

**Copyright** is the exclusive right given to the creator of a creative work to reproduce the work, usually for a limited time. The creative work may be in a literary, artistic, educational, or musical form. Copyright is intended to protect the original expression of an idea in the form of a creative work, but not the idea itself. A copyright is subject to limitations based on public interest considerations, such as the fair use doctrine in the United States. Some jurisdictions require "fixing" copyrighted works in a tangible form. It is often shared among multiple authors, each of whom holds a set of rights to use or license the work, and who are commonly referred to as rights holders. These rights frequently include reproduction, control over derivative works, distribution, public performance, and moral rights such as attribution.

Copyrights can be granted by public law and are in that case considered "territorial rights". This means that copyrights granted by the law of a certain state, do not extend beyond the territory of that specific jurisdiction. Copyrights of this type vary by country; many countries, and sometimes a large group of countries, have made agreements with other countries on procedures applicable when works "cross" national borders or national rights are inconsistent.

Typically, the public law duration of a copyright expires 50 to 100 years after the creator dies, depending on the jurisdiction. Some countries require certain copyright formalities to establishing copyright, others recognize copyright in any completed work, without formal registration.

**A trademark** is a type of intellectual property consisting of a recognizable sign, design, or expression which identifies products or services of a particular source from those of others, although trademarks used to identify services are usually called service marks. The trademark owner can be an individual, business organization, or any legal entity. A trademark may be located on a package, a label, a voucher, or on the product itself. For the sake of corporate identity, trademarks are often displayed on company buildings. It is legally recognized as a type of intellectual property.

### **Registration**

Some law considers a trademark to be a form of property. Proprietary rights in relation to a trademark may be established through actual use of that trademark in the marketplace or through registration of the mark with the relevant trademarks office (or "trademarks registry") of a particular jurisdiction. In some jurisdictions, trademark rights can be established through either or both means. Certain jurisdictions generally do not recognize trademark rights arising merely through use. If trademark owners do not hold registrations for their marks in such jurisdictions, the extent to which they will be able to enforce their rights through trademark infringement proceedings may be limited. In cases of dispute, this disparity of rights is often referred to as "first to file" (i.e., register) as opposed to "first to use." Some countries, such as Germany, offer a limited amount of common law rights for unregistered marks where to gain protection, the goods or services must first occupy a highly significant position in the marketplace-where this could be 40% or more market share for sales in the particular class of goods or services.

In the United States, the registration process includes several steps. First, the trademark owner files an application with the United States Patent and Trade Mark Office to register the trademark. About three months after it is filed, the application is reviewed by an examining attorney at the U.S. Patent and Trademark Office. The examining attorney checks for compliance with the rules of the Trademark Manual of Examination Procedure. This review includes procedural matters such as making sure the applicant's goods or services are identified properly. It also includes more substantive matters such as making sure the applicant's mark is not merely descriptive or likely to cause confusion with a pre-existing applied-for or registered mark. If the application runs afoul of any requirement, the examining attorney will issue an office action requiring the applicant to address certain issues or refusals prior to registration of the mark. If the examining attorney approves the application, it will be "published for opposition." During this 30-day period third parties who may be affected by the registration of the trademark may step forward to file an Opposition Proceeding to stop the registration of the mark. If an Opposition proceeding is filed it institutes a case before the Trademark Trial and Appeal Board to determine both the validity of the grounds for the opposition as well as the ability of the applicant to register the mark at issue. Finally, provided that no third-party opposes the registration of the mark

during the opposition period or the opposition is ultimately decided in the applicant's favor, the mark will be registered in due course.

Outside of the United States the registration process is substantially similar to that found in the U.S. save for one notable exception in many countries: registration occurs prior to the opposition proceeding. In short, once an application is reviewed by an examiner and found to be entitled to registration a registration certificate is issued subject to the mark being open to opposition for a period of typically 6 months from the date of registration.

A registered trademark confers a bundle of exclusive rights upon the registered owner, including the right to exclusive use of the mark in relation to the products or services for which it is registered. The law in most jurisdictions also allows the owner of a registered trademark to prevent unauthorized use of the mark in relation to products or services which are identical or "colourfully similar" to existing registered products or services, and in certain cases, prevent use in relation to entirely dissimilar ones. The test is always whether a consumer of the goods or services will be confused as to the identity of the source or origin, not just the area of rights specified by the trademark. An example might be a very large multinational electronics brand such as Sony Corporation where a non-electronic product such as a pair of sunglasses might be assumed by a consumer to have come from Sony Corporation of Japan despite being outside a class of goods to which Sony has rights, yet still protected by Sony's trademark; a similarly-named psychotherapy office or line of hamburger buns or summer camps, however, would not be infringing on Sony Corporation's trademark because the service or products being offered are so vastly different from Sony Corporation's trademark claim of rights and range of manufactured goods.

Once trademark rights are established in a particular jurisdiction, these rights are generally only enforceable in that jurisdiction, a quality which is sometimes known as "territoriality". However, there is a range of international trademark laws and systems which facilitate the protection of trademarks in more than one jurisdiction.

**The 1886 Berne Convention** first established recognition of copyrights among sovereign nations, rather than merely bilaterally. Under the Berne Convention, copyrights for creative works do not have to be asserted or declared, as they are automatically in force at creation: an author need not "register" or "apply for" a copyright in countries adhering to the Berne Convention. As soon as a work is "fixed", that is, written or recorded on some physical medium, its author is automatically entitled to all copyrights in the work, and to any derivative works unless and until the author explicitly disclaims them, or until the copyright expires. The Berne Convention also resulted in foreign authors being treated equivalently to domestic authors, in any country signed onto the Convention. The UK signed the Berne Convention in 1887 but did not implement large parts of it until 100 years later with the passage of the Copyright, Designs and Patents Act 1988. Specially, for educational and scientific research purposes, the Berne Convention provides the developing countries issue compulsory licenses for the translation or reproduction of copyrighted works within the limits prescribed by the Convention. This was a special provision that had been added at the time of 1971 revision of the Convention, because of the strong demands of the developing countries. The United States did not sign the Berne Convention until 1989.

**The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations** was accepted by members of BIRPI, the predecessor to the modern World Intellectual Property Organization, on 26 October 1961. The agreement extended copyright protection for the first time from the author of a work to the creators and owners of particular, physical manifestations of intellectual property, such as audiocassettes or videocassettes.

Nations drew up the Convention in response to new technologies like tape recorders that made the reproduction of sounds and images easier and cheaper than ever before. Whereas earlier copyright law, including international agreements like the 1886 Berne Convention, had been written to regulate the circulation of printed materials, the Rome Convention responded to the new circumstance of ideas

variously represented in easily reproduced units by covering performers and producers of recordings under copyright:

1. Performers (actors, singers, musicians, dancers and other persons who perform literary or artistic works) are protected against certain acts they have not consented to. Such acts are: the broadcasting and the communication to the public of their live performance; the fixation of their live performance; the reproduction of such a fixation if the original fixation was made without their consent or if the reproduction is made for purposes different from those for which they gave their consent.
2. Producers of phonograms enjoy the right to authorise or prohibit the direct or indirect reproduction of their phonograms. Phonograms are defined in the Rome Convention as meaning any exclusively aural fixation of sounds of a performance or of other sounds. When a phonogram published for commercial purposes gives rise to secondary uses (such as broadcasting or communication to the public in any form), a single equitable remuneration must be paid by the user to the performers, or to the producers of phonograms, or to both; contracting States are free, however, not to apply this rule or to limit its application.
3. Broadcasting organisations enjoy the right to authorise or prohibit certain acts, namely: the rebroadcasting of their broadcasts; the fixation of their broadcasts; the reproduction of such fixations; the communication to the public of their television broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

The Rome Convention allows the following exceptions in national laws to the above-mentioned rights:

- private use
- use of short excerpts in connection with the reporting of current events
- ephemeral fixation by a broadcasting organisation by means of its own facilities and for its own broadcasts
- use solely for the purpose of teaching or scientific research
- in any other cases—except for compulsory licenses that would be incompatible with the Berne Convention—where the national law provides exceptions to copyright in literary and artistic works.
- Furthermore, once a performer has consented to the incorporation of his performance in a visual or audiovisual fixation, the provisions on performers' rights have no further application.

## **TRIPS Agreement**

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is an international legal agreement between all the member nations of the World Trade Organization (WTO). It sets down minimum standards for the regulation by national governments of many forms of intellectual property (IP) as applied to nationals of other WTO member nations. TRIPS was negotiated at the end of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) between 1989 and 1990 and is administered by the WTO.

The TRIPS agreement introduced intellectual property law into the multilateral trading system for the first time and remains the most comprehensive multilateral agreement on intellectual property to date. In 2001, developing countries, concerned that developed countries were insisting on an overly narrow reading of TRIPS, initiated a round of talks that resulted in the Doha Declaration. The Doha declaration is a WTO statement that clarifies the scope of TRIPS, stating for example that TRIPS can and should be interpreted in light of the goal "to promote access to medicines for all."

Specifically, TRIPS requires WTO members to provide copyright rights, covering authors and other copyright holders, as well as holders of related rights, namely performers, sound recording producers and broadcasting organisations; geographical indications; industrial designs; integrated circuit layout-designs; patents; new plant varieties; trademarks; trade names and undisclosed or confidential

information. TRIPS also specifies enforcement procedures, remedies, and dispute resolution procedures. Protection and enforcement of all intellectual property rights shall meet the objectives to contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

TRIPS requires member states to provide strong protection for intellectual property rights. For example, under TRIPS:

Copyright terms must extend at least 50 years, unless based on the life of the author. (Art. 12 and 14)  
Copyright must be granted automatically, and not based upon any "formality," such as registrations, as specified in the Berne Convention. (Art. 9)

Computer programs must be regarded as "literary works" under copyright law and receive the same terms of protection.

National exceptions to copyright (such as "fair use" in the United States) are constrained by the Berne three-step test

Patents must be granted for "inventions" in all "fields of technology" provided they meet all other patentability requirements (although exceptions for certain public interests are allowed (Art. 27.2 and 27.3) and must be enforceable for at least 20 years (Art 33).

Exceptions to exclusive rights must be limited, provided that a normal exploitation of the work (Art. 13) and normal exploitation of the patent (Art 30) is not in conflict.

No unreasonable prejudice to the legitimate interests of the right holders of computer programs and patents is allowed.

Legitimate interests of third parties have to be taken into account by patent rights (Art 30).

In each state, intellectual property laws may not offer any benefits to local citizens which are not available to citizens of other TRIPS signatories under the principle of national treatment (with certain limited exceptions, Art. 3 and 5). TRIPS also has a most favored nation clause.

### **Paris Convention for the Protection of Industrial Property**

The Paris Convention for the Protection of Industrial Property, signed in Paris, France, on 20 March 1883, was one of the first intellectual property treaties. It established a Union for the protection of industrial property. The Convention is currently still in force. The substantive provisions of the Convention fall into three main categories: national treatment, priority right and common rules.

#### **National treatment**

According to Articles 2 and 3 of this treaty, juristic and natural persons who are either national of or domiciled in a state party to the Convention shall, as regards the protection of industrial property, enjoy in all the other countries of the Union, the advantages that their respective laws grant to nationals.

In other words, when an applicant files an application for a patent or a trademark in a foreign country member of the Union, the application receives the same treatment as if it came from a national of this foreign country. Furthermore, if the intellectual property right is granted (e.g. if the applicant becomes owners of a patent or of a registered trademark), the owner benefits from the same protection and the same legal remedy against any infringement as if the owner was a national owner of this right.

#### **Priority right**

The "Convention priority right", also called "Paris Convention priority right" or "Union priority right", was also established by Article 4 of the Paris Convention, and is regarded as one of the cornerstones of the Paris Convention. It provides that an applicant from one contracting State shall be able to use its first filing date (in one of the contracting States) as the effective filing date in another contracting State, provided that the applicant, or his successor in title, files a subsequent application within 6 months (for industrial designs and trademarks) or 12 months (for patents and utility models) from the first filing.

#### **Temporary protection for goods shown at some international exhibitions**

Article 11(1) of the Paris Convention requires that the Countries of the Union "grant temporary protection to patentable inventions, utility models, industrial designs, and trademarks, in respect of goods exhibited at official or officially recognized international exhibitions held in the territory of any of them".

If a patent or trademark registration is applied for during the temporary period of protection, the priority date of the application may be counted "from the date of introduction of the goods into the exhibition" rather than from the date of filing of the application, if the temporary protection referred to in Article 11(1) has been implemented in such a manner in national law. There are, however, other means for the Countries of the Union to implement in their national law the temporary protection provided for in Article 11 of the Paris Convention:

It is also possible, for example, in the case of exhibited patentable inventions, to make provision for temporary protection by other means, namely, by prescribing that, during a certain period, such exhibition will not destroy the novelty of the invention and that the person who exhibits the invention will also be protected against usurpation of his invention by third parties. Still another possibility of protection consists in the recognition of a right of prior use in favor of the exhibitor as against possible rights acquired by third parties.

### **Mutual independence of patents and trademarks in the different Countries of the Union**

According to Articles 4bis and 6 (for patents and trademarks respectively), for foreigners, the application for a patent or the registration of a trademark shall be determined by the member state in accordance with their national law and not by the decision of the country of origin or any other countries. Patent applications and trademark registrations are independent among contracting countries.

### **International Intergovernmental Organizations**

- World **Intellectual Property Organization** (WIPO)
- World Customs **Organization** (WCO)
- World Trade **Organization** (WTO)
- **International** Trade Centre (ITC)
- Trilateral Website (EPO - JPO - USPTO)
- **Organization** for Economic Development (OECD)
- **United Nations** (UN)

**The World Intellectual Property Organization** is one of the 15 specialized agencies of the United Nations (UN). WIPO was created in 1967 "to encourage creative activity, to promote the protection of intellectual property throughout the world". WIPO currently has 193 member states, administers 26 international treaties, and is headquartered in Geneva, Switzerland. The current Director-General of WIPO is Francis Gurry, who took office on 1 October 2008. 190 of the UN member states as well as the Cook Islands, Holy See and Niue are members of WIPO. Non-members are the states of Federated States of Micronesia, Palau and South Sudan. Palestine has permanent observer status.

**The World Customs Organization (WCO)** is an intergovernmental organization headquartered in Brussels, Belgium. The WCO is noted for its work in areas covering the development of international conventions, instruments, and tools on topics such as commodity classification, valuation, rules of origin, collection of customs revenue, supply chain security, international trade facilitation, customs enforcement activities, combating counterfeiting in support of Intellectual Property Rights (IPR), drugs enforcement, illegal weapons trading, integrity promotion, and delivering sustainable capacity building to assist with customs reforms and modernization. The WCO maintains the international Harmonized System (HS) goods nomenclature, and administers the technical aspects of the World Trade Organization (WTO) Agreements on Customs Valuation and Rules of Origin.

**The World Trade Organization (WTO)** is the only global international organization dealing with the rules of trade between nations. At its heart are the WTO agreements, negotiated and signed by the bulk

of the world's trading nations and ratified in their parliaments. The goal is to help producers of goods and services, exporters, and importers conduct their business.

**The International Trade Centre (ITC)** is a multilateral agency which has a joint mandate with the World Trade Organization (WTO) and the United Nations (UN) through the United Nations Conference on Trade and Development (UNCTAD). Through its work, the ITC contributes directly to 10 of the Sustainable Development Goals. These include SDG 1 (no poverty), Goal 2 (zero hunger), Goal 4 (Quality Education), Goal 5 (Gender Equality), Goal 8 (Decent Work and Economic Growth), Goal 9 (Industry, innovation and infrastructure), Goal 10 (Reduced Inequalities), Goal 12 (Responsible Production and Consumption), Goal 16 (Peace, Justice and strong institutions), and Goal 17 (Partnerships for the Goals). The headquarters of the ITC are situated in Geneva, Switzerland. Their staff consists of approximately 300 employees spanning more than 80 nationalities. Furthermore, ITC has country-based project offices where they employ experts from the specific region.

**The Trilateral Patent Offices**, or simply the Trilateral Offices, are the European Patent Office (EPO), the Japan Patent Office (JPO) and the United States Patent and Trademark Office (USPTO). In 1983, these patent offices set up a programme of co-operation in an effort to "improve efficiency of the global patent system". Key areas of co-operation include the development of a common system architecture for electronic exchange of documents such as priority documents, developing standards for electronic filing of patent applications and genetic sequence submissions, harmonisation of patent practices, and developing common patent information dissemination policies.

**The Organisation for Economic Co-operation and Development (OCED)** is an intergovernmental economic organisation with 36 member countries, founded in 1961 to stimulate economic progress and world trade. It is a forum of countries describing themselves as committed to democracy and the market economy, providing a platform to compare policy experiences, seek answers to common problems, identify good practices and coordinate domestic and international policies of its members. Most OECD members are high-income economies with a very high Human Development Index (HDI) and are regarded as developed countries.

**The United Nations (UN)** is an intergovernmental organization that aims to maintain international peace and security, develop friendly relations among nations, achieve international cooperation, and be a center for harmonizing the actions of nations. It is the largest, most familiar, most internationally represented and most powerful intergovernmental organization in the world. The UN is headquartered on international territory in New York City; other main offices are in Geneva, Nairobi, Vienna and The Hague.

The UN was established after World War II with the aim of preventing future wars, succeeding the ineffective League of Nations. On 25 April 1945, 50 governments met in San Francisco for a conference and started drafting the UN Charter, which was adopted on 25 June 1945 and took effect on 24 October 1945, when the UN began operations. Pursuant to the Charter, the organization's objectives include maintaining international peace and security, protecting human rights, delivering humanitarian aid, promoting sustainable development, and upholding international law. At its founding, the UN had 51 member states; this number grew to 193 in 2011, representing the vast majority of the world's sovereign states.

The organization's mission to preserve world peace was complicated in its early decades by the Cold War between the United States and Soviet Union and their respective allies. Its missions have consisted primarily of unarmed military observers and lightly armed troops with primarily monitoring, reporting and confidence-building roles. UN membership grew significantly following widespread decolonization beginning in the 1960s. Since then, 80 former colonies have gained independence, including 11 trust territories that had been monitored by the Trusteeship Council. By the 1970s, the UN's budget for economic and social development programmes far outstripped its spending on

peacekeeping. After the end of the Cold War, the UN shifted and expanded its field operations, undertaking a wide variety of complex tasks.

The UN has six principal organs: the General Assembly; the Security Council; the Economic and Social Council (ECOSOC); the Trusteeship Council; the International Court of Justice; and the UN Secretariat. The UN System includes a multitude of specialized agencies, such as the World Bank Group, the World Health Organization, the World Food Programme, UNESCO, and UNICEF. Additionally, non-governmental organizations may be granted consultative status with ECOSOC and other agencies to participate in the UN's work. The UN's chief administrative officer is the Secretary-General, currently Portuguese politician and diplomat António Guterres, since 1 January 2017. The organization is financed by assessed and voluntary contributions from its member states.