

CULTART Training programme

Training Module 4: Project Management & IPR

How to create and manage your project and IPR



Co-funded by the
Erasmus+ Programme
of the European Union

The European Commission support for the production of this publication does not constitute an endorsement of the contents that reflects the views only of the authors, and the Commission cannot be held responsible for any use that may be made of the information contained therein.
Project number: 2021-1-BG01-KA220-YOU-000028537

A.I.P. Plovdiv | Foundation Plovdiv 2019 | EduCenter Skopje | ICSD | CAN Lecce | cc Vienna

Declaration on copyright:

Creative Commons Attribution-Non-Commercial-Share-Alike 4.0 International License.

You are free to:

Share — copy and redistribute the material in any medium or format

Adapt — remix, transform, and build upon the material under the following terms:

Attribution — You must give appropriate credit, provide a link to the license, and indicate if changes were made. You may do so in any reasonable manner, but not in any way that suggests the licensor endorses you or your use.

Non-commercial — You may not use the material for commercial purposes.

Share Alike — If you remix, transform, or build upon the material, you must distribute your contributions under the same license as the original.

Disclaimer

The CULTART training program has been developed as a blended training program, combining e-learning (independent study relying on online learning resources) and in- person classroom activities facilitated by a qualified trainer.

The units of this module are designed to provide learners with the most important insights regarding the subject matter of the module, in accordance with the findings of the analyses conducted in the framework of Intellectual Output 1 of the CULTART project.

The learning content provided here is intended to serve for independent learning and does not pretend to cover all possible aspects and related issues in terms of the subject matter covered.

Users are solely responsible for ensuring that they have sufficient and compatible hardware, software, telecommunications equipment, and Internet service necessary for the use of the online campus and modules

Content

Training description

Objectives of this training module

Target groups

Competencies and skills after finishing this module

Training method

Training Content

Unit 1 – The Basics of IP and IPR

Unit 2 – IP Protection and Value Creation

Unit 3 – IP Management and Commercialisation

Training description

Intellectual Property Rights (IPR) and Intellectual property (IP) management are key for improving the competitiveness of any company. Unfortunately, small and medium-sized enterprises (SMEs) and stakeholders of creative industries often lack the time, resources, or knowledge to address IP matters.

This training module aims at providing answers to some of the main IP issues often faced. It has been developed on the basis of the experience gained by vast business development and startup support expertise. Moreover, it refers to several reference documents, which are listed within this module for further information.

Each unit of this module is dedicated to one IP management topic, covering essential aspects around regulation in Europe concerning different types of IP. However, this module can only provide the basic insights into IPR and IP management, it cannot claim to be exhaustive. It is provided as a service for small and medium-sized enterprises (SMEs) and stakeholders of creative industries.

Objectives of this training module

This module aims helping start-up companies and entrepreneurs to understand the basics of Intellectual Property Rights. You should have (or have been trained to have) a good overview on topics related to IP management:

- To know which types of IP exist and what you have to do to create IP
- To understand the related management aspect of the different types of IP
- To learn about how you can create value out of IP and commercialise it.

Target groups

This training module is designed to fit the training needs of the following stakeholders:

- Stakeholders operating in the CCS and the fintech industry;
- CCI freelancers;
- Start-ups in the CCI sector;
- Entrepreneurs that want to use networks for value creation in their international expansion;
and
- Regional multipliers and supporters.

Competencies and skills after finishing this module

After studying this module,

- you will have a better understanding, why IP and IP management, is important for businesses;
- you will understand the various types of IP and their values to your organisation; and
- you will have learned why IP can be important to build and how to do it
- you will understand why IP is an important driver for scaling up your business.

Training method

Cultart learning philosophy promotes a unique engaging training method, based on the following aspects:

- Short-burst learning sessions which feature very well-structured learning content.
- A deep sense of involvement and merging of action and awareness.
- A sense of control and dealing with the task that you will find at the end of the module.
- Enjoyment and provoking further interest.

Cultart focuses on an interactive training approach:

- The modules as a training material for self-learning.
- Using the interactive Cultart online training platform: moodle.Cultart.eu for facilitated training sessions in a group with a professional trainer.

Unlike the lecturers into the face-to-face classroom, which provide their students with guidance and some additional directions, you have to take the responsibilities for the time management and for the control of your learning progress.

Training Content

Unit 1 – The Basics of IP and IPR

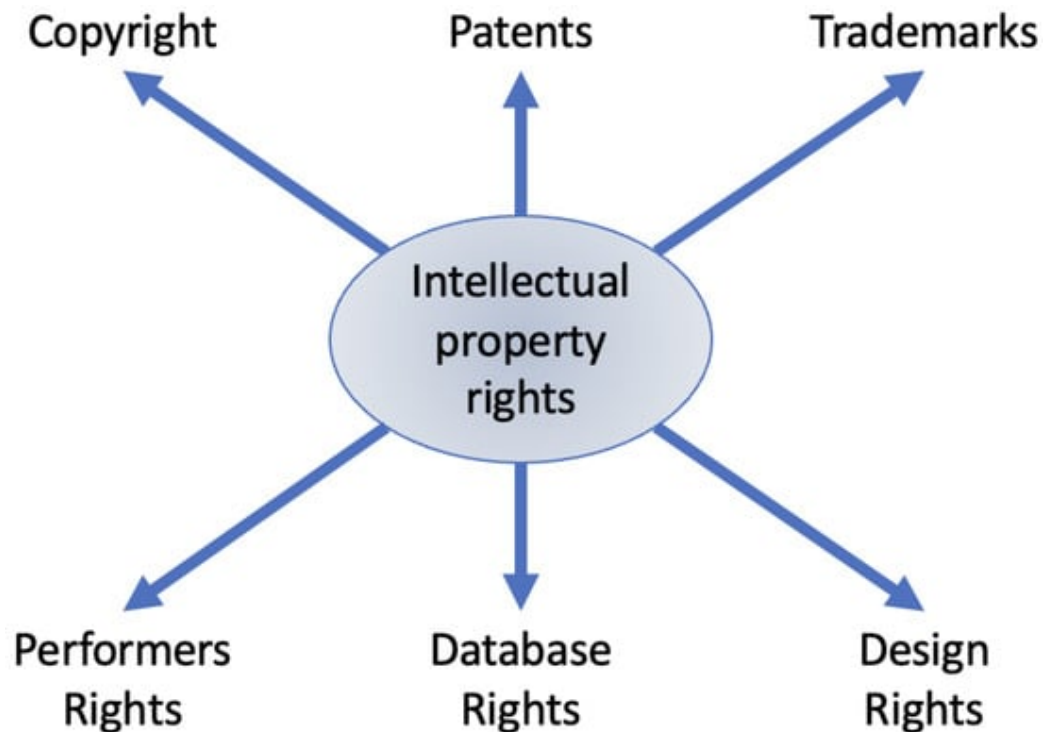


Figure 1. Intellectual property rights, adopted from [11]

A Survey of Intellectual Property Rights Protection in Big Data Applications § by Rafik Hamza 1,*ORCID andHilmil Pradana Hilmil Pradana ScilitPreprints.orgGoogle Scholar

Tags:

IP, IPR, WIPO, patents, trademarks, industrial designs, utility models, service marks, trade names, databases, domain names and geographical indications, IP registration

Unit 1 – Introduction

The main purpose of intellectual property law is to encourage the creation of a wide variety of intellectual assets. To achieve this, the law gives people and businesses property rights to the information and intellectual goods they create, usually for a limited period of time. This gives economic incentive for their creation, because it allows people to profit from the information and intellectual assets they create. These economic incentives are expected to stimulate innovation and contribute to the technological progress of countries, which depends on the extent of protection granted to innovators. Within this unit, you will understand that there are many types of intellectual property. The most well-known types patents, trademarks, copyrights, and trade secrets. You will understand how these can be distinguished and used.

What is IP?

Until recently, the purpose of intellectual property laws was to give as little protection as possible in order to encourage innovation. Historically, therefore, they were granted only when they were necessary, to encourage invention, limited in time and scope. This is mainly as a result of knowledge being traditionally viewed as a public good, in order to allow its extensive dissemination and improvement thereof.

According to Jean-Frédéric Morin, "the global intellectual property regime is currently in the midst of a paradigm shift". Indeed, up until the early 2000s the global IP regime used to be dominated by high standards of protection characteristic of IP laws from Europe or the United States, with a vision that uniform application of these standards over every country and to several fields with little consideration over social, cultural or environmental values or of the national level of economic development.

The intangible nature of intellectual property presents difficulties when compared with traditional property like land or goods. Unlike traditional property, intellectual property is "indivisible" – an unlimited number of people can "consume" an intellectual good without it being depleted. Additionally, investments in intellectual assets suffer from problems of appropriation – a landowner can surround their land with a robust fence and hire armed guards to protect it, but a producer of information or an intellectual good can usually do very little to stop their first buyer from replicating it and selling it at a lower price. Balancing rights so that they are strong enough to encourage the creation of intellectual assets but not so strong that they prevent the assets' wide use is the primary focus of modern intellectual property law.

Intellectual property rights include patents, copyright, industrial design rights, trademarks, plant variety rights, trade dress, geographical indications, and in some jurisdictions trade secrets. There are also more specialized or derived varieties of sui generis exclusive rights, such as circuit design rights and supplementary protection certificates for pharmaceutical products (after expiry of a patent protecting them) and database rights (in European law).

Types of IPR:

The term "industrial property" is sometimes used to refer to a large subset of intellectual property rights including patents, trademarks, industrial designs, utility models, service marks, trade names, databases, domain names and geographical indications. They are all briefly described below.

1. Trademarks

What is a Trademark?

A Trademark is an exclusive right over the use of a sign in relation to the goods and services for which it is registered. Trademarks consist of signs capable of distinguishing the products (either goods or services) of a trader from those of others. Such signs include: Words, Names, Logos, Letters, Numbers, Colours, Shape/Packaging of Goods, and Sounds.

The main function of a Trademark is to identify the commercial origin of a product. Besides, Trademarks convey a message about the quality of a product, thus facilitating consumers' choice. Furthermore, they are used for advertisement purposes and can function as an investment instrument (e.g. they can be assigned, licensed, etc.).

What are the routes to Trademark registration?

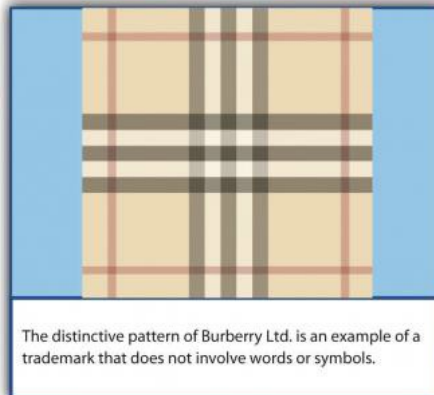
Trademark registration can be performed at three different levels: national, regional and international. The best route usually depends on the applicant's target markets, business and financial capabilities, as well as commercial expectations.

What kind of protection do Trademarks confer?

The exclusive right conferred by a Trademark allows its owner to prevent others from using the same or similar signs for identical or related goods and/or services as those protected by the trade mark in the course of trade, without the owner's prior permission. The Trademark owner may sell its Trademark to someone else who will then become the new owner of the Trademark, or give permission to others to use the trade mark on mutually agreed terms (i.e. Trademark licensing agreement).

Understanding Trademarks with examples

An organization's trademarks consist of phrases, pictures, names, or symbols that are closely associated with the organization. Some examples and key issues surrounding trademarks are illustrated below.



*Source: Illustration from the web version of the Mastering Strategic Management – 1st Canadian Edition.
<https://opentextbc.ca/strategicmanagement/back-matter/versioning-history/>*

2. Industrial Designs

What is an industrial design?

An industrial design is the outward appearance of the whole or part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation.

What are the routes to design protection?

Designs can be protected by different means: through a registration system, through a system of non-registration and through copyright. Registration can be obtained at three different levels: national, regional and international. The best route usually depends on the markets in which the applicant intends to operate. A route to design confers to its holder the exclusive right to use their design and to prevent third parties from using it commercially without prior consent.

What kind of protection do Industrial Designs confer?

An industrial design only protects against deliberate copying, in other words, the design owner can only prevent third parties from making a commercial use of their design if it has been copied and not if such third parties have created a similar or identical design independently. Design owners, including industrial design owners, may sell their design to someone else, who will then become the new owner of the design, or give permission to others to use the design on mutually agreed terms (i.e. design licensing agreement).

3. Patents

What is a patent?

A patent is an exclusive right granted for the protection of inventions (products or processes) offering a new technical solution or facilitating a new way of doing something. The patent holder enjoys the exclusive right to prevent third parties from commercially exploiting their invention for a limited period of time. In return, the patent holder must disclose the invention to the public in the patent application.

What are the routes to patent protection?

Patent registration can be performed at three different levels: national, regional and international (through the Patent Cooperation Treaty (PCT) System). The best route usually depends on the territories where a company intends to exploit the patent.

What kind of protection do patents confer?

The exclusive right conferred by a patent allows its owner to prevent others from making, using, offering for sale, selling or importing a product or a process based on the patented invention, without the owner's prior permission. The patent owner may give permission to others to use the invention on mutually agreed terms (i.e. patent licensing agreement).

The owner may also sell the patent to someone else, who will then become the new owner of the patent.

What is a unitary patent?

A European patent with unitary effect (unitary patent) is a European patent granted by the EPO to which unitary effect in the territory of 26 participating EU Member States (Spain and Croatia being the only EU Member States that do not take part in this scheme) is given after grant, at the patentee's request. Although not yet in force when this guide is being written, the unitary patent will provide applicants with a means for obtaining patent rights in each of the 26 participating states simultaneously without the need for national validation in each country, as it is the case for the European patent.

Once the unitary regime enters into force, patent applicants will be able to choose between various combinations of classical European patents and unitary patents, for example:

- a unitary patent for the 26 Member States of the European Union which participate in the unitary patent scheme together with
- a classical European patent taking effect in one or more EPC contracting states which do not participate in the scheme, such as Spain, Switzerland, Turkey, Norway, Iceland, etc.

Can I patent a computer program?

Software patentability in Europe is excluded by law but the issue is under debate. As a consequence, a computer program claimed “as such” is not a patentable invention.

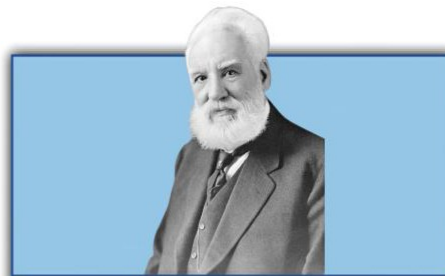
Under specific conditions, a patent could be granted for a computer-implemented invention where a technical problem is solved in a novel and non-obvious manner.

Computer programs may receive copyright protection in Europe, as long as they comply with the requirements for copyright protection.

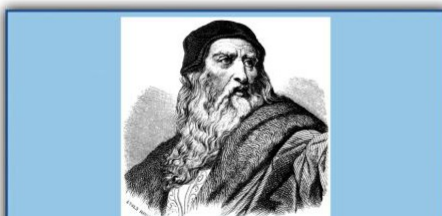
Patents protect inventions from direct imitation for a limited period of time. Some examples and key issues surrounding patents are illustrated below.



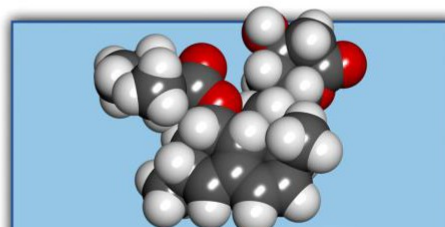
To earn a patent from the Canadian Intellectual Property Office, an inventor must demonstrate that an invention is new, nonobvious and useful.



As several different inventors raced to create a workable system for voice transmission over wires, Alexander Graham Bell was awarded a patent for the telephone in 1876.



Leonardo DaVinci excelled in every field (painting, sculpture, you name it), but rarely was his talent recognized. As the inventor of an early airplane, machine gun and armored tank, he was centuries ahead of his time.



In 2013, the Canadian Federal Court ruled that Merck was entitled to over \$119 million in damages, plus interest, for Apotex's infringement of Merck's patent for the anti-cholesterol drug lovastatin. This judgement was the largest patent infringement award in Canadian history.

*Source: Illustration from the web version of the Mastering Strategic Management – 1st Canadian Edition.
<https://opentextbc.ca/strategicmanagement/back-matter/versioning-history/>*

Understanding patents with examples

4. Utility Models

What is a utility model?

Also referred to as a “petty patent”, a utility model is an exclusive right granted for an invention, which allows its owner to prevent others from commercially using the protected invention, without their authorisation, for a limited period of time.

What are the routes to utility model protection?

In the EU, utility models can be granted at national level in the following countries: Austria, Bulgaria, Czech Republic, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Poland, Portugal, Slovakia and Spain. There is no European or international utility model protection.

What kind of protection do utility models confer?

The exclusive right conferred by a utility model generally allows its owner to prevent others from making, using, offering for sale, selling or importing a product or a process based on the protected invention, without the owner's prior permission.

5. Trade Secrets

What is a trade secret?

Any confidential business information providing a competitive advantage to an enterprise can be considered a trade secret. The type of information that can be protected as a trade secret is therefore highly diverse. It can include know-how, technical knowledge (potentially protectable as a patent), but also business and commercial data such as lists of customers, business plans, recipes or manufacturing processes.

How are trade secrets protected?

Trade secrets do not require administrative or procedural formalities in order to be protected. There are, however, some conditions for the information to be considered and, hence, be protected as a trade secret.

The information must:

- be secret, meaning that it is not generally known
- have commercial value due to its secrecy and
- have been subject to reasonable measures, by the person in control of the information, to keep it secret.

These reasonable measures may include:

- storing confidential information safely;
- concluding non-disclosure agreements where trade secrets must be discussed with business partners;
- including non-disclosure clauses within agreements such as licence agreements, employment agreements, consortium agreements or partnership agreements, where the exchange of confidential information is very likely and/or necessary.

What kind of protection do trade secrets confer?

Trade secrets do not confer "proprietary rights", meaning that the holder of a trade secret does not have exclusive rights over the information. However, if the information is leaked by someone under the obligation to keep it confidential, such a disclosure would constitute a breach of contract allowing remedies for the trade secret holder.

Moreover, if a person obtains the trade secret by dishonest means (such as in the case of espionage), most European countries and all EU Member States offer protection under unfair competition laws.

Understanding Trade secrets with examples

Trade secrets are formulas, practices, and designs that are central to a firm's business and that remain unknown to competitors. Everyone loves a good mystery, so it is no surprise that legends have arisen around some trade secrets. Some examples and key issues surrounding trade secrets are illustrated below.



Pepsi-cola, KFC, Twinkies and Krispy Kreme all have secret recipes, and a certain mystique surrounds those products.



In 2006, Pepsi was offered a chance to buy a stolen copy of Coca-Cola's secret recipe. An FBI sting was created and the thieves were arrested.



WD-40 was developed to repel water and prevent corrosion, but it was later found to have over two thousand uses. Creating WD-40 took a lot of work: the product's unusual name stands for "Water Displacement, 40th attempt." Despite being created in 1953, the formula for making WD-40 remains unknown outside the company that sells it.



FarmVille creator Zynga alleged in a lawsuit that Disney had lured away Zynga employees to work for Disney and then urged the employees to turn over a secret "playbook" that described Zynga's strategy. The case was settled out of court in late 2010.



Why people love burning Sriracha hot sauce - spicy secret finally revealed. People who love the sauce may be masochists, experiencing pleasure from pain. Heat receptors in the mouth are triggered by the ingredients in Sriracha. The body reacts as it would to burning water, which may be the attraction to the sauce for some people.

Source: Illustration from the web version of the Mastering Strategic Management – 1st Canadian Edition.
<https://opentextbc.ca/strategicmanagement/back-matter/versioning-history/>

Copyright

What is copyright?

Copyright (or author's right) is the term used to describe the rights that creators have over their literary, scientific and artistic works. There is not an exhaustive list containing the works that can be protected by copyright. However, there is a number of works usually covered by copyright at international level:

- literary works such as novels, poems, plays, newspaper articles;
- computer programs, databases;
- films, musical compositions, and choreographies;
- artistic works such as paintings, drawings, photographs, and sculptures;
- architecture; and
- advertisements, maps, and technical drawings.

Can ideas be protected by copyright?

Ideas as such cannot obtain copyright protection. It is the expression of those ideas that can be copyrighted.

How does copyright arise?

Automatic protection

In the EU, copyright protection is obtained automatically from the moment when the work is created and no registration or other formality is required. However, some countries allow for the voluntary registration/deposit of works protected by copyright. Therefore, registration is not constitutive of the right but can be useful in some situations (e.g. to solve disputes over ownership or creation, to facilitate financial transactions).

Copyright notice

While no formalities are required to obtain copyright protection, it is common practice to attach a copyright notice to the work, such as the mention "all rights reserved" or the symbol © together with the year in which the work has been created, to inform others of the existence of copyright and therefore reduce the likelihood of infringement.

What are the requirements to obtain copyright protection?

Although copyright is regulated at national level and, therefore, the requirements can vary from one country to another, to qualify for copyright protection a work must in general:

Be original:




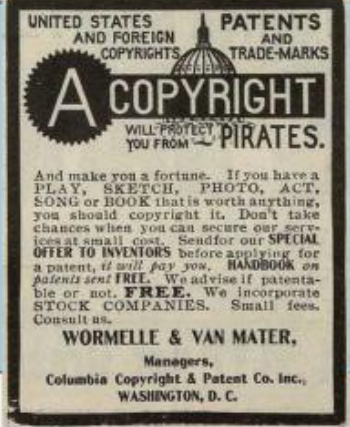

There is no total harmonisation at EU level, nor at international level on what is to be understood by "original". However, based on EU case law, it can be said that the originality requirement is satisfied when the author expresses his creativity by making free and creative choices, resulting in a work that reflects his personality.

Exist in some form:

There is no harmonisation at EU level regarding whether the work has to be fixed in a material form in order to receive copyright protection. It is for Member States to freely prescribe that works in general or any specified categories of works shall not be protected unless they have been fixed in some material form. Therefore, non-fixed works such as unrecorded speeches, may receive protection in some countries but not in others.

Understanding Copyrights with examples

The rights of creators of original artistic works such as books, movies, songs, and screenplays are protected by copyrights. Some examples and key issues surrounding copyrights are illustrated below.

| | | |
|---|--|--|
|  |  |  |
| <p>In China, millions of pirated DVDs are sold each year, and music piracy is estimated to account for at least 95 percent of music sales. In response, the Canadian government has pressed its Chinese counterpart to better enforce copyrights.</p> | <p>The presence of the copyright symbol tells consumers that they are not allowed to duplicate the product that carries the copyright.</p> | <p>When it became apparent that The Verve's 1997 hit single "Bittersweet Symphony" duplicated a Rolling Stones song, The Verve was forced to give up the copyright for the song.</p> |
|  | |  |
| <p>Today's cheesy television ads aimed at inventors follow a long tradition of companies offering to help individuals copyright their ideas—for a small fee, of course.</p> | | <p>A painting such as Johannes Vermeer's "Girl with a Pearl Earring" enters the public domain (i.e., is not subject to copyright) one hundred years after its creator's death.</p> |

Source: Illustration from the web version of the Mastering Strategic Management – 1st Canadian Edition.
<https://opentextbc.ca/strategicmanagement/back-matter/versioning-history/>

6. Databases

What is a database?

In the EU, a “database” consists of a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means.

What are the routes to database protection?

Copyright protection

- Original databases can be protected by copyright
- Copyrighted databases must be original “intellectual creations”
- Copyright is the highest level of protection that can be obtained by databases in the EU
- The owner of the database is the person who creates it Sui

Generis protection

- Non-original databases – which do not meet the requirements for obtaining copyright protection - can be protected in the EU by a specific EU database right known as the sui generis database right
- Sui generis databases do not need to be an “intellectual creation”, but they must show that there has been “qualitatively or quantitatively a substantial investment in either the obtaining, verification or presentation of the contents” of the database
- The owner of a sui generis database is the person who creates the database, that is to say, the person undertaking the initiative of creating the database and assuming the associated investment risks
- Some examples of protected non-original databases include telephone listings or compilations of legislation

What are the requirements for obtaining protection of a database?

Copyright

- To obtain copyright protection, databases must be original intellectual creations. In the EU, databases which, by reason of the selection or arrangement of their contents, constitute the author’s own intellectual creation shall be protected as such by copyright.
- No other criteria shall be applied to determine their eligibility for copyright protection.

Sui generis right

- To obtain sui generis protection it is required that a substantial investment is made in obtaining, verifying and presenting the contents of the database.
- Substantial investment is understood as a financial and/or professional investment, which may consist in the deployment of financial resources and the expending of time, effort and energy in obtaining and collecting the contents.

7. Domain Names

What is a domain name?

According to WIPO, “domain names are the human-friendly forms of Internet addresses, and are commonly used to find web sites”. For example, the domain name iprhelpdesk.eu is used to locate the European IPR Helpdesk web site at <http://www.iprhelpdesk.eu>. Apart from this function, domain names also serve the purpose of identifying a company or a trade mark on the Internet.

What are the types of domain names?

Top Level Domain (TLD): It is located after the last dot (“.”), e.g. iprhelpdesk.eu. There are two types of TLD:

- generic Top Level Domain (gTLD): indicates the area of activity (e.g. “.com” for any purposes or “.biz”, restricted to businesses); and
- country code Top Level Domain (ccTLD): indicates the geographical area where the domain owner intends to operate (e.g. “.uk” or “.fr”, for the UK and France respectively).

Second Level Domain: It is located directly to the left of the toplevel domain (e.g. iprhelpdesk.eu). Most domain names disputes concern this type of domain.

Third Level Domain: It is located directly to the left of the secondlevel domain (e.g. helpline.iprhelpdesk.eu). Not every address has this type of domain, also known as subdomain. It is often used to identify departments in large organisations.

What kind of protection do domain names confer?

Domain names have an international character. Unlike trade marks or designs, domain names are not territorial so their registration at any accredited registrar confers them worldwide protection.

8. Geographical Indications

What is a geographical indication?

A geographical indication (GI) is a sign used on products having a specific geographical origin and whose qualities and/or reputation are attributable to that origin. Geographical indications are often place names. However, nongeographical names can also be protected if they are linked to a particular place. For example, Feta cheese is not named after a place, but after the Italian word

“fetta”, meaning “slice”, which was incorporated into the Greek language in the 17th century. However several factors such as the fact

that 85% of EU consumption of feta cheese per capita and per year takes place in Greece or the fact that feta is usually marketed with labels referring to Greek cultural traditions and civilisation, make EU consumers perceive feta as an inherently Greek product.

In order to function as a GI:

- the sign must identify a product as originating in a given place (e.g. Chianti identifying a wine originating in the Italian region of Chianti or Roquefort cheese originating in the Roquefort-sur-Soulzon region in France);
- the qualities, characteristics or reputation of the product should be due to the place of origin (e.g. the qualities of Chianti are due to the grapes grown in the soil of that specific Italian region, while the qualities of Roquefort result from the characteristics of the milk obtained from indigenous breeds of sheep fed according to the tradition and the characteristics of the caves in which the cheese is aged).

What type of products can be protected by GIs?

Geographical indications are used for agricultural products, foodstuffs, wine and spirit drinks, handicrafts, and industrial products. However, at EU level, most non-agricultural products or industrial goods (like textiles, wood, ceramics, etc.) are not protectable with a GI. Nevertheless, some Member States of the EU (e.g. Bulgaria) provide for the protection of these products as GIs at national level.

How are geographical indications protected?

Protection for a GI is obtained by acquiring a right over the name that constitutes the indication (e.g. Chianti). Although in many countries and at EU level this right over a name can be acquired through the registration of a collective trademark and/ or a certification mark, a specific right protecting the GI can also be obtained.

This GI right may be, depending on the country, a protected GI, a designation of origin or an appellation of origin. Appellations of origin (AOs) and designations of origin (DOs) are special kinds of GIs generally implying a stronger link with the place of origin (e.g. the quality and characteristics of a product protected as an AO and a DO must generally result exclusively or essentially from its geographical origin).

| <i>IPR</i> | <i>What for?</i> | <i>Duration of protection</i> | <i>Priority</i> | <i>Routes to registration</i> |
|---------------------------------|---|--|-----------------|--|
| Trade marks | Distinctive signs | Renewable indefinitely for periods of 10 years | 6 months | National EU trade mark (EU) Madrid System |
| Industrial designs | Appearance of products | RCD: renewable every 5 years up to 25 years UCD: 3 years, not renewable | 6 months | National Community design (EU) Hague System |
| Patents | Inventions | 20 years | 12 months | National European Patent (EPC) PCT |
| Utility models | Inventions | 7-10 years | 12 months | National |
| Trade secrets | Confidential business information | Unlimited | No | None |
| Copyright | Literary, scientific and artistic works Neighbouring rights (media or related rights) | Moral rights: no time limit Economic rights: at least the author's lifetime + 50 years (in the EU, 70 years from the author's death) Neighbouring rights: at least 20 years from the end of the year in which the fixation was made or the performance / broadcast took place (in the EU, 50 years instead of 20 for phonograms and performances) | No | None |
| Databases | Collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible | Copyrighted databases: within the EU: life of the author + 70 years Sui generis databases: 15 years from the end of the year in which the making of the database was completed or in which the database was first made available to the public | No | Copyrighted databases: automatic Sui generis databases: EU right only |
| Domain names | Internet addresses | Renewable indefinitely for periods of a maximum of 10 years | No | Worldwide protection when registered at any accredited registrar |
| Geographical indications | Products having a specific geographical origin and whose qualities and/or reputation are attributable to that origin | Unlimited | No | National EU Lisbon System |

Image 2.

Source: European IPR Helpdesk, European Union, 2017

Recommendations for Further Reading

Training programme "Creative thinking for innovation", Blended Training Module 5: "Brainstorming and Advertising Techniques", Unit 1 How to find the best idea? where you will learn how to inject the right amount of creativity into your advertising campaigns, and how our recommended approach could make a strong impact on your advertising strategy and concept.

Reference for Unit 1:

Goldstein, P. & Reese, R. (2008) 'Copyright, Patent, Trademark and Related State Doctrines: Cases and Materials on the Law of Intellectual Property (6th ed.)'. New York, Foundation Press

Morin, J.-F. (2014) 'Paradigm shift in the global IP regime: The agency of academics, Review of International Political Economy', vol 21-2, 2014, p.275ff

WIPO Intellectual Property Handbook (2008) 'Policy, Law and Use. Chapter 2: Fields of Intellectual Property Protection', WIPO

Unit 2 – IP Protection and Value Creation

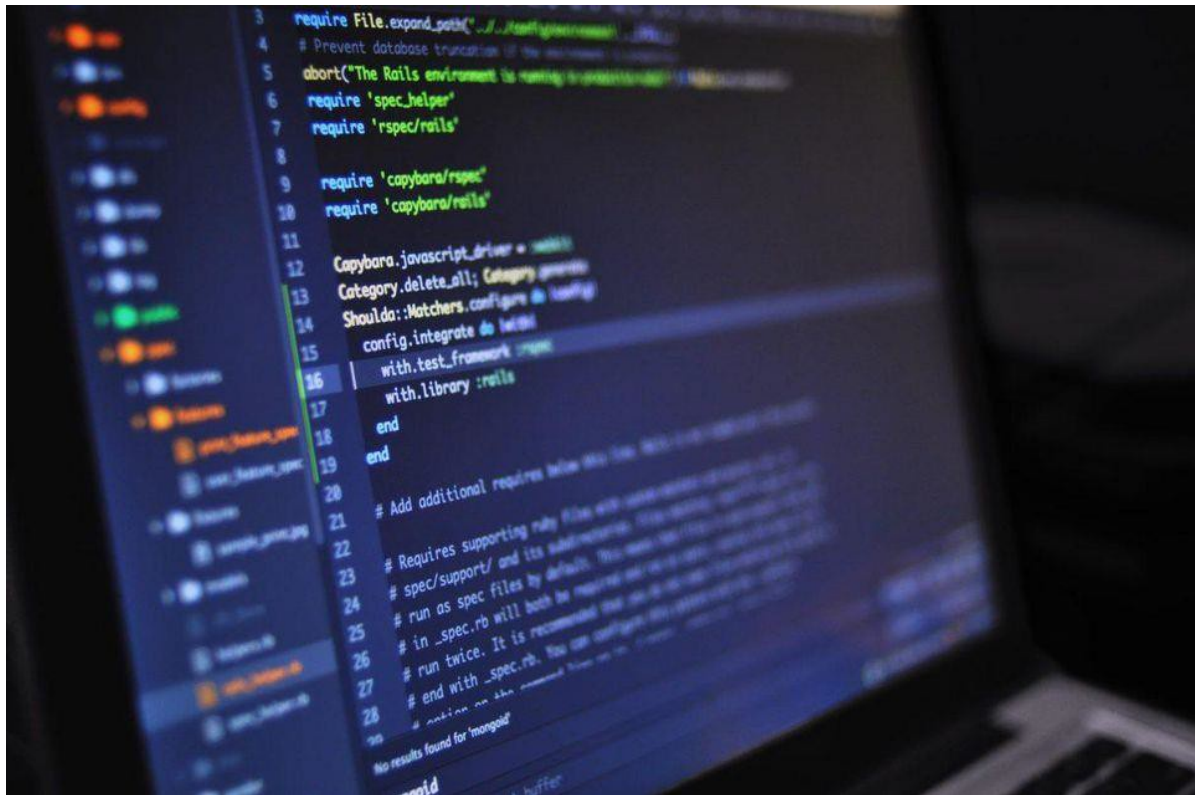


Image 1 Source:
c/o Pexels.com

Tags:

Protect IP, patent filing, open source, outsourcing, team distribution, access control, joint ownership, NDA, exclusivity, licensing, value creation, litigation;

Unit 2 - Introduction

When you want to build your organization's IP strategy and managing it practically, it is worth considering different protection methods, steps and rules. You also have to make sure not to infringe on others protection. When entrepreneurs launch a product or a service on the market, the best is always to check recognized general rules. Consequently, this unit will provide you with some lessons learned, achieving readiness to create value and to exploit your IPR.

Understanding IP by the examples

The brand, "Coca-Cola" is a trademark. The formula for the actual soda is a trade secret, while copyright law protects the packaging art. Both a design patent and a trademark (i.e., trade dress) can protect the shape of the Coca-Cola® bottle.



0 Figure <https://thehustle.co/can-a-corporation-trademark-a-color/>

The term **intellectual property** refers to creations of the mind, such as inventions, artistic products, and symbols. Some forms of intellectual property are protected by law while others can best be defended by surrounding them in secrecy.



Patents protect inventions from direct imitation for a limited period of time. Within the pharmaceutical industry, patents protect the new drugs created by firms such as Merck and Pfizer for up to twenty years. If a new drug gains acceptance in the market, its patent creates a window of opportunity for the patent holder to enjoy excellent profits.

Trademarks are phrases, pictures, names, or symbols used to identify a particular organization. McDonald's golden arches, the phrase "Intel Inside," and the brand name Old Navy are examples of trademarks.



Copyrights provide exclusive rights to the creators of original artistic works such as books, movies, songs, and screenplays. Sometimes copyrights are sold and licensed. The late pop star Michael Jackson bought the rights to The Beatles' music catalog and later licensed songs to Target and other companies for use in television advertisements.

Trade secrets refer to formulas, practices, and designs that are central to a firm's business and that remain unknown to competitors. One famous example is the blend of eleven herbs and spices used in Kentucky Fried Chicken's original recipe chicken. KFC protects this secret by having multiple suppliers each produce a portion of the herb and spice blend; no one supplier knows the full recipe.



Source: Illustration from the web version of the Mastering Strategic Management – 1st Canadian Edition. <https://opentextbc.ca/strategicmanagement/back-matter/versioning-history/>

How to protect your IP

Once you are in the process of creating new ideas and accomplishing new inventions, your initial thought may be to let the world know. While you might consider it appealing shouting your accomplishments from the rooftops, you might want to consider beforehand how to protect best what you have worked so hard to develop.

Patents and copyrights can offer you some security, but don't always mean that your design is completely protected, as copies can certainly emerge. The most uncommon way to protect intellectual property is not to file patents immediately. Filing patents provides the recipe of how a product or service can be created. Once a recipe is published, one can create a similar product with workarounds to not violate the intellectual property rights. The second method is to standardize the idea with a standards association, so that others are blocked from creating such an idea.

There are, however, a number of other options available to you, each with their own strengths. Below, you will find some recommendations out of practical experiences gained, yet still effective, ways to protect your intellectual property:

Keep it quiet and out of sight

Classic ways of protecting IP often involve patenting or copyrighting works and techniques, and vigorously defending them in court. Modern techniques involve using Digital Rights Management systems. A now somewhat uncommon way that is still effective is to simply keep things secret and limit exposure to the trade secrets that make up the IP, and design the system to keep them hidden.

Run lean and fast

Innovation in the tech sector will always be prone to plagiarism. To some extent, that's what drives innovation's evolutionary jumps in such quick succession. Having relentless innovation cycles keeps your competitors constantly catching up. That does require your company to run lean and fast.

Separate teams

Several companies are having their engineering teams separated geographically, so that none of these teams have access to the complete product. In order to undermine the security and sanctity of the new product, several of these teams would need to work together to steal the total product. Therefore, separation of duties is a basic recipe of information security.

Open-source it

It may seem counterintuitive, but one of the best ways to build a competitive advantage is to open-source your technology and tap into a broad community of developers. This way, your company can focus on the added value on top of the technology stack that remains proprietary, and can execute with speed and agility.

Avoid joint ownership

Make sure to avoid joint ownership of intellectual property at all costs. Joint ownership creates problems later on, that could make it difficult to protect, hurting all parties involved.

Get exact-match domains

If you can, one of the best intellectual property securement methods for trademarks (that you actually own) is an exact-match domain name. It could cost you more in the short run; however, the benefits in the long run are unrivaled.

Strong access control

Store drawings, documentations, minutes, creations and all ideas in a safe place that's protected by an identity and access-management solution. With 81% of breaches being due to compromised credentials, it's essential to store intellectual property on a system that uses adaptive authentication with risk analysis, or at least two-factor authentication. Passwords alone are obsolete.

Apply Non-Disclosure Agreements

Get used to creating well-written Non-Disclosure Agreements (NDAs). In the internet, you will find a lot of free examples, which you may adopt to your own needs, requirements and purposes. Also, look at any other agreements you use in your business to make sure they cover your intellectual property. These could include employment agreements, licenses, and sales contracts.

Publish it widely with attribution

While patents require being the "first to invent" in Europe, respectively "first to file" in the U.S. these days another common way to ensure that your IP is seen as yours is to publish and reference it widely. Thereby you have to ensure that your organisation's name is attributed to where it is mentioned. The more you are seen online with your IP, the more support your patents have.

How to create value from IPR?

An organisation may select between several models to create value from intellectual property. In today's business world, a competitive advantage of an organisation can depend on how they are creating value out of their intellectual property. A business can obtain major benefits from the intellectual property rights, which are :

- **Exclusivity:**

It is the basic model for creating value from Intellectual Property. This prohibits others from the use of a technology of a patent or a trademark. Value created under this model has got a higher market sales, profit and larger market share. This model is also known as practicing intellectual property.

- **Licensing and cross-licensing:**

Licensing or assigning the intellectual property rights is another method of creating value from IP. The economic value of intellectual property right is realized through licensing when the licensee pays royalties to the licensor. This way, revenue stream can be created through royalties on the sales of any products that embody any of the IP rights. In this model an organisation may benefit from building value-chains: in the creation of IP by getting access to research & development facilities owned by their partners or – in the exploitation of IP - to distribution channels and sales networks.

- **Litigation:**

The economic advantage of litigation is mostly only applicable to patents. The scope and requirements for the protection of the different intellectual property rights differ. An entity that does not practice or license a patent can sometimes receive value by leveraging the special legal status of patents. Recently, some patent holders (often referred to as “patent trolls”) use patents as an asset in a threatened or real patent infringement suit. In this case, the patent holder does not intend to practice the patent, but seeks value primarily through settlements and court awarded damages.

- **Deterring:**

Deterring value is just the opposite of litigation value. As patent infringement litigation becomes more common, companies increasingly file defensive patents to serve as a deterrent that they own the territory and that the litigation value would be high for the infringer.

- **Use of intellectual property as collateral:**

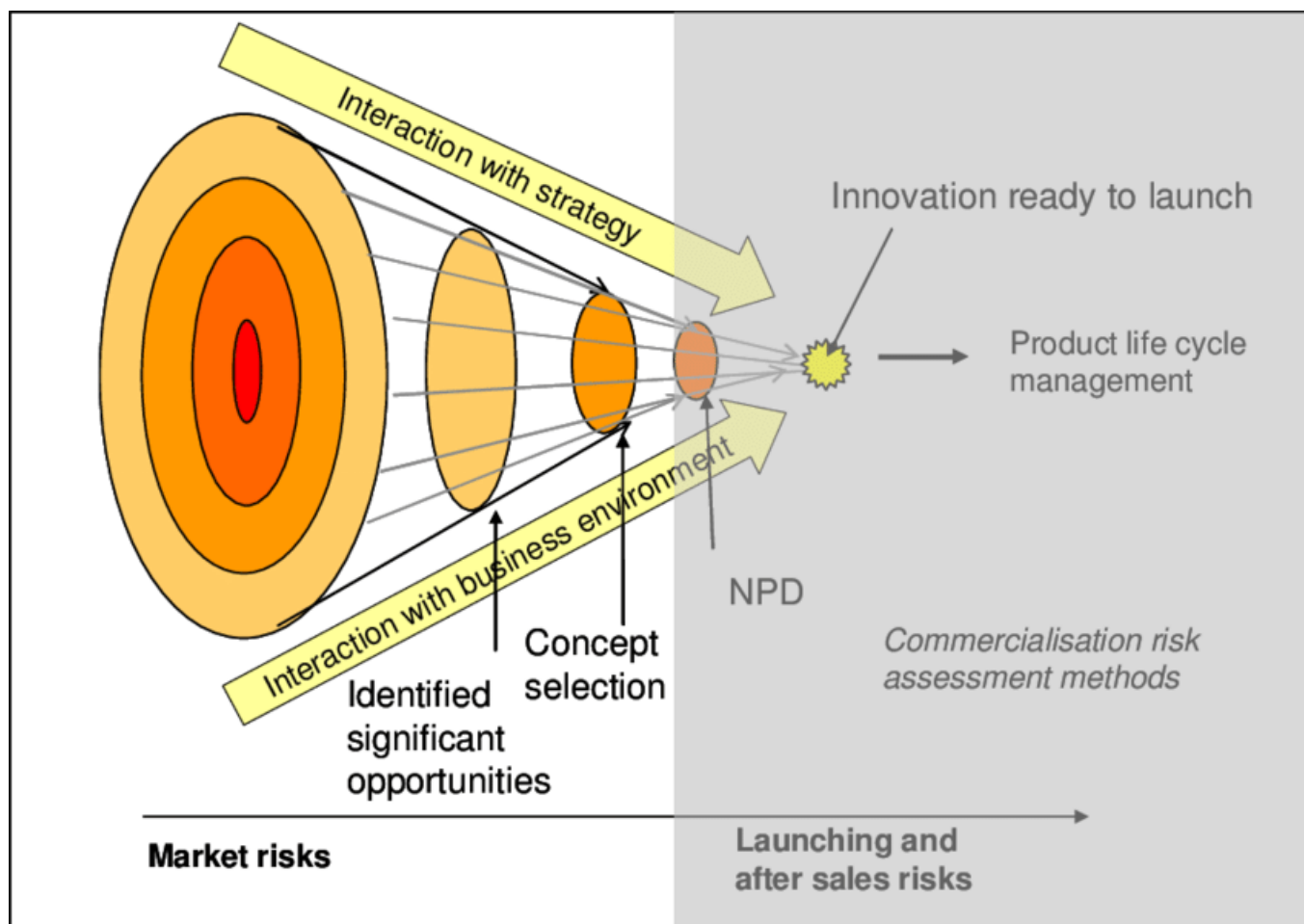
As mentioned above, intellectual properties are becoming the assets of organisations in today’s business world. As a result, large investment banks and boutique private equity firms alike are targeting the traditional venture capital space, looking for promising early stage innovation and inventions to invest in intellectual property and intellectual asset for development and commercialization purposes, even before start up. Aspects of IP valorisation are highlighted in the next Unit 3 of this module.

Recommendation for Further Reading:

References

1. Gargiulo, Michael, VPN.com
2. Graham, Keith, secureauth.com
3. <https://www.investopedia.com>

Unit 3 – IP Management and Commercialisation



[Managing Commercialisation Risks in Innovation Development: Linking Front End and Commercialisation](#)

By Tuija Rantala, Jaakko Paasi, Hanna Nordlund

Tags:

Protect IP management, commercialisation, valorisation, IP licensing, IP investments, infringements, IPR as marketing tool;

Unit 3 – Introduction

Concerning Intellectual Property (IP), the term 'Commercialisation' can be specifically defined as the process of bringing IP to the market in view of future profits and business growth. As the success of this process depends on several internal and external factors such as business objectives, type of IP as well as economic and intellectual resources, it is not an easy task to manage IP commercialisation (some times also referred to as IP valorisation).

This unit has been prepared with the objective to clarify IP management issues in the light of commercialising Intellectual Property. You may, in addition, consult the European IPR Helpdesk or the other reference documents listed at the end of each unit for further information.

How to valorise from IPR?

The value of intellectual property can increase indefinitely. If a company owns a fixed asset (building, machines, etc.), its value is fixed. Even it is likely to depreciate in the future. But a building requires repairs and maintenance, and machines require renewal. Intellectual property, however, protects the value in the organisation, and also contributes to its increase.

For instance, the value of trademarks (which protects the brand) is largely determined on how well the company does. There is no external limit on how high that can get regardless of the size of the company. Even better, according to ISO standard 10668:2010, registered trademarks not only protect the existing value in the brand but also contribute to its increase as well.

Many aspects of brand's value can also be protected and captured through design registrations. For example, for many consumers, product design is one of the most crucial and recognisable aspects. Making sure it is legally protected increases the value of the business.

Patents can have significant intrinsic value that is not even dependent on the performance and perception of the company or its product on the market. Good inventions that are protected by strong patents will be useful (and therefore valuable) at least to somebody.

In conclusion, intellectual property represents an important financial and legal asset for companies, including start-ups. It is often estimated that intellectual property counts for more than 80% of company's value. For investors, companies with solid intellectual property portfolio are attractive investment targets.

When it comes to decisions on IP management and IP commercialisation, it has to be taken into consideration that intellectual property can be leveraged in many different ways. IP licensing can be essential in the revenue generation not only for big companies; it can be a very profitable business model for startups as well, since there are very little costs involved. Patent licensing does not even require a famous brand behind it, only that the technology (invention) is good and well protected. Intellectual property portfolio can also be used as collateral for obtaining different types of financing. In addition, since IP can be commercialised either directly by its owner, through an assignment or by building up business partnerships, the selection of the most appropriate tool is often challenging, especially for Small and Medium-sized Enterprises (SMEs).

In summary, when money is invested in creating and protecting intellectual property, there is a good chance that those investments can be recouped in many different ways. Also protecting brand, innovation and design of the product with intellectual property rights in major markets creates a basis for scaling business quickly and extensively – a good reason for investors to love intellectual property rights.

Scaling up with IPR

As it became obvious in the previous chapter, a company that does not protect its investments (brand building, innovations) is hard to take seriously. Not protecting intellectual property also put partners (resellers, distributors, etc.) in a difficult position. For example, a reseller might not be a very motivated partner if infringing products are being sold for knock-off prices and there is nothing that can be done to prevent that. So by protecting intellectual property companies are also protecting their business partners' interests and thereby attracting higher quality partners.

Furthermore, you have to be sure that your product is not infringing any legal law. Also in this perspective, the best thing to do is to protect yourself by registering your trademarks, patents, etc. In case of litigation, registered rights (where applicable), even if your trademark grows notorious, are easier to defend when at court. Here are a few examples how to avoid infringements:

- No other product of the same kind have the same trademark registered;
- Your product doesn't use an in force patent or utility model;
- You don't reproduce any design; and
- You don't infringe any copyright/Authors' rights/Geographical indication.

Be careful on the countries targeted by your work - products or activities. Generally, an IP right is geographically limited, so you have to make sure where your market is and where you will sell your commercial products or services. If you think your product might infringe an IP right on a country, don't always close the door to that

country; you may find that you can negotiate licenses. In addition, be careful, in some countries like the United States, software can be registered. So please check if other foreign countries may provide different levels of protection for your product or service and their registration.

If you are outsourcing some components of your product, make sure your business subcontractor has the appropriate rights concerning IP. Normally when signing a trade contract with a subcontractor be sure to always have a clause on IP rights.

And even if you are not or not yet interested in the valorisation of your business or brand but just want to sell your products, please be aware of the fact that intellectual property also works as a marketing tool. The ® symbol informs the public that the brand owner believes in the product and does not want competitors to ride on its reputation. “Patent pending” statements in marketing give a message about the product’s innovativeness. By indicating that the appearance of the product or its detail is a protected design you make it clear that the product represents increasing individuality and stands out from the mass. These messages appeal to customers and investors know.

Recommendations for Further Reading

If you want upgrade your knowledge, we recommend taking also blended training module 4 “Growth Hacking” from Training programme “Creative Thinking for Innovation”. After studying this module, you will be familiar with the concept of growth hacking, and with some of the best-known examples of creative growth-fostering tactics that startup companies have resorted to in the past decade. Furthermore, you will understand how the combination of creative thinking and rigorous measuring can yield real results in terms of customer development and business growth.

References

1. <https://www.gov.uk/intellectual-property-crime-and-infringement>
2. <http://www.ipaustralia.gov.au/ip-infringement/infringing-on-others-ip/>
3. <https://www.gerbenlaw.com/trademark-registration/>
4. <https://www.semanticscholar.org/paper/Managing-Commercialisation-Risks-in-Innovation-End-Luoma-Paasi/9157d553da135b40a1b13eb7f134b0ab4d4736e8>

Study Materials

1. **Gargiulo, Michael**, VPN.com
2. **Graham, Keith**, secureauth.com
3. **Goldstein, P. & Reese, R.** (2008) ‘Copyright, Patent, Trademark and Related State Doctrines: Cases and Materials on the Law of Intellectual Property (6th ed.)’. New York, Foundation Press
4. **Morin, J.-F.** (2014) ‘Paradigm shift in the global IP regime: The agency of academics, Review of International Political Economy’, vol 21-2, 2014, p.275ff
5. **WIPO** Intellectual Property Handbook (2008) ‘Policy, Law and Use. Chapter 2: Fields of Intellectual Property Protection’, WIPO
6. <https://www.gov.uk/intellectual-property-crime-and-infringement>
7. <http://www.ipaustralia.gov.au/ip-infringement/infringing-on-others-ip/>
8. <https://www.investopedia.com>