

# 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** includes literary works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs. Rights related to copyright include those of performing artists in their performances, producers of phonograms, and those of broadcasters in their radio and television programs.

# What is intellectual property?

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

Intellectual property rights are like any other property rights – they allow the creator, or owner, of a patent, trademark, or copyright to benefit from his or her own work or investment. These rights are outlined in Article 27 of the Universal Declaration of Human Rights, which sets forth the right to benefit from the protection of moral and material interests resulting from authorship of any scientific, literary, or artistic production.

The importance of intellectual property was first recognized in the Paris Convention for the Protection of Industrial Property in 1883 and the Berne Convention for the Protection of Literary and Artistic Works in 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 rests on its capacity for new creations in the areas of technology and culture. Second, the legal protection of these new creations encourages the expenditure of additional resources, which leads to 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.

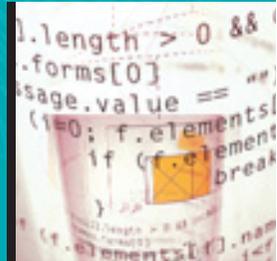
An efficient and equitable intellectual property system can help all countries realize intellectual property's potential as a powerful tool for economic development and social and cultural well-being. The intellectual property system helps strike a balance between the interests of the innovator and the public interest, providing an environment in which creativity and invention can flourish, to 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 multi-billion dollar film, recording, publishing, and software industries, which bring pleasure to millions of people in all parts of the world, would not exist without copyright protection;
- Consumers would have no means to confidently buy products or services without reliable, international trademark protection and enforcement to discourage counterfeiting and piracy;
- 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 worldwide.

# What is a patent?



## What is a patent?

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

A patent provides protection for the invention to the owner of the patent. The protection is granted for a limited period, generally 20 years.

## What kind of protection does a patent offer?

Patent protection means that the invention cannot be commercially made, used, distributed or sold without the patent owner's consent. These patent rights are usually enforced in a court, which, in most systems, holds 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 does a patent owner have?

A patent owner has the right to decide who may – or may not – use the patented invention for the period in which the invention is protected. The patent owner may give permission to, or license, other parties to use the invention on mutually agreed terms. The owner may also sell the right to the invention to someone else, who will then become the new owner of the patent. Once a patent expires, the protection ends, and an invention enters the public domain, that is, the owner no longer holds exclusive rights to

the invention, which becomes available to commercial exploitation by others.

### **Why are patents necessary?**

Patents provide incentives to individuals by offering them recognition for their creativity and material reward for their marketable inventions. These incentives encourage innovation, which assures that the quality of human life is continuously enhanced.

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

Patented inventions have, in fact, pervaded every aspect of human life, from electric lighting (patents held by Edison and Swan) and plastic (patents held by Baekeland), to ballpoint pens (patents held by Biro) and microprocessors (patents held by Intel, for example).

All patent owners are obliged, in return for patent protection, to publicly disclose information on their invention in order to enrich

the total body of technical knowledge in the world. Such an ever-increasing body of public knowledge promotes further creativity and innovation in others. In this way, patents provide not only protection for the owner but valuable information and inspiration for future generations of researchers and inventors.

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

The first step in securing a patent is the filing of a patent application. The patent application generally contains the title of the invention, as well as an indication of its technical field; it must include the background and a description of the invention, in clear language and enough detail that an individual with an average understanding of the field could use or reproduce the invention. Such descriptions are usually accompanied by visual materials such as drawings, plans, or diagrams to better describe the invention. The application also contains various "claims", that is, information which determines the extent of protection granted by the patent.

## **What kinds of inventions can be protected?**

An invention must, in general, fulfill the following conditions to be protected by a patent. It must be of practical use; it must show an element of novelty, that is, some new characteristic that is not known in the body of existing knowledge in its technical field. This body of existing knowledge is called "prior art". The invention must show an inventive step that could not be deduced by a person with average knowledge of the technical field. Finally, its subject matter must be accepted as "patentable" under law. In many countries, scientific theories, mathematical methods, plant or animal varieties, discoveries of natural substances, commercial methods, or methods for medical treatment (as opposed to medical products) are generally not patentable.

## **Who grants patents?**

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



## What is a trademark?

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

What is a  
trademark?

## **What does a trademark do?**

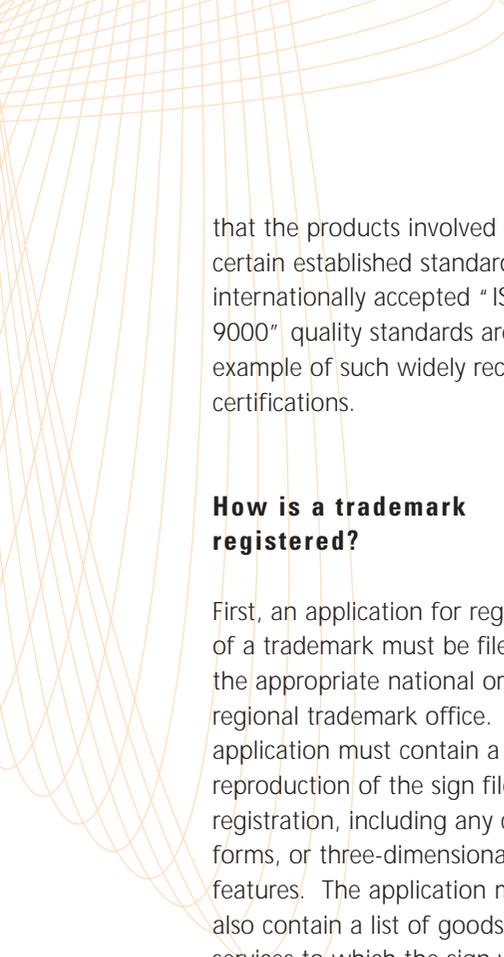
A trademark provides protection to the owner of the mark by ensuring the exclusive right to use it to identify goods or services, or to authorize another to use it in return for payment. The period of protection varies, but a trademark can be renewed indefinitely on payment of corresponding fees. Trademark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

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

## **What kinds of trademarks can be registered?**

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

In addition to trademarks identifying the commercial source of goods or services, several other categories of marks exist. Collective marks are owned by an association whose members use them to identify themselves with a level of quality and other requirements set by the association. Examples of such associations would be those representing accountants, engineers, or architects. Certification marks are given for compliance with defined standards, but are not confined to any membership. They may be granted to anyone who can certify



that the products involved meet certain established standards. The internationally accepted "ISO 9000" quality standards are an example of such widely recognized certifications.

### **How is a trademark registered?**

First, an application for registration of a trademark must be filed with the appropriate national or regional trademark office. The application must contain a clear reproduction of the sign filed for registration, including any colors, forms, or three-dimensional features. The application must also contain a list of goods or services to which the sign would apply. The sign must fulfill certain conditions in order to be protected

as a trademark or other type of mark. The trademark must be distinctive, so that consumers can distinguish it from other trademarks identifying other products, as well as identify a particular product with it. It must neither mislead nor deceive customers or violate public order or morality.

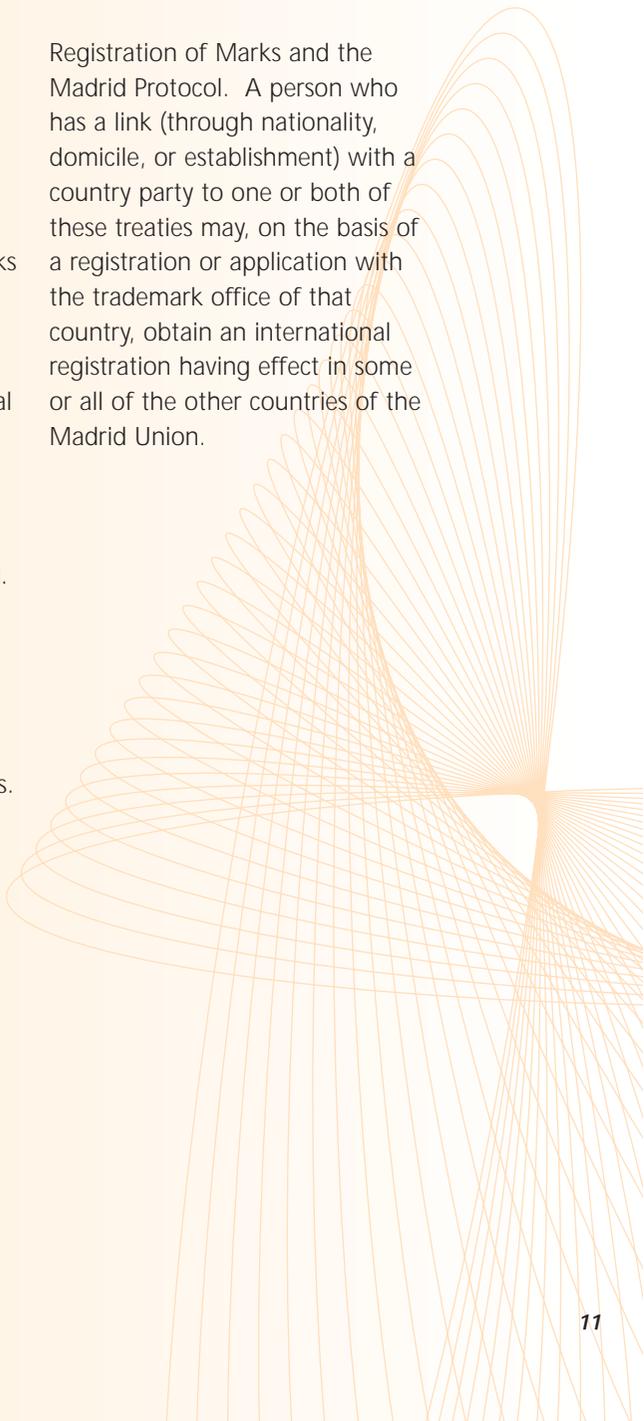
Finally, the rights applied for cannot be the same as, or similar to, rights already granted to another trademark owner. This may be determined through search and examination by the national office, or by the opposition of third parties who claim similar or identical rights.

## **How extensive is trademark protection?**

Almost all countries in the world register and protect trademarks. Each national or regional office maintains a Register of Trademarks which contains full application information on all registrations and renewals, facilitating examination, search, and potential opposition by third parties. The effects of such a registration are, however, limited to the country (or, in the case of a regional registration, countries) concerned.

In order to avoid the need to register separately with each national or regional office, WIPO administers a system of international registration of marks. This system is governed by two treaties, the Madrid Agreement Concerning the International

Registration of Marks and the Madrid Protocol. A person who has a link (through nationality, domicile, or establishment) with a country party to one or both of these treaties may, on the basis of a registration or application with the trademark office of that country, obtain an international registration having effect in some or all of the other countries of the Madrid Union.



# What is an industrial design?

## What is an industrial design?

An industrial design is the ornamental or aesthetic aspect of an article. The design may consist of three-dimensional features, such as the shape or surface of an article, or of two-dimensional features, such as patterns, lines or color.

Industrial designs are applied to a wide variety of products of industry and handicraft: from technical and medical instruments to watches, jewelry, and other luxury items; from housewares 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.



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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 against unauthorized copying or imitation of the design by third parties. This helps to ensure a fair return on investment. An effective system of protection also benefits consumers and the public at large, by promoting fair competition and honest trade practices, encouraging creativity, and promoting more aesthetically attractive products.

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

Industrial designs can be relatively simple and inexpensive to develop

and protect. They are reasonably accessible to small and medium-sized enterprises as well as to individual artists and craftsmen, in both industrialized and developing countries.

## **How can industrial designs be protected?**

In most countries, an industrial design must be registered in order to be protected under industrial design law. As a general rule, to be registrable, the design must be “new” or “original”. Different countries have varying definitions of such terms, as well as variations in the registration process itself. Generally, “new” means that no identical or very similar design is known to have existed before. Once a design is registered, a registration certificate is issued. Following that, the term of protection is generally five years, with the possibility of further periods of renewal up to, in most cases, 15 years.

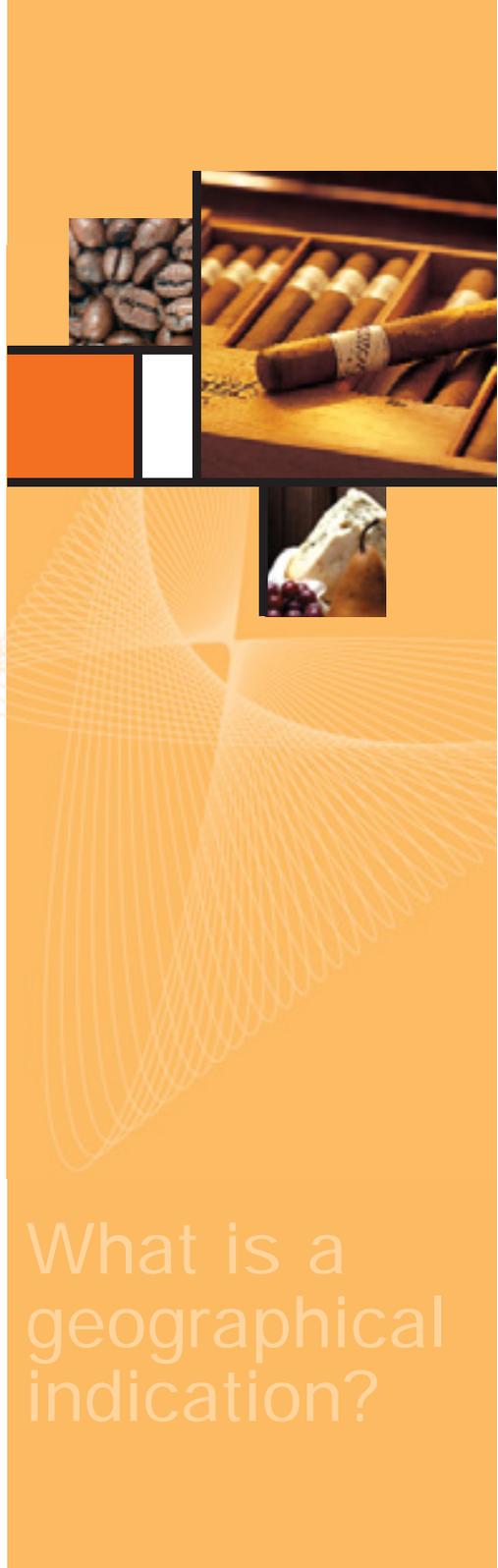
Depending on the particular national law and the kind of design, an industrial design may also be protected as a work of applied art under copyright law. In some countries, industrial

design and copyright protection can exist concurrently. In other countries, they are mutually exclusive: once the owner chooses one kind of protection, he can no longer invoke the other.

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

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

Generally, industrial design protection is limited to the country in which protection is granted. Under The Hague Agreement Concerning the International Deposit of Industrial Designs, a WIPO-administered treaty, a procedure for an international registration is offered. An applicant can file a single international deposit either with WIPO or the national office of a country which is party to the treaty. The design will then be protected in as many member countries of the treaty as the applicant wishes.



What is a geographical indication?

## 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 that are 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 this region of France.

The use of geographical indications is not limited to agricultural products. They may also highlight specific qualities of a product which are due to human factors that can be found in the place of origin of the products,

such as specific manufacturing skills and traditions. That place of origin may be a village or town, a region or a country. An example for the latter is “Switzerland” or “Swiss”, which is perceived as a geographical indication in many countries for products that are 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 that is exclusively or essentially due to the geographical environment in which the products are produced. The concept of geographical indication encompasses appellations of origin. Examples of appellations of origin which are protected in states that are 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, “Habana” for tobacco grown in the Havana region of Cuba or “Tequila” for spirits produced in particular areas of Mexico.

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

Geographical indications are understood by consumers to denote the origin and the quality of products. Many of them have acquired valuable reputations which, if not adequately protected, may be misrepresented by dishonest 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 and led into believing that they are buying a genuine product with specific qualities and characteristics, while they in fact get a worthless imitation. The latter suffer damage because valuable business is taken away from them and the established reputation for their products is damaged.

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

A trademark is a sign used by an enterprise to distinguish its goods and services from those of other enterprises. It gives its owner the right to exclude others from using the trademark. A geographical indication tells consumers that a product is 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 their products in the place designated by a geographical indication and whose products share typical qualities.

## **How is a geographical indication 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 the unauthorized use to the payment of damages and fines or, in serious cases, imprisonment.

### **How are geographical indications protected on the international level?**

A number of treaties administered by WIPO provide for the protection of geographical indications, most notably the Paris Convention for the Protection of Industrial Property of 1883, and the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration.

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

If the name of a place is used as the designation of a particular style of product, rather than an indication of the place of origin of that product, the term no longer functions as a geographical

indication. For example, “Dijon Mustard” , is a style of mustard that originated many years ago in the French town of Dijon; however, over time it has come to denote a certain style of mustard that is made in many places. Hence, “Dijon mustard” is now a generic indication and refers to a type of product, rather than a place.

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

WIPO administers a number of international agreements which deal partly or entirely with the protection of geographical indications (in particular, the Paris Convention for the Protection of Industrial Property, and the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration). Furthermore, the Member States of WIPO and other interested parties explore at WIPO meetings new ways of enhancing the international protection of geographical indications.

# What are copyright and related rights?



## What are copyright and related rights?

Copyright is the body of laws which grants authors, artists and other creators protection for their literary and artistic creations, which are generally referred to as "works". A closely associated field of rights related to copyright is "related rights", which provides 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 sound recordings (for example, cassette recordings and compact discs) in their 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, computer programs, databases, films, musical compositions, choreography, paintings, drawings,

photographs, sculpture, architecture, advertisements, 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 “rightsholders”), 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 rightsholder(s) of a work can prohibit or authorize:

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

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

Many types of works, etc., 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 the rights to their works to companies best 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 of copyright have a duration, as provided for in the relevant WIPO treaties, commencing upon 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 took place. Copyright and the protection of performers also include moral

rights, which are the right to claim authorship of a work, and the right to oppose changes to the work which could harm the creator's reputation.

Rights provided for under copyright and related rights laws can be enforced by rightsholders through a variety of methods and fora, including by instituting civil actions, pursuing administrative remedies, and through criminal prosecutions. Injunctions, orders requiring destruction of infringing items, inspection orders, etc., are used to enforce rights.

### **What are the benefits in 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 rewards increases their activities and output and often enhances the results. Also, by insuring the

existence and enforceability of rights, enterprises and companies can more easily invest in the creation, development, and global dissemination of works; this, in turn, helps increase access to, and enhances the enjoyment of, culture, knowledge, and entertainment all over the world, as well as stimulating 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 developments, which have in turn brought new ways of disseminating creations by such forms of worldwide communication as satellite broadcasting, compact discs and DVDs. Dissemination of works via the Internet is but the latest development, which raises new questions concerning copyright and related rights in this global medium. WIPO is deeply involved in the on-going 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 Performance and Phonogram Treaty (WPPT), which are often referred to as the “Internet Treaties”. These Internet Treaties have clarified 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 any 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, financing transactions, sales, assignments and transfers of rights.

Many authors and performers do not have the ability or the means

to pursue the legal and administrative enforcement of copyright and related rights, especially given the increasingly worldwide use of literary, musical and performance rights. As a result, the establishment and enhancement of collective management organizations, or “societies”, is a growing and necessary trend in many countries. These societies can provide for their members the benefits of the organization’s administrative and legal expertise and efficiency in, for example, collecting, managing, and disbursing royalties gained from the national and international use of a member’s 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 to ensure that the rights of creators and owners of intellectual property are protected worldwide and that inventors and authors are thus recognized and rewarded for their ingenuity.

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



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

As part of the United Nations, WIPO exists as a forum for its Member States to create and harmonize rules and practices to protect intellectual property rights. Most industrialized nations have protection systems that are centuries old. Many new and developing countries, however, are now building up their patent, trademark, and copyright laws and systems. With the rapid globalization of trade during the last decade, WIPO plays a key role in helping these new systems evolve through treaty negotiation, legal and technical assistance, and training in various forms, including in the area of enforcement of intellectual property rights.

WIPO also provides global registration systems – for patents, trademarks, and industrial designs – which are under regular review by Member States and other stakeholders to determine how they can better serve the needs of users and potential users.

WIPO works with its Member States to demystify intellectual property from the grass-roots level through the business sector to policy makers to ensure that its benefits are well known, properly understood, and accessible to all.

## **How is WIPO funded?**

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

