers to denote the origin and the quality of products.
- Many of them have acquired valuable reputations which, if not adequately protected, may be misrepresented by dishonest commercial operators.
- False use of geographical indications by unauthorized parties, for example “Darjeeling” for tea that was not grown in the tea gardens of Darjeeling, is detrimental to consumers and legitimate producers.
- Consumers are deceived into believing that they are buying a genuine product with specific qualities and characteristics, whereas they have actually got a worthless imitation.
- Producers suffer damage because valuable business is taken away from them, and the established reputation of their products is adversely affected.

Module 06 – Industrial Designs

What is an industrial design?

An industrial design is the **ornamental or aesthetic aspect of an article**. The design may consist of three-dimensional features, such as the shape of an article, or two-dimensional features, such as patterns, lines or color.

Industrial designs are applied to a wide variety of products of industry and handicrafts such as technical and medical instruments, watches, jewelry, houseware, electrical appliances, vehicles, architectural structures, textile designs, leisure goods, and other luxury items.



Image Source: Pexels



Image Source: Pexels

To be protected under most national laws, an industrial design must appeal to the eye. This means that an industrial design is primarily of an aesthetic nature, and does not protect any technical features of the article to which it is applied.

How can industrial designs be protected?

1

In most countries, an industrial design must be **registered** in order to be protected **under industrial design law**.

As a general rule, to be registrable, the design must be “**new**” or “**original**”. Different countries have varying definitions of such terms, as well as variations in the registration process itself. Generally, “**new**” means that no identical or very similar design is known to have existed before. Once a design is registered, a registration certificate is issued.

2

Depending on the particular national law and the kind of design, an industrial design may also be protected **as a work of art** under **copyright law**. In which case registration is not required.

In some countries, industrial design and copyright protection can exist concurrently. In other countries, they are mutually exclusive: once the owner chooses one kind of protection, they can no longer invoke the other.

3

In certain countries, an industrial design may also be protected against imitation under **unfair competition law**.

What kind of protection is provided by industrial designs?

- The owner of a protected industrial design is granted the right to **prevent unauthorized copying or imitation** of the design by others. This includes the right of making, offering, importing, exporting or selling any product in which the design is incorporated or to which it is applied.
- They may also **license or authorize others to use** the design on mutually agreed terms.
- The owner may also **sell** the right to the industrial design to someone else.

How long does the protection last?

The term of protection under industrial design laws is **generally five years**, with the possibility of further periods of **renewal** up to, in most cases, 15 years.

Are there territorial restrictions to industrial design protection?

Generally, industrial design protection is limited to the country in which protection is granted.

Under the Hague Agreement Concerning the International Deposit of Industrial Designs, a WIPO-administered treaty, a procedure for an international registration is offered. An applicant can file a single international deposit with WIPO. The design will then be protected in as many member countries of the treaty as the applicant wishes.

Why protect industrial designs?

Why protect industrial designs?

- Industrial designs make an article attractive and appealing, thereby adding to its commercial value and increasing its marketability.
- Protecting an industrial design:
 - helps to ensure a fair return on investment;
 - improves the competitiveness of a business against copying and imitating the design by competitors;
 - helps to increase the commercial value of a company, as successful industrial designs constitute business assets;
 - encourages creativity in the industrial and manufacturing sectors, as well as in traditional arts and crafts.

Module 07 – Patents

What is a patent?

A patent is an exclusive right granted in respect of an invention, which may be a product or a process that provides a new and inventive way of doing something, or offers a new and inventive technical solution to a problem.

Examples of patents range from electric lighting (patents held by Edison and Swan) and plastic (patents held by Baekeland), to ballpoint pens (patents held by Biro), microprocessors (patents held by Intel, for example), telephones (patents held by Bell), and CDs (patents held by Russell).



Image Source: Pexels



Image Source: Pexels

What kinds of inventions are protected?

An invention must, in general, fulfill the following conditions to be protected by a patent:

it must be **new** or **novel**, that is, it must show some new characteristic which is not known in the body of existing knowledge (called “prior art”) in its technical field.

it must be **non-obvious** or involve an inventive step, that is, it could not be deduced by a person with average knowledge in the technical field.

it must be **useful** or capable of industrial application;

finally, the invention must be part of the so-called “**patentable subject matter**” under the applicable law. In many countries, scientific theories, mathematical methods, plant or animal varieties, discoveries of natural substances, commercial methods, or methods for medical treatment (as opposed to medical products) are not considered to be patentable subject matter.

How to protect your inventions?

The most common and efficient way of protecting an invention is by obtaining a patent.

A patent is granted by the patent office of the country in which you wish to protect your invention. Patent rights are granted in return for the inventor’s full disclosure of the technology to the public in the patent application.

Another way of obtaining protection is to keep the technology secret, and to rely on what is referred to as trade secrets.

Trade secrets protection allows the preservation of the confidential nature of information from being unduly revealed, and used by unauthorized people.

How is a patent granted?

The first step in securing a patent is the filing of a patent application.

- The patent application generally contains the title of the invention and a brief statement of the technical field in which the invention lies, as well as the background and a description of the invention in a manner sufficiently clear for it to be evaluated and carried out by a person having ordinary skill in the arts.
- Such descriptions are usually accompanied by visual materials such as drawings, plans, or diagrams to better describe the invention.
- The application also contains various “claims”, that is, information which determines the extent of protection granted by the patent.

The patent rights are usually enforced in a court, which, in most systems, holds the authority to stop patent infringement. Conversely, a court can also declare a patent invalid upon a successful challenge by a third party.



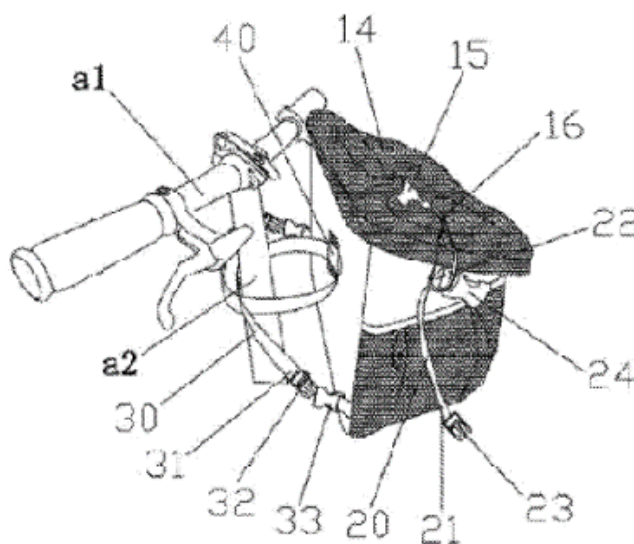
US 20190045741A1

(19) **United States**(12) **Patent Application Publication**
LU(10) **Pub. No.: US 2019/0045741 A1**(43) **Pub. Date: Feb. 14, 2019**(54) **PET CARRYING BAG FOR INSTALLATION TO A BICYCLE HANDLE BAR**(52) **U.S. CL.**CPC *A01K 1/0281* (2013.01); *B62J 9/003* (2013.01); *A01K 1/0254* (2013.01)(71) Applicant: **Kongzhi LU**, Xiamen (CN)(72) Inventor: **Kongzhi LU**, Xiamen (CN)(73) Assignee: **Xiamen Sunnypet Products Co., Ltd.**, Xiamen (CN)(21) Appl. No.: **16/058,865**(22) Filed: **Aug. 8, 2018**(30) **Foreign Application Priority Data**

Aug. 11, 2017 (CN) 201710684919.0

Publication Classification(51) **Int. CL***A01K 1/02*
B62J 9/00(2006.01)
(2006.01)(57) **ABSTRACT**

Present invention provides a pet carrying bag utilizing first tie bands and second tie band to provide means for securing the bag to a bicycle handle bar when looping the bands around the handle bar and clicking the insertion prongs to the receiving insertion shells. Such installation mechanism allows for tight and secure fit to bicycle handle bars of different configurations. The bag body is made of flexible materials with rigid back board and bottom board embedded inside the flexible material, for easy fold-down and storage. During regular usage, two movable boards can be set, by using common Velcro pieces, to prop the bag open, creating a maximum space for the pets.

*Image Source: USPTO Database***What rights does a patent provide?**

The owner of a patent may, in principle, **exclude others** in the territory covered by the patent **from making, using, offering for sale, importing, or selling** the invention without their consent.

Furthermore, the patent owner may give permission to, or license, other parties to use the invention on mutually agreed terms.

The owner may also **sell** the right to the invention to someone else, who will then become the new owner of the patent.

How extensive is patent protection?

A patent is, in general, granted by a national patent office.

The effects of such a grant are, however, limited to the country concerned.

Patents may also be granted by a regional office that does the work for a number of countries, such as the European Patent Office (EPO) and the African Regional Industrial Property Organization (ARIPO).

- Under such regional systems, regional patent office accepts regional patent applications, or grants regional patents, which have the same effect as applications filed, or patents granted, in the member states of that region.
- The enforcement of such regional patents, however, lies within the jurisdiction of each Member State.

The WIPO-administered Patent Cooperation Treaty (PCT) is an agreement for international cooperation in the field of patents.

- It is largely a treaty for rationalization and cooperation with regard to the filing, searching, and examination of patent applications and the dissemination of the technical information contained therein.
- The PCT does not provide for the grant of "international patents": The task and responsibility for granting patents remains exclusively in the hands of the offices mentioned in the paragraph above.

Why protect inventions by patents?

Why protect inventions by patents?

- Patents provide incentives to individuals by offering them recognition for their creativity and material reward for their marketable inventions.
- These incentives encourage innovation, which assures that the quality of human life is continuously enhanced.
- Furthermore, patent owners are obliged, in return for patent protection, to publicly disclose information on their invention.
- Such an ever-increasing body of public knowledge promotes further creativity and innovation by future researchers and innovators.



Module 08 – New Plant Varieties

How can new plants be protected?

The International Convention for the Protection of New Varieties of Plants (UPOV Convention) provides for the protection of plant varieties by means of a “Plant Breeder’s Right”, which is a *sui generis* form of intellectual property rights, specifically tailored for that purpose.

Members of the World Trade Organization (WTO) are committed by the TRIPS Agreement to provide protection to plant varieties either by patents or by an effective *sui generis* system (that is, a special system for plant varieties) or by a combination of both (Article 27.3(b)).



Image Source: Freepik

When can plant varieties be protected?

Under the UPOV Convention, in order for the plant variety to be protected, it must be:

- a** **New**, meaning that it has not been commercially exploited during a certain period before the application;
- b** **Distinct**, meaning that it is clearly distinguishable from any other variety whose existence is a matter of common knowledge;
- c** **Uniform**, meaning that the plants of a variety should be uniform in the relevant characteristics, subject to the variations that may be expected from the particular features of its propagation;
- d** **Stable**, meaning that the variety should remain unchanged in its relevant characteristics over a period of repeated propagation;
- e** Have a **suitable denomination**, meaning it must have a name by which it is designated.

What protection does the breeder get?

Under the 1991 Act of the UPOV Convention, the following acts in respect to the propagating material (the seed or plant, or part of plant that is used for the reproduction or multiplication of the variety) require prior authorization from the breeder:

- production or reproduction;

- conditioning for the purpose of propagation;

- offering for sale;

- selling or other marketing;

- exporting;

- importing;

- stocking for any of the above purposes.

If breeders do not have the chance to exercise their right on the propagating material, and the variety is propagated without authorization, breeders can exercise their right on the harvested material.

How does the system allow the breeder to recoup the investment?

When giving the authorization for the above-mentioned acts to those who wish to exploit the variety, the breeder may, as a condition, require the payment of a royalty. Thus, for farmers who buy seed, this royalty would be included in the price of the seed.

To what extent can you use a protected plant variety without the need to ask for authorization?

It is important to note that authorization from the breeder is NOT required for:

- acts done for non-commercial purposes;

- acts done for experimental purposes;

- acts done for the purpose of breeding and exploiting other varieties.

Subject to reasonable limitations and to the safeguarding of the legitimate interest of the breeders, the UPOV Convention allows UPOV members to provide for farmers to use the product of their harvest for propagating purposes (e.g. to save part of the grain harvested by the farmer to be used as seed for the following season on their own farm).



Image Source: Freepik

How long do the breeder's rights last?

The minimum duration described in the 1991 Act of the UPOV Convention is:

25 years for trees and vines

20 years for other plants.

How extensive is plant variety protection?

- Usually, the protection is granted on a national level, in each of the States where the breeder seeks protection.
- However, the UPOV Convention allows protection on a supranational basis, which can greatly reduce the cost and effort needed to obtain protection in several countries.
- For example in the European Union, the Community Plant Variety Office grants a plant breeder's right which is valid in the territory of all its member States.

Why protect new varieties of plants?

Why protect
new varieties
of plants?

- Providing an effective system of plant variety protection has the aim of encouraging the development of new varieties of plants, for the benefit of society.
- The breeding of new varieties of plants requires substantial amounts of investment (skill, labor, money, time, etc.).
- Providing exclusive rights to breeders is an incentive to the development of new plant varieties for agriculture, horticulture, and forestry

Module 09 – Unfair Competition

What is unfair competition?

Unfair competition is generally understood as any act of competition that is contrary to honest practices in industrial or commercial matters.

A dishonest practice is not something that can be defined with precision. The standard of fairness or honesty may change from country to country, as well as evolve with time. It is, therefore, difficult to attempt to encompass all existing acts of unfair competition in one definition. On the other hand, the Paris Convention for the Protection of Industrial Property specifies that the following acts and practices are incompatible with the notion of fairness in competition:

- acts which may **create confusion** by any means with the establishment, the goods or the industrial or commercial activities of a competitor

(e.g. using a trademark identical or similar to another with respect to goods of the same category);

- acts that constitute **false allegations** of such nature **as to discredit or disparage the establishment, the goods, or the industrial or commercial activities, of a competitor**

(e.g. an enterprise attacking a competitor through statements that are false and untrue with relation to the latter's goods or services);

- indications or allegations which may mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity of the goods

(e.g. a company publishing false and untrue statements concerning the quality or safety of its own products in connection with promotion or sales advertising);

Unfair competition cannot be confined only to the 3 categories described above.

There is broad agreement that this concept should also apply to the following:

- **acts** consisting in the **disclosure or use by others of secret, or confidential information** without proper consent of the rightful holder of the information, in a manner contrary to honest commercial practices

(e.g. acts tending to appropriate another's secret information, such as, a method of manufacturing a product, through industrial or commercial espionage);

- **acts or practices** that, in the course of industrial or commercial activities, **damage the goodwill or reputation of another's enterprise**, regardless of the fact whether such acts cause confusion or not

(e.g. the fact of using a well-known trademark, say Cadillac, by someone other than its owner, for entirely different products, such as watches. This may result in the dilution of the well-known trademark, that is, the lessening of its distinctive character or of its advertising value. Furthermore, in this case, the user obtains an unfair advantage over their competitors, who do not own the well-known trademark, which is likely to favor the sale of his own product.)

What is the relationship between unfair competition and intellectual property laws?

In many countries, unfair competition laws supplement intellectual property laws.

To illustrate with an example, let us consider the situation where a trademark (A) has been used in association with certain goods. If a third party uses the same trademark or another similar mark (B) with the same category of goods, in a way that it is likely to cause confusion with (A), then the user of trademark (A) would justifiably have reason to complain and a legal basis to sue in order to stop the harmful activities. Two situations may then arise:

If the owner of trademark (A) has registered their trade mark beforehand, they will be entitled to bring action before the courts on the basis of trademark violation or infringement;

If the owner of trademark (A) has not yet registered the trademark, they may bring action on the basis of unfair competition.

However, the prerequisites to proceed with one or the other lawsuits are not identical.

It may be easier to succeed with an action based on infringement of an intellectual property law, than with an action based on unfair competition.

It is, therefore, advisable to register your rights (on trademarks, industrial designs, geographical indications, etc.) whenever national laws or international treaties allow for such a possibility, instead of relying solely on unfair competition, as a means to put an end to a dishonest behavior of a competitor that may harm your business.

Module 10 – Enforcement of Intellectual Property Rights

Infringement of Intellectual Property Rights

- A publisher may own copyright in a book, which has been reproduced and sold at a cut price, without their consent.
- A sound producer, who has invested large amounts of money, in terms of talent and technical skill, in producing a record, sees that copies of it are sold on the market, at cheap prices, without their authorization, hence jeopardising their investment.
- Someone else's trade mark may have been used by a company on similar or identical goods of lesser quality, harming thus the reputation of the legitimate owner, and inflicting on them serious financial loss, let alone exposing customer's health to danger.
- Somebody may be using the geographical denomination of "Roquefort" on cheese manufactured elsewhere than in the region of Roquefort in France, thus deceiving the consumers as well as taking away business from legitimate producers.



Image Source: Unsplash

In all such cases intellectual property rights (that is, copyrights, related rights, trademarks, and geographical indications) have been infringed. It is important that in such cases, enforcement mechanisms be called into play to protect not only the legitimate interests of the rights of the owners, but also of the public.

Enforcement Measures

Enforcement is an essential component of intellectual property laws. It may seem trite, but nevertheless true, to state that, laws that are not enforced or implemented are like tigers without teeth. This is why the TRIPS Agreement, as well as national laws, provide for a variety of methods designed to ensure that rights are enforced in an efficient manner. These methods include:

Provisional measures, such as search of premises and seizure of suspected infringing goods,, as well as equipment used to manufacture them;

Civil remedies, such as monetary compensation and destruction of infringing goods;

Court orders, to stop the violation that has taken place, or prevent it from happening;

Criminal sanctions, such as imposition of fines and imprisonment; and

Border measures, designated to stop the release into circulation of suspected imported

Should you suspect that your intellectual property rights have been violated, it would be advisable to seek professional help from a lawyer or specialized institutions in your country.

Module 11 – Emerging Issues in Intellectual Property

Intellectual property plays an important role in an increasingly broad range of areas, ranging from the Internet to health care, to nearly all aspects of science and technology, literature, and the arts.

The following two topics, Biotechnology and Traditional Knowledge, are now being discussed at length at the international arena. They are briefly described in the following paragraphs.

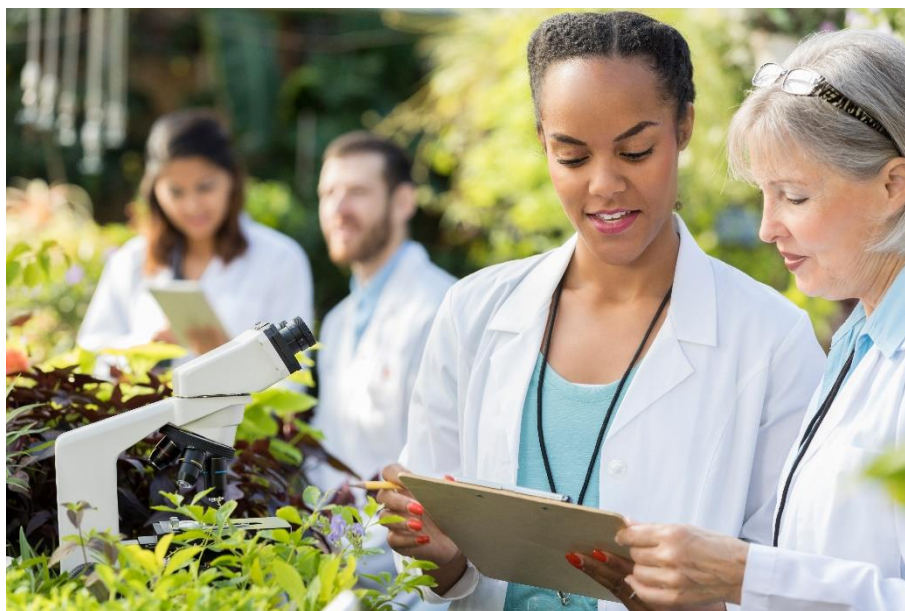


Image Source: Getty Images



Image Source: Pexels

What is Biotechnology?

Biotechnology is a field of technology of growing importance in which inventions may have a significant effect on our future, particularly in medicine, food, agriculture, energy, and protection of the environment.

The science of biotechnology concerns living organisms, such as plants, animals, seeds, and microorganisms, as well as biological material, such as, enzymes, proteins, and plasmids (which are used in “genetic engineering”).

In recent times, scientists have developed processes to modify the genetic composition of living organisms (called, genetic engineering). For example, the modified microorganisms created by Chakrabarty (an inventor in the United States of America), were able to break down components of oil pollution in oceans and rivers.

The patent on these microorganisms was the subject of a landmark decision by the United States Supreme Court, in which modified microorganisms were recognized as patentable subject matter. The Court noted that the laws of nature, physical phenomena, and abstract ideas were not patentable.

The claimed invention, however, was not directed to an existing natural phenomenon but to new bacteria with markedly different characteristics from any found in nature. The invention therefore resulted from the inventor’s ingenuity and effort, and could be the subject of a patent.



Image Source: Unsplash

The list of industries using biotechnology has expanded to include health care, agriculture, food processing, bio-remediation, forestry, enzymes, chemicals, cosmetics, energy, paper-making, electronics, textiles, and mining. This expansion of applications has resulted from innovations that have led to significant economic activity and development.

Why protect biotechnological inventions?

As in other fields of technology, there is a need for legal protection in respect of biotechnological inventions. Such inventions are creations of the human mind just as much as other inventions, and are generally the result of substantial research, inventive effort, and investment in sophisticated laboratories.

Typically, enterprises engaged in research, only make investments if legal protection is available for the results of their research. As with other inventions and industries, the need for investment in research and development efforts creates an obvious need for the protection of biotechnological inventions.

This need is not only in the interest of inventors and their employers, but also in the public interest of promoting technological progress.

Modern, flexible intellectual property systems and policies have contributed to fostering investment needed to establish biotechnology industries that create tangible products. Flexible intellectual property policies can play a role in favoring stable legal environments conducive to public/private partnerships, investment, and other economic activity needed to spread biotechnological innovations to more countries.



Image Source: Unsplash

The patenting of biotechnology innovations has been accompanied by controversy as has the use of some of these new innovations. Policy makers of all countries, however, have been careful to avoid extending patent rights to things as they exist in nature or to natural phenomena.

A new plant species discovered in the wild, for instance, can-not be patented and neither can laws of nature. In each country, the laws on patentability of biotechnological inventions need to be consulted to learn the availability of patent protection and its scope.

When considering these issues, one also needs to recognize that legal regimes other than patent systems, are typically relied upon to address other public interests, such as the environmental or medical safety of products, efficacy of products, and unfair competition that may occur in the assertion of patent rights.

The confluence of this new technology with legal and regulatory systems makes biotechnology an evolving and dynamic component of intellectual property law.

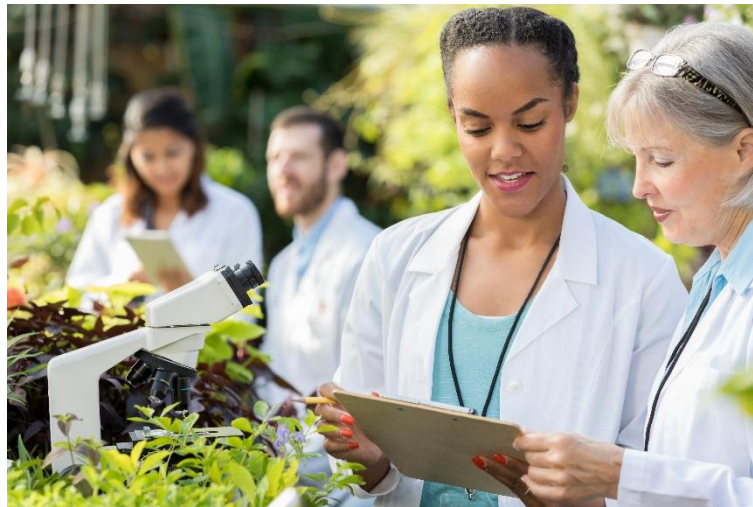


Image Source: Getty Images

Why has traditional knowledge been recently discussed in connection with IP?

Traditional knowledge – used here broadly to refer to tradition-based innovations and creations, resulting from intellectual activity in the industrial, scientific, literary or artistic fields – had been largely over-looked in the IP community until quite recently.

It is now increasingly recognized that the economic value of traditional knowledge assets could be further enhanced by the use of IP.

There are also concerns that the IP system has not adequately recognized the contribution of traditional knowledge systems in human development, and the interests of the holders of traditional knowledge.

Holders of traditional knowledge are exploring ways of protecting their interests within the IP system, safeguarding against misappropriation of their knowledge, cultural works and distinctive signs and symbols.



Image Source: Pexels

Many also seek to build their traditional knowledge and cultural expressions into sustainable economic and social development, utilizing various intellectual property approaches including patent, trademark, and copyright laws, and so called '*sui generis*' or tailor made laws for protecting traditional knowledge, traditional cultural expressions, or folklore, where these have been established.

Often, the enhancement of an old technology generates valuable new inventions, or the adaptation of an old artistic tradition results in new creative works.

These questions are the subject of focused discussion in the WIPO Intergovernmental Committee (IGC) on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore, which is making substantial progress in addressing both policy and practical linkages between the IP system, and the concerns and needs of holders of traditional knowledge and custodians of traditional cultures.

Why and how does the issue of genetic resources relate to IP?

Genetic resources (that is, genetic material of actual or potential value including elements of biological diversity in their natural setting, and modern or traditional cultivars and breeds used in agriculture, and special genetic stocks) can provide an important input for research and the development of new products, in an increasingly broad range of technological and industrial sectors. The terms and conditions of access to genetic resources, the exercise of prior informed consent by the providers of genetic resources, and the resulting arrangements made for the sharing of benefits from their use and development, are critical issues.

Existing international law and a number of regional, national and sub-national laws and regulations set the framework for exercising prior informed consent for access to genetic resources, and determining the terms and conditions of access, in particular ensuring that this material is used sustainably and the benefits of its use are shared equitably.



Image Source: Freepik

Key elements of international law include the Convention on Biological Diversity (CBD) and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR) of the Food and Agricultural Organization (FAO). Within access and benefit-sharing agreements and legal regimes permitting access to genetic resources, the specific arrangements made for intellectual property management can be crucial in ensuring that they operate to create benefits from access to genetic

resources, and in particular to ensure that those benefits are shared equitably and the interests and concerns of the resource providers are fully respected.



Image Source: Freepik

Module 12 – Summary and Conclusions

1

Through your study of this IP Primer, you have been able to learn about the fundamental areas of intellectual property (IP), the types of rights granted by different categories of IP, and the commercial value of IP assets. You have also had a chance to grasp the role that IP plays in increasingly broad areas, ranging from science and technology to literature and the arts.

2

Now that you have completed your reading of the course, you are invited to test your understanding of the subject matter. The following Section consists of a series of **Self-Assessment-Questions (SAQ)**, on each of the areas covered in the Primer.

3

In answering the SAQs, you may wish to consult and revert to the course materials. It is advisable to answer the questions in writing (instead of simply thinking up the answer), as this will enable you to fully articulate your thoughts on the elements required. After providing your own answer, you will be able to compare it with the standard answer provided by the course itself, and measure the accuracy of your own reply.

4

We hope that the course DL-001 and its exercises have been useful to you. Having become more knowledgeable of the multiple aspects of intellectual property, you may now decide whether to continue, and further your education in this field. A series of curricular **distance learning (DL) courses** provided by the WIPO Academy will allow you to do that.

5

In exploring the possibility to register for one of these courses, it will be important for you to know the main pedagogical difference between this self-learning Primer, and mainstream DL courses. While here you have conducted your studies entirely on your own, by enrolling in the regular DL courses you will enjoy the support of a tutor throughout the session for which you have registered.

6

Mainstream distance learning courses, in fact, bring teachers specializing in intellectual property closer to students in all corners of the world, using the Academy's Distance Learning platform, the Internet, and email communication. The tutorial support provided will greatly enrich your learning experience, while at the same time offering you the flexibility of following DL courses at your own pace, in your own space.

Please note that by registering in the DL curricula courses, you commit to actively participating in the prescribed activities under your tutor's guidance, and to taking the final exam.

Self-Assessment Questions

Self-Assessment Question 1

For each of the following examples state the area of IP law that would be most appropriate for their protection:

- 1) a company wishes to protect a product comprising a new chemical formula (Tetrafluorethylene,) which when used on, or applied to kitchen utensils, has the characteristics of preventing food in general, and eggs in particular from sticking to the pan. The company wants to ensure that it has sole use of the formula;
- 2) The same company wishes to market the frying pans that are coated with Tetrafluorethylene, under a commercial name that may attract its potential customers (as Tetrafluorethylene is not an easy name to be remembered, let alone pronounced by ordinary consumers). "Tefal", is the name chosen and used to identify the frying pans manufactured with the magic formula. The company wants to make sure that it has sole use of the name in relation to kitchen utensils and frying pans coated with Tetrafluorethylene;
- 3) The same company wishes to enhance the sale of its frying pans, not only by using the Tetra formula, but also by giving them a more appealing, aesthetic and new aerodynamic shape. It also wants to make sure that it has sole use of the new appearance, or "look" of its frying pans;
- 4) The same company wishes to aggressively advertise its unique and special frying pans (coated with the magic formula, sold under the name of "Tefal", and appearing under nice contours), on both T.V, by means of short film sketches of 20 seconds, and on radio, by means of short songs. It wants to make sure that nobody will use the music or words of the song, nor the short films made for TV.;

Self-Assessment Question 2

A person has composed the music and lyrics of a song. In order to be protected from acts of piracy, should they register their rights on the song?

Self-Assessment Question 3

Which of the following categories of persons are protected by related rights?

- 1) music composers
- 2) singers of songs
- 3) producers of sound recordings
- 4) authors of plays
- 5) film producers
- 6) actors (of film and plays)
- 7) broadcasting companies
- 8) ballet dancers

Self-Assessment Question 4

You are the owner of a company that produces and sells fruit juices in bottles and cans. You intend to choose the designation "Frutamine" to identify your products

- 1) Do you think this word could be used as a trademark?
- 2) If yes, what should you do in order to protect it?

Self-Assessment Question 5

Please indicate, for each of the following designations, the suitable system of protection available:

- 1) "DARJEELING" (tea harvested in India)
- 2) "SONY"
- 3) "CHAMPAGNE"
- 4) "ROLEX"
- 5) "IBM"
- 6) "TEQUILA" (alcoholic beverage produced in Mexico)
- 7) "SWISS AIRLINES"

Self-Assessment Question 6

A company is putting on the market telephones with "post modern, revolutionary" designs. It hopes that in a highly competitive market, the ornamental features of its telephones, different from all what has existed before, will help attract new customers and increase its business.

Could such design be protected, and how?

Self-Assessment Question 7

Could Einstein obtain a patent on his famous mathematical equation: $E = mc^2$?

Self-Assessment Question 8

Company (A) has developed a new formula that enhances the taste of a beverage it sells to the public. The composition of the mixture is kept secret. The beverage is a huge success. A competitor (B) is interested in getting hold of the formula. In order to obtain it, (B) pays a hefty amount of money to one of Company (A)'s employees, who is well aware about the confidential nature of the information that has been entrusted to them by the Company that employs them. Company A discovers the fact. Can it successfully complain against B's behavior and if yes on what ground?

Answers

No	Answer
SAQ1	1) Patent
	2) Trademark
	3) Industrial design
	4) Copyright
SAQ2	No. Works in general, such as songs, are protected under copyright laws of most countries by the mere fact of their creation. Protection does not depend on the fulfillment of formalities such as registration.
SAQ3	<p>Related Rights would apply to:</p> <ul style="list-style-type: none"> 2) singers of songs 3) producers of sound recordings 6) actors (of film and plays) 7) broadcasting companies 8) ballet dancers <p>These all are performers. However, music composers, authors of plays and film producers would be protected by copyright.</p>
SAQ4	<ul style="list-style-type: none"> 1) There is a good likelihood that “Frutamine” could be used as a trademark. It consists of a combination of words that suggest that fruits are a source of vitamins. It is not clearly descriptive of the product (fruit juice), nor is it deceptive (fruit juice is, in fact, rich in vitamin) 2) It is important to register the trade mark at your national trademark office, in order to obtain protection in this country. <p>Furthermore, if you intend to export your product, and ensure that protection is granted abroad, you should also register your trademark in each of the countries where the goods will be distributed. Remember however that, under the Madrid Agreement concerning the International Registration of Trademarks, you may obtain an international registration in a number of countries that are members of the such Treaty, provided the country of which you are a national, or in which you are domiciled or have an establishment, is also a member of the Madrid Agreement.</p>
SAQ5	<p>Trademark Law would apply to the following designations: 2) SONY, 5) IBM, 4) ROLEX, and 7) SWISS AIRLINES.</p> <p>Geographical Indications would cover: 1) DARJEELING, 3) CHAMPAGNE, 6) TEQUILA. In these examples, the name indicates that a given product – tea, or alcoholic beverage - originates in a given geographical area and possesses qualities or reputation due to that place of origin.</p> <p>However, please be aware of the fact that in certain countries, the protection for geographical indications may be available under either, special laws to that effect (that is, laws that protect geographical indications as such), or other branches of law (such as laws for the protection against unfair competition, or even trademark law, as geographical indications may be protected by a certification mark or a collective mark).</p>
SAQ6	<p>The design, as described, appears to be new and original, and as such it should be protected. Following the laws that exist in your country, such protection may differ.</p> <p>This design could be registered under the law of Industrial Design.</p> <p>It may also be that in your country, such design could be protected under Copyright law (which does not require any registration as a condition for protection), or under both Industrial Design and Copyright laws.</p> <p>Should you contemplate selling the telephones in foreign countries, you may be able to obtain an industrial design registration in a number of countries, that are party to the Hague Agreement related to the International Deposit of Industrial Designs, provided that you are a national of a State, or that your company is established in a State that is party to the Hague Agreement.</p>
SAQ7	No. Scientific theories or mathematical formulas cannot constitute subject matter of patents.

SAQ8	<p>The secret formula developed by Company (A) may be considered as a trade secret. In the circumstances (B)'s conduct may be described, under the terms of the Paris Convention for the Protection of Industrial Property, as an act that is contrary to honest practices in industrial or commercial matters, and hence an act of unfair competition.</p> <p>It is generally recognized that acts tending to appropriate someone else's secret or confidential information, (in this case the secret formula of the mixture developed by Company (A)), without proper consent of the rightful holder of the information, are contrary to honest commercial practices and should hence be considered as acts of unfair competition.</p>
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