



3rd March 2018 – Glenamaddy - Ireland

Introduction to Intellectual Property (IP) and Intellectual Property Rights (IPR)

- Trade marks
- Copyright

KA219 - Strategic Partnerships

Project: “Entrepreneurship: Imagination at Work”

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Key questions

- *What is meant by “intellectual property” and “intellectual property rights”?*
- *Which are the IP protection tools available?*
 - *Patent*
 - *Utility Model*
 - *Industrial Design*
 - *Trademark*
 - *Copyright*





Intellectual Property

UNREGISTRABLE

COPYRIGHT & related rights

- Literary & Artistic Works
- Related rights
- Databases
- Software
- Operas – music
 - choreography
 - movies
 - photography

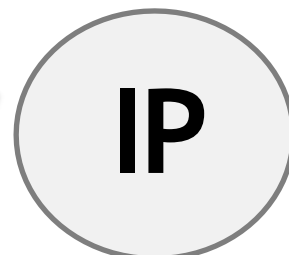
1886 Berne Convention



INDUSTRIAL PROPERTY

- Patents
- Utility models
- Trademarks
- Industrial Designs
- Indications of provenance
- Semiconductors topography

REGISTRABLE



'SOFT IP'

- Secrets
- Know-How
- Confidentiality



1883 Paris Convention



Soft IP

Soft IP

No specific definition

“Soft IP” are intellectual assets which are not included in industrial property or in literary and artistic works, but have an important value for organisations.

Soft IP components

Know-how, trade secret, confidential information

Protection of Soft IP

- **Are not protected** by registration and specific IP legislation
- Fall under the category of **intangible rights** – associated with other IPR
- **Free of charge**
- Do not involve long or complex registration-processes , **BUT** require internal management



Patent

What is a patent?

It is a title providing the *inventor* and/or the *applicant* with the **exclusive right** to prevent others from possessing, using, selling, manufacturing and importing the patented invention or offering to do any of these things within a definite geographical area.

What can be patented?

Patents maybe granted for any invention concerned with the *functional* and *technical* aspects of *products* and *processes*. To qualify for patent protection the invention must fulfill the so-called **conditions of patentability**:

- *Novelty*
- *Inventive step (non-obviousness)*
- *Industrial Applicability (utility)*
- *Patentable subject matter*



Patent application

How to apply for a patent?

NATIONAL PATENT

Patent applications need to be filed before your National Patent Office (NPO).

**Duration of protection:
20 years, without
renewal**

EUROPEAN PATENT

One single application, in one official language may be filed:

- at your NPO, or
- at European Patent Office (EPO).

EPO grants patents having the effect of a national patent in designated countries (max. 38). You may decide to maintain it in force in some or all of them.

INTERNATIONAL PATENT

By filing an international application, patent protection can be obtained in each designated states between 133 worldwide. PCT applications may be submitted:

- to your NPO,
- to the EPO, or
- to the WIPO.



Utility model

What is a utility model?

It is a title of protection for **certain inventions**, such as inventions in the mechanical field. Utility models are usually sought for **technically less complex** inventions or for inventions that have a **short commercial life** and normally **do not meet the patentability criteria**.

The **requirements** for acquiring a utility model are less stringent than for patents. While the “novelty” requirement must always be met, that of “inventive step” or “non-obviousness” may be much less or even absent altogether.

In the **EU** only **17** countries provide registration process. The latter is often significantly simpler and faster, taking - on average - six months. Finally, utility models are **much cheaper to obtain and to maintain**.

**Duration of protection:
between 6 & 10 years
without renewal**



Industrial design

What is an industrial design?

It refers to the right granted in many countries to protect the **original, ornamental and non-functional features** of a product that result from design activity.

The right concerns merely the **appearance** (the 'design') of a product, not the product itself. It allows the owners to exclude others from making, importing, selling, hiring or offering articles for sale in which the design is embodied.

What can be protected?

It maybe granted for **visual features** of a product (i.e. shape, ornamentation, pattern, configuration, etc.). Designs that are dictated solely by the article's **function** are excluded from protection.

To qualify for protection the design must show:

- *Novelty*
- *Individual character*



Design registration

How to register a design?

NATIONAL DESIGN

An application must be filed before your National Intellectual Property Office (NIPO).

**Duration of protection:
up to 25 years, without
renewal**

EUROPEAN DESIGN

One single application, in one official language may be filed at the Office for the Harmonisation of the Internal Market (OHIM) in Alicante – Spain. A CRD is legally enforceable and enjoy uniform protection throughout the territory of the European Union

INTERNATIONAL DESIGN

By filing an international application, to WIPO in Geneva you may be able to obtain the protection in several states that are members of The Hague system.



Trademark

What is a trademark (TM)?

It is a **sign**, or a combination of signs, used in the trade to **identify** and **distinguish** the **goods or services** of one enterprise from those of another. A trademark owner is granted exclusive rights to:

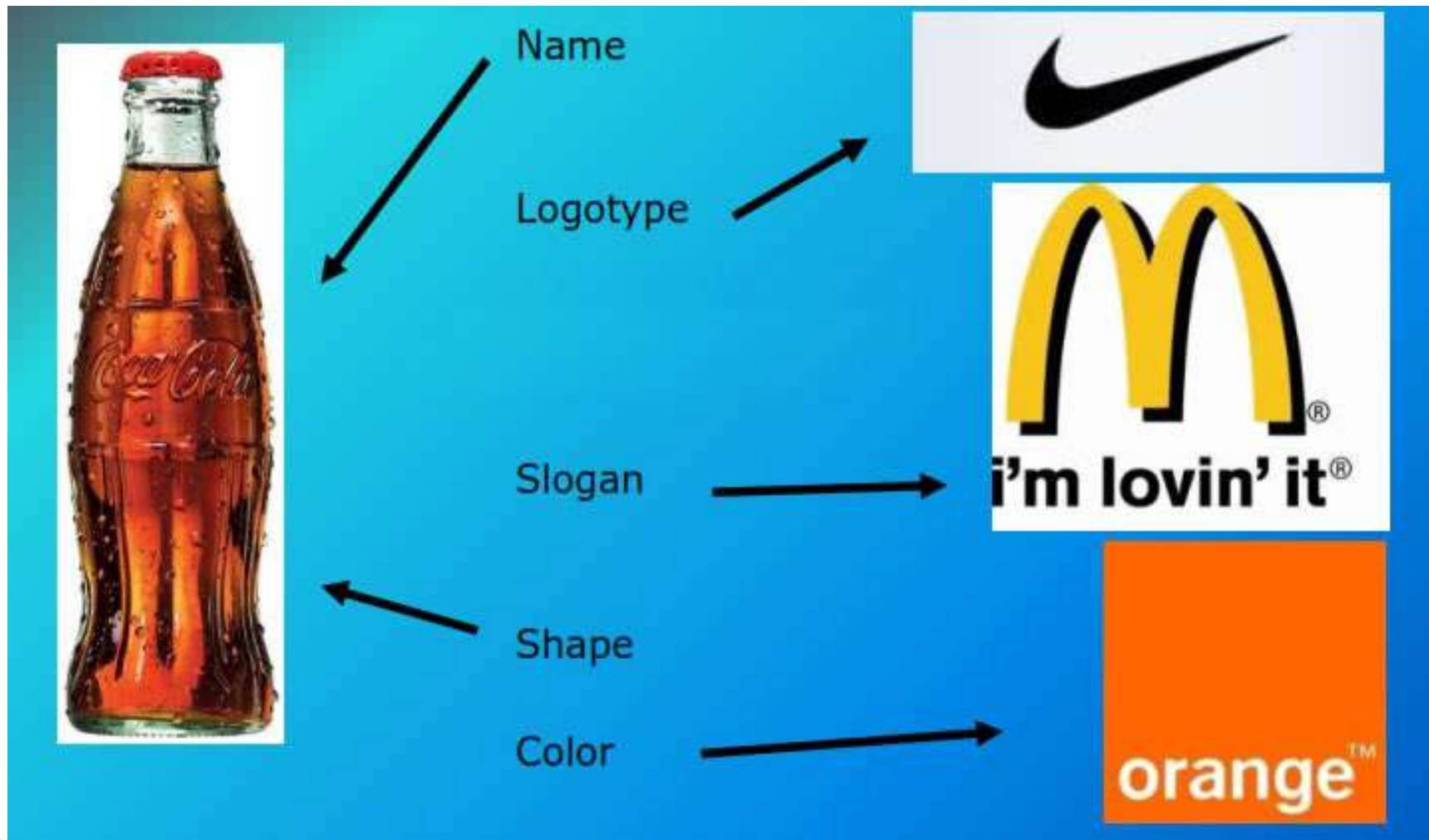
- *use the mark in relation to the good or services with respect to which it is registered*
- *prevent others from using a substantially identical or deceptively similar mark in relation to the goods or services registered by the mark.*

What can be protected as trademark?

Words, letters, numerals, pictures, shapes and colours, as well as any combination of the above.

It is now allowed for the registration of less traditional forms of trademark, such as **three-dimensional signs** (like the Coca-Cola bottle), **audible signs** (sounds, Nokia jingle), or **olfactory signs** (smells, such as perfumes - “a floral fragrance/smell reminiscent of roses).

Trademark





Trademark

Trademarks normally perform **four main functions**:

- ***Distinguishing the products or services*** of one enterprise from those of other enterprises
- ***Referring to a particular enterprise*** which offers the products or services on the market
- ***Referring to a particular quality of the product or service*** for which it is used
- ***Promoting the marketing and sale of products***, and the marketing and rendering of services.



Trademark requirements

Which are the requirements to seek registration?

In order for a sign to be eligible for a trademark protection it must:

- *Be distinctive*
- *Not be deceptive*
- *Not be descriptive*
- *Not belong to the exclusions* provided by the law
- *Be in conformity with public order and morality.*

**Duration of protection:
10 years, renewable
indefinitely**



Trademark classification

Your application for a European Union trade mark must contain a representation of the trade mark you want to register and a list of the goods and/or services to be covered by the mark.

There are certain rules for how to present the list of goods and services:

- The goods and services should be specified as accurately and precisely as possible.
- They should be classified under one of the classes of the Nice Classification.

The European Union Intellectual Property Office (EUIPO) has adopted the Nice Classification for classifying goods and services.

The Nice Classification divides the goods and services into 45 categories (or classes).



Trademark registration

How to register a trademark?

NATIONAL TM

Applications must be filed before your National TM Office
Registrations can be cancelled if the holder is not using a mark.

Aprox. 200 €

EUROPEAN TM

One single application, in one official language may be filed at the Office for the Harmonisation of the Internal Market (OHIM) in Alicante – Spain. ACTM is legally enforceable and enjoy uniform protection throughout the territory of the European Union

Aprox. 1500 €

INTERNATIONAL TM

By filing an international application, TM protection can be obtained in each states member of the Madrid system, designated by the applicant. Applications may be submitted:

- to your National trademark Office
- to the OHIM
- to the WIPO.

Aprox. 8500 €



Well-known trademark

Well - known (famous) trademarks are entitled to protection without registration.

(Art 6bis of the Paris Convention)

Trademarks symbols:

TM - trademark for products

SM - trademark for services

® - registered trademark and legally protected

Fake trademarks



Visual identification of original logos

1



A



B

2



A

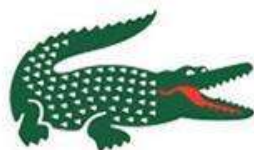


B



Visual identification of original logos

3

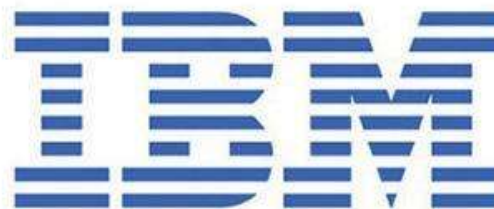
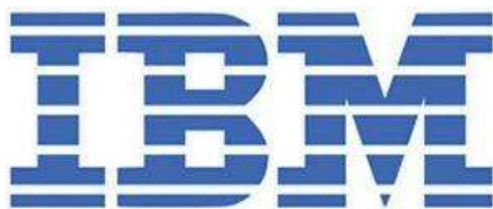


LACOSTE LACOSTE

A

B

4



A

B

Visual identification of original logos

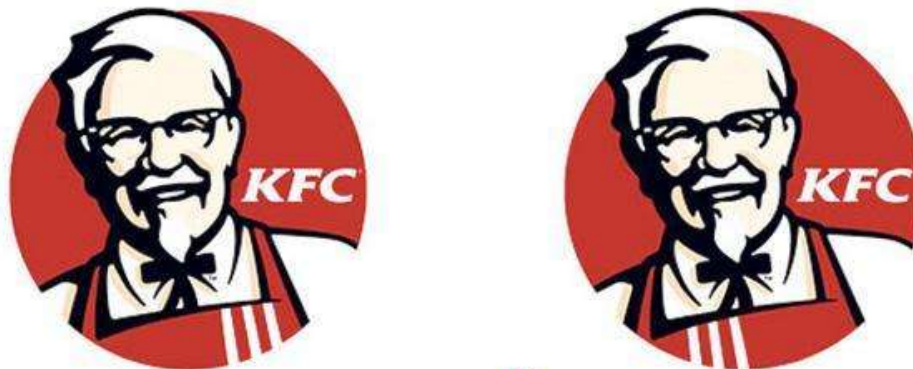
5



A

B

6



A

B



Visual identification of original logos

7



A



B

8



A



B



Copyright

Main aspects

Copyright is the **exclusive right** of the creator **to the distribution and reproduction** of his/her work.

Copyright is automatic and **no registration** is required.

Copyright is **temporary**: in general, in Europe, it lasts until the death of the last surviving author + 70 years.

Copyright is **territorial**: there are currently 28 different (but partially harmonised) copyright systems in the EU.



Copyright

Only original expressions of ideas are protected by copyright law.

Ideas are not protected.

Facts are not protected.

The European Court of Justice defines originality as **‘the Author’s own intellectual creation’**.

Works protected by copyright include paintings, drawings, photography, letters, books, posters, maps, some fashion, architecture, poems, song lyrics and oral history websites content, computer software

Generally,
protection lasts for
70 years after the
death of the creator.





Rightsholders

In principle the **creator is the rights holder** of his/her work.

Rights can be transferred, sold and inherited.

A **work can have multiple rights holders**, e.g. rights in one audiovisual work may belong to the producer, director, performer, songwriter etc.



COLLECTIVE MANAGEMENT

Basic functions of collective management

- Negotiations with users on remuneration and other licensing conditions
- Setting and publishing tariffs
- Licensing uses
- Monitoring uses
- Enforcement of rights
- Collection of remuneration
- Distribution of remuneration



COLLECTIVE MANAGEMENT

Main fields of collective management

- Authors' musical „performing” rights
- Authors' musical „mechanical” right
- Performers' and producers of phonograms' right to single equitable remuneration concerning broadcasting and communication to the public of phonograms published for commercial purposes
- Interactive right of making available to the public in musical works and concerning the rights of performers
- Cable retransmission right
- Public performance right in dramatic works
- Reprographic reproduction right
- Right to remuneration for private copying
- Authors' and performers' „residual” right to remuneration after the transfer of their rental right to producers
- Resale rights (*droit de suite*)



COLLECTIVE MANAGEMENT

„Performing rights” – remuneration systems

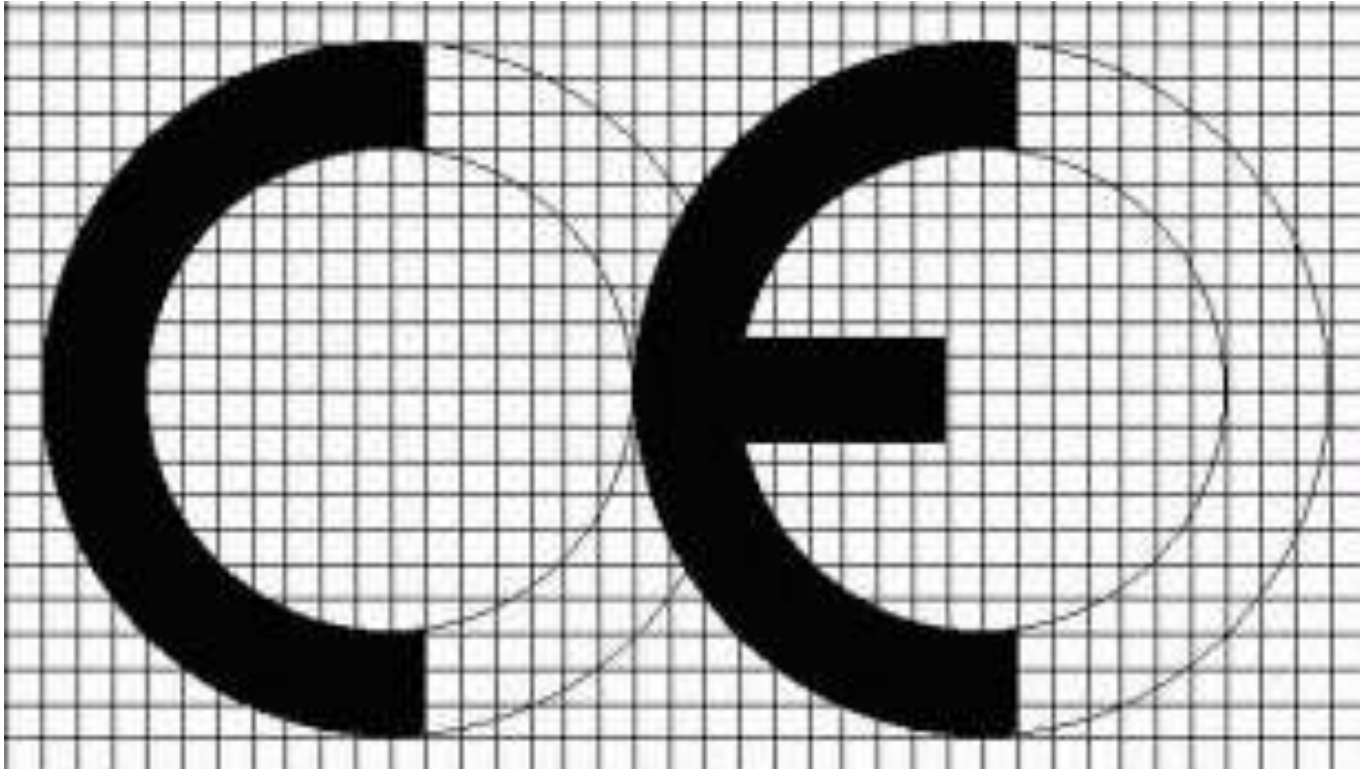
Main methodological criteria for tariffs in respect of the **use of rights of authors of musical works for broadcasting, cablecasting, webcasting and simulcasting:**

- In case of **broadcast programs**, the tariffs may take **two basic forms**: (i) a **lump sum-type percentage** where it is not measured and calculated what part of the programs music may play, in which case the percentage **may be lower** (such as from **public subsidy 1%**, from **subscription fees 2%**; from the income of **advertisement and sponsorship 4%**), but not lower than a **minimum tariff** to be taken into account irrespective of availability of the incomes; (ii) where the tariff is **calculated more or less precisely according to the part of music within the program** (for example, up to 25% or 50% or 75% or more percentage of the program), **in the case of the lowest percentage, the tariff may be lower** (for example, from **public subsidy 1%**; from **subscription 1.5%**, from **advertisement incomes 2%**), while in the case of the **highest percentage, it may be correspondingly higher** (from **public subsidy 1%**, from **subscription 4%**, from **advertisement income 8%**).



Erasmus+

CE MARKING





WHAT IS CE MARKING?

CE marking is a certification mark that indicates conformity with health, safety, and environmental protection standards for products sold within the European Economic Area (EEA).

The CE marking is also found on products sold outside the EEA that are manufactured in, or designed to be sold in, the EEA.

This makes the CE marking recognizable worldwide even to people who are not familiar with the European Economic Area. It is in that sense similar to the **FCC Declaration of Conformity** used on certain electronic devices sold in the United States.

EU Member States have an obligation to find and remove unsafe products from the EU market.

Market surveillance is a responsibility of each Member State.

Member States exchange experiences and best practice examples.



CE DECLARATION OF CONFORMITY

It is the manufacturer's responsibility to draw up and sign an "EC declaration of conformity" proving that the product meets the requirements. After that your CE-marked product is ready for the market.

Declaration of performance under Regulation (EU) 305/2011 on Construction products .



DECLARATION OF PERFORMANCE

No.

1. Unique identification code of the product-type:
2. Intended use(s):
3. Manufacturer:
4. Authorised representative:
5. System(s) of AVCP:
- 6a. Harmonised standard:
- Notified body(ies):
- 6b. European Assessment Document:
7. Declared performance(s):
8. Appropriate Technical Documentation and/or Specific Technical Documentation:

The performance of the product identified above is in conformity with the set of declared performance(s). This declaration of performance is issued, in accordance with Regulation (EU) No 305/2011, under the sole responsibility of the manufacturer identified above.

Signed for and on behalf of the manufacturer by:

[name]

At [place] on [date of issue]

One product - many IP rights

Trade marks

- NOKIA
- Product "208"
- Start-up tone

Copyright

- Software
- User manuals
- Ringtones
- Start-up tone
- Images



Patents and utility models

- Data-processing methods
- Operating system
- Operation of user interface

Designs

- Form of overall phone
- Arrangement and shape of buttons
- Position and shape of screen

Trade secrets

- Some technical know-how kept "in-house" and not published