GET FAMILIAR WITH INTELLECTUAL PROPERTY

ORGANIZERS:

PARTNERS:

HONORARY PATRONAGE:

GET FAMILIAR WITH INTELLECTUAL PROPERTY

ORGANIZERS:

PATENT OFFICE OF THE REPUBLIC OF POLAND

EUIPO

PARTNERS:

FUNDACJA ZAAWANSOWANYCH TECHNOLOGII

FUNDACJA nowoczesna Polska

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HONORARY PATRONAGE:

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Table of contents

Dear Readers,

It is worth remembering that each of us is a creator. We tap into our creative selves to develop solutions, create works or make improvements of all sorts as we go about our daily life, or engage in various kinds of social and professional activities. But there is more to it than that. Creativity has accompanied humanity since the dawn of time.

New ideas and the way they are expressed have become recognisable symbols of a given century, many a time paving the way to technological advances and the development of civilization. A separate and extremely important place belongs to literary and artistic works that mirrored both the trends characteristic of a particular period of time as well as sensitivity of the authors of individual works. Many innovators were way ahead of their time. This is perfectly illustrated by the quote from Henry Ford, an industrialist who launched the first moving assembly line for the mass production of the automobile: "If at the beginning of my career as an entrepreneur I had asked my customers what they wanted, they would have said faster horses. So I did not ask them."

However, the mere statement that we are surrounded by objects that are products of the human mind is not sufficient. For the intellectual property to be effectively used it must be properly protected.

No wonder, awareness of the protection of intangible assets needs to be developed from an early age, giving due attention to the fact that they not only constitute a fundamental feature of innovative technologies, but they also play a major role in our everyday lives. Undoubtedly, access to up-to-date and practical knowledge on the topic helps to get a sound grasp on the importance of intangible assets and the need to protect them. Moreover, familiarity with the subject matter enhances awareness of the commercial potential of exclusive rights, which is a prerequisite for the development of an innovative economy.

It is a well-known fact that a vast majority of modern economies rely primarily on the knowledge. States and various types of organisations focus on exploiting intellectual property as a strategic lever for creating competitive advantage. According to the recent estimates, intangible assets account for 80% of the enterprise value of the companies that are at the forefront of global business.

The intellectual property system is very extensive; it refers to both industrial property (inventions, industrial designs, trademarks, etc.), copyright and related rights, and also personal interests, rights to the business name, database rights, plant variety rights and trade secrets (know-how). The phenomenon of accumulation of these rights occurs very often.

It may very well happen that one product boasts technical solutions in the form of patent -protected inventions, its market power is strengthened by a widely known and well-reputed trademark while its functionality and visual product aesthetics has been achieved through the use of modern industrial design.

This publication aims to provide practical knowledge about intellectual property. It has been developed by the Patent Office of the Republic of Poland in collaboration with the the JWP Foundation, the Modern Poland Foundation and the High Tech Foundation. It contains information on industrial property objects, copyright, and the intangible assets management. The publication sets out how to effectively protect and also how to lawfully access existing works and solutions that are the effect of someone else's creative work.

We hope that our Readers will find the publication helpful in getting familiar with and making effective use of the intellectual property system. At the same time, we would like to acknowledge and thank the authors of individual chapters for their huge effort and enormous contribution to the content of this publication.

Patent Office of the Republic of Poland

Protection of industrial property

PATENT OFFICE OF THE REPUBLIC OF POLAND

When buying a watch, a sweatshirt, a pen or a bag, you can easily indicate their owner, and at the same time defend your property efficiently. This is more complicated when it comes to intellectual goods. A patent or copyright cannot be seen, and yet they exist, which, in a nutshell, means that they cannot be used without limitations – it requires the holder's consent.

In this chapter, you will learn about:

- Elements of the intellectual property system
- Benefits from a patent, trademark or industrial design protection
- Cost and duration of industrial property protection
- Ways to protect a trade secret
- Patent wars

We live in a world of intellectual property. Most modern economies base their development on knowledge. Nowadays, intellectual capital has become a factor which largely determines whether a state or an organisation of any type gains competitive advantage. In the late 1970s, intangible assets constituted only 5% of all assets of the 500 companies with the largest capitalisation listed on the New York Stock Exchange (S&P 500 Index). Today, this trend is reversed. Intellectual goods constitute as much as **80% of the resources of the global business leaders.**

It is therefore worth exploring the intellectual property system – to efficiently protect one's own solutions, on the one hand, and not to violate the rights of others, on the other. It may turn out that a project that you're trying to implement, or a work that you want to disseminate, already belongs to someone else.

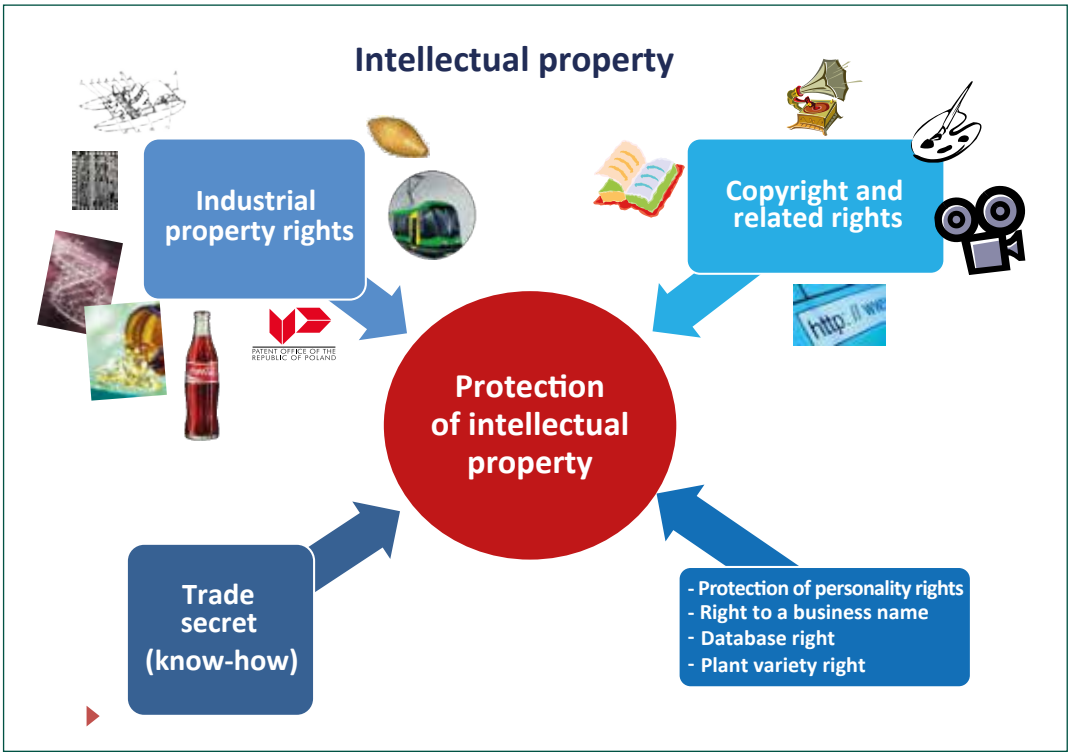
The principle of intellectual property rights stipulates that the author, in return for disclosing the essence of their solution, is granted a monopoly e.g. on its production, which is to help them obtain specific financial gains. The public, for its part, may use the protected innovation, as it surely contributes to technical progress and serves the needs of society.

Currently, intellectual property protection has become not only a factor in organisational development, but also a tool for blocking competition. Many patents will never be commercialised, and their purpose will be limited to blocking other companies, as mentioned above.

"**Patent wars**" is a common term to describe a situation in which companies focus on preventing others from using the patented solution.
Commercialisation of patents, on the other hand, consists in a planned and organised marketing of inventions.

The intellectual property system is very broad. It covers industrial property (inventions, industrial designs, trademarks, etc.), copyright and related rights, but also personality rights, right to a business name, database right, plant variety right and trade secret (know-how).

Exclusive rights are very often cumulated. One product may include technical solutions in the form of inventions protected by patents, whose market power is reinforced by a trademark that is well-known and appreciated by consumers, and by the utility and aesthetics of the product achieved through modern industrial design. This increases the market value of the product.



Example:

The solutions adopted in the modern mobile phone may be patented as inventions. The view of the main screen may be registered as an industrial design, and the name of the company that produced that phone is a trademark. Discovering all functions and the ability to smoothly use the device constitutes a specific know-how of its user, while the instruction accompanying the phone may be a work subject to copyright protection.

The Patent Office of the Republic of Poland, established by a Decree of the Chief of State, Józef Piłsudski, of 13 December 1918, **is responsible for granting protection for subjects of industrial property.** Substantive examination of applications for registration of inventions, trademarks, industrial designs etc. requires qualified personnel and adequate infrastructure in the form of efficient IT systems and a support system for the Office's customers. First and foremost, the Patent Office employs examiners and civil servants.

To sum up, patent offices grant "monopoly rights" on works of human creativity (subjects of industrial property), i.e. exclusive rights to use and market a given solution.

These monopoly rights are limited in time, as it is necessary to prevent their negative consequences. An excessively long period of protection for various innovations might lead to hindering technical progress. The above information is systematised in the table below:

Subject of industrial property	Name of monopoly (exclusive right)	Duration of monopoly
Invention	Patent	Up to 20 years
Utility model	Right of protection	Up to 10 years
Trademark	Right of protection	Up to 10 years with possible extension for further 10-year periods
Industrial design	Right in registration	Up to 25 years

It should be remembered that the term of protection is calculated from the date of application filing with the patent office. For example, where a stakeholder filed the application for the protection of an invention on 1 January 2019, regardless of the time necessary for an examiner to examine this application, in case of a positive decision on granting the right the patent concerned will be valid for 20 years, i.e. the protection term will expire in January 2039. However, this requires periodic renewal fees. Failure to pay these fees generally means expiry of the protection before the end of the maximum period presented in the table. If that is the case, the solution becomes part of the public domain. Everyone can use it, but it is not possible to obtain protection for this solution for a second time.

Inventions and utility models

An invention is a solution of technical nature. Therefore, many solutions cannot be patent-protected as they are not technical in nature. For example, it is not possible to patent a marketing method, i.e. new forms of online product promotion.

No legislation provides for a definition of an invention, but it specifies what is required to patent an invention (so-called "**patentability**"). Inventions are patentable if they are characterised by novelty, inventive step and industrial applicability. An invention is considered **new** if prior to filing an application with the patent office it had not been disclosed in another patent application, technical literature, at a scientific conference or in any other way.

An interesting illustration of novelty in the world's prior art is the story of a Danish inventor, Karl Kroyer, who tried to patent his method of raising sunken ships by filling them with plastic balls made of light polystyrene foam. The case concerned a vessel "Al Kuwait", which sank in 1964, posing a threat of contamination of drinking water in the entire city. When the inventor tried to patent his solution in the Dutch patent office, the experts, searching the world's prior art, found an old, 1949 issue of the Donald Duck magazine for youth, where an identical solution was presented to raise a sunken ship. This prevented the inventor from obtaining a patent.

Note:

Until the moment of filing an application with the patent office, the substance of an invention may not be disclosed. Otherwise, the solution is no longer a novelty and will not be granted protection. It does not matter who (e.g. the applicant themselves) made the prior disclosure of the invention, where they did it (e.g. in Australia) and how (e.g. through offering for sale, in a scientific article).

The **inventive step** means that the invention does not obviously stem from prior solutions. Essentially, the invention should be surprising even for someone with all the available knowledge and design skills. For example, if you combine an electrical engine with a traditional bike, such a solution will lack an inventive step. Likewise, if you equip a coffee machine with Bluetooth, the device thus obtained will not yet be an invention.

In the Polish system, apart from an invention, there is also another type of a technical solution, i.e. **utility model**, commonly referred to as "small invention". A utility model must be new and utile, however, it does not have to involve an inventive step. In practice, it is very often a combination of several well-known and obvious elements that brings about a non-obvious effect. Utility model has a ten-year term of protection. In many patent systems, it is only possible to make a patent application for an invention.

An **invention is suitable for industrial application** provided that it can be produced or used in any industry. It is also required by law that the documents submitted to the patent office allow for reproducing the invention. For example, every now and then, attempts are made to patent a perpetual motion machine, i.e. a hypothetical machine that could work without an energy source or that would generate more power than it would draw from the environment. It is obviously contrary to scientific laws (e.g. the law of conservation of energy and the first or second law of thermodynamics, depending on the version of the machine) and so far, no one has been able to prove that such a device might actually work.

There are many companies in the Polish market whose competitive advantage results from skilful use of the industrial property system. A team led by Prof. Jacek Jemielity (University of Warsaw) discovered universal mRNA molecule ends (called "5' cap"). The 5' cap can be used in the treatment of cancer and genetic diseases. In the years 2007–2008, the University of Warsaw applied for protection of the invention in Poland and abroad, and in 2010, it signed a licensing agreement with BioNTech. In the years 2015–2016, BioNTech granted a sub-licence for over USD 600 million. Another example is FAKRO, a company in Nowy Sącz, specialising in the production of roof windows. Since its establishment in 1991, the company has consistently been developing its patent portfolio. Currently, FAKRO holds over 160 applications for inventions and utility models, including 55 European patents. It is now the second best company in the industry worldwide.

A patent is granted in a specific country, which means that in other countries anyone can use the invention freely. However, there are specialised procedures making it easier to obtain more patents in different countries. The table below shows examples of costs of such procedures compared to the costs at the Polish Patent Office (PPO). EPO stands for the European Patent Office (procedure in the region). WIPO stands for the World Intellectual Property Organization (international dimension), and VPI for the Visegrad Patent Institute – an intergovernmental organisation for cooperation in the field of patents.

	PPO	EPO	WIPO-VPI
Application examination and publication	EUR 140+	EUR 4560+	EUR 3165+ + costs in selected offices
Annual charges for maintaining the protection in force (increase over time)	EUR 40–365	EUR 155–1560	As in selected offices

As at 01.09.2019

How about know-how?

If a pharmacist from Atlanta, US – the author of the Coca-Cola recipe – had decided to patent it in the late 19th century, anyone could have easily produced it and sold it twenty years later. The monopoly granted to the holder of exclusive rights is compensated to the rest of the society by a time restriction and necessity to disclose the substance of the solution. That is why some people consciously decide not to apply for protection of their innovations, in order to keep them secret. This is called know-how or trade secret protection. Such an approach requires less paperwork and the protection is unlimited in time. However, the protection results primarily from confidentiality as such, and not from a right. In the case of disclosure/leakage of confidential information, a given solution automatically enters the public domain, where everyone can legally use it. The patent vs know-how dilemma is often difficult to solve, and eventually it all comes down to a specific case and its circumstances.

Industrial designs and trademarks

Once a company has patented its innovative solution, it should think about marketing. Although the solution is technically revolutionary, its poor aesthetics, shape or colour may discourage customers from its purchase. A favourable visual effect may be achieved with the use of an adequate design. Polish legislation leaves the choice of protection method at the discretion of an individual user. They may choose to apply for an industrial design at the patent office in order to obtain the right in registration and to obtain protection of a design based on the law on copyright. An interesting design may significantly increase the value of an object and encourage a larger number of clients to purchase it. Design is not only used in a given company's products, but it can also be an important element of its office arrangements or it can be reflected in the design of the company's website.

Using appropriate design markedly increases the value of an object. Even a technically revolutionary solution needs the right shape and colours that will induce potential customers to buy it. A good example here is the whale-shaped grand piano designed by a Polish designer Robert Majkut. Even items of everyday use may be design objects, e.g. unusually-shaped pen or a mug with a fancy ornament. Industrial designs are often said to connect aesthetics and functionality. Under the Industrial Property Law, they are subject to a separate protection. The term of protection for an industrial design is 25 years from its registration in the patent office. An industrial design always concerns the external part of the product, e.g. its shape.

Another separate area subject to legal protection is trademark. A trademark can be any sign which makes the goods and/or services of one entrepreneur distinguishable from those of another. When applying for the registration of a trademark, you should also present it in a way that makes it clear what the mark is. Thus, until recently, only specific expressions or graphics could constitute trademarks. Under the current provisions, this requirement is waived, making it possible to register e.g. olfactory trademarks.

The primary purpose of trademarks is for the entrepreneur to distinguish their offer from the competition. Apart from that, when purchasing a product bearing a familiar trademark, the consumer receives not only a guarantee of its origin, but also, indirectly, of the quality

and particular values of the product. When a buyer knows the trademark of their favourite chocolate producer, they do not have to check the country of origin or ingredients, or wonder about its taste. They can be certain of all its qualities, as they rely on the trust developed by the producer of a given brand.

The most common trademarks are word and figurative signs (PKN Orlen, E. Wedel, PKO BP or 4F). Worldwide, sound marks are also registered, although extremely rarely – one such example is the well-known lion's roar at the beginning of films produced by the studio Metro-Goldwyn-Mayer. Recently, as a result of legal changes, it has also become possible to obtain protection of multimedia marks, holograms or even olfactory marks.

The protection of a trademark lasts for 10 years and is the only subject of industrial property which can be extended indefinitely. This is because many commonly known trademarks persist for generations.

The great importance of trademarks in economic activity and trade can be seen even in annual rankings of the value of brands prepared by Interbrand. According to data for the last several years, the world's leading brands include Coca-Cola, IBM, Microsoft and Google. The value of Coca-Cola trademark amounts to over USD 60 billion a year, which is estimated to account for three quarters of the value of the entire enterprise! Add to this the results of surveys conducted by Polish public opinion research centres, clearly pointing to the brand as the second most important criterion (after price) taken into account by Poles when choosing a given product, and the role of a trademark appears to be paramount to the company's functioning.

A trademark can be more than just an element of a competitive strategy. Co-branding has been gaining traction in recent years. It assumes that cooperation between different brand owners will boost the value of consumer goods and services. What some have taken to calling a business marriage is actually profitable, proven by McDonald's fast food restaurants offering Jacobs coffee or the Coca-Cola company beverages.

The right of protection for a trademark or the right in registration for an industrial design are concerned with the product's exterior and do not extend to its featured technical solutions. For example, the Nivea trademark placed on the cosmetics made by this company consists in the product packaging and its unique logo in white lettering. The right of protection does not extend to the way these cosmetics are manufactured or their chemical composition. As mentioned above, the technical solutions can be protected as inventions and utility models, upon receiving their respective patents and protection rights.

Authors: PhD Piotr Zakrzewski, Marek Gozdera, Patent Office of the Republic of Poland

Protection of industrial property – quiz

1. For what period is a patent granted?
   a. 20 years
   b. 25 years
   c. 15 years

2. It is possible to extend protection of one subject of industrial property. Which one?
   a. Industrial design
   b. Utility model
   c. rademark

3. The decision to establish the Patent Office of the Republic of Poland was made by:
   a. Ignacy Mościcki
   b. Lech Wałęsa
   c. Józef Piłsudski

4. How long is the term of protection of a trademark?
   a. 70 years with possible extension
   b. 10 years with possible extension
   c. 25 years with possible extension

5. A president, an inventor and a chemist in the Second Republic of Poland was:
   a. Ignacy Mościcki
   b. Stanisław Wojciechowski
   c. Wincenty Witos

6. Kerosene lamp was invented by:
   a. Ignacy Łukasiewicz
   b. Olgierd Łukasiewicz
   c. Karol Łukasiewicz

7. The Industrial Property Act does not provide for the protection of:
   a. Integrated circuit layout design
   b. Geographical indication
   c. Know-how

8. Original product design can be protected with:
   a. A patent
   b. A utility model
   c. An industrial design

9. Which of the sentences is true?
    a. The costs of industrial property protection result only from its duration, and not from the territorial scope.
    b. The costs of industrial property protection result only from its territorial scope, and not from duration.
    c. The costs of industrial property protection are impacted by both its duration and territorial scope.

10. Which of the sentences is false?
    a. Utility model is a new and utile solution that does not require an inventive step.
    b. Inventive step means that a solution is not obvious for an expert in a given field of technology.
    c. Intellectual property rights do not extent to new plant varieties.

11. The definition of an invention does not include:
    a. Novelty on a global scale
    b. Industrial applicability
    c. Unique nature

12. Which of the sentences is true?
    a. Intellectual property right protects only creative ideas.
    b. Intellectual property right protects only ideas that are original and one of a kind.
    c. Intellectual property right does not protect ideas, only their concrete, physical manifestations.

13. Which of the following is not an institution of regional or international industrial property protection?
    a. EPO – European Patent Office
    b. WIPO – World Intellectual Property Organization
    c. CEEPI – Central European Patent Institute

14. "Small invention" is the common name for:
    a. An industrial design
    b. A utility model
    c. Technical formula

15. Protection for subjects of industrial property is granted by:
    a. The President of the Republic of Poland
    b. District Courts in Warsaw
    c. The Patent Office of the Republic of Poland

Fundamentals of copyright

FUNDACJA nowoczesna Polska

In this chapter, you will learn that:

- You can freely draw inspiration from someone else's work and take ideas from it;
- Copying and modifying someone else's work requires consent from the original creators;
- Works and official materials of a certain age can be used without any special restrictions;
- The creators' consent is also not required to make use of someone else's contemporary work for such purposes as copying for personal use and for the use of friends, quoting or performing a parody;
- Situations where consent to make use of someone else's work is required necessitate concluding an agreement with the creator or publisher, transferring the rights or licence to said work;
- When publishing an original work, you should carefully read the agreement that you receive from a publisher or the regulation of an internet service;
- On the internet, licences are often placed in the descriptions of specific works or in the regulations of internet services;
- Free licences allow for making a very extensive use of someone else's work free of charge and make sharing your own work easier;
- On the internet, you can find many open sources and communities you can work with when creating them.

How to use someone else's work

Launching a personal video channel online, recording a PC gameplay, creating a meme, posting fan fiction on a message board for fans of our favourite book, making a song remix – it's all child's play, and the only limit is your imagination. Publishing is also a very important activity from the perspective of copyright.

Copyright is a set of rules concerning creative output.

Creative works and their boundaries

Observing what others create and how they do it is natural for every creator. Others creations **inspire** our own work, and copyright clearly allows for it. You don't need to ask for anyone's consent to publish your own work based on ideas and principles drawn from the abundance of culture, art, science, technologies etc. all around us.

Note:

Ideas are not protected by copyright. Turning specific ideas into inventions can be protected e.g. by a patent or prohibition of unfair competition (e.g. posing as someone else's website). However, you should remember that permitted use of someone else's ideas never extends to claiming their authorship.

Borrowing specific, creative ways of expressing ideas is not considered inspiration. Copyright strictly regulates the rules for such borrowing. One of the greatest challenges when using another's work is to tell the expression of ideas from ideas themselves.

Example:

It is difficult to draw the line between an idea and its expression. One example of an unprotected idea is a literary motif. In his Witcher series, Andrzej Sapkowski used a popular folklore motif of a striga and cleverly wove elements of the fairy tale about Snow White into it. He also borrowed heavily from *Hansel and Gretel*, *Cinderella* or *Little Mermaid*.

The combination of an idea with a person's unique way of creative expression makes up a **creative work**: text, graphic art, film, music or any other form of expression. All it requires is contributing some of your own creative work.

Poland has no institution tasked with registering creative works and granting copyright. Therefore, they benefit from informal protection, upon meeting several conditions:

- the work must be created by a human being (the author),
- the work must be creative and unique in nature,
- there must be a possibility for a person other than the author to become familiar with the work.

Note:

Creative works are not only products of artistic or academic value. In fact, creative work can be anything that bears any sign of a human authorship, regardless of its quality and purpose, the creator's abilities or any other factors.

Trivia:

Books, movie discs, etc., often bear a label with the © sign, date, publisher's or author's name and the phrase "All rights reserved". They are known as "copyright notices" containing information on the publication date and the person enjoying author's economic rights. But works that do not carry such labels are also subject to copyright. The absence of such information does not in itself mean that copyright rules do not have to be followed.

A person (not a corporation, animal or computer programme), who contributed their individual creative output to the work, is considered its **author** (**creator**).

Copyright

When we say that the creator holds copyright to a work, we mean that everyone else needs their consent to use the work in question (copyright is an **exclusive right**).

Copyright consists of **economic** and **moral rights**. The table below presents basic differences between these rights.

The author's economic rights	The author's moral rights
• Prohibition of copying and distributing a work without the creator's consent; • The creator's right to collect remuneration for the uses of their work	• Prohibition of claiming authorship of someone else's work and making misleading statements as to the authorship; • If the creator uses a pseudonym, it should be respected; • Only the creator is entitled to decide on whether they wish for their work to be published at all; • The creator must be consulted on whether their work is presented in a way they intended
Limited in time	Never expire
They are passed on to heirs and can be transferred to other people (once the buyer acquires the rights, they become the person that grants consent to use the work instead of the author)	They are always tied to the author; they cannot be transferred (e.g. it cannot be agreed upon that someone else will be deemed the author of your work)

An **adaptation** is a creative modification of someone else's pre-existing work. It constitutes a separate work, with rights due to its author. However, if the original work is still copyright-protected, an adaptation requires additional consent from the original creator in order to be used (that is why adaptations are also referred to as "**derivative works**"). Examples of adaptations include summaries and translations, but also certain remixes and collages.

There is a substantial number of differences between ownership right over objects and copyright extending to creative works, although both are exclusive rights. However, infringing on copyright carries legal ramifications in the form of civil and penal sanctions. These may include the compensation awarded by court or an account being blocked under private procedures followed by internet websites. Making use of works in the public domain, free licence works or works within the boundaries of fair use do not result in copyright infringement.

Licences

Licence is a legal term for consent to use a work. Licences are agreements. There are many works online with readily available consent (licence) allowing their further use. Such licences are included in the descriptions of particular works or regulations of sites they are hosted on. The differences between individual licences are shown in the table below.

Proprietary licences	Free licences
• Usually have to be paid for • Can be free of charge, but only for a narrow range of uses (e.g. for non-commercial use only, only for 30 days, with use limited to a certain number of copies, etc.)	Free of charge, so the works can be used for free
Strictly defined scope of permitted use (e.g. in print, on an internet site with a user base of up to 1000, etc.)	• Freedom to use a work for any purpose, even commercial, in its original form or as part of an adaptation • Sometimes may require sharing the modifications made to a work under the same free licence (such a prohibition of claiming ownership of a free work is referred to as copyleft or share alike)
Examples: • Services hosting "stock" photographs such as ShutterStock, Pixabay or SCX.HU • "Trial" software version	Examples: • Wikipedia and the resources available at Wikimedia Commons • Open Source Software: Linux operating systems, LibreOffice suite • Maps at OpenStreetMap.org Many services such as flickr or SoundCloud allow you to filter their resources by free licences as part of their search engine's functionality.

Free licences are standardised. Marking a work with such a licence consists in giving its shortened name or icon along with a link to its full text. Among the most popular free licences used for sharing graphic art, photographs, videos, music and books are the two Creative Commons licences (http://creative-commons.org):

- CC BY: it allows the use and distribution of works in their original or modified form, even for commercial purposes, while retaining information about the author, the source and the licence itself (the attribution clause);
- CC BY SA: compared to CC BY, this licence features an additional term – obligation to share the contributions made to the licenced work under the same licence as the original (the "share alike" clause).

Note:

The Creative Commons also include licences that are not free, as they forbid using a work for commercial purposes or modifying such a work. That is why, when searching for graphic images, music or photographs online, you should always take note of the specific licence under which they are available.

Even the most liberal licence does not deprive the authors of their moral rights. You still cannot claim authorship of their works or e.g. suggest that they endorse your goal, the changes you have made, etc.

Consent to use someone else's work is not required only in two cases:
1. The work is in the public domain,
2. The work is used under fair use.

These two situations are discussed in detail below.

Public domain

Public domain are works that are not bound by limitations imposed by economic copyrights. They may be used freely (even commercially) and incorporated into your own work without having to worry about the boundary between an idea and its creative expression. It includes works that:
1. Have never been protected by copyright;
2. Were clearly excluded from copyright protection (e.g. official materials);
3. Were moved to the public domain due to the passage of time (expiry of rights)

Discussion of all these cases follows below.

Works that have never been protected

In Poland, the first copyright regulations were introduced by the occupants in the 19th century, although already in the 16th century printed books had featured inscribed information on the printer benefiting from royal privileges, which prohibited e.g. "the manuscript to be re-printed without acknowledging the author" (note on a copy of Psalms translated by Jan Kochanowski). Jan Kochanowski is also one of the first creators to have used a free license – in the opening to his Songs he wrote:
I give these books to no one or rather to all,
So that none would think (since the fear is not small),
That he should pay for them; all of you keep them free.
I don't mention the printer, with him you set the fee.*

*transl. Michał Jacek Mikoś, in Kochanowski Jan, Trifles, Songs, and Saint John's Eve Song, Lublin 2018

An entire work had been created in a given country before it adopted its first copyright law and is not, nor ever has been, protected under this law.

Protection was also never extended to the works that, although created under some kind of copyright, never met the formal criteria in force at that time. For instance, in Poland, until 1994 photographs had been protected only when the copies featured a clear information about all rights being reserved.

Official materials etc.

There are several types of works over which no one can claim exclusivity, regardless of when they were created and what creative contributions have been made to them. These include e.g. laws, judgements and other official materials.

A visit to the state archives can be a good idea when searching for inspiration and readily available materials, if we are working on a historical novel or a game. Many scenarios can be extracted from sources like old case files of the public prosecutor and the courts, while official maps can help in designing strategy games.

Example:

The artistic rendition of "The decree on the imposition of martial law" by the Piwnica Pod Baranami cabaret became a classic example of ingenuity in skirting around censorship while smartly criticising the ruling regime. The artists offered a creative interpretation of the text of an official document, putting their own message into words used by the regime.

Expiry of rights

Expiration extends to the author's economic rights. The author's moral rights are always in force. This, for instance, means that once the rights expire, you can freely copy and distribute the work, but you may never claim authorship over it.

When deciding on the rights' expiry date, the legislator has to balance the following aspects:
1. Making it easier for the creator to find a publisher (obtaining exclusive rights from the creators allows them to invest in works and not have to face competition);
2. Maximising social benefits from the fact that works are freely available to everyone for further cultural advancement.

The author's economic rights expire 70 years after the creator's death. In case of a joint authorship of a work, that period begins with the death of the last surviving author. Films are governed by separate rules – for these, copyright expires 70 years after the death of the last surviving among the following: director, screenplay author, author of dialogues, composer of music featured in the film. On the other hand, in the case of works whose creators are unknown, that period is counted from the distribution date (the date the work was published).

Expiry period for protection of a public domain work adaptation is counted from the death of the author of the adaptation rather than the original author.
Example: Disney's animated features, such as Snow White, Cinderella or Hercules, are contemporary renditions of traditional fairy tales and myths taken from the public domain. These film adaptations had their own screenwriters, directors, cartoonists, etc. Some of these people are still alive, and for those who are not, 70 years have not yet passed since their death. Therefore, although anyone can make their own film adaptation of these fairy tales and myths, making use of the creative layer of their Disney interpretations will require the company's consent.

Fair use

Copyright Act devotes an entire chapter to situations that allow for the use of works which have not yet entered the public domain. Examples of fair use include:

1. personal use,
2. quotations and parodies,
3. educational use.

Personal use

Anyone can copy someone else's work for their own purposes and to share it with friends and family. It is rather difficult to arrange precise boundaries here.

Keep in mind the following:

- You should carefully check the settings of various applications (e.g. torrent sites) and services (their "public/private" status), and find out whether they share files with someone else's works outside the circle of your family and friends.
- It is important to verify that the work you distribute comes from a legal source (this was the interpretation given by the Court of Justice of the European Union). You are also not allowed to share a work that the creator did not choose to share publicly. Therefore, if you are watching a film on a VOD platform, you can copy it and share it with your friends.
- Various notes that prohibit private copying and can sometimes be found on music and film discs, are invalid.
- Producers and publishers often prevent copying by resorting to DRM (**digital rights management**), which is simply a technical security measure. Bypassing or cracking said DRM will not be considered illegal, as long as it is motivated by personal fair use and not used for any other purpose.

Quotations and parodies

Quotation refers to borrowing the protected expression of a work, that is e.g. a content of a book for your own article or essay. You can quote any work of art, which includes music, films and computer games alike. However, there is a boundary that separates quoting someone else's work and borrowing parts of it illegally. Unless you want to overstep this boundary, you should adhere to all the requirements listed below:

- If the author of the work we wish to use has not yet decided to publish it (e.g. someone else's notes, diary or a file uploaded on their cloud), that work cannot be quoted without the author's consent;
- You must create your own work, only featuring quotes from someone else's works – this requires you to contribute your own individual creative efforts and in most cases means you are not allowed to e.g. simply paste someone else's content as captions under images, social media comments or to compile the contents of a school essay using fragments found in books or on websites;
- You can only use fragments of someone else's works – only works of fine arts, photographs and small works can be quoted in their entirety;

- You should be able to provide good reasoning as to why you needed a given quote – in order to explain something, dispute a claim, offer criticism, conduct a scientific analysis or for teaching purposes;
- The quote must be clearly marked (distinguished from your own work), with reference given to its source and the creator's name (or possibly a pseudonym) – this is accomplished through customary forms such as quotation marks, while the name of the source and the author can be put in a footnote or (e.g. in the case of films) in end credits.

Using a quote can also be argued through operating within the constraints of a given genre. Someone else's works can be parodied. Many internet memes are, in fact, parodies of well-known works. Do you think that remixing, sampling, found footage or fan fiction (fan art, fan-created content) can be referred to as "creative genres", and if so, why?

Art, fashion and public debate are areas where boundaries of fair use quoting (as well as other legal and social norms) are often tested. Religious or national symbols often serve to communicate the beliefs of specific social groups. Fashion sometimes borrows from cultural attainment of other cultures, while corporate markings are often used in artistic works.
On the other hand, popular works are frequently included in political messages. Examples include:

- Clothing designs that copy the ritual outfits of indigenous inhabitants of the Americas or Africa
- The "Campbell's Soup Cans" by Andy Warhol
- The "Solidarity – High Noon" poster by Tomasz Sarnecki

Fair educational use

Copyright is more lenient when it comes to schools (and school teachers). Teachers are allowed to show an entire film to their students or hand out copies of a chapter from a book they wish to discuss in class. Such measures would not be permitted if their scope was to extend beyond the classroom and educational purposes. By the same token, textbooks can feature someone else's works or their fragments copied to a degree greater than would otherwise be allowed for books intended for the general public.

During a school event, you can perform someone else's works (sing, play, recite, etc.) as well as play the recordings of such, using the equipment available at the school. However, such events cannot entail monetary benefits for the school, nor for the people who perform or play the works. This means you can organise e.g. an after-school film screening, and this would not require purchasing any additional licences. However, such a screening cannot be devoted solely to entertainment, it must be clearly connected to the school's educational tasks. More importantly, were such a screening to be organised by a different institution (like a community centre or a public library), it would no longer abide by such liberal principles.

This means that, while at school, you can become accustomed to using works more broadly and freely than it is otherwise allowed. Therefore, unfortunately, teachers' behaviours should not be taken as a benchmark for what is generally allowed when you start to use someone else's work in public – this requires you to follow more restrictive rules concerning quotations, for instance.

Freedom of panorama

Photographs posted online often feature objects that may be someone's creative works (graphics, sculptures, buildings, structures). When publishing such a photograph, you are also publishing the work featured in it. Copyright provides for a special use of someone else's works captured on photographs or videos without the consent of the right holders. This is referred to as **freedom of panorama** and applies to works which are permanently exposed to the public, such as on public roads, streets, in squares or gardens. This means that you can photograph and publish the photographs of monuments, buildings, etc., that are located in a public space, even if they are the works of contemporary artists or architects. The one thing you may not do is use them for the same purpose. It follows that you can, for example, create a computer game set in your city, with images of the sights in the background. However, distributing 3D printed copies of a contemporary sculpture that stands in a park would require a proper consultation with lawyers.

Apart from creative works, your photographs or video footage can also feature other people. Everyone has the right of **personal portrayal**. It is similar to copyright in that you need consent in order to publish such a photograph, unless there are special circumstances. These, however, are specified differently than in the case of the fair use of works. You are not required to ask for consent to publish a photograph or video footage containing the images of:

- A well-known person, if the photograph or video was produced in connection with their performance of a public function (political, social or professional)
- Persons who make up a bigger whole, such as a gathering, landscape, or a public event.

How to benefit from one's own work

You've written a text, recorded a video, composed music, created a graphic image. These are all creative works and copyright makes it easier for you to manage your publications. The basic tool for this are copyright transfer agreements and licensing agreements.

Transfer agreement	Licensing agreement
(Economic) copyright is transferred to the buyer. This means that from that moment on, it is the buyer, not the author, who has exclusive rights to make decisions concerning a given work.	All copyright stays with the author, and the licence holder is only allowed to use their work. The other party to the agreement has exclusive rights only when this is explicitly stated in the agreement.
A transfer of rights is valid only if the agreement carries a hand signature and explicitly provides for the transfer.	A licensing agreement can even be concluded orally, as well as by agreeing to the rules (regulations) of a website. Therefore, you should carefully read those rules, as it may turn out that by accepting them you give your consent to such practices as using your creative output for marketing purposes free of charge.

Copyright can only be transferred once. Reversing the consequences of such an agreement is possible only under specific circumstances and is usually very difficult.	You can enter into many licensing agreements with many persons (as long as you do not grant exclusivity to any of them), for a definite or an indefinite period. A licensing agreement can be terminated, which means it will no longer apply.

Copyright transfer and licence are not the only options. You can also indicate precisely how your work can be used (e.g. printed, performed on stage, broadcast on television, posted on the internet – these are known as fields of exploitation). The buyer or licence holder cannot use the work in any way that has not been clearly agreed upon with you. You should ensure that the licence covers a properly narrow definition of fields of exploitation. This will allow you to retain the remainder of rights.

If you wish to share your creative output online, and you want to make it as widely available and used as possible, it is best to resort to free licences. Although free licenses do not entail any costs, you can still profit from such works. Many artists use them as a method of promoting their music, making money on concerts or voluntary donations from fans. Free licences are a legal tool for organising collaborative economy, where the rules governing the sharing and use of resources, e.g. Wikipedia or open source software, are agreed upon by the participants. Prof. Elinor Ostrom was one of the most distinguished researchers in this field, which earned her a Nobel Prize in 2009.

Author: PhD Krzysztof Siewicz, Modern Poland Foundation

Fundamentals of copyright – quiz

1. Inspiration is:
   a. Drawing an idea from someone else's work and creatively incorporating it into your own creative output
   b. Modifying someone else's work
   c. Signing your name under someone else's work

2. A creator can be:
   a. A computer
   b. An animal
   c. A child

3. Copyright protects:
   a. Only valuable works
   b. The multiplication table
   c. All works created by human

4. Copyright protects works:
   a. If they bear a copyright notice.
   b. If they bear information on the Rome Statute.
   c. From the moment of their creation.

5. Copyright is divided into:
   a. Economic and moral
   b. Transferring and licensing
   c. Original and derivative

6. The author's economic rights:
   a. Can be inherited.
   b. Always stay with the creator.
   c. Are synonymous with property rights.

7. The author's moral rights:
   a. Expire 70 years after the author's death.
   b. Allow the creator to decide on whether to publish the work at all.
   c. Do not apply on the internet.

8. 8. Works found on the internet can be used:
   a. Freely, as long as the source is referenced.
   b. Only when paying a subscription fee.
   c. According to the rules of fair use or the licence attached to a given work.

9. The public domain covers:
   a. Official materials
   b. All published works
   c. Works for which author's moral rights have expired

10. A modern remix of a public domain work:
   a. Requires consent of heirs to the author of the original work.
   b. Is a separate, protected work.
   c. Must be shared under a free licence (copyleft).

11. Personal fair use:
   a. Is a rule stating that every work should be purchased.
   b. Means that a book or a disc cannot be copied from a friend.
   c. Is sometimes blocked by producers or publishers via technical security measures.

12. Appropriate quoting requires:
   a. Only reference to the source
   b. Reference to the source, quotation marks and justification for the use of quote
   c. The author's consent

13. A licensing agreement:
   a. Transfers rights between the parties to the agreement.
   b. Can be concluded even orally or online.
   c. Can only be concluded against payment.

14. Agreement between a book's author and publisher:
   a. Always transfers the rights to the publisher.
   b. Can exclude the possibility for the book to be published abroad without the publisher's consent.
   c. Has to be concluded in writing.

15. Once the creator is granted a free licence:
   a. They can no longer profit from their work.
   b. They can still profit, e.g. by selling copies of their work or performing concerts.
   c. They have to pay a special culture tax.

Intellectual property protection strategies

fundacja JWP

Intellectual property is an important component of a company's assets. However, if it is to generate profit, it needs proper protection. In this chapter, you will learn about:

- Different ways in which companies developing proprietary innovative solutions (involved in R&D activity) care for their subjects of intellectual property rights,
- Opportunities for a non-R&D company to profit from intellectual property,
- Ways to build an intellectual property protection strategy,
- Different types of intellectual property protection strategies,
- Tools that are used to manage intellectual property,
- Benefits of a proper intellectual property management.

How to make money on intellectual property

We all buy groceries or use other services every day. Upon choosing a specific offer, people often consider not only the price, but also the renown of a given brand or the product's unique value. Nowadays, in order to keep pace with the changing world, meet customer demands and stay ahead of the competition, producers and service providers have to focus on innovations and protect them properly. Approach to the protection of intellectual property rights hinges on many factors, such as the company size, the sector in which a given entrepreneur operates, or the amount of funding they can allocate to investments.

Businesses that grow by development and improvement do not die. But when a business ceases to be creative, when it believes it has reached perfection and needs to do nothing but produce, it is done – Henry Ford, a renown engineer, entrepreneur and innovator

- **How do companies which develop proprietary innovative solutions care for their rights?**

Investments in research and development, building recognisable brands and unique projects offer a tremendous advantage over the competition, however, they usually require considerable financial contributions. The developed solutions are part of company's assets, they are the proof of its value and that is why innovation-oriented companies assign particular importance to the protection of intellectual property. Patents, rights in registration of trademarks or industrial designs, granting exclusivity in the use of a solution (limited in time and territory) allow to compensate for the outlays and to obtain funds for further development of innovations. Depending on the business strategy adopted by a company, the holder of the obtained intellectual property rights may use them to secure exclusivity on the market and as a tool to fight the competition. These rights can also be sold or licensed.

A special category of innovation-oriented entities are start-ups, which usually have limited funds for development. For these, intellectual property is a fundamental resource, and

its proper protection is crucial, also in the process of attracting investors or other forms of funding (grants, loan).

- **What to do if you do not want to or cannot develop proprietary innovation?**

In such a case, you should turn to solutions that are available under a licence or in the public domain.

Licences present an opportunity to offer goods and services created based on solutions developed by others, such as patent-protected inventions, models registered as industrial designs, and many others. This requires mutual agreement on the rules for making use of someone else's solution. Sometimes the rights holder may submit their licensing agreement for approval. The licence holder can grant many non-exclusive licences (such as software producers selling multiple copies to users) or an exclusive licence, which means that no person other than the license holder will be entitled to use the protected solution. On the other hand, public domain solutions are available to everyone with no option to obtain exclusivity. You can use them freely as a basis for developing your own solutions.

It is worth mentioning that, as they grow, companies that initially relied on solutions created by others sometimes decide to invest in research and development, thus becoming innovation-oriented enterprises.

How to build a strategy for intellectual property management?

Building a strategy for intellectual property management in an enterprise consists of three stages:

- qualification,
- obtaining protection,
- exercising the granted rights.

Qualification

First, you should specify what activities a company intends to undertake over a specific **time horizon** (over the next year, two and five years – research and development requires time), and **in which territory**.

Example:

A Polish company offering suitcases and purses in Poland plans to start distributing three best selling models of their well-known products abroad next year, expanding to the US, Japan and the EU markets. Within the next two years, the company plans not only to continue selling on all the previous markets, but also to expand the range of products offered on those markets to include leather belts, neckerchiefs and scarves. In the following years, aside from sales of goods on all markets on which it is present, the company plans to continue the development work associated with designing an innovative lifting device for suitcases and travel bags that would facilitate lifting heavy luggage. The company plans to launch the designed solution on the market within five years – first, on the Polish market, and then on those markets where the sales of suitcases and travel bags are high.

It is also necessary to establish:

- The nature of **competition** in a given industry,
- The lifespan of products on offer,
- The goods and services that are of utmost importance for the bussines,
- What **budget** one wishes to allocate to activities related to intellectual property management.

Note!

Before entering into talks with potential investors, you should consider signing a confidentiality agreement, prohibiting the disclosure of the essence of your solution. Such agreements should be concluded in writing. This is particularly important in the case of know-how and intellectual property rights which in order to be granted require the solution they protect to be new (patent, right in registration for an industrial design and right of protection for a utility model).

Then, you should choose the protection measures best suited to your objectives. Industrial property rights, copyrights and related rights, personal rights, trade secret, which is closely linked with know-how protection – each of these has its specific characteristics, possibilities and limitations.

To begin with, you should decide whether you want your solution to be disclosed – if so, choose the industrial property rights – or kept secret and protected as know-how. Remember that although obtaining a patent offers monopoly, it requires the disclosure of the solution and is limited in time. Meanwhile, know-how protection allows you to keep the solution secret, but it is much more difficult to enforce protection of rights in the event of its disclosure. The form of legal protection should also be adjusted to the characteristics of the solution to be protected. If you wish to protect the product's exterior, e.g. a chair's distinctive shape, its texture or ornamentation, for that purpose you might apply the right in registration for an industrial design, as opposed to a patent, which protects technical solutions and not aesthetics. At the stage of qualification for protection, familiarity with the specifics of the different exclusive rights (described in previous chapters) is of key importance.

Every person (i.e. natural person) is further entitled to personal rights, which extend to dignity, name or pseudonym, image or scientific, artistic, inventive works and rationalisation projects, among other things. The Civil Code ensures their protection, regardless of provisions found in other acts. Similarly to copyrights, the protection arises from the law itself. Protection of personality rights is particularly important for public persons, who are recognisable as their image or name/pseudonym are crucial for their activity and are oftentimes deliberately cultivated. Some violations of personal rights may constitute criminal offences and lead to criminal liability, which is something you should bear in mind when discussing others, in particular on social media. Meanwhile, in regards to enterprises, the Civil Code ensures the protection of the right to a business name, which enables business activity to be carried out under a specific name, without registering it as a trademark.

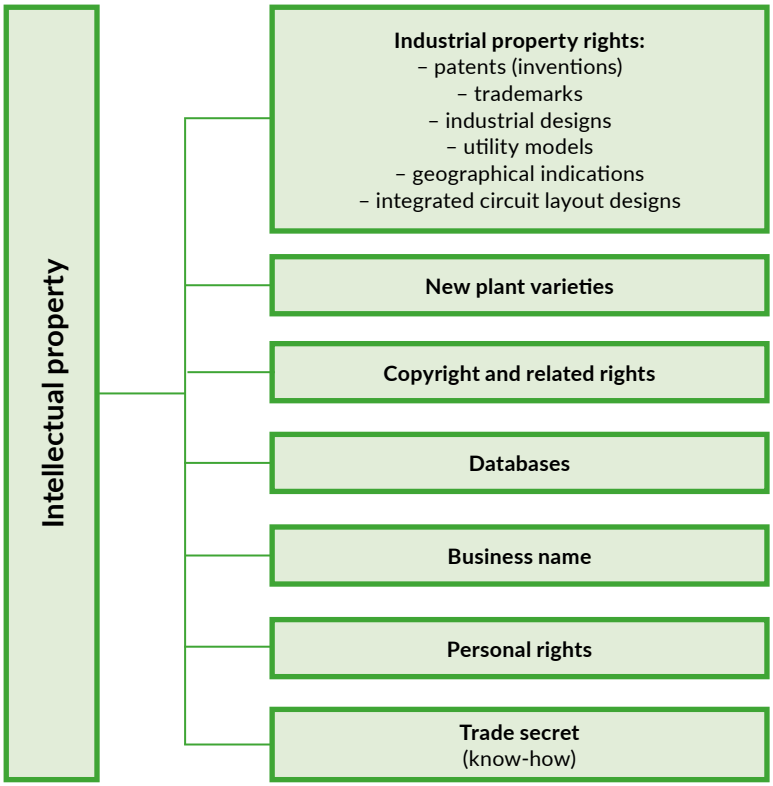
Developing a strategy for protecting and managing intellectual property is based on choosing and exercising such types of intellectual property rights which will support the implementation of the company's business objectives and plans. Protection of intellectual property also involves additional legal measures provided for in the Act on Combating Un-

fair Competition. This Act falls outside the scope of Intellectual Property Law, but is intrinsically linked with the strategy for managing the intellectual property rights of a company.

Example:

Let us consider which rights our previously-described luggage manufacturer might choose to protect:

- Trademarks – for their products' designation,
- Industrial designs – protecting the shape and texture of suitcases,
- Utility models – protecting functional parts, e.g. the zipper,
- Patents – protecting e.g. the innovative material for the suitcases; and many more, depending on the strategy adopted by the company.



Elements of particular importance in building a strategy for intellectual property management include:

- **Differences in the creation of rights,** in particular the division into:
  - Rights arising from law itself, without the need to take any steps (such as copyright and related rights or personal rights), i.e. in order to obtain an exclusive right is not necessary to initiate registration proceedings, submit an application, or notify any offices. The same principle applies to know-how, the right to a business name and personal rights;

- Rights obtained by means of applicable proceedings before a competent national or foreign authority (such as industrial property rights) – in this case, to obtain an exclusive right, you must meet the conditions stipulated by the law, take the appropriate steps, make the appropriate payments;

Question:

Should your solutions or works be registered or is it enough to be the author in order to exercise protection?

- **Territorial scope of protection** – once you determine the markets on which you wish to operate and to build your competitive advantage, you will be able to select the relevant procedures for obtaining rights in that region. Your options include national, regional or international protection. Keep in mind that the wider the territorial scope of protection, the higher the cost of obtaining and, subsequently, maintaining it.

Example:

The said luggage manufacturer, who so far has operated solely in Poland, used to submit the appropriate applications to the Patent Office of the Republic of Poland under national procedure. Wishing to expand their activity to:

- The US and Japan, they should submit applications to the national offices of those countries, in cooperation with a local representative or take advantage of the international procedure (before the World Intellectual Property Organization (WIPO));
- The European Union, they should consider submitting applications before the competent European offices (the European Patent Office (EPO) or the European Union Intellectual Property Office (EUIPO)).

- **Industry** – when running a company, you should be aware of the characteristic of the industry and the market on which you operate, as well as your competitors' activity. How many entities operate in the industry, is there a chance for you to be the market pioneer, how to best capitalise on your assets, how can you stand out in the market?

Research into industrial property rights and monitoring are valuable tools used for managing intellectual property and fostering the development of companies. Patent databases are useful sources of knowledge and inspiration for inventors and entrepreneurs. Analysis of data contained in patent databases allows for following the technology development trends in various industries. Moreover, it offers the possibility of continuously monitoring competitors' activity in relation to inventions and industrial designs or designations under development.

- **Term of the right** – at this point, you should consider how long you will benefit from protection. As you recall, industrial property rights are limited in time, and application procedure might itself take as long as several years (in case of patents). You should bear that in mind when evaluating particular products, and consider what their lifespan on the market is and how long it takes to develop them.

Example:

In highly innovative and competitive industries (e.g. among consumer electronics manufacturers), with tremendous expenditure on research and development, where the benefits of monopoly on certain solutions are even greater, companies invest in obtaining patent protection, registering trademarks or utility models and industrial designs. On the other hand, selection of rights in the clothing industry, with its rapidly changing trends, should involve considering how quickly they can be obtained.

Remember that the form of protection must be adjusted to the type of solution. When developing a new technological solution, the very first thing you should do, even before disclosing it, is investigate the possibility of obtaining a patent or a right of protection for a utility model (all the while refraining from boasting about your idea before submitting the application, as this would undermine global novelty, which is a prerequisite to obtaining an exclusive right). Meanwhile, if you choose to base your activity on non-technological solutions, e.g. furniture design, you should protect copyrights or the right in registration for an industrial design. As regards computer programmes, which are not subject to patenting in Poland and the European Union, you should protect copyrights or keep the solution secret, effectively safeguarding your know-how. In each case, as you build a solid company brand, its reputation on the market and the position of products or services on offer, remember to register trademarks. This is all the more important since the protection of intellectual property rights helps fight against counterfeiting your solutions and products.

Obtaining protection

The next stage of building a strategy for intellectual property protection involves taking the appropriate steps to obtain the rights. Obtaining protection rights generally implicates a number of administrative procedures, which differ depending on the type of proceedings, country or mode. In this regard, it might be helpful to seek the assistance of a person with relevant competencies in the field of intellectual property, e.g. a patent attorney. They will make sure that the applications are properly submitted, the necessary agreements are systematically reviewed and the deadlines for extending the protection of industrial property rights are met.

Note!

In some cases, actions before the competent intellectual property office are required to be taken through a local representative (e.g. a patent attorney).

Example:

In proceedings before the Patent Office of the Republic of Poland, if your registered office or place of residence is located in a territory other than Poland, the European Union, Member State of the European Free Trade Association (EFTA) – a party to the agreement on the European Economic Area or the Swiss Confederation, you are obliged to act through a proper local representative, e.g. a Polish patent attorney.

Exercising rights

A proper preparation and implementation of a protection strategy leads to the final stage of management – exercising the obtained rights. The rights holder is entitled to many things, the most important being the exclusive use of the subject of the protection for commercial purposes on the designated teritory (monopoly). This means that everyone else needs consent of the rights holder to use the mentioned subject of protection.

Types of strategies for intellectual property management

An effective strategy implements the company's business objectives and fosters its development. It can be passive, active (also referred to as expansive) or defensive.

TYPES OF STRATEGIES		
Passive	**Active**	**Defensive**
Rights obtained		
• Mainly copyrights, arising from law itself, or protection pursuant to the provisions of the Act on Combating Unfair Competition; • Refraining from taking other steps or limiting them to the necessary minimum	• **Many different types of rights, offering the widest possible protection, to maintain distance from the competition**	• **Exclusive rights to solutions used in the business activity**
Measures adopted		
• Responding only to violations of those rights that pertain to the company's core products, or refraining from taking any action whatsoever	• Widest possible monitoring and research into intellectual property rights; • Responding to violations of obtained rights or those which may pose a threat (mediation, but also court proceedings); • Generating income from sales or licensing of rights, especially those that are not used in the company's current operations	• Monitoring and research into intellectual property rights to the extent necessary; • Responding to certain cases of rights violation (if possible – mediation instead of litigation)
Financial contributions		
All costs reduced to a minimum or no costs	**High expenditure** on obtaining and maintaining rights (submitting many applications through different procedures) and claiming protection against violations	**Expenditure limited to the minimum necessary** for combating the loss or reduction of the value/ position of obtained rights

WATCH OUT FOR PATENT TROLLS! As is the case with all areas, the world of intellectual property is not free from misuses. Flaws in the patent system (particularly in the US) contributed to a greater exposure to the activity of "patent trolls" – persons or companies that buy or register patents just so they can claim damages for their violation, or collect licence fees for allowing them to be used. A group of world's leading companies, such as Google, IBM, Microsoft, Sony, established a non-profit organisation "Allied Security Trust", aimed at, among other things, protecting from patent trolls.

What to do in order to manage intellectual property efficiently?

If you wish to be effective in managing your rights, you need to apply the right tools. These include primarily:

- **Activities** related to obtaining and maintaining the exclusive rights
- **Procedures** for protecting a trade secret and
- **Regulating** the issue of copyright.

We may also use:

- **Research** – useful in analysing the situation on the market, identifying competition, assessing chances of obtaining a patent or a right of protection, or right in registration, as well as in avoiding conflict/disputes with other entities.
- **Monitoring** – allows us to follow the developments in market segments of interest, also providing for easier adoption of preventive measures, e.g. effectively opposing the registration of similar designations or solutions.
- **Agreements (e.g. sales, licensing agreement)** or internal regulations.

Note:

Keep in mind that the most important element in the process of managing intellectual property rights is **people**. Not only do they develop the solutions which are subject to protection, but they also conduct studies, research and analyses related to existing rights. The authors of protected solutions are often company employees. This grants them certain privileges. Their scope depends to a large extent on the company's binding internal regulations. The Industrial Property Law contains relevant regulations, also referring to internal regulations in the company (Employee Handbook, Innovation Regulations) and to employment contracts, contracts for specific work or other contracts signed with the creators.

What are the benefits of intellectual property rights protection?

One of the key benefits of intellectual property rights for the rights holder is legal monopoly on their use for commercial purposes.

The rights holder (proprietor) may ban others from using them, thus protecting their own monopoly, which allows them to maintain their position on the market and helps earn back the expenditure on investment. For instance, they may:

- Launch on the market developed on the basis of patents,
- Label the goods and services with registered trademarks,
- Launch products with an original exterior – protected as industrial design – on the market,
- Distribute works,
- Operate under their own company name,
- Sell or license rights.

Rights holders can also object to new registrations which would violate their existing rights, or request a declaration of invalidity of a right already granted to another person. In the two latter cases, it is crucial to monitor the market and the submissions published by the Patent Office. This allows for a proper response.

If someone violates your rights, meaning they do not respect your exclusive right to use the invention, design or trademark registered in your name, you may take steps against them, leading to a ban on further use of solutions, withdrawal of goods from the market or abandoning acts of violation; you may also claim compensation. Where warning letters and other adopted measures yield no results, you should resort to legal action. However, sometimes a quicker and less expensive method of dispute resolution involves mediation proceedings.

Trivia:

Disputes over intellectual property violations often make it to the newspapers. One of the most spectacular legal battles, which lasted for seven years, was the dispute between Apple and Samsung. The compensations awarded at different stages of proceedings amounted to hundreds of millions of dollars. The dispute spanned the entire globe and found its finale in 2018, when the two giants finally reached an agreement.

"iPhone" Case Study

From a garage in Los Altos to one of the top most expensive brands in the world – the story continues to inspire many entrepreneurs. For many years, the ingenious innovator and businessman, Steve Jobs, was at the heart of it. From the very beginning, Apple has adopted the Blue Ocean Strategy. It consists in creating areas on the market which were previously undeveloped. Through innovativeness, entrepreneurs build up their position, leaving competition far behind. As Jobs once said: "Our job is to figure out what [customers] are going to want before they do." Applying this principle, Apple's new groundbreaking products have continued to emerge. Everyone who has ever come across their products knows that they belong to somewhat of a sub-category in comparison to other goods of the same kind. Based on their own operating system, they are intercompatible, but their ability to cooperate with competitors' products is limited; they do not rely on other solutions, but are themselves a source of inspiration. Such an approach requires a comprehensive intellectual property protection strategy in place. A great example here would be one of Apple's flagship products – the iPhone. Its strictly confidential development took nearly 3 years. Before presenting it for the first time in 2007, the company had to make the appropriate arrangements to ensure the widest and most effective protection. Confirming without doubt which technical solutions, from among thousands of patents owned by Apple, were used in developing the iPhone would require an experienced engineer to perform a thorough analysis. Moreover, to this day, hundreds of trademarks have been registered around the world, pertaining to the words "iPhone" and "made for iPhone", including their verbal and figurative varieties, 3D signs, as well as the graphic (for iPhone 4) featuring the widely familiar icon for the "Find My iPhone" app. Many industrial designs have been registered for the sake of better protection of the visual design. The fact that Apple is among the top most expensive brands in the world is testament to the major benefits of pro-active management of intellectual property. Numerous applications for a variety of rights ensure that products marked with the characteristic apple silhouette are protected as widely as possible. Meanwhile, the iPhone itself perfectly illustrates that virtually the entire world of intellectual property can be contained to a single device. Undoubtedly, Apple applies an active strategy for protecting intellectual property rights – not only by taking advantage of protection from all types of intellectual property rights (patents, industrial designs, trademarks, copyright), but also by securing exclusive rights associated with the industry it operates in, which are the source of profit derived from licensing or selling them. Active protection of intellectual property rights is also reflected in protecting a single product through several types of rights, as shown in the graphic below.

Examples of industrial property rights

Source: www.canva.com

1 iPHONE

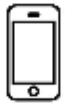
... many rights

Trademarks


EUTM-017610528

MY-07025215


MX-1284001


EUTM-013947783


TN/E/2011/373 (3D)


EUTM-002593127

EUTM-016905961

EUTM-005341301

Apple Inc. owns around 1,000 registered trademarks protected in Poland.

Industrial designs


RCD-001236590-0013


RCD-000748314-0001

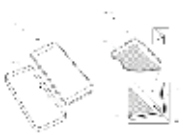

RCD-004522910-0002


RCD-002084095-0015

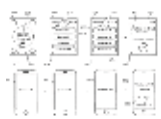
Under EU procedure, the company has over 4,000 registered industrial designs

Patents


US-10015298


US-09307816


US-08131322


US-09930157

Apple has around 15,000 protected solutions, amounting to around 45,000 patents in different jurisdictions.

"Star Wars" Case Study

"A long time ago in a galaxy far, far away..."

Star Wars, as a pop culture phenomenon, is the perfect example of how intellectual property protection can be used to generate enormous profits. The first episode of the saga, like any other movie, constitutes an audiovisual work protected by copyright. Since the 70s, "Star Wars" has evolved and become one of the biggest franchises in the history of culture. When building a brand development and protection strategy, LucasFilm focused mainly on deriving profits from copyright protection, licensing and combating acts of unfair competition. Even if you have not seen a single episode of the saga, you must have come across products which directly referenced the characters, plot lines or props created for the movies. From toys and LEGO bricks to computer games, clothes or cosmetics – there are licensed products for fans of all ages. Profits from their sales reach hundreds of millions of dollars and one of the main beneficiaries is the rights holder – LucasFilm. Given such massive demand for merchandise related to the saga, there are many entities wishing to benefit financially from the popularity of the STAR WARS brand, for instance by launching counterfeit products on the market. In response to such actions, steps are taken under the Industrial Property Law, the aforementioned Act on Combating Unfair Competition and the Act on Copyright and Related Rights. Aside from copyright and related rights, the actively developed portfolio of intellectual property in the "Star Wars" universe comprises of numerous trademarks, which also cover different variations of the movies' titles, as well as e.g. their characters (the R2D2 robot). Interestingly, solutions protected by a patent of Disney Enterprises, Inc. (current owner of LucasFilm) were used to create BB-8 (one of the film droids). In the case of "Star Wars", whose nature and industry specifics differ from Apple's, LucasFilm does not aim to obtain as many industrial property rights as possible, except for numerous trademarks registered to protect the brand. At the heart of this incredibly effective management strategy lies copyright and its consistent protection, as well as maximising the benefits of licensing.

Authors: Anna Kupińska-Szczygielska, Dorota Rzążewska, Kancelaria JWP Rzecznicy Patentowi/Fundacja JWP Pomysł | Patent | Zysk

Examples of industrial property rights

May the force of intellectual property be with you...

Source: www.canva.com

Trademarks

STAR WARS
EUTM-000175380

EUTM-005896311

ARTOO-DETOO (R2-D2)
EUTM-000559542

EUTM-005896601

JEDI POWER BATTLES
EUTM-001586395

EUTM-008759482

Copyright

In the case of audiovisual works, the author's economic rights expire 70 years after the death of the last remaining of the following persons: the principal director, the author of the screenplay, the author of the dialogue and the composer of the music. Notably, since 1897, a Copyright Register has been kept in the US, where you can find a great number of registrations concerning "Star Wars", for instance the soundtrack with "The Imperial March" or the film posters.

Licences

Source: www.canva.com

Source: opracowanie własne

US-08269447

Patent: "magnetic spherical balancing robot drive", used for the movements of the BB-8 droid in the film.

"Star Wars" is a sci-fi film classic. For all fans of the saga, manufacturers taking advantage of a licence developed a wide range of merchandise, such as children's toys, clothes, computer games, and more. Awarded licences account for the greater part of profits for the rights holder.

Intellectual property protection strategies – quiz

1. Copyright to a work:
   a. Is obtained in an appropriate procedure before a competent authority
   b. Arises from the law itself
   c. None of the above is correct

2. A licence:
   a. Allows to legally place on the market products to which other persons hold exclusive rights
   b. Transfers all intellectual property rights to the licence holder
   c. Is always free of charge

3. Industrial property rights:
   a. Can be sold
   b. Are not limited in time
   c. Are not part of company's assets

4. Which of the terms below falls outside the scope of intellectual property law:
   a. Personal rights
   b. Related rights
   c. Unfair competition

5. Intellectual property rights:
   a. Remain in force with no time limit
   b. Are limited in time, depending on the type of rights
   c. All expire 70 years after the death of the author

6. Companies which limit expenditure on intellectual property protection to a minimum, or do not wish to incur any, adopt:
   a. A passive strategy
   b. An active strategy
   c. A defensive strategy

7. Where intellectual property rights are violated:
   a. Their holder is unable to take legal actions
   b. Their holder may demand that counterfeit products are withdrawn from the market
   c. The holder is not entitled to exercise any rights

8. Trade secret protection:
   a. Lasts as long as the information remains confidential
   b. Is the only tool that grants monopoly on using a protected solution
   c. Requires registration in a Patent Office

9. Which of the intellectual property protection strategies found below is effective:
   a. Passive
   b. Active
   c. Defensive
   d. Each of the above, as long as it implements the company's business objectives and fosters its development

10. Placing counterfeit products on the market:
   a. Is irrelevant from the standpoint of a company's intellectual property management
   b. Is permitted, provided that the rights holder is not aware of such actions
   c. Is punishable

11. The holder of intellectual property rights can generate profits:
   a. By violating the rights of others
   b. By placing counterfeit products on the market
   c. By selling and licensing their rights

12. Can one product be protected by more than one right?
   a. Yes
   b. No

13. Signing confidentiality agreements when securing financing is especially important:
   a. In the case of solutions which require novelty in order to obtain protection
   b. If the entrepreneur uses mainly copyright protection
   c. If the entrepreneur is a natural person

14. Which of the following does not entail disclosing a solution?
   a. Obtaining the right in registration of an industrial design
   b. Know-how protection
   c. Obtaining a patent

15. Which type of strategy involves protection of as many types of rights as possible, covering not only solutions essential to the company's operation:
   a. Active
   b. Passive
   c. Defensive

Project partners:

PATENT OFFICE OF THE REPUBLIC OF POLAND

The Patent Office of the Republic of Poland is a central government administration body, which, aside from awarding exclusive rights to protected industrial property, is also chiefly responsible for collecting and publishing patent documentation and literature, as well as co-developing and popularising industrial property protection principles. One of the most important tasks of the Patent Office is, therefore, broad dissemination of knowledge on industrial property protection. Social awareness in that area is, after all, a prerequisite for the effective functioning of legal regulations. It ought to be underlined that information on the consequences of rights violations or absence of protection with regard to industrial property is only a portion of the social communication programme implemented by the Patent Office of the Republic of Poland. It is also imperative to promote modern methods of managing industrial property rights, educating school youth on basic issues concerning intellectual property, introducing this topic in academic curricula and conducting regular information campaigns targeting the managerial staff of enterprises. The Patent Office of the Republic of Poland, which pursues a very important mission with regard to industrial property protection, is one of the key institutions with a say in the creation of conditions for the development of innovative economy, with safe trade and high level of competitiveness.

FUNDACJA nowoczesna Polska

The Modern Poland Foundation has been active since 2001, and in 2004 accorded the status of a public benefit organisation. Its statutory objectives include promoting and protecting the freedom to use cultural goods, disseminating and supporting modern education methods, promoting and protecting civil rights and freedoms, as well as pursuing charitable activities. The Foundation runs the most popular, free online library in Poland at wolnelektury.pl, featuring over 5,500 literary works from public domain or under a free licence, including many school readings. As part of the wolnelektury.pl library's work, it is actively involved in promoting reading among children and youth, for instance by organising the "#cojaczytam" [English: what I'm reading] competition for the best campaign promoting readership conducted by pupils. At the edukacjamedialna.edu.pl portal, it publishes educational materials useful in educating informed media users. Meanwhile, under the prawokultury.pl project, the Foundation's team helps understand copyright by conducting educational activities, offering "first legal aid", sharing publications and manuals, as well as providing training. Since 2012, the Foundation organises the annual International CopyCamp Conference, enabling representatives of different viewpoints to discuss copyright. It is a founding member of the Coalition for Open Education, under which it engages in promoting open educational resources.

fundacja JWP

The Foundation "Fundacja JWP Pomysł | Patent | Zysk" was established in 2011, at the initiative of Kancelaria JWP Rzecznicy Patentowi. The Foundation disseminates knowledge of intellectual industrial property protection, as a tool which strengthens the position of a company and its products on the market. It conducts training and educational projects addressed to entrepreneurs, scientists, creators, inventors, the media, as well as university students and school youth. Additionally, it supports initiatives aimed at raising social awareness regarding intellectual property protection, innovativeness of enterprises and the economy. The Foundation's educational efforts have the backing of experts with many years of professional experience, who on a daily basis advise on matters related to intellectual and industrial property protection.

Each year, over 1,000 individuals take part in educational workshops of the JWP Foundation. The largest group of trainees is made up of staff members of companies and research institutes from various industries, including pharmaceutical, medical, cosmetic, chemical, furniture and design, video games, IT or telecommunications.

The Foundation's mission is to promote the foundations of respect for intellectual property rights and educating about the harmfulness of counterfeits. This is achieved, for instance, through educational activities aimed at entrepreneurs, school youth and teaching staff – 'Win without fakes' and 'Be original – don't copy!'. The biggest educational initiative of the JWP Foundation is the Talent Advocates project, targeting university students and academic researchers, in particular from technical universities. The project comprises a series of trainings and a competition for an internship at a patent office. It disseminates knowledge on intellectual property rights, including with regard to protecting research results, and promotes the profession of a patent attorney as a possible career path.

The training offered by the JWP Foundation is supported by institutions and business-related organisations, universities, local government and state administrative bodies, as well as the media, which make it possible to implement diverse projects and share knowledge on intellectual property protection with so many groups of recipients.

www.jwp-fundacja.pl

FUNDACJA ZAAWANSOWANYCH TECHNOLOGII

The High Tech Foundation launched in 2011, in response to the needs triggered by the development of tech market and the socio-economic changes of the 21st century. Since then it has successfully supported entrepreneurship, commercialisation of state-of-the-art technologies and popularisation of science in Poland and around the world. The aim of the High Tech Foundation is to promote and support research, technological advancement, entrepreneurship, as well as the transfer and implementation of new technologies. They support innovativeness, promote a culture of technology and foster relations between public authorities, enterprises and the education sector. They advocate for the spirit of entrepreneurship by encouraging to apply research results in the industry and in the world of business.

The flagship effort of the HTF is the E(x)plory Program, connecting young scientists and scientific experts, start-ups and large enterprises, non-governmental organisations and public institutions, national and regional Polish media, educators and top universities, large cities and small towns. E(x)plory is the biggest Polish initiative supporting talented youth in implementing innovative science projects and endorsing their achievements on the international front.

Answer key for the quizzes

Protection of industrial property

1a, 2c, 3c, 4b, 5a, 6a, 7c, 8c, 9c, 10c, 11c, 12c, 13c, 14b, 15c

Fundamentals of copyright

1a, 2c, 3c, 4c, 5a, 6a, 7b, 8c, 9a, 10b, 11c, 12b, 13b, 14b, 15b

Intellectual property protection strategies

1b, 2a, 3a, 4c, 5b, 6a, 7b, 8a, 9d, 10c, 11c, 12a, 13a, 14b, 15a

Notes

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