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The Open  
University

## What is intellectual property?

*World Intellectual Property Organization*

# What is Intellectual Property?



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# What is Intellectual Property?

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## What is Intellectual Property

Intellectual property refers to creations of the mind: inventions; literary and artistic works; and symbols, names and images used in commerce. Intellectual property is divided into two categories:

- **Industrial Property** includes patents for inventions, trademarks, industrial designs and geographical indications.
- **Copyright** covers literary works (such as novels, poems and plays), films, music, artistic works (e.g., drawings, paintings, photographs and sculptures) and architectural design. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and broadcasters in their radio and television programs.

# What is Intellectual Property?

## **What are intellectual property rights?**

Intellectual property rights are like any other property right. They allow creators, or owners, of patents, trademarks or copyrighted works to benefit from their own work or investment in a creation. These rights are outlined in Article 27 of the Universal Declaration of Human Rights, which provides for the right to benefit from the protection of moral and material interests resulting from authorship of scientific, literary or artistic productions.

The importance of intellectual property was first recognized in the Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886). Both treaties are administered by the World Intellectual Property Organization (WIPO).

## **Why promote and protect intellectual property?**

There are several compelling reasons. First, the progress and well-being of humanity rest on its capacity to create and invent new works in the areas of technology and culture. Second, the legal protection of new creations encourages the commitment of additional resources for further innovation. Third, the promotion and protection of intellectual property spurs economic growth, creates new jobs and industries, and enhances the quality and enjoyment of life.

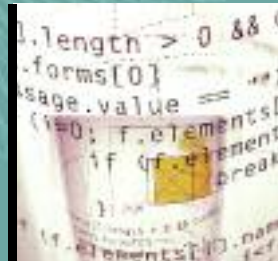
An efficient and equitable intellectual property system can help all countries to realize intellectual property's potential as a catalyst for economic development and social and cultural well-being. The intellectual property system helps strike a balance between the interests of innovators and the public interest, providing an environment in which creativity and invention can flourish, for the benefit of all.

## How does the average person benefit?

Intellectual property rights reward creativity and human endeavor, which fuel the progress of humankind. Some examples:

- The multibillion dollar film, recording, publishing and software industries – which bring pleasure to millions of people worldwide – would not exist without copyright protection.
- Without the rewards provided by the patent system, researchers and inventors would have little incentive to continue producing better and more efficient products for consumers.
- Consumers would have no means to confidently buy products or services without reliable, international trademark protection and enforcement mechanisms to discourage counterfeiting and piracy.

# What is a Patent?



## What is a Patent?

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

A patent provides patent owners with protection for their inventions. Protection is granted for a limited period, generally 20 years.

## Why are patents necessary?

Patents provide incentives to individuals by recognizing their creativity and offering the possibility of material reward for their marketable inventions. These incentives encourage innovation, which in turn enhances the quality of human life.

## What kind of protection do patents offer?

Patent protection means an invention cannot be commercially made, used, distributed or sold without the patent owner's consent. Patent rights are usually enforced in courts that, in most systems, hold the authority to stop patent infringement. Conversely, a court can also declare a patent invalid upon a successful challenge by a third party.

## What rights do patent owners have?

A patent owner has the right to decide who may – or may not – use the patented invention for the period during which it is protected. Patent owners may give

permission to, or license, other parties to use their inventions on mutually agreed terms. Owners may also sell their invention rights to someone else, who then becomes the new owner of the patent. Once a patent expires, protection ends and the invention enters the public domain. This is also known as becoming off patent, meaning the owner no longer holds exclusive rights to the invention, and it becomes available for commercial exploitation by others.

### **What role do patents play in everyday life?**

Patented inventions have pervaded every aspect of human life, from electric lighting (patents held by Edison and Swan) and sewing machines (patents held by Howe and Singer), to magnetic resonance imaging (MRI) (patents held by Damadian) and the iPhone (patents held by Apple).

In return for patent protection, all patent owners are obliged to publicly disclose information on their inventions in order to enrich

the total body of technical knowledge in the world. This ever-increasing body of public knowledge promotes further creativity and innovation. Patents therefore provide not only protection for their owners but also valuable information and inspiration for future generations of researchers and inventors.

### **How is a patent granted?**

The first step in securing a patent is to file a patent application. The 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 – drawings, plans or diagrams – that describe the invention in greater detail. The application also contains various “claims”, that is, information to help determine the extent of protection to be 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”, meaning some new characteristic that is not part of the body of existing knowledge in its particular technical field. That body of existing knowledge is called “prior art”. The invention must show an “inventive step” that could not be deduced by a person with average knowledge of the technical field. 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 of medical treatment (as opposed to medical products) are not generally patentable.

## **Who grants patents?**

Patents are granted by national patent offices or by regional offices that carry out examination work for a group of countries – for example, the European Patent Office (EPO) and the African Intellectual Property Organization (OAPI). Under such regional systems, an applicant requests protection for an invention in one or more countries, and each country decides 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 that 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.



What is a  
trademark?

## What is a trademark?

A trademark is a distinctive sign that identifies certain goods or services produced or provided by an individual or a company. Its origin dates back to ancient times when craftsmen reproduced their signatures, or “marks”, on their artistic works or products of a functional or practical nature. Over the years, these marks have evolved into today’s system of trademark registration and protection. The system helps consumers to identify and purchase a product or service based on whether its specific characteristics and quality – as indicated by its unique trademark – meet their needs.

## **What do trademarks do?**

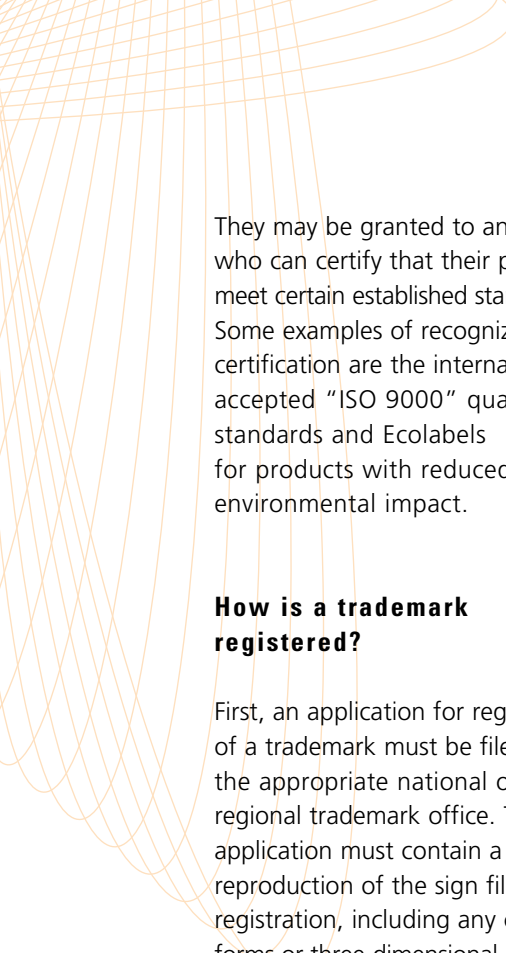
Trademark protection ensures that the owners of marks have the exclusive right to use them to identify goods or services, or to authorize others to use them in return for payment. The period of protection varies, but a trademark can be renewed indefinitely upon payment of the corresponding fees. Trademark protection is legally enforced by courts that, in most systems, have the authority to stop trademark infringement.

In a larger sense, trademarks promote initiative and enterprise worldwide by rewarding their owners 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?**

Trademarks may be one or a combination of words, letters and numerals. They may consist of drawings, symbols or three-dimensional signs, such as the shape and packaging of goods. In some countries, non-traditional marks may be registered for distinguishing features such as holograms, motion, color and non-visible signs (sound, smell or taste).

In addition to identifying the commercial source of goods or services, several other trademark categories also exist. Collective marks are owned by an association whose members use them to indicate products with a certain level of quality and who agree to adhere to specific requirements set by the association. Such associations might represent, for example, 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 their products meet certain established standards. Some examples of recognized certification are the internationally accepted “ISO 9000” quality standards and Ecolabels for products with reduced environmental impact.

### **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. It must also contain a list

of the 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 from trademarks identifying other products, as well as identify a particular product with it. It must neither mislead nor deceive customers nor 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 national offices, or by the opposition of third parties who claim to have 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 containing full application information on all registrations and renewals, which facilitates examination, search and potential opposition by third parties. The effects of the registration are, however, limited to the country (or, in the case of regional registration, countries) concerned.

To avoid the need to register separate applications with each national or regional office, WIPO administers an international registration system for trademarks. The system is governed by two treaties: the Madrid Agreement Concerning the International Registration of Marks and the Madrid Protocol. Persons with a link (be it through nationality, domicile or establishment) to 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 (or related region), obtain an international registration having effect in some or all of the other countries of the Madrid Union.

# What is an Industrial Design?

## What is an Industrial Design?

An industrial design refers to the ornamental or aesthetic aspects of an article. A design may consist of three-dimensional features, such as the shape or surface of an article, or two-dimensional features, such as patterns, lines or color.

Industrial designs are applied to a wide variety of industrial products and handicrafts: 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 be new or original and non-functional. This means that an industrial design is primarily of an aesthetic nature, and any technical features of the article to which it is applied are not protected by the design registration. However, those features could be protected by a patent.



Watch: Courtesy Swatch AG



Swiss Army Knife: courtesy Victorinox Ltd

## **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 and protection 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 pleasing products.

Protecting industrial designs helps to promote economic development by encouraging creativity in the industrial and manufacturing sectors, as well as in traditional arts and crafts. Designs contribute to the expansion of commercial activity 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 craftsmakers, in both developed 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 rule, to be registrable, the design must be “new” or “original”. 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 previously existed. Once a design is registered, a registration certificate is issued. Following that, the term of protection granted is generally five years, with the possibility of further renewal, in most cases for a period of up to 15 years.

Hardly any other subject matter within the realm of intellectual property is as difficult to categorize as industrial designs. And this has significant implications for the means and terms of its protection. Depending on the particular national law and the kind of design, an industrial design may also be protected as a work of applied art under copyright law, with a much longer term of protection than the standard 10 or 15 years under registered design law. In some countries, industrial design and copyright protection can exist concurrently. In other countries, they are mutually exclusive: once owners choose one kind of protection, they can no longer invoke the other.

Under certain circumstances an industrial design may also be protectable under unfair competition law, although the conditions of protection and the rights and remedies available can differ significantly.

### **How extensive is industrial design protection?**

Generally, industrial design protection is limited to the country in which protection is granted. The Hague Agreement Concerning the International Registration of Industrial Designs, a WIPO-administered treaty, offers a procedure for international registration of designs. Applicants can file a single international application either with WIPO or the national or regional office of a country party to the treaty. The design will then be protected in as many member countries of the treaty as the applicant designates.





## What is a Geographical Indication?

A geographical indication is a sign used on goods that have a specific geographical origin and possess qualities or a reputation due to that place of origin. Most commonly, a geographical indication consists of the name of the place of origin of the goods. Agricultural products typically have qualities that derive from their place of production and are influenced by specific local geographical factors, such as climate and soil. Whether a sign functions as a geographical indication is a matter of national law and consumer perception. Geographical indications may be used for a wide variety of agricultural products, such as, for example, “Tuscany” for olive oil produced in a specific area of Italy, or “Roquefort” for cheese produced in that region of France.

The use of geographical indications is not limited to agricultural products. They may also highlight specific qualities of a product that are due to human factors found in the product’s place of origin, such as specific manufacturing skills

# What is a Geographical Indication?

and traditions. The place of origin may be a village or town, a region or a country. An example of the latter is “Switzerland” or “Swiss”, perceived as a geographical indication in many countries for products made in Switzerland and, in particular, for watches.

### **What is an appellation of origin?**

An appellation of origin is a special kind of geographical indication used on products that have a specific quality exclusively or essentially due to the geographical environment in which the products are produced. The term geographical indication encompasses appellations of origin. Examples of appellations of origin that are protected in states party to the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration are “Bordeaux” for wine produced in the Bordeaux region of France, “Prosciutto di Parma” – or Parma ham – for ham produced in the Parma province of Italy or “Habana” for tobacco grown in the Havana region of Cuba.

### **Why do geographical indications need protection?**

Geographical indications are understood by consumers to denote the origin and quality of products. Many of them have acquired valuable reputations which, if not adequately protected, may be misrepresented by 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. The former are deceived into believing they are buying a genuine product with specific qualities and characteristics, and the latter are deprived of valuable business and suffer damage to the established reputation of their products.

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

A trademark is a sign used by a company to distinguish its goods and services from those produced by others. It gives its owner the right to prevent others from using

the trademark. A geographical indication guarantees to consumers that a product was 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 products that share certain qualities in the place designated by a geographical indication.

### **What is a “generic” geographical indication?**

If the name of a place is used to designate a particular type of product, rather than to indicate its place of origin, the term no longer functions as a geographical indication. For example, “Dijon mustard”, a kind of mustard that originated many years ago in the French town of Dijon, has, over time, come to denote mustard of that kind made in many places. Hence, “Dijon mustard” is now a generic indication and refers to a type of product, rather than a place.

### **How are geographical indications protected?**

Geographical indications are protected in accordance with

national laws and under a wide range of concepts, such as laws against unfair competition, consumer protection laws, laws for the protection of certification 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 injunctions preventing unauthorized use to the payment of damages and fines or, in serious cases, imprisonment.

### **What is WIPO’s role in the protection of geographical indications?**

WIPO administers a number of international agreements that deal partly or entirely with the protection of geographical indications (in particular, the Paris Convention and the Lisbon Agreement). WIPO meetings offer Member States and other interested parties the opportunity to explore new ways of enhancing the international protection of geographical indications.

# What are Copyright and Related Rights?

## What are Copyright and Related Rights?

Copyright laws grant authors, artists and other creators protection for their literary and artistic creations, generally referred to as “works”. A closely associated field is “related rights” or rights related to copyright that encompass rights similar or identical to those of copyright, although sometimes more limited and of shorter duration. The beneficiaries of related rights are:

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

Works covered by copyright include, but are not limited to: novels, poems, plays, reference works, newspapers, advertisements, computer programs, databases, films, musical compositions, choreography, paintings, drawings, photographs, sculpture, architecture, maps and technical drawings.



## **What rights do copyright and related rights provide?**

The creators of works protected by copyright, and their heirs and successors (generally referred to as “right holders”), have certain basic rights under copyright law. They hold the exclusive right to use or authorize others to use the work on agreed terms. The right holder(s) of a work can authorize or prohibit:

- its reproduction in all forms, including print form and sound recording;
- its public performance and communication to the public;
- its broadcasting;
- its translation into other languages; and
- its adaptation, such as from a novel to a screenplay for a film.

Similar rights of, among others, fixation (recording) and reproduction are granted under related rights.

Many types of works protected under the laws of copyright and related rights require mass distribution, communication and financial investment for their

successful dissemination (for example, publications, sound recordings and films). Hence, creators often transfer these rights to companies better able to develop and market the works, in return for compensation in the form of payments and/or royalties (compensation based on a percentage of revenues generated by the work).

The economic rights relating to copyright are of limited duration – as provided for in the relevant WIPO treaties – beginning with the creation and fixation of the work, and lasting for not less than 50 years after the creator’s death. National laws may establish longer terms of protection. This term of protection enables both creators and their heirs and successors to benefit financially for a reasonable period of time. Related rights enjoy shorter terms, normally 50 years after the performance, recording or broadcast has taken place. Copyright and the protection of performers also include moral rights, meaning the right to claim authorship of a work, and the right to oppose changes to the work that could harm the creator’s reputation.

Rights provided for under copyright and related rights laws can be enforced by right holders through a variety of methods and fora, including civil action suits, administrative remedies and criminal prosecution. Injunctions, orders requiring destruction of infringing items, inspection orders, among others, are used to enforce these rights.

### **What are the benefits of protecting copyright and related rights?**

Copyright and related rights protection is an essential component in fostering human creativity and innovation. Giving authors, artists and creators incentives in the form of recognition and fair economic reward increases their activity and output and can also enhance the results. By ensuring the existence and enforceability of rights, individuals and companies can more easily invest in the creation, development and global dissemination of their works. This, in turn, helps to increase access to and enhance the enjoyment of culture, knowledge and entertainment the world over,

and also stimulates economic and social development.

### **How have copyright and related rights kept up with advances in technology?**

The field of copyright and related rights has expanded enormously during the last several decades with the spectacular progress of technological development that has, in turn, yielded new ways of disseminating creations by such forms of communication as satellite broadcasting, compact discs and DVDs. Widespread dissemination of works via the Internet raises difficult questions concerning copyright and related rights in this global medium. WIPO is fully involved in the ongoing international debate to shape new standards for copyright protection in cyberspace. In that regard, the Organization administers the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), known as the "Internet Treaties". These treaties clarify international norms aimed at preventing unauthorized access to and use of creative works on the Internet.

## **How are copyright and related rights regulated?**

Copyright and related rights protection is obtained automatically without the need for registration or other formalities. 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, financial transactions, sales, assignments and transfer of rights.

Many authors and performers do not have the ability or means to pursue the legal and administrative enforcement of their copyright and related rights, especially given the increasingly global use of literary, music and performance rights. As a result, the establishment and enhancement of collective management organizations (CMOs), or “societies”, is a growing and necessary trend in many countries. These societies can provide their members with efficient administrative support and legal expertise in, for example, collecting, managing and disbursing

royalties gained from the national and international use of a work or performance. Certain rights of producers of sound recordings and broadcasting organizations are sometimes managed collectively as well.



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# What is the World Intellectual Property Organization?

## What is the World Intellectual Property Organization?

Established in 1970, the World Intellectual Property Organization (WIPO) is an international organization dedicated to helping ensure that the rights of creators and owners of intellectual property are protected worldwide, and that inventors and authors are therefore recognized and rewarded for their ingenuity.

This international protection acts as a spur to human creativity, pushing back the limits of science and technology and enriching the world of literature and the arts. By providing a stable environment for marketing products protected by intellectual property, it also oils the wheels of international trade. WIPO works closely with its Member States and other constituents to ensure the intellectual property system remains a supple and adaptable tool for prosperity and well-being, crafted to help realize the full potential of created works for present and future generations.





## **How does WIPO promote the protection of intellectual property?**

As part of the United Nations system of specialized agencies, WIPO serves as a forum for its Member States to establish and harmonize rules and practices for the protection of intellectual property rights. WIPO also services global registration systems for trademarks, industrial designs and appellations of origin, and a global filing system for patents. These systems are under regular review by WIPO's Member States and other stakeholders to determine how they can be improved to better serve the needs of users and potential users.

Many industrialized nations have intellectual property protection systems that are centuries old. Among newer or developing countries, however, many are in the process of building up their patent, trademark and copyright legal frameworks and intellectual property systems. With the increasing globalization of trade and rapid changes in technological innovation, WIPO plays a key role

in helping these systems to evolve through treaty negotiation; legal and technical assistance; and training in various forms, including in the area of enforcement.

WIPO works with its Member States to make available information on intellectual property and outreach tools for a range of audiences – from the grassroots level through to the business sector and policymakers – to ensure its benefits are well recognized, properly understood and accessible to all.

## **How is WIPO funded?**

WIPO is a largely self-financed organization, generating more than 90 percent of its annual budget through its widely used international registration and filing systems, as well as through its publications and arbitration and mediation services. The remaining funds come from contributions by Member States.

