

EU IP Law Deck

A compilation of foundational notions for students of the Jean Monnet Module SINPL-EU

Coordinated by Giulia Priora | with the support of NOVA IPSI researchers

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Meha Gosalia, Medium (2020)



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What do we mean by Intellectual Property (IP) in EU law

The million-dollar question: what is IP? Before grasping the essence of its definition in the EU legal system, here are some metaphors we grew affectionate to at NOVA IPSI:

- Some of us like thinking of IP as a tree: a legal discipline that **grew importance and outreach** over the centuries having originated as a way to regulate the book, textile and some other specific industries, and ending up regulating innumerable aspects of companies' and individuals' activities;
- Others among us think of IP as a glass dome: a type of **legal entitlement of exclusivity**, which allows creators, inventors and innovators to put their intellectual contributions under a transparent yet closed cage, which can be lifted only with the permission of the innovator themselves or, more rarely, the State.



IP law, in the EU and not only, is the branch of the legal system regulating the rights and obligations over some **fruits of the mind**, which are particularly valuable for society, thus deserve to be given legal protection in the form of recognition, reward and incentive to their creators.

To study more on this:

- EU Commission, *Intellectual property rights* https://commission.europa.eu/business-economy-euro/doing-business-eu/intellectual-property-rights_en
- Pila/Torremans, *European Intellectual Property Law* (2nd edition, OUP 2019) pp.39-69



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**What do we mean by
Copyright in EU law?**

Copyright is a branch of IP law that protects authors by way of granting them the right to claim **exclusive control** over their **original creations of artistic, literary or scientific nature**.

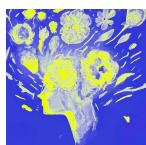
In the EU, to be sure we are in front of an original creation, we require that the author him/herself has undertaken **free and creative choices to create it**. In legal jargon, we say: the creation needs to qualify as the “author’s own intellectual creation” (see, among others, the CJEU decision *Infopaq*).

Differently from what many people in society think, the legal protection of this set of exclusive rights that we call **copyright** arises **automatically** in the moment the author creates the original work. Copyright legal protection, in fact, does **not** require registration to exist and be claimed, exercised, enforced.

Copyright legal protection in the EU is **only partially harmonised**: EU law aligns certain key aspects of copyright across Member States to support the internal market, but it is, to a significant extend, still governed by national laws, which at times differ in regulating the rights and obligations of copyright holders and users of copyrighted works.

To study more on this:

- *Ginsburg, Copyright, in Oxford Handbook of Intellectual Property Law (OUP 2017)*
- *van Eechoud et al, Harmonizing European Copyright Law: The Challenges of Better Lawmaking (Kluwer Law International 2009) Chapter 2*



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What do we mean by Patent in EU law?

In the EU (and not only), a patent corresponds to a legal entitlement granted to the **inventor of a technological advancement**, which can be a new process or a product in any field and sector, from medicine to digital technologies, from machines to industrial techniques. However, not all the inventions qualify to be patented. Specific **requirements** must be fulfilled, proving that the invention is particularly/really highly innovative.

To secure a patent, an inventor (or the company for which the inventor works) needs to **file for it at one or more national IP offices**, which will examine very closely the request and decide whether the invention is worth a patent or not. If the inventor or company manages to register the invention as a patented one, the legal protection acquired corresponds to an **exclusivity**, for a limited period of time (20 years), to prevent others from making, using, offering for sale, selling, and importing the patented invention without their authorization.

In the EU we do not have one set of legal rules governing patents. However:

- we do have "**European patents**" that are issued by the European Patent Office (EPO) in Munich, Germany and are fully governed by an international treaty called the European Patent Convention (EPC), that applies in 39 States (all EU Member States but not only, also UK, Switzerland, Norway, Turkey, Montenegro, North Macedonia...);
- and, more recently, we introduced the so-called "**unitary patents**" which are European patents (issued by EPO, governed by EPC) which, after being granted, are given "unitary effect", meaning they are enforceable and produce the same legal effects in 24 out of the 27 EU Member States (Croatia, Spain and Poland not adhering to this system), under the jurisdiction of the Unified Patent Court (UPC).

To study more on this:

- Hall, "Patents, Innovation, and Development" (2020) *Max Planck Institute for Innovation & Competition Research Paper No 20-07*
- MacGregor Pelikánova et al, "Unitary Patent System and Innovation Dynamics in the European Union: The Role of Economic Resources and R&D Investments' (2025) 21(2) *Journal of Entrepreneurship, Management and Innovation* 98–115



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**What do we mean
by Trademark
in EU law?**

Trademarks are those **signs** (broadly intended, it can be a name, a word, a logo, a slogan, but also a colour, a shape, a sound...) that were successfully registered in the EU or one or more national IP offices, thus being recognized as property of the companies/individuals applying for registration.

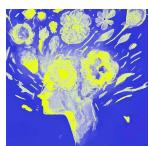
The main characteristic of a trademark is that it is **capable of distinguishing the goods or services of one company/individual** from the goods/services of the competitors and, in general, from those of other market actors. Closely linked to that, the main purpose of a trademark is to **clearly indicate the commercial origin** of products/services to consumers. This, in the EU, is referred to as the “essential function” of trademarks (see, among others, CJEU decision in *Arsenal*).

An initial important remark is that:

- Trademark registration is not strictly required for a company/individual to use the signs/branding elements of his/her choice in the market (without, however, having a legal claim of exclusive property over them);
- However, if he/she acquires a registered trademark, **the use of such trademark in course of his/her business is strictly needed**, not to lose trademark legal protection.

To study more on this:

- Kur/Senftleben, *European Trade Mark Law* (OUP 2017)
- Hasselblatt (ed), *European Union Trade Mark Regulation EU 2017/1001 Article-by-Article Commentary* (Bloomsbury 2018)



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**What do we mean by
Industrial Design in EU
law?**

Industrial design law is one of the commonly less known branches of IP law. It is dedicated to the protection and regulation of the legal entitlement giving designers exclusive control over the **appearance** of products that they came up with and helped put in the market. This type of IP legal protection stems from the recognition that the **study behind products**, especially but not limited only to their visual appeal, is an important driver of consumer preference.

In the EU, industrial design law is governed by the EU Design Directive and by the EU Design Regulation. The EU Design Directive aims to harmonise legal rules about industrial designs across Member States, while maintaining their own national design registration processes and national IP offices, which grant a legal entitlement that is valid only in the Member State for which protection is sought. Differently, the EU Design Regulation creates a **unitary EU-wide design** right: a company or a designer can apply for it at the EU IP office (EUIPO) and, if successful, they get a legal entitlement that is valid across all 27 EU Member States and is fully regulated by the EU Design Regulation itself.

In 2024 we had a big round of reform of the EU design law, which included meaningful changes in, among others, terminology, subject matter, rights conferred and limitations of such exclusive rights.

To study more on this:

- Kur/Levin/Schovsbo (eds) *The EU Design Approach* (EE 2018)
- Kur/Endrich-Laimböck/Huckschlag *Substantive Law Aspects of the 'Design Package'* (2023) *GRUR Int* 72(6)



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What is the principle of territoriality and how harmonized are Intellectual Property legal rules in the EU?

The principle of territoriality in intellectual property law refers to the legal precept as to IP rights (namely, the legal entitlements of exclusivity given by the State to creators and inventors) are **enforceable within the national boundaries of the State granting them**. For example: I write a book or I produce a new medicine; my legal claims of exclusivity ("it is mine, you cannot do without my permission") I have over either of these contributions depend on the way each State envisioned them and strictly apply within their national boundaries: I cannot stop someone from copying my book or medicine in Australia based on the fact that I have valid copyright protection over my book in Portugal and I successfully registered a patent over my medicine in Japan.

An important addition to the principle of territoriality is the ever-growing level of **internationalization and Europeanization of IP law**. Both these lawmaking processes, since the very first international treaties tackling IP legal protection (Paris Convention of 1883 and Berne Convention of 1886, both still in force) play the essential role of building a level of harmonization of how we regulate IP rights round the world.

In the EU, this does not only translate in a minimum level of IP protection that must be granted across the 27 Member States, but, very peculiarly, for some IP rights – namely trademarks and industrial designs – we also added a **level of full harmonization**. This means that, besides the national IP legal entitlements, there is also the possibility of requesting a EU-wide protection of a trademark or of a design, which would apply in the exact same way across the entire EU territory (Art.118 of the TFEU).

To study more on this:

- Kur/Dreier, *European Intellectual Property Law: Text, Cases and Materials* (EE 2013) p.12 and pp.57-67
- Gervais, *The principle of territoriality in international IP law and its implications for global FRAND rate-setting* (2025) GRUR Intl, <https://academic.oup.com/grurint/advance-article/doi/10.1093/grurint/ikaf141/8374757>



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| <p>What do we mean by licensing and assignments of IP rights?</p> | <p>In the EU, assignment and licensing are the two legal mechanisms through which any IP rights can be exploited, meaning exercised and used by way of contractual agreements.</p> <p>An assignment entails the transfer of ownership of an IP right from the holder to another party. Once assigned, the assignee becomes the new right holder and acquires the associated economic rights, with effects <i>erga omnes</i>, subject to applicable formalities under national or EU law. This transfer occurs, nonetheless, without prejudice of moral rights.</p> <p>A licence, by contrast, does not entail a transfer of ownership of the intellectual property, but rather grants the licensee an authorisation to use the protected subject matter under conditions contractually defined. Licences may be structured as exclusive or non-exclusive, may be limited by territoriality, duration, or fields of use, and may be granted on a gratuitous or remuneration basis (this remuneration can be through royalties or fixed grant such as lump-sums payments). Therefore, ownership remains with the licensor and the licensee's rights are primarily contractual.</p> <p>EU IP law interferes relatively little with licensing and assignments contractual practices. National IP laws do so slightly more, but generally speaking much space is left for private autonomy. What EU law aims to do is to ensure that their exploitation aligns with the functioning of the internal market. In this light, these agreements also need to comply with other EU legal frameworks, first of which EU competition law rules.</p> <p><i>To study more on this:</i></p> <ul style="list-style-type: none"> • EU, 'Licensing and selling intellectual property' https://europa.eu/youreurope/business/running-business/intellectual-property/licensing-selling/index_en.htm • Kur/Dreier, European Intellectual Property Law: Text, Cases and Materials (EE Publishing 2013) 393-396 |
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