



INTELLECTUAL PROPERTY RIGHTS

Training handbook



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Intellectual property (IP) refers to creations of the mind: inventions; literary and artistic works; and symbols, names and images used in commerce. In other words, IP can be seen as a bundle of property rights that protect “creations of the mind”. Intellectual property rights (IPR) are like any other property right. They allow creators, or owners, of patents, trademarks or copyrighted works to benefit from their own work or investment in a creation. These rights can be crucial for your business, as not only can they be used to protect your own creations, but also provide useful business tools that can be exploited commercially.

When entrepreneurs embark on a unique business idea that they have no doubt would be a commercial success in the market, their prime focus initially is how to actually start giving shape to the venture. In the midst of numerous things that go into building a start-up from scratch, the word ‘Intellectual Property Rights’ is often not their priority. And even if they consider IP protection, it seems too expensive a proposition for a start-up to act on. But entrepreneurs should remember that assessing IP implications is not just about protecting the work you are doing. It is also to check if someone else has an IP for similar work. Often, there could be others in different parts of the world working on a similar idea, which you may not be even aware of.

But it’s not just at the start-up stage that IPR is important. Businesses are constantly reinventing and redefining themselves in today’s day and age, where change is the only constant. This means greater focus on innovations, which in turn, means a greater need to protect IP. The importance of IPR cannot, (and should not) be undermined by start-ups, and established companies alike, because of the long-term sustainable advantages it offers.

Every business will have some form of Intellectual Property (IP). Different forms of IP may be used to protect different aspects of your business. Not all IP rights may apply to your particular field of business, but many will, and understanding not only your rights but those of your competitors will put you on a sound commercial footing. An understanding of IP and IPRs is an increasingly important aspect entrepreneurs and business life. Successful management of IPR provides the means by which individuals and institutions are able to protect their creative output from imitators. Ultimately, it is the company's responsibility to ensure that its IPR are properly protected.

This training will equip participants with the knowledge and confidence to understand and explain the importance of the IP, the nature of different IP rights, what they protect, and how the rights can be obtained and how they could be best commercialised. The workshop is well structured and covers various aspects on Intellectual Property Rights (IPRs) that are concerned with the protection of tangible and intangible property. The training material is based on interactive learning, experiential activities and facilitative training style. A variety of proprietary training tools, activities, group discussion and reflective circle is used.

During the trainings 15% of the time will be devoted to explanations and theoretical aspects of relevant background material and 80% devoted to working on practical cases, provided tools, development of own ideas.

Duration: one day

Language: English

Target group: university students from different subjects, potential entrepreneurs, founders and start-up enthusiasts.

Number of participants: 20+

The aim of the training to encourage widespread awareness and understanding of the role that intellectual property plays in fostering a creative and innovative culture.

Training Objectives:

- to impart greater awareness about the need and importance of IPR;
- to enable participants to have confidence explaining the different types of business protection. Give examples of companies that use the particular protection and why;
- to enable participants to demonstrate a clear understanding of the types of business they are designed to protect, to give examples of companies that use this protection and why.

Training format: workshop. This format is used for some reasons:

- It is creative problem solving
- Strengthens the teamwork
- Provide an opportunity for participants to learn something new
- Provide a space and a time for participants to make headway on problems they are interested in

Training activities plan:

- PowerPoint Presentation with learning material on subject topic
- Working in groups
- Reflection

The day is broken up into four sessions, separated by a lunch break and coffee/ tea breaks in the morning and afternoon. Participants will be actively encouraged to participate in group discussions and work. The trainer will draw on both theoretical and practical knowledge in order to make the experience and learning applicable to the real problems to be solved.

Intellectual property (IP) is the overall term for property in the creation of the mind, including inventions, literary and artistic works, but also images, and designs. There are two distinct categories of IP: copyright, which includes literary and artistic works and industrial property, which includes inventions protected by patents, trademarks, industrial designs, and geographical indications.

Intellectual property rights (IPR) are legal rights aimed at protecting the creations of the intellect, such as inventions, the appearance of products, literary, artistic and scientific works and signs, among others.

Intellectual property (IP):

- Just because something is not tangible
- It does not mean we do not own it
- Have you ever had a good idea and somebody has tried to pretend it was their idea?
- Annoying isn't it?!

The term IP is also used to denote things for which no explicit legal right is provided. An invention can be protected by a patent. An original work of authorship is protected by copyright. A distinctive product name can be registered as a trademark. But for instance, a domain name or a trade secret can be considered IP but there is no separate legal right to protect these. Hence, they cannot be called IPR.

Countries have laws to protect intellectual property for two main reasons:

- 1) to give statutory expression to the moral and economic rights of creators in their creations and the rights of the public in access to those creations;
- 2) to promote, as a deliberate act of Government policy, creativity and the dissemination and application of its results and to encourage fair trading which would contribute to economic and social development.

Intellectual property law aims at safeguarding creators and other producers of intellectual goods and services by granting them certain time-limited rights to control the use made of those productions. Those rights do not apply to the physical object in which the creation may be embodied but instead to the intellectual creation as such.

Intellectual property is traditionally divided into two branches:

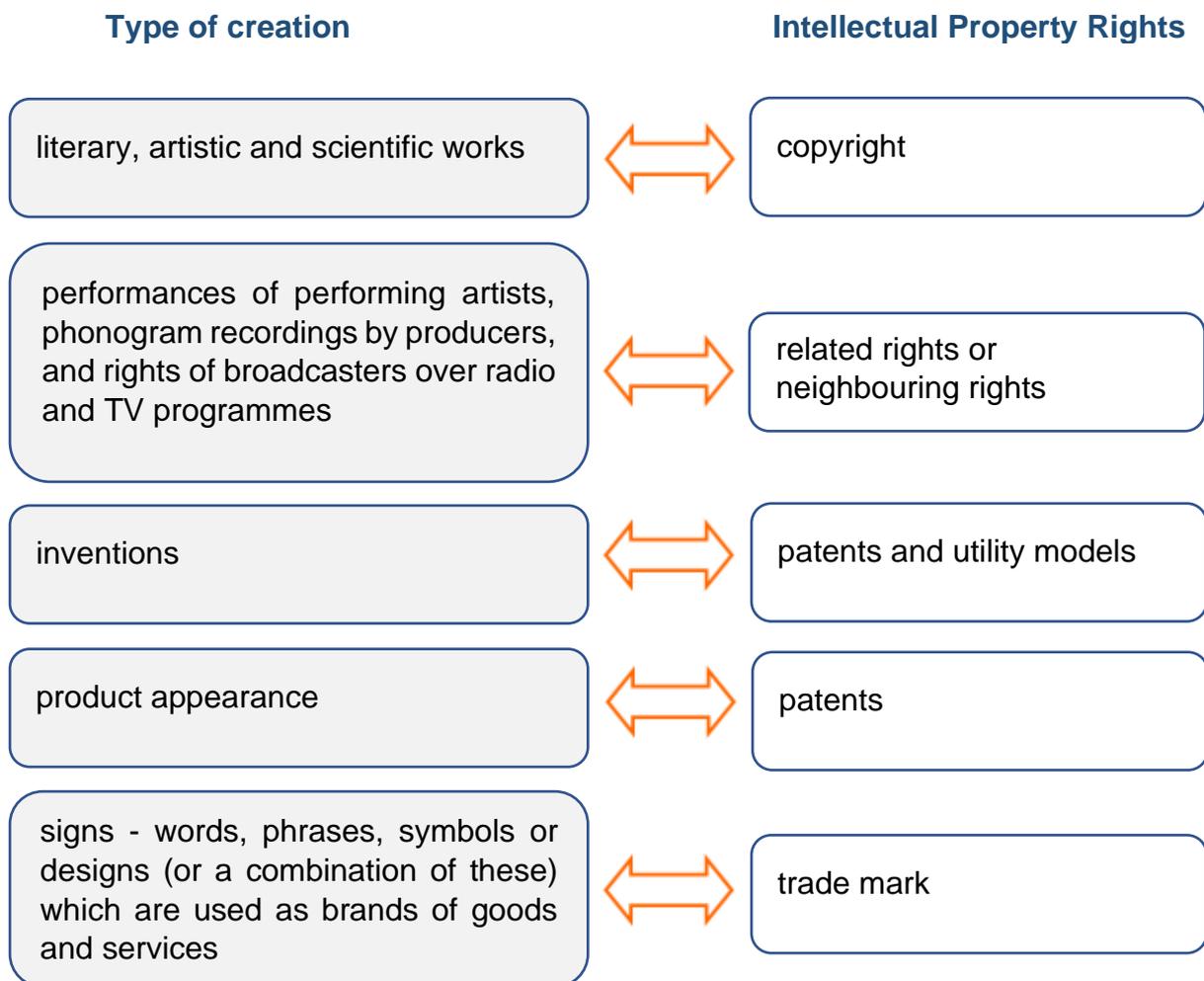
- **Industrial property** where the owner is granted monopolistic rights to technical or aesthetic inventions as well as exclusive marks. It bears relation with patents of inventions, design, industrial objects' samples and references of the place of origin or names; it covers inventions and industrial designs. Industrial property includes trademarks, service marks, commercial names and designations, including indications of source and appellations of origin, and protection against unfair competition. Industrial property typically consists of signs transmitting information to consumers, in particular as regards products and services offered on the market, and that the protection is directed against unauthorized use of such signs which is likely to mislead consumers, and misleading practices in general.
- **Copyright** which is also referred to as the rights owned by writers or artists, protects not only works of literature or art but also music, TV shows, software, data bases, advertising and multimedia (such as novels, poems, plays, films, musical works, drawings, paintings, photographs, sculptures, and architectural design etc).



The Convention Establishing the World Intellectual Property Organization (WIPO) provides that **IP shall include rights** relating to:

- literary, artistic and scientific works,
- performances of performing artists, phonograms and broadcasts,
- inventions in all fields of human endeavour,
- scientific discoveries,
- industrial designs,
- trademarks, service marks and commercial names and designations,
- protection against unfair competition,

- all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.



The areas mentioned as literary, artistic and scientific works belong to the **copyright** branch of intellectual property. The areas mentioned as performances of performing artists, phonograms and broadcasts are usually called “related rights,” that is, rights related to copyright. The areas mentioned as inventions, industrial designs, trademarks, service marks and commercial names and designations constitute the **industrial property** branch of intellectual property.

Types of intellectual property rights

Intellectual property are those assets of a business that are intellectual—in other words, not physical—such as copyrights, patents, and trademarks. But many business owners

mix up the different types of IPR, which makes it difficult for them to ask the right questions and learn how to make decisions to protect their creations.

There are common types of intellectual property all around us in our daily lives. From the media to the very furniture you use, the buildings that offer you shelter, the songs you hear on radio etc.



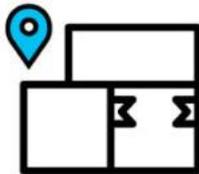
Copyrights



Trademarks



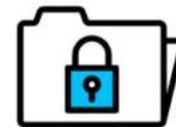
Industrial Designs



Geographic Indications



Patents



Confidential Information

COPYRIGHT

Copyright is the exclusive rights given to creators for their work. Copyrights are creative works that have been *fixed in a tangible form*. For example, these may include writings, songs, photos, video, paintings, sculptures, audio recordings, dance choreography, computer programs etc. For example, if you draw a painting, all rights to it are yours including usage, derivative works and reproduction. Most countries besides also recognize the “moral rights” of the author, where even if the author has licensed or sold rights to their work, they still have a right to attribution and to take their name off the work if it would hurt the author’s reputation.

“**Fixed in a tangible form**” means that it isn’t just in your head or something you speak or perform—it has been saved in some physical way (which may include in an electronic form).

TRADEMARK

A trademark is the rights to the unique logo, brand and brand name that the public uses to identify you (e.g. words, symbols, colors, sounds, or smells) that someone is using in conjunction with a product or service. Examples include the name Pepsi, the Nike's 'Just Do It' tag line, the Apple logo, or the shape of a Coca Cola bottle. In some ways, trademarks are not property, exactly, because trademark law is designed to protect consumers from confusion and counterfeits—not to reward businesses for their tag lines and logos. Unlike copyrights and patents, trademark protection can theoretically last forever, as long as the business is still using the trademark in conjunction with their product or service. An increasingly difficult task is ensuring that whatever intellectual property you wish to register as a trademark is distinctively unique and not in any way similar to another brand as to cause confusion.

CONFIDENTIAL INFORMATION/TRADE SECRET

It concerns to the information that is not meant for the public eye. It could be described as a secret information used by a business that derives its value from being secret, and where the business is invested in protecting that secrecy. For example, trade secrets, plant secrets, software, a company's marketing strategies etc. are considered confidential information. Two commonly cited examples include the recipes for Coca Cola and for the KFC "original recipe". Other types of common trade secrets include manufacturing processes, client lists, ingredients, systems, sales methods, launch strategies, and business plans. While it is difficult to protect the secrecy of a trade secret, the benefit is that the protection can theoretically last forever. There are no "official" processes to register confidential information for protection. But it's possible to protect this kind of IP through your efforts in keeping them secret, such as via non-disclosure agreements, security, and procedures.

INDUSTRIAL DESIGNS

These are the rights to particular details (e.g. shape, pattern, configuration etc) that is applied to an item by industrial means or processes. Essentially it covers the visual design of objects that are not purely functional. A purely functional object would be for example, a nut or bolt.

PATENTS

A patent is a type of grant that gives inventors exclusive rights to their inventions (similar to a copyright) for a specific amount of time. They are issued by the government to owners. The moment the patent expires (e.g. 20 years from filing in the United States), anyone else can make generic versions of your work. Patents typically cover inventions like machines, electronics, methods of production, software, methods of doing business, chemicals, and pharmaceuticals. An idea isn't patentable by itself.

Patents also prevent others from stealing your invention and ideas and manufacturing them elsewhere, using and/or selling your invention without consent etc. It must be novel, not obvious, useful, and "reduced to practice" (someone skilled in your industry must be able to read your information and make the product). Utility innovations are inventions that are new and industrially applicable.

Patents must be:

- New, not known anywhere in the world prior to filing
- Have an inventive step, not obvious or simple adaptation or combination of existing products
- Be capable of industrial application having a technical effect

NOTE! Patents are only given to new inventions that are industrially applicable and involve innovative/inventive steps. For example, if you designed a standard computer keyboard using pre-existing technology and it was no different than other computer keyboards, your invention is not likely to be patentable.

GEOGRAPHICAL INDICATIONS

This kind of intellectual property is a product from a specific location that gives it the special characteristics/quality/reputation. For example, Parmesan Cheese, Swiss watches, Scottish whiskey etc. If you do not produce the products in the specified region, you cannot use this right. The laws that govern geographical indices are under the Geographical Indications Regulations 2001.

Legal authority and background of IPR

Intellectual property rights are protected by a number of conventions initiated by two major organizations: World Intellectual Property Organization (WIPO) and World Trade Organization (WTO). Commitments undertaken the said area.

There are three areas of law that are relevant to IPR in the European Union (EU):

- **national**
- **European Union**
- **International.**



National laws involve the laws of an individual country. Each EU Member State has national authorities that address IPR laws in its country. Although, in some cases, it is the EU as a whole that has the authority to regulate IPR, national offices in specific Member States often provide registration services and information to protect IPR. If your company only does business in a limited number of Member States, it may be wise to contact the Member State's national office where your company conducts most of its business to learn about and enforce its rights at the national level.

European Union law is the “supranational law” of the EU, which comprises twenty-seven Member States. EU law works in conjunction with Member State laws and is directly applicable in Member States. If there is a conflict between EU law and a Member State's law, EU law often supersedes the Member State's national law, particularly with regard to economic and social policies. The EU is not, however, a federal government, nor is it an intergovernmental organization. The EU is a supranational institution that is based on treaties concluded by Member States. In addition to EU treaties, the EU also adopts Regulations and Directives. Regulations are self-executing and do not require the Member States to implement any additional measures. However, they are automatically binding on Member States and leave less flexibility. Directives allow Member States to determine the means of attaining that result as they normally permit some discretion as to the exact rules to be adopted.

International treaties that are relevant to IP protection are effectively those that are maintained by the World Intellectual Property Organization (WIPO), which aims to promote the effective use and protection of IP worldwide. The WIPO Convention established WIPO in 1967 with a mandate from its signatories to promote the protection of IP throughout the world through cooperation among countries and in collaboration with other international organizations. WIPO headquarters are in Geneva, Switzerland. Many international treaties that address IPR have been concluded under WIPO and will be discussed in further detail under the relevant sections.

The intention of intellectual property law is to protect the ideas, inventions etc. and the interests of their creators. By exchanging rights for disclosure or use of a creation, IP law helps promote progress while fostering a safe environment that allows creators to benefit – financial incentive being the most common benefit. This system also helps maintain economic growth as it encourages fair trade.

The driving force behind a start-up is a novel idea. Putting that idea into practice successfully is what transforms small start-ups into multibillion-dollar corporations. The purpose of intellectual property laws is to protect those ideas and concepts that underpin your start-up. A major part of your competitive advantage and attractiveness to investors is how well defined — and well protected — your IP is in your start-up's portfolio. In this way, IP is an asset to your new company, thus enhancing your commercial value.

NOTE:

IP is always given high weightage by the investors and creates good value for your venture.

Why IPR is important for start-ups?

Intellectual property is one of the most valuable assets of a start-up and patents are often chief among IP in terms of value. Typically, start-ups seek protection for inventions, logos, business names, and software. Different types of IP protection apply to these various works: **copyrights**, **trademarks**, and **patents**. For example, patents would protect an invention, copyrights would protect software, and trademarks would protect a start-up's brand name and logo.

Patents allow the start-up to prevent competitors from using their technology, which is a powerful feature that can grant unique advantages in the marketplace. Intellectual property helps your start-up:

- To protect core idea upon which the start-up is founded
- To create and maintain a competitive advantage
- To protect R & D investment (both time and money)
- To generate revenue
- To defend company
- To protect your brand (once product is sold or service is available)
- To attract investors
- To use as collateral to secure financing

From a business perspective, patents can help with driving investment and acquisitions, provide protection during partnerships and business deals, and help defend itself against patent lawsuits by others.

Safeguarding IP is much easier in the beginning phases of your business than after those ideas have become successful. IP protection puts legal checks on your competition, preventing others from infringing on and profiting from your property. A sound IP strategy from the beginning can also help attract investors, suppliers, partners, and more because this form of protection offers more security with any potential success.

While the best strategy for all forms of IP is to register as quickly as you can, **patents** are the most time-sensitive ones. But even waiting one year could put your start-up's inventions at risk. With other forms of IP, such as **copyrights, trademarks, and trade secrets**, the time constraints are less rigid. Still, you should register your IP early. Remember that with **copyrights**, you can't copyright an idea. Rather, you can only protect the idea once it's in some type of fixed medium, such as a software program or a catalogue. **With trademarks**, the law can protect your mark as soon as you begin using it, assuming that you're not infringing on another's trademark. Once you're sure the mark isn't already in use, display it on your products, website, letterhead, and business cards so that you can establish how long you've had it.

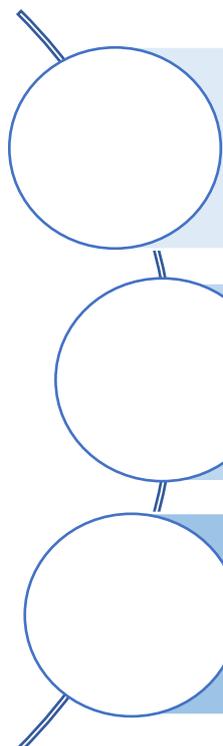
With so many things to think about — building a product, hiring a staff, fundraising, marketing, sales and more — there's often little time left for a patent strategy. The problem with this reactionary mindset is that by the time an IP problem is large enough for leadership to deal with, the entire business could be at risk. That's why having a plan upfront will save you from a lot of expense and legal hassle later on down the road.

With or Without IP protection?

With IP protection, your start-up has a legal claim to what you've registered. It means you have the right to sue when another company attempts to use IP that belongs to

you. If you win the lawsuit, the company infringing on your IP is not only prohibited from doing so further, but also may have to pay your company monetary damages.

Without IP protection, you put not only your IP at risk, but also your whole business at risk. Start-ups are often heavily dependent on their IP for competitive advantage, so unprotected intellectual property could be potentially fatal to a new company. Below are several risks your start-up takes by not protecting IP.



Someone else can patent your inventions. Imagine all the hard work you've put into your novel invention going to waste because someone else files for a patent before you. If you don't patent your invention, anyone can apply for a patent and exploit it for profit exclusively for 20 years. Even if you conceived of the invention first, the inventor who files first will be able to make money from that invention for decades.

You limit or destroy your ability to profit from your IP. When you own patents, copyrights, and other IP, that ownership allows you to make money from licensing, selling, and transferring those rights. For example, if you have a patent, but you don't have the resources to commercialize it yourself, you can license or sell the invention as a source of income. Likewise, if you don't have a copyright, others can more easily copy your work, such as a software program, without having to pay you anything for it.

You put your start-up at risk for costly litigation. If you're using a patent or trademark without proper registration, you likely do not know who else may be using that same IP. Part of registering your IP is a search for similar inventions or trademarks to make sure your IP isn't infringing on someone else's idea. Without proper registration, another company with legal rights to that IP could sue you and win, even if you invented or created that material before the other party did.

Common IP mistakes start-ups make

Start-ups often don't prioritize their IP strategy or don't have one at all. The most common — and most fatal — mistakes start-ups make with IP include:

- **Undervaluing intellectual property.** IP often is not considered equally when it comes to products, business strategies, and marketing plans. In reality, your start-up's IP is likely the most valuable intangible asset your company has. IP isn't only a legal issue. IP accounts for a larger percentage of a company's value the more successful a company is.
- **Not creating an IP strategy.** Just as you would with the marketing, supply chain, and financial aspects of your start-up, you need to develop an IP plan. A solid IP plan should include what IP assets you have, how and when you plan

to protect those assets, and how you will protect your start-up from being sued over IP.

- **Not keeping the creators communicating with the decision makers.** As your start-up grows, you'll eventually reach the point where the people who are creating your IP are separate from the people who make strategic decisions about how to protect it. Make sure your creators and deciders stay in touch. The people in charge of safeguarding your IP can't protect what they don't know about or don't understand.
- **Not protecting confidentiality.** One type of potentially valuable IP to start-ups is the trade secret. A trade secret is only protected if it stays what its name implies: a secret. For example, only two employees know the recipe for Pepsi, a protected trade secret. Confidentiality can be equally important in developing inventions and writing patents. To avoid breaches of your confidentiality, make sure you have employees, partners, and suppliers sign non-disclosure agreements (NDAs). You'll also want to password-protect all computers, limit which employees have access to certain information.
- **Failing to do a trademark search.** Before you begin using a trademark or business name, make sure you do a thorough search to see if that mark or name is already in use. If you don't take this step before you start building a brand and associating it with that mark or name, you'll lose your investment in that IP if you find out after the fact that you're infringing on a trademark from another individual or company.



Start-ups have to defy the odds to succeed. Competition is always there for new companies, and start-ups can't afford to make costly mistakes. One way you can help safeguard your new company and stay on the path toward success is by properly protecting your IP from the beginning. Not only will you insulate your start-up from legal problems later, but you'll also better position yourself for investors, partners, suppliers, and other stakeholders.

Working in groups. The training focuses on giving insight, understanding and ensuring that the acquired knowledge about IPR can be practically applied. Participants will work in groups on some practical tasks:



- To choose and present examples of different IPRs’.
- Write down at least 3 examples of firms protected by patent, copyright, trademark. Include a brief summary of why you think the business you selected would be covered by that specific protection.
- Group discussion: what companies you have selected and why for: patent, copyright or trademark.

Reflection

Feedback from the training is collected at the end of the workshop, but the best measure of the success of a workshop is the knowledge and experience gained during the training.