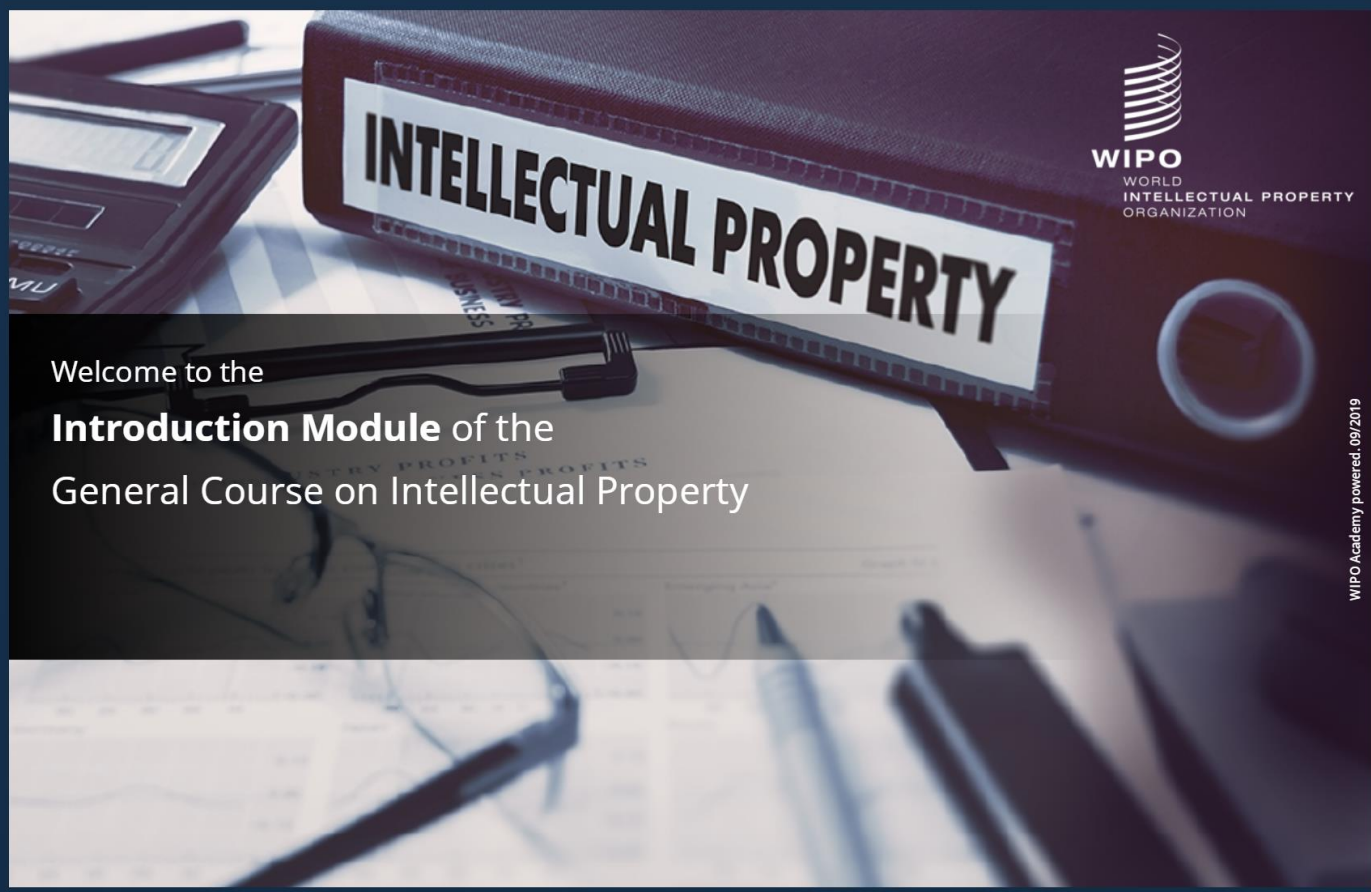




DL101: General Course on Intellectual Property



## Table of Contents

<b>Table of Contents .....</b>	<b>2</b>
<b>Module Introduction .....</b>	<b>3</b>
Aims of the Course.....	3
Knowledge Nugget: What is Intellectual property?.....	4
Why do intellectual property rights matter? .....	5
Intellectual Property and Society .....	6
<b>What does this course include? .....</b>	<b>7</b>
Copyright.....	8
Related Rights .....	9
Trademarks .....	11
Patents .....	15
Unfair Competition .....	16
New Plant Variety Protection .....	18
TK, TCE and GR.....	19
Summary and Further Reading.....	21
Things to Bear in Mind.....	22
<b>End of Module 1: Introduction.....</b>	<b>22</b>



## Module Introduction

### Aims of the Course

This course seeks to explain what the term Intellectual Property means, the benefits derived from the Intellectual Property and the Intellectual Property system, the history of how it developed and how it is evolving today to serve new and varied needs.

Throughout your study of the various modules, you will learn about the different domains of intellectual property and their different types of protection. The modules will stress the benefits of the various protections in terms of the holder's rights and how they benefit society. An underlying theme in all of the lessons that are prepared for you will be that creators of intellectual property can make financial rewards by the exercise of their rights which are limited in nature or require maintaining.

Just owning intellectual property rights does not generate money or benefits, it must be exploited.

Each module also deals with the International laws that are relevant to the particular IP topic being described.

After completing the study of this course you should be able to:

- Explain to you, or indeed any other person or company, how to benefit from Intellectual Property.
- Describe how intellectual property is designed to encourage human intellectual creativity and benefit society.
- Describe to you the domains of intellectual property and how they can protect your inventions and works.
- Provide you with the rationale of intellectual property law that is designed by the legislature to balance private legal interest for a limited period of time and at the same time serve the public.
- Give you knowledge about flexibilities in the Intellectual Property system that can benefit both you and society financially or culturally or indeed both.
- Explain to you the national and international legal principles and processes that are put in place by States so as to protect IP to facilitate the trading of goods and services that are traded nationally and across borders.
- Provide you with information so that you can contribute to debates and discussions about IP.
- Provide you with examples that illustrate how IP can be used to solve challenges and improve lives in areas like education, climate change, health, and economic development, through promotion of innovation and collaboration among IP stake holders and society at large.



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## Knowledge Nugget: What is Intellectual property?

You may already know the answer to this question.

We know that the inventor of a machine, the author of a book, or the writer of music somehow usually 'own' their work. From this ownership, certain consequences flow and you probably have been made aware of the fact that we cannot just copy or buy a copy of their works without consideration of their rights.

Equally, original industrial designs of furniture, wallpaper and the like seem naturally to be owned by someone or some organization. Each time we buy such an item, a part of what we pay goes back to the owner as recompense for the time, money, effort and thought they put into the creation of the work. This has resulted over the years in the development of industries such as the music industry growing worldwide and encouraging new talent to produce more and more original ideas and articles.

All of the images below relate to at least one aspect of Intellectual property and some of them relate to two or more in one product.

- IP laws can protect books, newspapers, films, recordings, paintings, photographs, sculpture, performances, broadcasts, computer programs, databases, etc. – by means of copyright and related rights
- brands and logos – by means of trademarks
- products whose reputation derives from their place of origin – by means of geographical indications
- shapes, surface decoration and other artistic aspects of products - by means of industrial designs
- inventions – by means of patents (and utility models)



Also, under the umbrella of IPR, are trade secrets and protection against unfair, plant varieties, and work continues on recognizing the rights, for instance to protect the traditional forms of creativity and innovation of indigenous people, namely traditional knowledge and traditional cultural expressions; and also genetic resources.





## Why do intellectual property rights matter?





## Intellectual Property and Society

The course will show you that IP rights are the result of a contract between the owner of the rights and the state. The national law determining these rights is a balance between the rights given to the owner of the IP and the need for benefits to flow to society. You will be given many examples of this balance, in particular the legal principle and formalities which set limited terms for IP rights beyond which the invention or creation may be can be used by anyone.

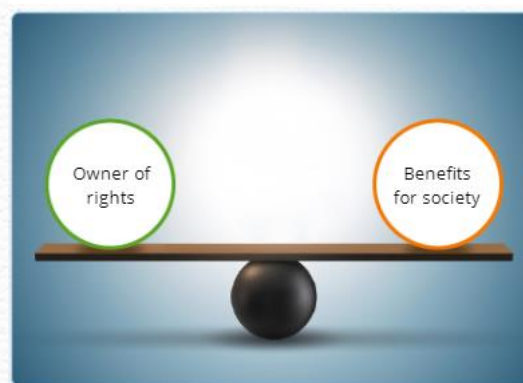
Governments can also in some circumstances permit the free use of copyrighted materials for example in education or the legal system.

All IP rights are also designed with a limited time period, some depending on payment for maintaining the IP right, after which they fall in the public domain to be used for further creative endeavors.

### The question of balance

#### Is the balance correct?

As with all balance, the question of whether the correct balance has been struck in a national IP law or International treaty is discussed among States and national legislature consistently. There is currently an active discussion about the concept of public domain and about inventions which are covered in the relevant modules of the course. Indeed there is a module at the end of the course that seeks to put a large body of research and studies putting topical issues such as flexibilities in the IP system and public domain if you are interested in further reading.



We recommend that you enroll in the advanced courses of the WIPO Academy to develop your knowledge more specifically to cover the flexibilities and public domain topics in the specific IP area.

## What does this course include?

Given below is a list of the modules in this course. Select each module for a brief overview of the module. It is ideal that you read through each module overview in sequence. Begin by selecting the Copyright module. You can use the **Menu**, available in the left navigation panel, to come back to this screen and choose the next module, after you have finished reading through the overview of the selected module.

### Intellectual Property

2 // Copyright	8 // Unfair Competition
3 // Related Rights	9 // International Registration
4 // Trademarks	10 // New Plant Variety Protection
5 // Geographical Indications	11 // TK, TCE and GR
6 // Industrial Designs	12 // IP and Development
7 // Patents	13 // Summary and Further Reading

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## Copyright

As with all fields of intellectual property copyright is concerned with protecting the work of the human intellect. The domain of copyright is the protection of literary and artistic works. These include writings, music, and works of the fine arts, such as paintings and sculptures, and technology-based works such as computer programs and electronic databases.

Note that copyright protects works, that is the expression of thoughts, and not ideas. So if you imagine a plot, this, as such, is not protected. For example, a plot consisting of a story about young men and women falling in love despite family and caste obstacles would not be protected. Different writers may build stories based on a similar plot. But when you express it in a synopsis or in, say, a short story, or a play, the expression of the plot in that story will be protected. Hence, for example, Shakespeare's play Romeo and Juliet would be considered as a creative expression of that plot. Still, other writers may build new stories based on a similar plot.

There is no requirement that the literary and artistic work should be good or have artistic merit. It should, however, be original. The exact meaning of this requirement varies from country to country, and it is often determined by case law. In very general terms one may say that in countries belonging to the common law tradition very little is required, other than that the work must not be a copy of another work and that the author should have displayed a minimum amount of skill, labor and judgement in making it.

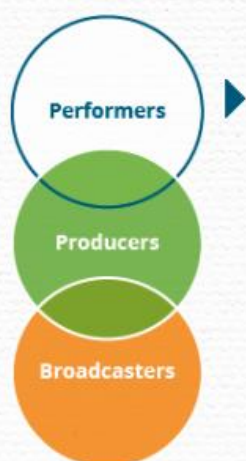






## Related Rights

Related rights are not copyright, but they are closely associated with it; they are often based on a work protected by copyright. So the two are, in some way, related. They offer the same kind of exclusivity as copyright, but they don't cover the actual works. They cover things that involve a work, in the general sense of bringing it to the public. Let's use the example of a copyright-protected song and take it through the various stages.

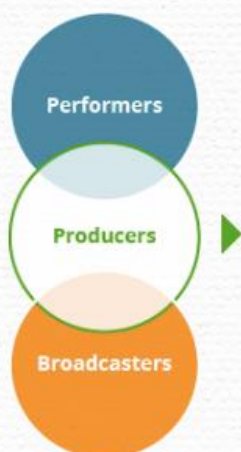


- Assuming that we have an original song, it is, of course, protected for the composer and the lyric writer as original copyright holders.
- They in due course will offer it to a singer who performs it.
- He or she will also need a form of protection.
- If it is to be recorded, or if the singer hopes to have it broadcast, those acts involve engaging another company, which will also want to be protected before it enters into an agreement.

The first of these related rights then are the rights of those who **perform** the works, namely the performers, singers, actors, dancers, musicians and so on.



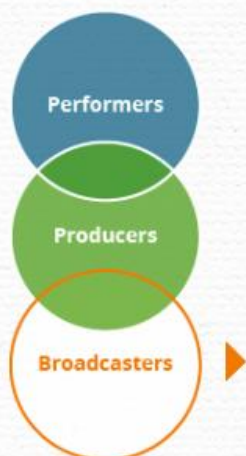
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Then there is a second group, the phonogram producers, or more accurately producers of sound recordings as recording material moves on from vinyl phonograph records into the realm of CDs and digital recording media. There is a more commercial kind of protection, in a sense, as the making of a quality sound recording has more to do with the protection of an investment, than with the artistic concerns involved in the making, writing or performance of a song. Nevertheless, even here, in the whole process of selecting the instrumental backing, repertoires, arranging the music and so on, there are some creative elements as well as the more obvious and important economic element. We should bear in mind that these producers are among the most immediate victims of piracy, as they don't get the money that is diverted to the illegal pirate producers, but then of course their loss, their financial loss, is passed down the line to the performers and authors. This is why **producers of sound recordings** have also been granted specific rights.



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The third group receiving protection for their related rights are **broadcasters**. Their rights derive from their creative and economic input, namely the assembly of the programs on the broadcast signal and its delivery to the audience not from the content of the broadcast, not from the film, for instance, but from the act of broadcasting it. The very fact that they have the ability to emit the signals constituting the broadcast gives them protection rights of a sort in those signals. And there again, it is the investments, the efforts that they made in putting together and broadcasting the various programs that are involved.



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## Trademarks

Trademarks existed in the ancient world.



The growing importance of trademarks in commercial activities is due to the increased competition among companies undertaking trade in more than one country.

- Trademarks have been used to simplify the identification by consumers of goods or services, as well as to guarantee their quality and value.
- Thus, a trademark may be considered as a tool of communication used by producers to inform and attract consumers.

In this module you will be able to learn what sort of signs can be used as trademarks.

- Explain how well-known marks are given special protection under the Paris Convention and the TRIPS Agreement.
- Describe how a trademark may be protected internationally and the issues that arise when trademarks are used on the Internet.






## Geographical Indications (GIs)

A geographical indication is a sign used on products that have a specific geographical origin and possess a quality, reputation or other characteristic that is due to that origin. They can be used for both agricultural and industrial products. Given below are the various uses of geographical indications.


**Uses of Geographical Indications**

Agricultural products typically have qualities that often derive from their place of production and are influenced by specific local, geographical factors such as climate and soil. It is therefore not surprising that a majority of GIs throughout the world are used to identify agricultural products, foodstuffs, wines and spirit drinks.





Bottle of Argan Oil

**Uses of Geographical Indications**




Champagne is used to identify a specific sparkling wine, which originates in the Champagne region of France. Given below are some other examples.

Darjeeling for Tea      Havana for Tobacco

**Uses of Geographical Indications**

GIs may also highlight specific qualities of a product that are mostly due to human factors in the product's place of origin, such as specific manufacturing skills and traditions.



Cheese Processing Caves





#### Uses of Geographical Indications

That is often the case for handicrafts (Thai Silk, Chulucanas for ceramics from Peru, or Bohemian Crystal).



Silk Weaving in Thailand



Ceramic Bulls from Peru



Bohemian Crystal

#### Uses of Geographical Indications



Swiss Watches

Geographical indications are also used to identify industrial products, such as Swiss Watches.



## Industrial Design

An industrial design relates to the appearance of an article, which results from features such as the lines or colors of the article or its ornamentation.

Industrial designs are applied to a wide variety of products of industry or handicraft: from watches, jewelry, fashion and other luxury items, to industrial and medical implements; from house ware, furniture and electrical appliances to vehicles and architectural structures; from textile designs to leisure items, such as toys and pet accessories.

In certain jurisdictions, an increasingly common kind of two-dimensional designs that are becoming a subject of industrial designs are the graphical user interfaces or (GUIs) and icons that are embedded in all kinds of consumer appliances such as our mobile phone.





## Patents

Patents are one of the oldest forms of intellectual property protection and, as with all forms of protection for intellectual property, the aim of a patent system is to encourage economic and technological developments by rewarding new solutions resulting from the intellectual creativity.

A patent is a document which describes a specific invention contains a 'claim' which creates a legal right for the inventor alerting that the invention can normally be exploited only with the authorization of the owner of the patent.

In other words, a patent protects an invention, and grants to the owner the exclusive rights to use his/her invention for a limited period of time provided that the invention meets certain conditions which you will learn about in the module. And an invention may be defined as a new solution to a technical problem.

Example of inventions: band-aid, electric iron, safety pin, ball point pen, telephone, etc.





## Unfair Competition

Fair play in the marketplace cannot be ensured only by the protection of Industrial property rights. A wide range of unfair acts, such as misleading advertising and the violation of trade secrets are usually not dealt with by the specific laws on industrial property. In fact Unfair competition law is necessary either to supplement the laws on all intellectual property or to grant a type of protection that no such law can provide.

Read through some examples of the definition of unfair competition.

Here are some examples of the definition of unfair competition:

- "all acts of such a nature as to create confusion, by any means, with the establishment, the goods, or the industrial or commercial activities, of a competitor;
- false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor;
- indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods."



Street vendor selling Nike shoes

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## International Registration

### How many different systems of international registration does WIPO oversee?

There are actually three systems.

1. There is what is known as the Madrid System, which is for the international registration of marks. It consists of two treaties: the Madrid Agreement and the Madrid Protocol. The Madrid System was established by the Madrid Agreement. However, now it is, de facto, a non-operational treaty, since it is no longer possible to become a member of the Madrid Agreement alone, and no more registrations can occur under the Agreement only. The Madrid System is therefore governed by the Madrid Protocol, which was concluded with a purpose to modernize and streamline the international registration process.
2. Then there is the system of international registration of industrial designs, which is offered through the Hague System.
3. The third is the system of international registration and protection of appellations of origin, under the Lisbon Agreement.





## New Plant Variety Protection

The protection of new plant varieties is another aspect of intellectual property rights, and as such seeks to acknowledge the achievements of breeders of new plant varieties by giving them, for a limited period, an exclusive right. To obtain such protection, the new varieties must satisfy specific criteria.

The organization overseeing the protection of new plant varieties is referred to as UPOV, which is an acronym derived from the French name for the organization, Union internationale pour la protection des obtentions végétales.

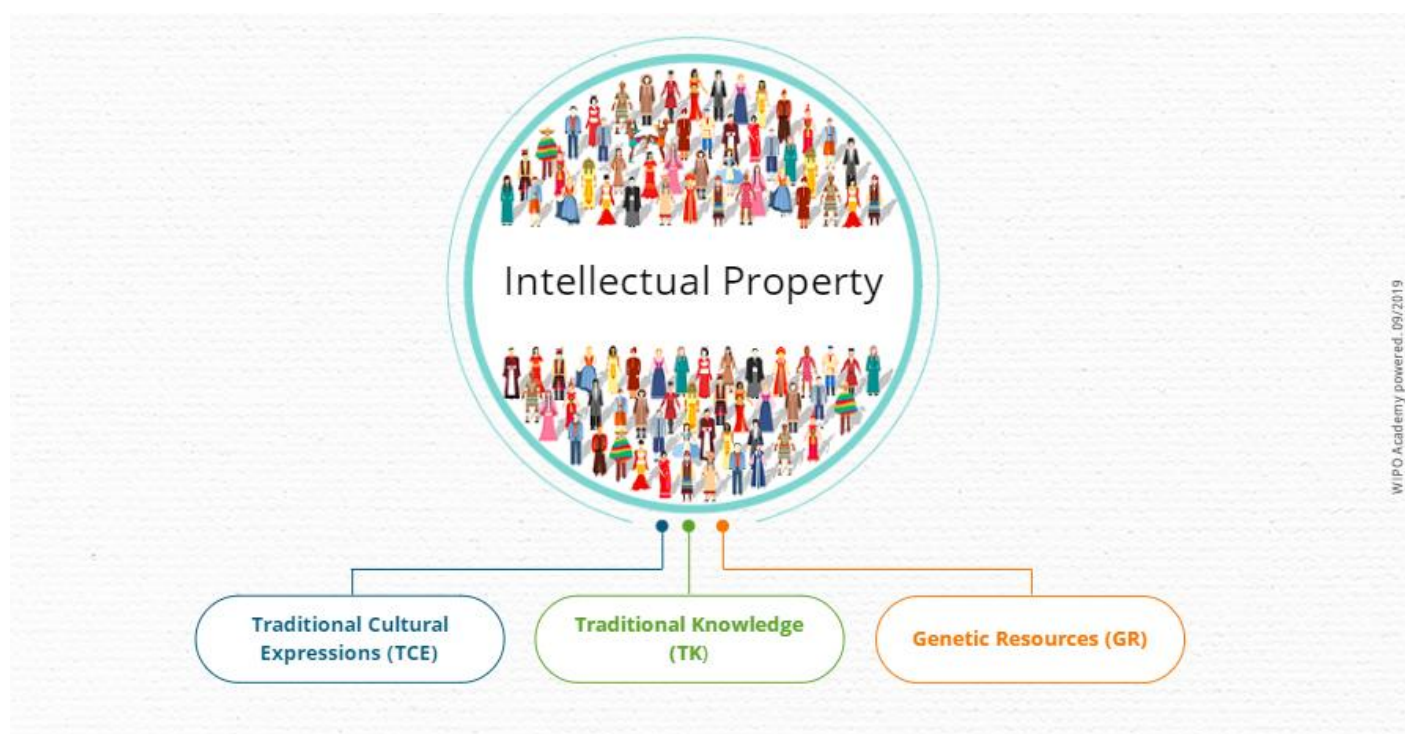




## TK, TCE and GR

In recent years, indigenous peoples, local communities, and governments—mainly in, but not limited to developing countries—have demanded IP protection for traditional forms of creativity and innovation, which, under the conventional IP system, are generally regarded as being in the public domain, and thus free for anyone to use. Indigenous peoples, local communities and many countries reject a “public domain” status of TK and TCEs and argue that this opens them up to unwanted misappropriation and misuse.

The objective of this chapter is therefore to offer general information on the interface between intellectual property or IP and traditional knowledge or TK, traditional cultural expressions or TCEs, and genetic resources or GRs.





## IP and Development

A well balanced system of granting and exploiting intellectual property rights is a factor in economic growth as it encourages investment and trade, but if designed and used appropriately:



Development is a broad concept to define, but important to understand because it is among the key objectives of the global and many domestic intellectual property systems. More recently, economic growth has been valued, not for its own sake, but for facilitating human freedom.

Intellectual property by itself neither helps nor hinders development necessarily. It is how laws, policies and practices are designed and used in different countries that determine whether IP is effective for development purposes. Flexibilities in the international treaties and agreements that you learned about in earlier modules can facilitate development because countries can use them in a manner that enables them to pursue their own public policies.

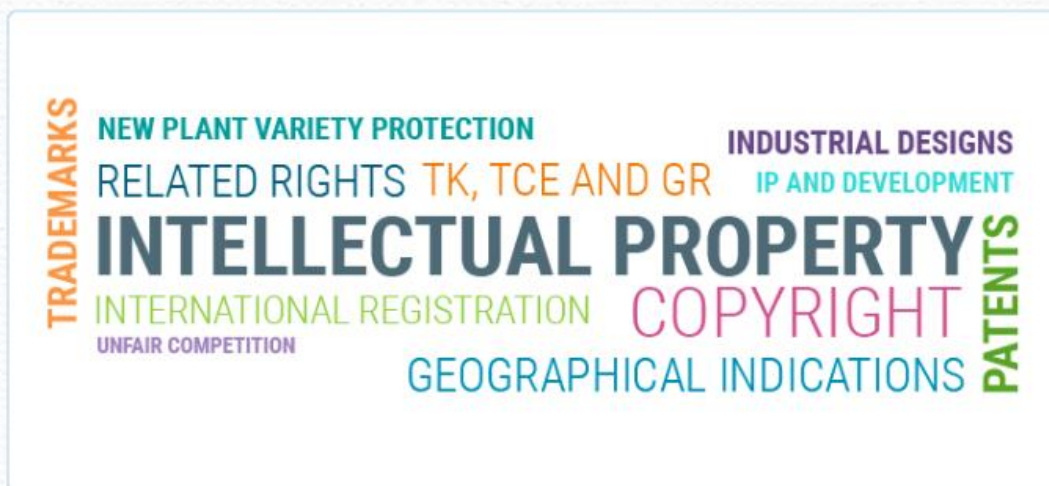




## Summary and Further Reading

The aims of this module are to:

- summarize the main ideas of this course and to show links between the module topics.
- provide further material to deepen your knowledge and of existing discussions concerning various issues on Intellectual property





## Things to Bear in Mind

As you study the various modules of this course please keep in mind this requirement for a balance between IP rights and the public good to society. Public good being a term that encompasses many factors that a society may be seeking to achieve and economic development is but one of them.

Other include health, cultural protection, removing inequalities etc. Each society will set its own priorities and IP laws can be framed in a way that helps achieve them.

Also be aware of linkages mentioned in the materials to economic shift from tangible products to intangible products such as databases, the geopolitical shift from West to East and the political shift from State to non-state entities such as global companies.



Balance between IP rights and the public good



Increased globalization and rising prominence of global companies and the shifts of economic activities from one region to the other



The use of Big Data and the rise of products based on Information Technology, Databases and Artificial Intelligence and the increasing speed with which technology is becoming prominent in everyday life.

Constant changes in the technological and economic environment are taking place which influence IP, such as the above.

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Finally, I wish you well with your study of the modules and hope that they both inform and inspire you in your future interaction with Intellectual property. Either as an owner of IP, a consumer of IP or as someone who helped shape the balance that leads to optimum public good.

This is the end of the Introduction module. Go back to the course main page and proceed to Module 2 of on Copyright to continue your learning of this course.

## End of Module 1: Introduction