

Protection of intellectual property

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What are intellectual property rights?

- Rights given to persons over the creations of their minds.
- They usually give the creator an **exclusive right** over the use of his/her creation **for a certain period of time**.

Key purposes of protection of IP

- encouraging and rewarding creative work
- In the knowledge-based economy intellectual property is one of those factors which can ensure a competitive advantage over other market players.
- registration of IP rights also provides significant tax benefits (IP rights, being intangible assets, can be subject to amortization, thus reducing the

Copyright and rights related to copyright (neighbouring rights)

The rights given to authors of literary and artistic works (such as books and other writings, musical compositions, paintings, sculpture, computer programs and films), protected also after the death of the author.

Related (neighbouring) rights (to copyrights)

- Rights of performers (e.g. actors, singers and musicians), producers of phonograms (sound recordings) and broadcasting organizations.

Industrial property rights

Distinctive signs

Trademarks distinguish the goods or services of one undertaking from those of other undertakings

Geographical indications identify a good as originating in a place where a given characteristic of the good is essentially attributable to its geographical origin

Industrial property rights

Distinctive signs

- The protection of distinctive signs aims to **stimulate and ensure fair competition** and to **protect consumers**, by enabling them to make informed choices between various goods and services.
- The protection may last **indefinitely** (only if the sign in question stays distinctive).

Industrial property rights

Other rights

Patents ...

Industrial designs ...

Trade secrets ...

provide protection for the results of investment in the development of new technology, thus giving the incentive and means to finance research and development activities.

A functioning intellectual property regime should also facilitate the transfer of technology in the form of foreign direct investment, joint ventures and licensing.

The protection is usually time-limited.

IPRs protected at...

- International level



- European Union level



- Domestic (national) level

International level

- **TRIPS** (Agreement on Trade-Related Aspects of Intellectual Property Rights) (1986-1997)
- **Paris Convention** for the Protection of Industrial Property (1883)
- **Berne Convention** for the Protection of Literary and Artistic Works (1886)
- **Rome Convention** for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961)
- **Washington Treaty** on Intellectual Property in Respect of Integrated Circuits (1989; *not yet in force*)

World Intellectual Property Organization (WIPO)

- specialized agency of the United Nations
- established by the WIPO Convention in 1967
- Strategic goals of WIPO:
 1. Balanced Evolution of the International Normative Framework for IP
 2. Facilitating the Use of IP for Development

International Cooperation on Building

TRIPS

- Agreement negotiated in the 1986-94 Uruguay Round, introduced intellectual property rules into the multilateral trading system for the first time.

The agreement covers five broad issues:

- how basic principles of the trading system and other international intellectual property agreements should be applied
- how to give adequate protection to intellectual property rights
- how countries should enforce those rights adequately in their own territories
- how to settle disputes on intellectual property between members of the WTO
- special transitional arrangements during the

National treatment rule in TRIPS

- Imported and locally-produced goods should be treated equally — at least after the foreign goods have entered the market. The same should apply to foreign and domestic services, and to foreign and local trademarks, copyrights and patents.

Article 3 of TRIPS

„1. Each Member shall accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals with regard to the protection of intellectual property (...)”

MFN rule in TRIPS

- **Most-favoured-nation (MFN):**
treating equally
- Under the WTO agreements, countries cannot normally discriminate between their trading partners. Grant someone a special favour (such as a lower customs duty rate for one of their products) and you have to do the same for all other WTO members.

Article 4 of TRIPS

„With regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Members. (...)”

EU level

- Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society
- Council Regulation (EC) No 40/94 on the Community trade mark
- Council Regulation (EC) No 6/2002 on Community designs
- ...others

National (Polish) level

- **Act of 4 February 1994 on copyright and related rights protection (as amended)**
- **Act of 30 June 2000 - Industrial Property Law (as amended)**

Copyright Act

- relates to such acts of human creativity as literary activity, journalism, science, music, IT and many other
- does not provide for any registration requirements
- regulates the rules of licensing, transfer of rights, the permitted scope of use of copyrights and many other related issues.

IPL Act - scope

- covers almost all areas of industrial property including regulations covering inventions, utility models, industrial designs, rationalization proposals, trademarks, geographical indications and topographies of integrated circuits as well as their protection

IPL Act - functions

- granting certain entities temporary exclusive rights to use protected property, thus giving them the possibility to use such for commercial purposes and, in turn, encouraging work on innovations as well as their financing.
- regulating the rights of authors of intellectual property as well as the rights and obligations of business entities organising creative work and ensuring material resources, in particular financial resources, for the performance

Geographical indications (I)

- a sign used on goods that have a specific geographical origin and possess qualities, reputation or characteristics that are essentially attributable to that place of origin.
- a geographical indication includes usually the name of the place of origin of the goods.
- Examples: “Champagne”, “Tequila” or “Roquefort”.

Geographical Indications (II)

- Agricultural products typically have qualities that derive from their place of production and are influenced by specific local factors, such as climate and soil.
- Whether a sign is recognized as a geographical indication is a matter of national law. Geographical indications may be used for a wide variety of products, whether natural, agricultural or

Geographical Indications in TRIPS (I)

- Article 22.3: The registration of a trademark which uses a geographical indication in a way that misleads the public as to the true place of origin must be refused or invalidated *ex officio* if the legislation so permits or at the request of an interested party.

Geographical Indications in TRIPS (II)

- Article 23: interested parties must have the legal means to prevent the use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication.
- This applies even where the public is not being misled, there is no unfair competition and the true origin of the good is indicated or

Case study

Protecting
the
Geographic
al
Indication
for
Darjeeling
Tea



What are copyrights?

- Copyrights are either **moral** or **economic**.
- **Moral copyrights:**
 - protect a tie between an author and a work;
 - strictly related to the author (may not be disposed of)
- only an author (co-author) is eligible for moral copyrights.
- only a physical person can be an

Moral copyrights

- An acquirer of rights to a work must respect moral copyrights of the author and make it possible for the author to, for example, mark the work with his/her

name, decide about the first dissemination of the work, supervise the way the work is used.

- An acquirer may not, without the author's consent, interfere in the form

Moral copyrights

- However, an author may undertake in a contract with an acquirer not to exercise his/her moral copyrights.

Economic copyrights

- Economic copyrights may be traded.
- The owner of such rights may also grant a license to use a **work**.
- Economic copyrights may be held either by the author himself/herself or another originally eligible entity (producer or publisher of a collective work, employer) or their acquirer.

Copyright protection in Poland

- ❑ Act on Copyrights and Related Rights of 1994 (ACRR)
- ❑ EU law
- ❑ International agreements and treaties (e.g. TRIPS)

Object of „work” pursuant to ACCR

Protection under ACCR is enjoyed by:

- **works,**
 - collections, anthologies, selections of works,
 - computer programmes ,
 - databases
- ... provided they have **features of creativity**

Concept of „work” pursuant to ACCR

- **Work = a result of creative activity of an individual character.**
- The condition of protection is that a work is **established in any form.**
- Ideas are not subject to protection.

Related rights

- rights to artistic performances, phonograms, videograms, broadcasts of programs as well as first editions and scientific and critical publications

... also **protected under ACCR**

No registry

- Works and objects of copyrights are protected without need of registration (there is no special register in Poland) or marking a work with a special reservation or designation indicating copyrights (e.g. ©, **all rights reserved**).

Duration of economic copyrights

- limited in time
- after expiry of the protection period a work enters the public domain.

Duration of economic copyrights

Period of protection of economic copyrights:

70 years

starts running as of:

(a) as a rule, **the date of the author's death**, and in

case of collective works – 70 years from the date of death of the last surviving author,

(b) with respect to works whose

Duration of economic copyrights

Period of protection of economic copyrights:

starts running as of:

(c) with respect to works where economic copyrights are held by a person other than the author - from **the date of dissemination** of the work, or if the work has not been disseminated - from the date of its establishment;

Duration of economic copyrights

Period of protection of economic copyrights:

starts running as of:

(d) with respect to an audiovisual work
- from

the date of death of the last of the following persons: main director, screenwriter, scriptwriter, composer of the soundtrack.

Rights of entities holding copyrights

- entirety of the economic copyrights to a work
- copyrights' holder **exclusively** entitled to use and dispose of the work **in all fields of exploitation.**

Fields of exploitation

- the ways the work may be used, with separate economic roles

Exemplary fields of exploitation

- (a) production of copies of a work with the use of a specific technology;
- (b) introduction to trade, letting for use or rental of
the original or copies;
- (c) public performance, exhibition, screening,
broadcasting and retransmission;
- (d) making the work available on the Internet.

Special rules for computer programmes

- protected as **literary works**
- protected all its forms of expression, including all forms of documentation relating to the design, production and utilization thereof
- „ *The ideas and principles underlying any element of a computer program, including those underlying its interfaces,*

Special rules for computer programmes

- economic rights in the computer program created by an employee in the course of duties under his employment contract shall belong to the employer

Fields of exploitation of computer programmes

- reproducing the program in its entirety or in part, either permanently or provisionally, by any means and in any form; where the loading, display, running, transmission or storage of a computer program calls for such reproduction, those acts shall not require the consent of the owner of rights;

• translating, adapting, arranging or

Fields of exploitation of computer programmes

- distributing the original or copies of a computer program to the public, including by rental or lending.

The first sale of a copy on which the program has been fixed by the owner of the rights or with his consent shall cause the right of distribution of that copy to lapse, without prejudice to the right to monitor subsequent rentals or lendings of the computer program

authorization of the owner of the rights

- making of a backup or reserve copy insofar as such a copy is necessary for the use of the computer program
- analysis and study of and experimentation with the operation of the computer program by the person authorized under the contract to make use of a copy of the program, in order to ascertain its underlying ideas and principles

authorization of the owner of the rights

- reproduction of the code or translation of the form thereof , where this is essential to the securing of the information necessary to achieve interoperability between an independently created computer program and other programs.

Special rules for computer programmes

- economic rights in the computer program created by an employee in the course of duties under his employment contract shall belong to the employer

Trade in economic copyrights

- An owner of economic copyrights may **transfer** them (e.g. sell them) or **authorize** a different entity **to use the work** (a license).
- Transfer of copyrights and grant of a license are **effective** with respect to the fields of exploitation specified in the agreement.

Trade in economic copyrights

- If copyrights are transferred only with respect to certain fields of exploitation, the author retains the rights to the work and may still dispose of it on the fields of exploitation not affected by the transfer.
- By granting an exclusive license the licensor may still use the work in a way specified in the license,

Agreement

- agreement for the transfer of copyrights and an exclusive license – always **in writing**
- non-exclusive license agreement may also be concluded **in a different form**

Permitted use

- regards only works that were previously distributed by the eligible entity or with its consent;
- it is allowed to use a copy of a work for the personal use of related individuals.
- Permitted use does not apply to computer programs.

Digital Rights Management (DRM)

- ACRR ensures protection of technical security measures for works (DRM).
- Violation of DRM may lead to compensatory liability (as for a breach of economic copyrights).
- Production and storage of devices for unlawful circumvention of DRM is subject to **criminal liability**.

Collective management organizations

- legal persons acting under a permit issued by the minister for culture and national heritage issues.
- exercise some of the rights of copyrights' owners specified in ACRR and related to the use of works, in particular connected with collection of fees for using the works.

economic copyrights

- compensation of damages,
- release of benefits,
- abandonment of the breach,
- remedy of its effects.

Trademarks

- Trademarks (and service marks) are signs capable of being represented graphically capable of distinguishing products of one business from those of another business.

Items that can constitute a trademark:

- a word, phrase,
- logo,
- sound, tune,
- design,
- image,
- a combination of words and graphical elements, colours,
- holograms,
- distinguishing elements of Internet addresses,
- spatial forms (3D),

Protection of trademarks

- Trademarks are protected from the time of application, however the ultimate protection is conditional upon the successful registration.
- Trademarks are registered by the Patent Office of the Republic of Poland.

Protection of trademarks

- The protection lasts for **10 years** and can be extended by successive applications, if filed in due time.
- Polish patent attorneys can register trademarks both in Poland and at the **Office for Harmonization in the Internal Market (OHIM)** in Alicante.
- In case of registration at OHIM, the trademarks are protected in all

Breach of a trademark protection right

Illegal use in business trade of:

- a mark identical to a registered trademark in the case of identical goods;
- a mark identical or similar to a registered trademark in the case of identical or similar goods if there exists the risk of misleading customers, including in particular the risk of associating the mark with a registered trademark;

Breach of a trademark protection right

Illegal use in business trade of:
a mark identical or similar to a renowned trademark registered for any goods if such usage may yield undue benefit to the entity using such or if such usage may effect the distinctive nature or reputation of the registered trademark.

The burden of proof of such prerequisite lies with the holder of

The person (entity) whose trademark protection right has been breached may demand:

- the cessation of the breach and the remedying of its consequences;
- the handing over of groundlessly achieved benefits;
- the remedying of damages pursuant to general principles,
-

Other

- the payment of a pecuniary amount in an amount equal to a licence fee or other appropriate compensation that would have been due in conjunction with the holder of the right giving approval for the use of the invention at the time such amount is being pursued;
- the publishing of the entire, or part thereof, of the ruling as well as information regarding such a ruling in a manner and scope defined by