

WHAT IS INTELLECTUAL PROPERTY (IP) ?

A SHORT INTRODUCTION TO
THE IP SYSTEM

OUTLINE

- Introduction
- Why does IP matter ?
- Patents
- Industrial Designs
- Trademarks
- Geographical Indications
- Copyright and related rights

WHAT IS IP ?



Intellectual property (IP) refers to **creations of the mind** – everything from works of art to inventions, computer programs to trademarks and other commercial signs.

WHY DOES IP MATTERS ?



- IP rights encourages inventors, artists, scientists and business to develop their innovations and creations, by giving them a chance to **make a fair return on their investment**

DIFFERENT TYPES AND CATEGORIES OF IP

Industrial Property

- Patents
- Industrial designs
- Trademarks
- Geographical Indications

Copyright and related rights

- Literary, artistic and scientific works, including performances and broadcasts



Striking a balance between rights and interests of different groups (creators vs. consumers, businesses vs. competitors, high vs. low income countries...)

PATENTS

- Exclusive rights over an invention – stop anyone from using, making, selling the invention without permission.
- Protection for a limited period of time (20 years)
- Disclosure

WHAT CAN BE PATENTED?



Invention: a product or process that offers a new way of doing something, or a new technical solution to a problem

- Utility
- Novelty
- Inventive step (non obvious)
- Not fall under non patentable subject matter (*<insert country specific rule if applicable>*)

OBTAINING PATENT RIGHTS AND ENFORCEMENT

Obtaining a patent

- Application
 - Description of invention
 - Claims
 - Examination
- Patents are **TERRITORIAL**

Enforcing patent rights

- Licensing
- Selling
- Prevent unauthorized use during patent period



International System – WIPO PCT System

INDUSTRIAL DESIGN

- Industrial rights cover the aesthetic or ornamental aspects of a product – the looks and feels
- Protection for a limited period of time (~ 10-15 years)
- Other ways to protect industrial designs: copyright, unfair competition, limited protection to unregistered designs

WHAT DESIGNS CAN BE PROTECTED?



Design may consist of three-dimensional features, such as the shape or surface of an article, or two-dimensional features such as patterns, lines or color.

- New
- Original
- Capable of being produced industrially (does not cover unique artworks)

INDUSTRIAL DESIGNS RIGHTS

Obtaining Industrial design rights

- Industrial design rights entitle the right holder to control the commercial production, importation and sale of products with the protected design.
- Industrial designs are **TERRITORIAL**

Enforcing design rights

- Licensing
- Selling
- Prevent unauthorized use during patent period



International System – WIPO Hague System

TRADEMARKS

- A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises.
- Limited period of protection (~ 10 years) but renewable indefinitely

DIFFERENT TYPE OF TRADEMARKS

- Words, letters, numbers, symbols, colors, pictures, three-dimensional signs such as shapes and packaging, holograms, sounds, even tastes and smells.
 - Distinctive \neq generic description
 - Not identical or very similar to a trademark already registered or used for that type of product or service
 - Not misleading, deceptive or violating public order or morality
- Other specific types of trademarks
 - Collective marks
 - Certification marks

PROTECTING TRADEMARKS

- Registration and Use
 - Submit reproduction of mark to the trademark office
 - Full list of goods and services to which it would apply
- Exclusive right to control who uses it: they can use it to identify their own goods or services, or license or sell it for someone else to use.
- Trademark protection is TERRITORIAL



International System – WIPO Madrid System

GEOGRAPHICAL INDICATIONS

- A geographical indication (GI) is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin.
 - Examples of geographical indications – often food and drink, such as Roquefort cheese from France, Darjeeling tea from India and Tequila liquor (<insert examples from your country if relevant>)
- Appellations of origin (AO) are a type of geographical indication

PROTECTING GEOGRAPHICAL INDICATIONS

3 MAIN WAYS

- Special GIs laws – sui generis system
- Using collective or certification marks
- Methods focusing on business practices, including administrative product approval schemes

Rights for collective use by those who comply with defined standards

- Allows legitimate producers, to use the law to stop a GI being used on goods produced elsewhere or to a different standard

→ International System – WIPO Lisbon System (AOs and GIs)

COPYRIGHT AND RELATED RIGHTS



- Copyright, or authors' right, is a legal term used to describe the rights that creators have in their literary, artistic and scientific works.
 - Books, music, paintings, sculpture and films, but also computer programs, databases, advertisements, maps and technical drawings, among other things.
 - Rights of performers, broadcasters and producers of sound recordings.

Copyright **DOES NOT** cover ideas themselves, procedures, methods of operation, or mathematical concepts.

WHAT RIGHTS DOES COPYRIGHT PROVIDE ?

- Economic and moral rights
- Transferrable economic rights
 - Licensing
 - Assignment
 - Inheritance
- Examples: Assignment of rights to publishers in exchange of royalties, licensing or assigning rights to collective management organizations (CMOs), allow free use of the work based on certain conditions such as Creative Commons Licenses...

COPYRIGHT MINIMUM STANDARD OF PROTECTION

- Automatic protection – no registration formalities
- Protection throughout the life of the creator + 50 years after the creator's death
- International law means that copyrighted works are protected in most countries, not just where they were created

LIMITATIONS TO COPYRIGHT PROTECTION

International Three step test

Reproduction is permitted under Article 9.2 Berne Convention

In special cases

Does not conflict with normal exploitation of the work

Does not unreasonably prejudice the legitimate interests of the author

Civil Law

National IP laws can list certain limitations, such as

Private use

Work in public domain

Quotation

Parody

Fair Use

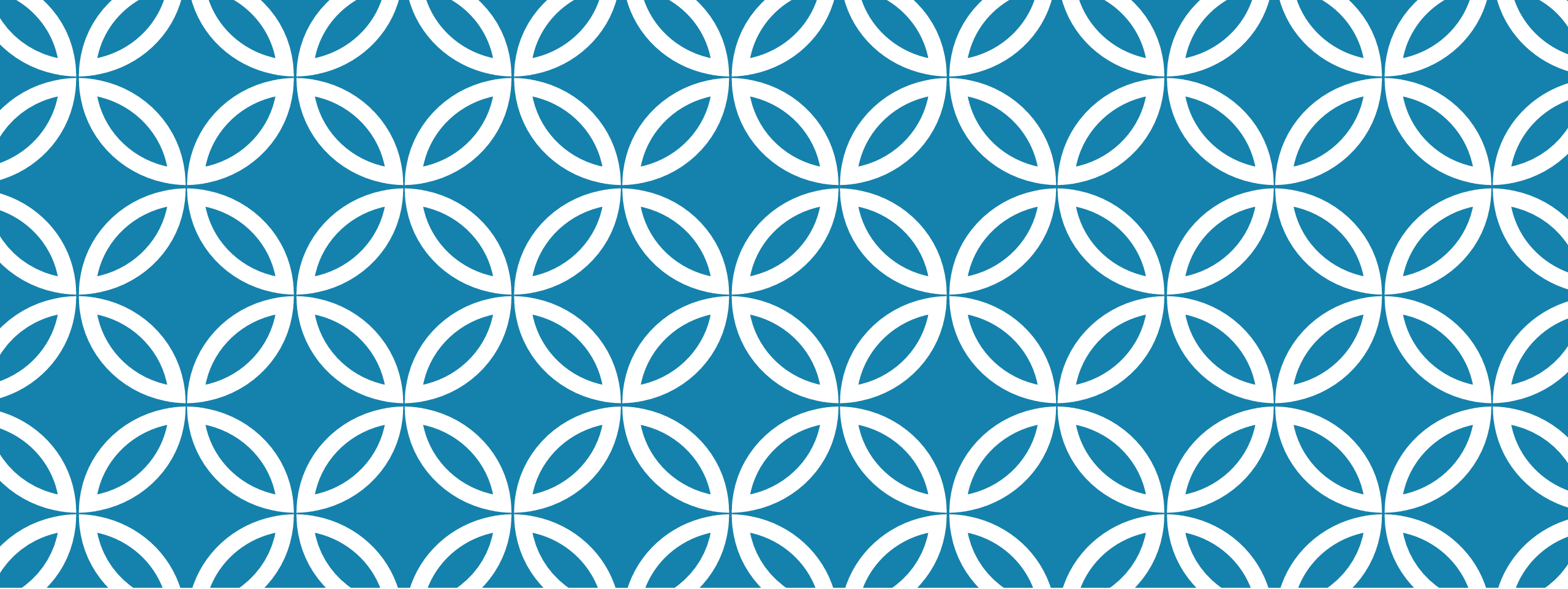
Under the US system, the reproduction is fair use depending on 4 factors

Purpose and character of the use

Nature of the copyrighted work

Amount and substance of the original work used

Effect of the use upon the copyright owner's potential market



THANK YOU FOR YOUR ATTENTION

For more information please refer
to WIPO publication “What is
Intellectual Property” , 2020
https://www.wipo.int/edocs/pubdocs/en/wipo_pub_450_2020.pdf