

INTELLECTUAL PROPERTY RIGHTS WORKSHOP

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COPYRIGHT

What is copyright?

Copyright is a legal term describing **rights given to creators** for their literary and artistic works.

What is covered by copyright?

The **kinds of works covered by copyright** include: literary works such as novels, poems, plays, reference works, newspapers and computer programs; databases; films, musical compositions, and choreography; artistic works such as paintings, drawings, photographs and sculpture; architecture; and advertisements, maps and technical drawings.

What rights does copyright provide?

The **original creators** of works protected by copyright, and their heirs, have certain basic rights. They hold the **exclusive right** to use or authorize others to use the work on agreed terms. The creator of a work can prohibit or authorize:

- its **reproduction** in various forms, such as printed publication or sound recording;
- its **public performance**, as in a play or musical work;
- **recordings** of it, for example, in the form of compact discs, cassettes or videotapes;
- its **broadcasting**, by radio, cable or satellite;
- Its **translation** into other languages, or its **adaptation**, such as a novel into a screenplay.

Many creative works protected by copyright require mass distribution, communication and financial investment for their dissemination (for example, publications, sound recordings and films); hence, creators often **sell the rights** to their works to individuals or companies best able to market the works in return for payment. These payments are often made dependent on the actual use of the work, and are then referred to as **royalties**.

These **economic rights** have a time limit, according to the relevant WIPO treaties, of 50 years after the creator's death. National law may establish longer time-limits. This limit enables both creators and their heirs to benefit financially for a reasonable period of time. Copyright protection also includes **moral rights**, which involve the right to claim authorship of a work, and the right to oppose changes to it that could harm the creator's reputation.

The **creator** - or the **owner of the copyright** in a work - can **enforce rights** administratively and in the courts, by inspection of premises for evidence of production or possession of illegally made - "**pirated**" - goods related to protected works. The owner may obtain court orders to stop such activities, as well as seek damages for loss of financial rewards and recognition.

Are ideas, methods or concepts protected by copyright?

Copyright protection extends only to expressions and not to ideas, procedures, and methods of operation or mathematical concepts as such. This principle has been confirmed by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) of the World Trade Organization (WTO) as well as the WIPO Copyright Treaty.

What are rights related to copyright?

A field of **rights related to copyright** has rapidly developed over the last 50 years. These related rights grew up **around** copyrighted works, and provide similar, although often more limited and of shorter duration, rights to:

- **performing artists** (such as actors and musicians) in their performances;
- **producers of sound recordings** (for example, cassette recordings and compact discs) in their recordings;
- **broadcasting organizations** in their radio and television programs.

Why protect copyright?

Copyright and its related rights are **essential 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 and **enhances the enjoyment of culture, knowledge, and entertainment** all over the world.

Do you need to register to be protected?

Copyright itself does not depend on official procedures. A created work is considered protected by copyright as soon as it exists. According to the Berne Convention for the Protection of Literary and Artistic Works, literary and artistic works are protected without any formalities in the countries party to that Convention. Thus, WIPO does not offer any kind of copyright registration system. However, many countries have a national copyright office and some national laws allow for registration of works for the purposes of, for example, identifying and distinguishing titles of works. In certain countries, registration can also serve as *prima facie* evidence in a court of law with reference to disputes relating to copyright."

How are copyright and related rights protected on the Internet?

Two treaties were concluded in 1996 at the World Intellectual Property Organization (WIPO) in Geneva. One, the WIPO Copyright Treaty (WCT), deals with protection for authors of literary and artistic works, such as writings and computer programs; original databases; musical works; audiovisual works; works of fine art and photographs. The other, the WIPO Performances and Phonograms Treaty (WPPT), protects certain "related rights" (that is, rights related to copyright): in the WPPT, these are rights of performers and producers of phonograms.

The purpose of the two treaties is to update and supplement the major existing WIPO treaties on copyright and related rights, primarily in order to respond to developments in technology and in the marketplace. Since the Berne and Rome Conventions were adopted or lastly revised more than a quarter century ago, new types of works, new markets, and new methods of use and dissemination have evolved. Among other things, both the WCT and the WPPT address the challenges posed by today's digital technologies, in

particular the dissemination of protected material over digital networks such as the Internet. For this reason, they have sometimes been referred to as the “Internet treaties.”

Both treaties require countries to provide a framework of basic rights, allowing creators to control and/or be compensated for the various ways in which their creations are used and enjoyed by others. Most importantly, the treaties ensure that the owners of those rights will continue to be adequately and effectively protected when their works are disseminated through new technologies and communications systems such as the Internet. The treaties thus clarify that existing rights continue to apply in the digital environment. They also create new online rights. To maintain a fair balance of interests between the owners of rights and the general public, the treaties further clarify that countries have reasonable flexibility in establishing exceptions or limitations to rights in the digital environment. Countries may, in appropriate circumstances, grant exceptions for uses deemed to be in the public interest, such as for non-profit educational and research purposes.

The treaties also require countries to provide not only the rights themselves, but also two types of technological adjuncts to the rights. These are intended to ensure that right holders can effectively use technology to protect their rights and to license their works online. The first, known as the “anti-circumvention” provision, tackles the problem of “hacking”: it requires countries to provide adequate legal protection and effective remedies against the circumvention of technological measures (such as encryption) used by right holders to protect their rights. The second type of technological adjuncts safeguards the reliability and integrity of the online marketplace by requiring countries to prohibit the deliberate alteration or deletion of electronic “rights management information”: that is, information which accompanies any protected material, and which identifies the work, its creators, performer, or owner, and the terms and conditions for its use.

The WCT entered into force on March 6, 2002. For the WPPT, the date of entry into force was May 20, 2002. A number of countries have implemented the provisions of the two treaties in their national legislation. The Collection of Laws for Electronic Access (CLEA) database of WIPO can be consulted to search copyright laws of a wide range of countries.

How do I get permission to use somebody else’s work and other subject matters?

You can contact the right owner. For certain types of works and other subject matter, you can get permission from a collective management organization. Collective management organizations license use of works and other subject matter that are protected by copyright and related rights whenever it is impractical for right owners to act individually. There are several international non-governmental organizations that link together national collective management organizations.

How much of someone else’s work can I use without getting permission?

Under most national copyright laws, it is permissible to use limited portions of a work, including quotes, for purposes such as news reporting and private personal use. For further information see the national legislation available in the Collection of Laws for Electronic Access (CLEA).

Is computer software protected by copyright?

In the 1970s and 1980s, there were extensive discussions on whether the patent system, the copyright system, or a *sui generis* system, should provide protection for computer software. These discussions resulted in the generally accepted principle that computer programs should be protected by copyright; whereas apparatus using computer software or software-related inventions should be protected by patent. Copyright law and patent law provide different types of protection. Copyright protection extends only to expressions, and not to ideas, procedures, methods of operation or mathematical concepts as such, whereas a patent is an exclusive right granted for an invention, which is a product or a process that provides a new way of doing something, or offers a new technical solution to a problem. Copyright protection is formality-free in countries party to the Berne Convention for the Protection of Literary and Artistic Works (the Berne Convention), which means that protection does not depend on compliance with any formalities such as registration or deposit of copies. A patent is generally granted after completing an examination procedure

by a government agency. Copyright protection of computer software is established in most countries and harmonized by international treaties to that effect. The law relating to the patentability of software is still not harmonized internationally, but some countries have embraced the patentability of computer software and others have adopted approaches that recognize inventions assisted by computer software. In view of the complexity of these matters, it is recommended that you contact a practicing lawyer who is specialized in intellectual property or the intellectual property offices of those countries in which you are interested to get protection. You can find a list of URLs and a directory of national and regional intellectual property offices on our Website.

Is a television format protected by copyright?

Broadcasting organizations are protected as holders of related rights under the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention). Broadcast content as such, as opposed to broadcast signals, can also be protected by copyright and related rights, depending on the national legislation. Television formats, however, have not been discussed at WIPO as subject of a separate international protection.

Is a character protected by copyright?

A character could be protected under copyright if it is an original expression of an author. Merchandising items such as toys, interactive games, books and clothing including characters can also be protected by intellectual property rights in certain circumstances, mainly copyright and trademarks, along with other areas of law.

Is a name, title, slogan or logo protected by copyright?

Copyright may or may not be available for titles, slogans, or logos, depending on whether they contain sufficient authorship. In most circumstances copyright does not protect names.

What is the rule concerning copyright and related rights in my country?

While in some countries treaties are “self-executive”, meaning that the provisions of treaties can be directly applied as law, in general copyright and related rights are provided in national legislation of individual countries. International treaties link various national laws by ensuring that at least a minimum level of rights will be granted to creators under each national law. The treaties do not themselves grant rights, but rather require the countries that join the treaties to grant certain rights specified on a nondiscriminatory basis. Copyright laws of a wide range of countries can be consulted from the Collection of Laws for Electronic Access (CLEA) database of WIPO. For further information, you can also contact national copyright administrations.

I have a problem with my copyright. Who can give me a legal advice?

WIPO is an intergovernmental organization, which administers a number of international treaties in the field of intellectual property, and may, at their request, advise governments. WIPO has, however, no mandate to give legal advice to private persons or non-governmental bodies or entities. For advice concerning specific matters, it is recommended that you consult a practicing lawyer who is specialized in intellectual property.

PATENT

What is a patent?

A patent is an exclusive right granted for an **invention**, which is a **product** or a **process** that provides a new way of doing something, or offers a new technical solution to a problem.

What does a patent do?

A patent provides **protection** for the invention to the **owner** of the patent. The protection is granted for a

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, as well as an indication of **its technical field**; it must include the **background** and a **description** of the invention, in clear language and enough detail that an individual with an average understanding of the field could use or reproduce the invention. Such descriptions are usually accompanied by **visual materials** 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.

What kinds of inventions can be protected?

An invention must, in general, fulfill the following conditions to be protected by a patent. It must be of **practical use**; it must show an element of **novelty**, that is, some **new characteristic** which is not known in the **body of existing knowledge** in its technical field. This body of existing knowledge is called "**prior art**". The invention must show an **inventive step** which could not be deduced by a person with average knowledge of the technical field. Finally, its subject matter must be accepted as "patentable" under 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 generally not patentable.

Who grants patents?

A patent is granted by a **national patent office** or by a **regional office** that does the work for a number of countries, such as the European Patent Office and the African Regional Industrial Property Organization. Under such regional systems, an applicant requests protection for the invention in one or more countries, and each country decides as to whether to offer patent protection within its borders. The WIPO-administered **Patent Cooperation Treaty (PCT)** provides for the filing of a single **international patent application** which has the same effect as national applications filed in the designated countries. An applicant seeking protection may file one application and request protection in as many signatory states as needed.

TRADEMARK

What is a trademark?

A trademark is a **distinctive sign** which identifies certain goods or services as those produced or provided by a specific person or enterprise. Its origin dates back to ancient times, when craftsmen reproduced their signatures, or "marks" on their artistic or utilitarian products. Over the years these marks evolved into today's system of trademark registration and protection. The system helps consumers identify and purchase a product or service because its nature and quality, indicated by its **unique** trademark, meets their needs.

What does a trademark do?

A trademark provides **protection** to the owner of the mark by ensuring the **exclusive right** to use it to identify goods or services, or to authorize another to use it in return for payment. The period of protection varies, but a trademark can be renewed indefinitely beyond the time limit on payment of additional fees. Trademark protection is enforced by the courts, which in most systems have the authority to block trademark infringement.

In a larger sense, trademarks promote initiative and enterprise worldwide by rewarding the owners of trademarks with recognition and financial profit. Trademark protection also hinders the efforts of unfair competitors, such as counterfeiters, to use similar distinctive signs to market inferior or different products or services. The system enables people with skill and enterprise to produce and market goods and services in the fairest possible conditions, thereby facilitating international trade.

What kinds of trademarks can be registered?

The possibilities are almost limitless. Trademarks may be one or a combination of words, letters, and numerals. They may consist of drawings, symbols, three-dimensional signs such as the shape and packaging of goods, audible signs such as music or vocal sounds, fragrances, or colors used as distinguishing features.

In addition to trademarks identifying the commercial source of goods or services, several other categories of marks exist. **Collective marks** are owned by an **association** whose members use them to identify themselves with a level of quality and other requirements set by the association. Examples of such associations would be those representing accountants, engineers, or architects. **Certification marks** are given for compliance with defined standards, but are not confined to any membership. They may be granted to anyone who can certify that the products involved **meet certain established standards**. The internationally accepted "ISO 9000" quality standards are an example of such widely-recognized certifications.

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 other 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 neither mislead nor deceive customers or violate public order or morality.

Finally, the rights applied for cannot be the same as, or similar to, rights already granted to another trademark owner. This may be determined through **search** and **examination** by the national office, or by the **opposition of third parties** who claim similar or identical rights.

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, facilitating examination, search, and potential opposition by third parties. 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** and the **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 other countries of the **Madrid Union**. At present, more than 60 countries are party to one or both of the agreements.

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 or surface** of an article, or of two-dimensional features, such as **patterns, lines or color**.

Industrial designs are applied to a wide variety of products of industry and handicraft: from technical and medical instruments to watches, jewelry, and other luxury items; from house wares and electrical appliances to vehicles and architectural structures; from textile designs to leisure goods.

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.

Why protect industrial designs?

Industrial designs are what make an article **attractive** and **appealing**; hence, they add to the **commercial value** of a product and **increase its marketability**.

When an industrial design is protected, the **owner** - the person or entity that has registered the design - is assured an exclusive right against **unauthorized copying or imitation of the design** by third parties. This helps to ensure a fair return on investment. An effective system of protection also benefits **consumers and the public at large**, by promoting fair competition and honest trade practices, encouraging creativity, and promoting more aesthetically attractive products.

Protecting industrial designs helps **economic development**, by encouraging creativity in the industrial and manufacturing sectors, as well as in traditional arts and crafts. They contribute to the expansion of commercial activities and the export of national products.

Industrial designs can be relatively simple and inexpensive to develop and protect. They are reasonably accessible to small and medium-sized enterprises as well as to individual artists and craftsmen, in both industrialized and developing countries.

How can industrial designs be protected?

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. Following that, the term of protection is generally five years, with the possibility of further periods of renewal up to, in most cases, 15 years.

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 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, he can no longer invoke the other.

Under certain circumstances an industrial design may also be protect able under **unfair competition law**, although the conditions of protection and the rights and remedies ensured can be significantly different.

How extensive is 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 either with WIPO or the national office of a country which is party to the treaty. The design will then be protected in as many member countries of the treaty as the applicant wishes.