**Lec 1. International legal guard of intellectual property: substantive provisions.**

Intellectual property, very broadly, means the legal rights which result from intellectual activity in the industrial, scientific, literary and artistic fields. Countries have laws to protect intellectual property for two main reasons. One is 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. The second is 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.

Generally speaking, 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” and “copyright.”

The Convention Establishing the World Intellectual Property Organization (WIPO), concluded in Stockholm on July 14, 1967 (Article 2(viii)) provides that “intellectual property shall include rights relating to:

literary, artistic and scientific works,

performances of performing artists, phonograms and broadcasts,

inventions in all fields of human endeavor,

scientific discoveries,

industrial designs,

trademarks, service marks and commercial names and designations,

protection against unfair competition,

and 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. The area mentioned as protection against unfair competition may also be considered as belonging to that branch, the more so as Article 1(2) of the Paris Convention for the Protection of Industrial Property (Stockholm Act of 1967) (the “Paris Convention”) includes “the repression of unfair competition” among the areas of “the protection of industrial property”; the said Convention states that “any act of competition contrary to honest practices in industrial and commercial matters constitutes an act of unfair competition” (Article 10*bis*(2)).

The expression “industrial property” covers inventions and industrial designs. Simply stated, inventions are new solutions to technical problems and industrial designs are aesthetic creations determining the appearance of industrial products. In addition, industrial property includes trademarks, service marks, commercial names and designations, including indications of source and appellations of origin, and protection against unfair competition. Here, the aspect of intellectual creations—although existent—is less prominent, but what counts here is that the object of

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.

Scientific discoveries, the remaining area mentioned in the WIPO Convention, are not the same as inventions. The Geneva Treaty on the International Recording of Scientific Discoveries (1978) defines a scientific discovery as “the recognition of phenomena, properties or laws of the material universe not hitherto recognized and capable of verification” (Article 1(1)(i)). Inventions are new solutions to specific technical problems. Such solutions must, naturally, rely on the properties or laws of the material universe (otherwise they could not be materially or “technically” applied), but those properties or laws need not be properties or laws “not hitherto recognized.” An invention puts to new use, to new technical use, the said properties or laws, whether they are recognized (“discovered”) simultaneously with the making of the invention or whether they were already recognized (“discovered”) before, and independently of, the invention.

The World Intellectual Property Organization (WIPO) is one of the specialized agencies of the United Nations (UN) system of organizations. The “Convention Establishing the World Intellectual Property Organization” was signed at Stockholm in 1967 and entered into force in 1970. However, the origins of WIPO go back to 1883 and 1886, with the adoption of the Paris Convention and the Berne Convention respectively. Both of these conventions provided for the establishment of international secretariats, and both were placed under the supervision of the Swiss Federal Government. The few officials who were needed to carry out the administration of the two conventions were located in Berne, Switzerland.

Initially there were two secretariats (one for industrial property, one for copyright) for the administration of the two conventions, but in 1893 the two secretariats united. The most recent name of the organization, before it became WIPO, was BIRPI, the acronym of the French-language version of the name: United International Bureaux for the Protection of Intellectual Property (in English). In 1960, BIRPI moved from Berne to Geneva.

At the 1967 diplomatic conference in Stockholm, when WIPO was established, the administrative and final clauses of all the then existing multilateral treaties administered by BIRPI were revised. They had to be revised because member States wished to assume the position of full governing body of the Organization (WIPO), thus removing the supervisory authority of the Swiss Government, to give WIPO the same status as all the other comparable intergovernmental organizations and to pave the way for it to become a specialized agency of the United Nations system of organizations.

Most of the intergovernmental organizations now called specialized agencies did not exist before the Second World War. They were created for the specific purpose of dealing with a particular subject or field of activity at the international level. However, some intergovernmental organizations, such as the International Labor Office (ILO), the Universal Postal Union (UPU) and the International Telecommunication Union (ITU) were in existence, and had become the responsible intergovernmental organizations in their respective fields of activity long before the establishment of

the United Nations. After the United Nations was established, these organizations became specialized agencies of the United Nations system.

Similarly, long before the United Nations was established, BIRPI was the responsible intergovernmental organization in the field of intellectual property. WIPO, the successor to BIRPI, became a specialized agency of the United Nations when an agreement was signed to that end between the United Nations and WIPO which came into effect on December 17, 1974.

A specialized agency, although it belongs to the family of United Nations organizations, retains its independence. Each specialized agency has its own membership. All member States of the United Nations are entitled to become members of all the specialized agencies, but in fact not all member States of the United Nations are members of all the specialized agencies. Each State decides for itself whether it wants, or does not want, to become a member of any particular specialized agency. Each specialized agency has its own constitution, its own governing bodies, its own elected executive head, its own income, its own budget, its own staff, its own programs and activities. Machinery exists for coordinating the activities of all the specialized agencies, among themselves and with the United Nations, but basically each agency remains responsible, under its own constitution, to its own governing bodies, which are the States members of the organization.

The agreement between the United Nations and WIPO recognizes that WIPO is, subject to the competence of the United Nations and its organs, responsible for taking appropriate action in accordance with its basic instrument and the treaties and agreements administered by it, *inter alia*, for promoting creative intellectual activity and for facilitating the transfer of technology related to industrial property to developing countries in order to accelerate economic, social and cultural development.

The mission of WIPO is to promote through international cooperation the creation, dissemination, use and protection of works of the human mind for the economic, cultural and social progress of all mankind. Its effect is to contribute to a balance between the stimulation of creativity worldwide, by sufficiently protecting the moral and material interests of creators on the one hand, and providing access to the socio-economic and cultural benefits of such creativity worldwide on the other.

WIPO’s place on the international scene has greatly changed since its beginnings, when it was created to serve as the secretariat of treaties concluded between States. Although WIPO has maintained this function (it currently administers 23 such treaties), together with the consequential one of promoting intergovernmental cooperation in the administration of intellectual property, its activities have not only expanded, but also greatly diversified.

An outstanding example of the expansion of WIPO’s earlier work is the growth of its registration activities—that is to say, the increase in the use of international treaties that create the facility of a single procedure to apply for patents and register trademarks and industrial designs, valid in up to all States party to those treaties. The Patent Cooperation Treaty (PCT), the Madrid Agreement and Protocol Concerning the International Registration of Marks, and the Hague Agreement Concerning the International Deposit of Industrial Designs have all given rise to an increased volume of registration activities. To strengthen this aspect of WIPO’s work, a new international treaty, namely, the Patent Law Treaty, came into existence in June 2000: its purpose is

to streamline application procedures and to reduce the cost of obtaining simultaneous patent protection in several countries.

In its more recent history, WIPO increasingly does not stop short of promoting all kinds of intellectual property. This is only the means to achieve an end, which is to promote human creativity that results in industrial and cultural products and services enriching human society as a whole. Thus WIPO is increasingly involved in helping developing countries, whose creativity has yet to be adequately harnessed, to receive the full benefits of the creations of their citizens, as well as those of the outside world. WIPO’s role is to assist them also in the preparation and enforcement of laws, in the establishment of sound institutions and administrative structures and in the training of appropriate personnel. WIPO has given particular attention to the 49 Least Developed Countries (LDCs), as will be seen in chapter 3, and has also given similar assistance to countries whose economies are in transition, in Central Asia, Central and Eastern Europe and the Baltic region.

WIPO’s cooperation for development program is closely interwoven with governmental and intergovernmental cooperation, including WIPO’s agreement with the World Trade Organization (WTO), whereby WIPO assists developing countries in the implementation of WTO’s Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (see chapter 5).

The problem of development is compounded by rapid technological and scientific progress. WIPO’s approach is twofold: it is to identify and to promote international solutions to the legal and administrative problems posed by digital technology, especially the Internet, to the traditional notions and practices of intellectual property.

WIPO’s work in alternative dispute resolution between individuals and companies, through the WIPO Arbitration and Mediation Center (see chapter 4) has been extended to cover the problems arising from the misuse of domain names on the Internet. WIPO has been accredited by the Internet Corporation for Assigned Names and Numbers (ICANN) to administer cases filed under ICANN’s Uniform Domain Name Dispute Resolution Policy. Disputes are handled and resolved online, enabling parties to settle cases in a time- and cost-effective manner, without being physically present in the same place.

A project that will greatly advance the sharing of valuable intellectual property information benefits is the worldwide global intellectual property information network (WIPONET), a project launched by WIPO in 1999. WIPONET is designed to establish a secure, global network linking the intellectual property offices of all WIPO’s Member States, facilitating access to and exchange of information worldwide. Already WIPO’s main and subsidiary websites are heavily used all over the world.

WIPO is increasingly adopting a global approach not only to intellectual property in itself, but to the place of intellectual property in the wider framework of emerging issues such as traditional knowledge, folklore, biological diversity, environmental protection and human rights. These issues are explored in chapter 2 and chapter 7. WIPO has followed the method of consultation and empirical research to find, for example, the relation between intellectual property and genetic resources, traditional knowledge and folklore.

One of the most significant present-day tasks of WIPO is to demystify intellectual property, so that it is recognized as a part of everyday life not only by those directly involved in it at governmental, legal, industrial and cultural levels, but also by any others who compose civil society, whether in non-governmental organizations or small businesses, whether farmers, public health personnel, individual creators or simply interested members of the general public. Realizing the importance of small- and medium-sized enterprises (SMEs) as the backbone of market economies,

WIPO has established a program aimed at helping them to fulfill their potential as a powerful force behind wealth creation.

WIPO’s agenda of outreach to all members of society is through their inclusion as stakeholders and partners in global and national intellectual property systems. To ensure that such inclusion is of benefit to the parties concerned, WIPO pursues a policy of empowerment. This means that WIPO’s activities aim to give to all levels of society an awareness of how they have a stake in a healthy intellectual property system, and also to provide them with access to the knowledge, experience and expertise that will enable them to use those systems effectively.

The constitution, the “basic instrument,” of WIPO is the Convention signed at Stockholm in 1967. In describing WIPO, the following questions will be answered in very general terms: why is an intergovernmental organization needed? What are the Unions administered by WIPO? Which States are members of WIPO? What does WIPO do? How is it governed and managed?

The General Assembly consists of all the States that are members of WIPO and also members of any of the Unions.

Unlike the General Assembly, the Conference consists of all the States which are members of WIPO, whether or not they are members of any of the Unions. The main functions of the Conference were originally divided into five groups. First, the Conference was to constitute a forum for exchanges of views between all States members of WIPO on matters relating to intellectual property, and in that context it was empowered, in particular, to make any recommendations on such matters, having regard to the competence and autonomy of the Unions. Secondly, the Conference was to establish the biennial development cooperation program for developing countries and, thirdly, it was to adopt a budget for that purpose. Fourthly, the Conference is also competent to adopt amendments to the Convention establishing WIPO. Proposals for the amendment of the Convention may be initiated by any State member of WIPO, by the Coordination Committee or by the Director General. Fifthly, the Conference, like the General Assembly, was to determine which States and organizations would be admitted to its meetings as observers.

Why is an intergovernmental intellectual property organization needed? Intellectual property rights are limited territorially; they exist and can be exercised only within the jurisdiction of the country or countries under whose laws they are granted. But works of the mind, including inventive ideas, do and should cross frontiers with ease in a world of interdependent nations. Moreover, with growing similarity in the approach and procedures governing intellectual property matters in various countries, it makes eminent sense to simplify practice through international standardization and mutual recognition of rights and duties among nations. Therefore, governments have negotiated and adopted multilateral treaties in the various fields of intellectual property, each of which establishes a “Union” of countries which agree to grant to nationals of other countries of the Union the same protection as they grant to their own, as well as to follow certain common rules, standards and practices.

The Unions administered by WIPO are founded on the treaties. A Union consists of all the States that are party to a particular treaty. The name of the Union is, in most cases, taken from the place where the text of the treaty was first adopted (thus the Paris Union, the Berne Union, etc.). The treaties fall into three groups.

The first group of treaties establishes international protection, that is to say, they are treaties which are the source of legal protection agreed between countries at the international level. For instance, three treaties on industrial property fall into this group—the Paris Convention, the Madrid Agreement for the Repression of False and Deceptive Indications of Source on Goods and the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration.

The second group consists of treaties which facilitate international protection. For instance, six treaties on industrial property fall into this group. They are the Patent Cooperation Treaty, which provides for the filing of international applications for patents, the Madrid Agreement Concerning the International Registration of Marks, the Lisbon Agreement, which has already been mentioned because it belongs to both the first and second groups, the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure and the Hague Agreement Concerning the International Deposit of Industrial Designs.

The third group consists of treaties which establish classification systems and procedures for improving them and keeping them up to date. Four treaties, all dealing with industrial property, fall into this group. They are the International Patent Classification Agreement (IPC), the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks and the Locarno Agreement Establishing an International Classification for Industrial Designs.

Revising these treaties and establishing new ones are tasks which require a constant effort of international cooperation and negotiation, supported by a specialized secretariat. WIPO provides the framework and the services for this work.

The Convention establishing WIPO provides for four different organs: the General Assembly, the Conference, the Coordination Committee and the International Bureau of WIPO or Secretariat.

The General Assembly is the supreme organ of WIPO. Among its other powers and functions, the General Assembly appoints the Director General upon nomination by the Coordination Committee; it reviews and approves the reports and activities of the Coordination Committee as well as the reports of the Director General concerning WIPO; it adopts the financial regulations of WIPO and the biennial budget of expenses common to the Unions; it approves the measures proposed by the Director General concerning the administration of the international agreements designed to promote the protection of intellectual property; it determines the working languages of the Secretariat, taking into consideration the practice of the United Nations; and it also determines which States not members of WIPO and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers.

The fourth organ of WIPO is the International Bureau of WIPO or Secretariat. It is headed by the Director General, and further consists of those who make up its regular staff; the staff in the professional and higher categories are recruited on a principle of equitable geographical distribution established in the United Nations system, and other staff are from a wide range of countries in all regions of the world.

The Convention establishing WIPO declares that membership shall be open to any State that is a member of any of the Unions, and to any State which is not a member of any of the Unions, provided that it is a member of the United Nations, of any of the specialized agencies of the United Nations or of the International Atomic Energy Agency, or is party to the Statute of the International Court of Justice or is invited by the General Assembly of WIPO to become a member. Thus only States can be members of WIPO.

To become a member, a State must deposit an instrument of ratification or accession with the Director General of WIPO at Geneva. States party to the Paris or Berne Conventions may become members of WIPO only if they are already bound by, or concurrently ratify or accede to, at least the administrative provisions of the Stockholm (1967) Act of the Paris Convention or of the Paris (1971) Act of the Berne Convention.

The States party to the Convention Establishing the World Intellectual Property Organization (WIPO) are listed in the appropriate document to be found inserted in the back flap of this volume.

**Lec 2. General Provisions of Intellectual Property Law.**

The Member States of WIPO have, in recent years, adopted or considered a series of policies which ultimately require, for their implementation, amendment of the WIPO Convention and at least certain of the other treaties administered by WIPO.

The first such policy relates to the unitary contribution system and changes in contribution classes. In 1993 the WIPO Conference and the Assemblies of the Paris and Berne Unions adopted the unitary contribution system in replacement of the multiple contribution system provided for in the WIPO Convention and the treaties administered by WIPO. Under the unitary contribution system a State party to any of WIPO’s contribution treaties would pay a single contribution, regardless of the number of such treaties to which it was party. It was adopted on a provisional and experimental basis, pending an evaluation of the outcome, and possibly subsequently the amendment of the relevant provisions of the WIPO Convention and the treaties administered by WIPO that provide for the payment of contributions by Contracting States. In 1989, 1991 and 1993, the same organs also adopted new contribution classes on the same provisional basis, pending the amendment of the requisite treaties to bring the provisions of those treaties into line with the new classes.

A second such policy arises out of the work of the Working Group on Policies and Practices for the Nomination and Appointment of Directors General, which was established by the WIPO Coordination Committee in 1988. Acting upon the recommendations of the Working Group, the WIPO Coordination Committee and the WIPO General Assembly, the Assemblies of the Paris and Berne Unions and the WIPO Conference adopted a proposal to amend Article 9(3) of the Convention Establishing the World Intellectual Property Organization, limiting to 12 years a Director General’s total period in office.

The third series of policies arises out of the adoption of the 1998-99 Program and Budget. That Program and Budget contained various proposals for the simplification and rationalization of the governance structure of WIPO. The proposals for simplification and rationalization relate to

committees constituted directly by the Assemblies of the Member States; there are, however, other similar proposals in respect of organs or bodies constituted by WIPO-administered treaties.

Given that it appeared necessary to set in motion the procedure for treaty amendment because of the new practices relating to the unitary contribution system and contribution classes and the policy on limitation of mandates of Directors General, the WIPO Secretariat used the opportunity to propose other options for change in the governance structure of WIPO.

The culmination of proposals by the Secretariat and the adoption by the Member States of the policies described above was the creation of a Working Group on Constitutional Reform. The Working Group, which was open to all Member States of WIPO and also to the Member States of the Paris and Berne Unions, was established by the WIPO General Assembly at its meeting in September 1999. The Working Group met on six occasions in the space of three years, twice in 2000, 2001 and 2002 respectively. Its final recommendations were submitted to, and adopted by, the Assemblies of Member States of WIPO in September 2002.

The various proposals on constitutional reform which were studied by the Working Group may be described under five topics:

Unitary contribution system and changes in contribution classes

The first set of proposals on constitutional reform is to amend the relevant WIPO- administered treaties in order to formalize the unitary contribution system adopted in 1993 and the new contribution classes adopted in 1989, 1991 and 1993.

Executive Committees of the Paris Union, the Berne Union and the PCT Union

The reasons for the establishment of the Executive Committees of the Paris, Berne and PCT Unions seem to have been the perceived need for a body of a lesser number of member States than the Assembly in order to consider matters that were urgent in nature, and therefore could not await the next ordinary session of the Assembly, or were of lesser importance and did not require attention by the Assembly.

In practice, the Executive Committees have never functioned as intended. The PCT Executive Committee was never actually constituted; and neither the Paris nor the Berne Executive Committee has ever considered, as a body meeting separately, a substantive item of business.

The second set of proposals on constitutional reform is therefore to amend the WIPO Convention, the Paris Convention, the Berne Convention and the PCT by abolishing the Executive Committees of the Paris, Berne and PCT Unions.

WIPO Conference

The WIPO Conference is composed of all the Member States of WIPO. In practice, the Conference never meets separately from the General Assembly. It meets during the same period and in the same room as the General Assembly, and the only ostensible difference in the proceedings is the difference in presiding officer. In practice also, the Conference has considered very few separate items of business. In reality the functional division of work originally envisaged between the General Assembly and the Conference did not occur.

The third set of proposals on constitutional reform is to amend the WIPO Convention in order to abolish the WIPO Conference.

The other Conferences of Representatives

The Conferences of Representatives that exist for various Unions were the predecessor bodies of the Assemblies of those Unions. The Assembly of member States of a Union was introduced as a result of the reforms at the 1967 Stockholm Diplomatic Conference, in the Stockholm Act of those treaties that were revised at that Diplomatic Conference. Conferences of Representatives thus exist only for those Unions:

which were established under treaties that have Acts that were concluded before 1967, and

which have member States that have not yet acceded to or ratified the Stockholm (1967) Act of the Treaty. The following Conferences of Representatives still exist:

Paris Union Conference of Representatives;

Berne Union Conference of Representatives;

Hague Union Conference of Representatives;

Nice Union Conference of Representatives; and

the Lisbon Union Council.

The powers conferred on the Conferences of Representatives by their constituent instruments were extremely limited. In practice, the bodies have never separately considered any item of substantive business. Their convening has tended to be a formality only. Moreover, the number of States belonging to those bodies is small, and declining as States progressively accede to the Stockholm Acts of the relevant treaties.

The fourth set of proposals on constitutional reform is to amend the relevant conventions and other documents in order to discontinue the Conferences of Representatives.

Unitary Assembly

Under this proposal, the WIPO General Assembly would be the body competent to make decisions in respect of all WIPO treaties. Each Assembly constituted by a WIPO treaty would be replaced by the WIPO General Assembly so that there would be one organization, one Assembly of Member States, one Secretariat and one contribution from Member States. There would continue to be a number of different treaties, with differing memberships, providing for rights and obligations in the field of intellectual property. They would, however, all be administered in accordance with the unitary structure.

The fifth set of proposals on constitutional reform is to amend the relevant treaties and conventions in order to reduce the number of WIPO governing bodies to one single Assembly.

Final Recommendations of the Working Group adopted by the Assemblies in 2002

The final three recommendations on which agreement was reached by the members of the Working Group on Constitutional Reform were submitted to the General Assembly in September 2002. These recommendations were: (i) the abolition of the WIPO Conference; (ii) in respect of the unitary contribution system and the changes in contribution classes, the formalization in the treaties of what was already in practice; and (iii) a change in the periodicity of the ordinary sessions of the WIPO General Assembly and the other Assemblies of the Unions, from once every two years to once every year.

The Assemblies of the Member States of WIPO adopted the three recommendations of the Working Group on Constitutional Reform in September 2002, and set out a timetable for the process of amendment of several WIPO-administered treaties for implementation of the suggested recommendations. The proposed amendments were considered and adopted by the WIPO General Assembly and the other concerned Assemblies of the Unions in September 2003.

The Member States of WIPO have now been invited to accept the amendments in accordance with their respective constitutional processes. The said amendments will enter into force one month after written notifications of acceptance have been received by the Director General from three-fourths of the Member States.

Apart from using the mechanisms described above, WIPO has increasingly sought to build up the broadest possible base throughout the world. For this purpose, several advisory bodies have been established, and a policy of public outreach has been pursued.

**Lec 3. International guard of the authorial and allied rights.**

In March 1998, the Director General of WIPO proposed to Member States the establishment of a Commission of eminent international personalities drawn from politics, diplomacy and administration, to “enhance the Secretariat’s capacity to monitor and respond in a timely, informed and effective manner to international and regional developments in intellectual property, in information technology and in other fields bearing on WIPO’s operations and its policy environment.” More recently (November 2003), members include President Guido de Marco (Malta), President Ion Iliescu (Romania), and President Jorge Sampaio (Portugal).

Member States approved this proposal. The Policy Advisory Commission (PAC) was to consider vital topics such as the advance of globalization, digital technology, breakthrough discoveries in biotechnology, transfer of technology to developing countries, conservation of biodiversity and the environment, electronic commerce, protection of indigenous cultures and the viability of an “international patent” ensuring the continuing and widespread availability of pharmaceuticals, and the relation of those topics to the intellectual property system. It was to present its findings to the Director General, who would draw on its conclusions in formulating possible policy proposals for the Member States’ consideration.

The first meeting of the Commission took place in April 1999. HRH Prince El-Hassan of Jordan was elected Chair of the 25-member body, which held detailed discussions on both globalization and the need to demystify and depoliticize intellectual property issues. It then resolved to set up a Task Force to develop its work program: this was to include the formulation of a World Intellectual Property Declaration (WIPD) stating clearly and simply to the general public the benefits of intellectual property and intellectual property rights.

The Task Force met twice, in Amman in July 1999 and Washington, D.C., in March 2000, and worked on the above-mentioned projects as well as considering other questions. The first study to be published under the auspices of the PAC was authored by a member, Hisamitsu Arai, and looked in detail at the Japanese experience of intellectual property and wealth creation. It was published under a new Policy Advisory Commission imprint in December 1999. Work on the World Intellectual Property Declaration (WIPD) led to its adoption by the PAC at its second meeting in June 2000.

Besides working on the WIPD, the second meeting of the PAC also heard and discussed presentations on the WIPO Worldwide Academy, WIPO’s approach to global communications, the information-technology-based WIPONET project and its potential benefits for developing countries, developments in automation of the Patent Cooperation Treaty and the results of the recent Diplomatic Conference for the Adoption of the Patent Law Treaty.

The third meeting of the PAC took place in Geneva in October 2001, following a preparatory meeting of the Task Force in New York in May of that year. The topics discussed, accompanied by presentations, were the Agenda for Development of the International Patent System and Issues Concerning Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.

A fourth plenary meeting took place in November 2003. This followed a preparatory Task Force meeting in Beijing in May 2002. The topics discussed were Managing Cultural Assets, with a discussion paper, entitled *Copyright, Culture and Development: the Role of Intellectual Property and of WIPO in the Cultural Industries,* provided by Mr. Bruce Lehman, and *Intellectual Property Policies and the Japanese Economy*, with a discussion paper, entitled *Strategic Program for the Creation, Protection and Exploitation of Intellectual Property,* provided by Mr. Hisamitsu Arai.

The Industry Advisory Commission (IAC) was established in 1998 as part of the efforts by WIPO’s Director General to take into consideration the broadest range of opinions in the context of policy-making. The Commission is composed of some 20 top-level representatives from the private sector. These representatives were invited in their personal capacity, with consideration being given to balanced geographical distribution and the need to have as broad a range of industries as possible represented. Among the industries represented are those connected with entertainment (motion pictures, theatre, music), telecommunications, pharmaceuticals and biotechnology.

The idea of the IAC arose from the Director General’s conviction that an organization like WIPO, whose mission is to promote the protection of intellectual property worldwide, must stay abreast of developments in the private sector.

The IAC, which generally meets twice a year, is of crucial importance to WIPO in view of the fact that industry benefits most directly from intellectual property protection. In addition, the challenges that industry faces from globalization and rapid developments in technology directly affect and are affected by intellectual property. The IAC thus provides a forum for leaders in industry to exchange views with WIPO. The IAC will also enhance the WIPO Secretariat’s capacity to monitor and respond in a timely, informed and effective manner to the demands of the market sector and of users of intellectual property systems.

Being a purely advisory body for the Director General of WIPO, the IAC’s recommendations are not binding, and the IAC does not in any way replace the decision-making powers of WIPO’s Member States.

Since its establishment, the IAC has held discussions on a broad range of issues, including electronic commerce, intellectual property and wealth creation, biotechnology and the impact of the global economy on the intellectual property system, as well as efforts by WIPO to promote public awareness and understanding of intellectual property and its contribution to economic and social development.

Bearing in mind the importance of the issue of privatization in an increasing number of countries, the Director General of WIPO created a new body, the Ad Hoc Advisory Panel on Privatization, in 2000, to assist Member States in determining strong intellectual property policies and strategies for their efforts at privatization. It is a panel of nine experts representing governmental, diplomatic and academic circles.

The Panel met twice in 2000, and in particular considered how identification and appropriate valuation of intellectual property assets could be incorporated into the privatization process, especially through the provision of expert advice, training and guidelines for evaluating intellectual property assets in the privatization process.

Since 1998 WIPO has made a concerted effort to reach out not only to the intellectual property community but also to the general public, in order to demystify a hitherto specialized field for a wider public. The aim is to promote a general understanding of the role of intellectual property and of the need to foster and protect it. WIPO has concentrated these efforts on using three types of means – information technology, more traditional information materials and “live” activities promoting media and personal contact and interchange.

The major tool used in information technology to reach a wider public is the Internet. The WIPO website was developed to the extent that visitors viewed an average of 4.5 million pages per month during 2003. Thousands of pages of information, including the documentation of most WIPO meetings and many of its printed publications, are available via the site in six languages, Arabic, Chinese, English, French, Russian and Spanish.

The more traditional printed information materials—books, pamphlets, brochures, leaflets— increased, and new material was added, also in the form of posters and CD-ROMs. Sales of information products were enhanced by the creation of a new Visitors’ Center in 1998 and of an electronic bookshop in 1999. Many publications are made available on CD-ROM to Member States for translation and local printing, and an increasing number of free publications are available for downloading from the WIPO website.

Media activities and exhibitions on aspects of intellectual property extended public outreach. WIPO press releases, articles in the press and media coverage on radio and television worldwide gave WIPO and its activities greater exposure amongst the public, as did exhibitions on various aspects of intellectual property (such as women inventors, inventions used in everyday life in the home and music in the digital age) held at WIPO and elsewhere.

1. 80 Visits for groups, mostly students, are also organized regularly throughout the year. The groups are briefed on the history, structure and activities of the Organization. Specialized thematic briefings are also organized on request for groups who are interested in more in-depth information about specific intellectual property issues.

1.81 WIPO also worked with certain Member States and organizations (notably in the framework of cooperation for development) in the field of public outreach, with the object of raising awareness in the general public of the nature and importance of intellectual property.

**Lec 4. The essence of Copyright.**

Copyright law is a branch of that part of the law which deals with the rights of intellectual creators. Copyright law deals with particular forms of creativity, concerned primarily with mass communication. It is concerned also with virtually all forms and methods of public communication, not only printed publications but also such matters as sound and television broadcasting, films for public exhibition in cinemas, etc. and even computerized systems for the storage and retrieval of information. Copyright deals with the rights of intellectual creators in their creation. Most works, for example books, paintings or drawings, exist only once they are embodied in a physical object. But some of them exist without embodiment in a physical object. For example music or poems are works even if they are not, or even before they are, written down by a musical notation or words. Copyright law, however, protects only the form of expression of ideas, not the ideas themselves. The creativity protected by copyright law is creativity in the choice and arrangement of words, musical notes, colors, shapes and so on. Copyright law protects the owner of rights in artistic works against those who “copy”, that is to say those who take and use the form in which the original work was expressed by the author.

Copyright protection is above all one of the means of promoting, enriching and disseminating the national cultural heritage. A country’s development depends to a very great extent on the creativity of its people, and encouragement of individual creativity and its dissemination is a *sine qua non* for progress.

Copyright constitutes an essential element in the development process. Experience has shown that the enrichment of the national cultural heritage depends directly on the level of protection afforded to literary and artistic works. The greater the number of a country’s intellectual creations, the higher its renown; the greater the number of productions in literature and the arts, the more numerous their so-called “auxiliaries” (the performers, producers of phonograms and broadcasting organizations) in the book, record and entertainment industries; and indeed, in the final analysis, encouragement of intellectual creation is one of the basic prerequisites of all social, economic and cultural development.

Legislation could provide for the protection not only of the creators of intellectual works but also of the auxiliaries that help in the dissemination of such works, in respect of their own rights. The protection of these auxiliaries of intellectual creators is also of importance to developing countries since the cultural achievement of some of these countries includes, in no small measure, performance, sound recording and broadcasting of different creations of their folklore as well. While developing countries are often in need of foreign books, especially in the field of science, technology, education and research, they could offer to the world an abundance of their national cultural heritage, which can be protected, within the framework of copyright legislation, through protection of the rights of these auxiliaries or of related (or neighboring) rights as they are called.

Adoption of the law is the first step. The practical value of the law depends on its effective and efficient application. This can be achieved through setting up of appropriate authors’ organizations for collection and distribution of authors’ fees. Copyright, if effectively implemented, serves as an incentive to authors and their assignees (the publishers) to create and disseminate knowledge. It is something that society must necessarily accept if it wishes to encourage intellectual creativity, to ensure the progress of the sciences, the arts and of knowledge in general, to promote the industry using authors’ works and to render it possible to distribute such works in an organized manner among the widest possible circle of interested persons.

Copyright protection, from the viewpoint of the creator of works, makes sense only if the creator actually derives benefits from such works, and this cannot happen in the absence of publication and dissemination of his works and the facilitation of such publication and dissemination. This is the essential role of copyright in developing countries.

There are several factors influencing intellectual creativity in developing countries, apart from the pecuniary condition of most of the authors and intellectual creators themselves, who need to be offered incentives and subsidies. There is the shortage of paper for the production of textbooks for the process of continuing education (both formal and non-formal), and for production of prescribed and recommended books as also general books, which are to be placed within the reach of the common man in these countries.

The role of governments in this activity could include financial assistance in the creation and production of textbooks and other educational literature, inputs for training and also help for expansion of the library system, the creation of mobile libraries to serve far-flung and remote rural areas, etc. In this whole chain, the various links, namely authorship, publishing, distribution and

fostering of the library movement on a broad base, cannot be underrated, and need to be carefully nurtured and coordinated.

In the late nineteenth and in the twentieth century considerable socio-economic and political changes on the one hand, and rapid strides in technological development on the other, have brought about substantial changes of outlook in relation to copyright. The freedom and expansion of the press, the gradual disappearance of the feudal order, the growth of adult training and mass education schemes, the raising of standards in higher education, the increase in the number of universities, institutions of higher learning and libraries, the emphasis on the use of national languages, the development of science and technology, the changed map of the world with the birth of a number of newly independent developing nations—all these factors have caused conceptual changes.

The challenge in this new situation is to maintain a balance between provision of adequate rewards to creators of works and ensuring that such rewards are in harmony with the public interest and the needs of modern society.

The subject-matter of copyright protection includes every production in the literary, scientific and artistic domain, whatever the mode or form of expression. For a work to enjoy copyright protection, however, it must be an original creation. The ideas in the work do not need to be new but the form, be it literary or artistic, in which they are expressed must be an original creation of the author. And, finally, protection is independent of the quality or the value attaching to the work—it will be protected whether it be considered, according to taste, a good or a bad literary or musical work—and even of the purpose for which it is intended, because the use to which a work may be put has nothing to do with its protection.

Works eligible for copyright protection are, as a rule, all original intellectual creations. A non-exhaustive, illustrative enumeration of these is contained in national copyright laws. To be protected by copyright law, an author’s works must originate from him; they must have their origin in the labor of the author. But it is not necessary, to qualify for copyright protection, that works should pass a test of imaginativeness, of inventiveness. The work is protected irrespective of the quality thereof and also when it has little in common with literature, art or science, such as purely technical guides or engineering drawings, or even maps. Exceptions to the general rule are made in copyright laws by specific enumeration; thus laws and official decisions or mere news of the day are generally excluded from copyright protection.

Practically all national copyright laws provide for the protection of the following types of work:

*literary works:* novels, short stories, poems, dramatic works and any other writings, irrespective of their content (fiction or non-fiction), length, purpose (amusement, education, information, advertisement, propaganda, etc.), form (handwritten, typed, printed; book, pamphlet, single sheet, newspaper, magazine); whether published or unpublished; in most countries “oral works,” that is, works not reduced to writing, are also protected by the copyright law;

*musical works:* whether serious or light; songs, choruses, operas, musicals, operettas; if for instructions, whether for one instrument (solos), a few instruments (sonatas, chamber music, etc.), or many (bands, orchestras);

*artistic works:* whether two-dimensional (drawings, paintings, etchings, lithographs, etc.) or three-dimensional (sculptures, architectural works), irrespective of content (representational or abstract) and destination (“pure” art, for advertisement, etc.);

*maps and technical drawings*;

*photographic works:* irrespective of the subject matter (portraits, landscapes, current events, etc.) and the purpose for which they are made;

*motion pictures (“cinematographic works”):* whether silent or with a soundtrack, and irrespective of their purpose (theatrical exhibition, television broadcasting, etc.), their genre (film dramas, documentaries, newsreels, etc.), length, method employed (filming “live,” cartoons, etc.), or technical process used (pictures on transparent film, videotapes, DVDs, etc.).

*computer programs* (either as a literary work or independently).

Many copyright laws protect also “works of applied art” (artistic jewelry, lamps, wallpaper, furniture, etc.) and choreographic works. Some regard phonograph records, tapes and broadcasts also as works.

The owner of copyright in a protected work may use the work as he wishes—but not without regard to the legally recognized rights and interests of others—and may exclude others from using it without his authorization.

Therefore, the rights bestowed by law on the owner of copyright in a protected work are frequently described as “exclusive rights” to authorize others to use the protected work.

The original authors of works protected by copyright also have “moral rights”, in addition to their exclusive rights of an economic character.

What is meant by “using” a work protected by copyright? Most copyright laws define the acts in relation to a work which cannot be performed by persons other than the copyright owner without the authorization of the copyright owner.

Such acts, requiring the authorization of the copyright owner, normally are the following: copying or reproducing the work; performing the work in public; making a sound recording of the work; making a motion picture of the work; broadcasting the work; translating the work; adapting the work.

Right of Reproduction and Related Rights

The right of the owner of copyright to prevent others from making copies of his works is the most basic right under copyright. For example, the making of copies of a protected work is the act performed by a publisher who wishes to distribute copies of a text-based work to the public, whether in the form of printed copies or digital media such as CD-ROMs. Likewise, the right of a phonogram producer to manufacture and distribute compact discs (CDs) containing recorded performances of musical works is based, in part, on the authorization given by the composers of

such works to reproduce their compositions in the recording. Therefore, the right to control the act of reproduction is the legal basis for many forms of exploitation of protected works.

Other rights are recognized in national laws in order to ensure that the basic right of reproduction is respected. For example, some laws include a right to authorize distribution of copies of works. The right of distribution is usually subject to exhaustion upon first sale or other transfer of ownership of a particular copy, which means that, after the copyright owner has sold or otherwise transferred ownership of a particular copy of a work, the owner of that copy may dispose of it without the copyright owner’s further permission, for example, by giving it away or even by reselling it. Another right which is achieving wider and wider recognition, including in the TRIPS Agreement (see chapter 5, paragraph 5.241), is the right to authorize rental of copies of certain categories of works, such as musical works included in phonograms, audiovisual works, and computer programs. The right of rental is justified because technological advances have made it very easy to copy these types of works; experience in some countries has shown that copies were made by customers of rental shops, and therefore, that the right to control rental practices was necessary in order to prevent abuse of the copyright owner’s right of reproduction. Finally, some copyright laws include a right to control importation of copies as a means of preventing erosion of the principle of territoriality of copyright; that is, the legitimate economic interests of the copyright owner would be endangered if he could not exercise the rights of reproduction and distribution on a territorial basis.

Performing Rights

Another act requiring authorization is the act of public performance—for example, public readings, dramatic and musical performances before an audience. The right to control this act of public performance is of interest not only to the owners of copyright in works originally designed for public performance, but also to the owners of copyright, and to persons authorized by them, when others may wish to arrange the public performance of works originally intended to be used by being reproduced and published. For example, a work written originally in a particular way in order to be read at home or in a library may be transformed (“adapted”) into a drama designed to be performed in public on the stage of a theater.

Recording Rights

The third act to be examined is the act of making a sound recording of a work protected by copyright. So far as music is concerned, sound recording is the most favored means of communicating a work to a wide public. This serves much the same purpose for musical works as books serve for literary works.

Sound recordings can incorporate music alone, words alone or both music and words. The right to authorize the making of a sound recording belongs to the owner of the copyright in the music and also to the owner of the copyright in the words. If the two owners are different, then, in the case of a sound recording incorporating both music and words, the maker of the sound recording must obtain the authorization of both owners.

Under the laws of some countries, the maker of a sound recording must also obtain the authorization of the performers who play the music and who sing or recite the words. This is another example of the fact that the owner of copyright in a work cannot use it or authorize the use of it in a way which is contrary to the legal rights of others.

Motion Picture Rights

A “motion picture” is a visual recording, giving to viewers an impression of motion. In the technical language of copyright law it is often called a “cinematographic work” or an “audiovisual work.” In some countries the word “film” is used instead of the expression “motion picture.” The expression “motion picture” is perhaps preferable, because such productions are, today, frequently made with technological methods (such as magnetic tape) which do not require the use of photographic film.

A drama originally written for performance by performers to an immediately present audience (“live performance”) can be visually recorded and shown to audiences far larger in numbers than those who can be present at the live performance; such audiences can see the motion picture far away from the place of live performance and at times much later than the live performance.

Broadcasting Rights

A major category of acts restricted by copyright consists of the acts of broadcasting works and of communicating works to the public by means of wires or cables.

When a work is broadcast, a wireless signal is emitted into the air which can be received by any person, within range of the signal, who possesses the equipment (radio or television receiver) necessary to convert the signal into sounds or sounds and images.

When a work is communicated to the public by cable, a signal is diffused which can be received only by persons who possess such equipment linked to the cables used to diffuse the signal.

In principle, according to the Berne Convention for the Protection of Literary and Artistic Works, owners of copyright have the exclusive right of authorizing both the wireless broadcasting and the diffusion by cable of their works.

The broadcasting and diffusion by cable of works protected by copyright have given rise to new problems resulting from technological advances which may require a review by governments of their national copyright legislation. The advances include the use of space satellites to extend the range of wireless signals, the increasing possibilities of linking radio and television receivers to signals diffused by cable, and the increasing use of equipment able to record sound and visual images which are broadcast or diffused by cable.

Translation and Adaptation Rights

The acts of translating or of adapting a work protected by copyright require the authorization of the copyright owner.

*“Translation”* means the expression of a work in a language other than that of the original version.

*“Adaptation”* is generally understood as the modification of a work from one type of work to another, for example adapting a novel so as to make a motion picture, or the modification of a work so as to make it suitable for different conditions of exploitation, for example adapting an instructional textbook originally prepared for higher education into an instructional textbook intended for students at a lower level.

Translations and adaptations are themselves works protected by copyright. Therefore, in order, for example, to reproduce and publish a translation or adaptation, the publisher must have the authorization both of the owner of the copyright in the original work and of the owner of copyright in the translation or adaptation.

Moral Rights

The Berne Convention requires member countries to grant to authors:

the right to claim authorship of the work;

the right to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the work which would be prejudicial to the author’s honor or reputation.

These rights, which are generally known as the moral rights of authors, are required to be independent of the usual economic rights and to remain with the author even after he has

**Lec 5. Rights Related to Copyright - Patent law.**

Differences Between Patents and Copyrights

Patents usually involve a product or process that has a functional use. By contrast, copyrights involve the creative arts. Thus, patents usually apply to technologies, while copyrights apply to paintings, novels, songs, movies, and other areas of the humanities. Design patents can bear some similarities to copyrights because they relate to the non-functional appearance of objects.

Differences Between Patents and Trademarks

Patents cover the use of a new technology, while trademarks distinguish a product or service from competing products or services. A patent provides stronger protection because it prevents anyone else from making, selling, or using an invention without the patent owner’s permission. A trademark simply prevents other parties from marketing similar products in a manner that confuses consumers. Sometimes a patent that covers a design feature in an invention may overlap with trademark protection if the design feature also sets apart the product from competing products in the market.

Differences Between Copyrights and Trademarks

Copyrights apply to works that have a minimal amount of creativity and are fixed in a tangible medium. They do not cover individual words or phrases, and they do not protect titles of works. Trademarks serve this purpose by covering words and phrases, as well as logos and other visual images, if they are sufficiently distinctive to set apart a source of products or services from the competition. Copyright and trademark can overlap when a logo contains artistic features. Copyright protection may apply to the logo as an artistic work, while trademark protection may apply to prevent competitors from using the logo in a way that causes consumer confusion. Also, trademarks apply to the names of products and marketing slogans used in advertising, while copyrights protect the artistic features of an ad, such as additional passages of text, music, or video components.

There exist rights related to, or “neighboring on”, copyright. These rights are generally referred to as “related rights” (or “neighboring rights,”) in an abbreviated expression.

It is generally understood that there are three kinds of related rights: the rights of performing artists in their performances, the rights of producers of phonograms in their phonograms, and the rights of broadcasting organizations in their radio and television programs. Protection of those who assist intellectual creators to communicate their message and to disseminate their works to the public at large, is attempted by means of related rights.

Works of the mind are created in order to be disseminated among as many people as possible. This cannot be done generally by the author himself, for it requires intermediaries whose professional capability gives to the works those forms of presentation that are appropriate to make them accessible to a wide public. A play needs to be presented on the stage, a song needs to be performed by artists, reproduced in the form of records or broadcast by means of radio facilities. All persons who make use of literary, artistic or scientific works in order to make them publicly accessible to others require their own protection against the illegal use of their contributions in the process of communicating the work to the public.

Let us examine why such protection of those that thus assist intellectual creators was found necessary and how it developed. The protection of authors’ interests does not consist merely in preventing the use of their creations and cannot be limited to prohibiting infringements of the rights that laws afford to the authors. Their works are intended to be made available to the public at large. Various categories of works are made accessible to the public in various ways. A publisher reproduces a manuscript in its final form without adding to the expression of the work as created by the author. The interests of book publishers are protected by means of copyright itself and laws do recognize that copyright is essential as a stimulus to creative writing, as also to support the economies of publishing.

The position is slightly different with regard to dramatic and musical works, pantomimes, or other types of creative works intended for either auditive or visual reception. Where some of such works are communicated to the public, they are produced or performed or recited with the aid of performers. In such cases, there arises the interest of the performers themselves in relation to the use of their individual interpretation in the performed work.

The problem in regard to this category of intermediaries has become more acute with rapid technological developments. Where, at the very beginning of the 20th century, the performance of dramatists, actors, or musicians ended with the play or concert in which they performed, it is no longer so with the advent of the phonograph, the radio, the motion picture, the television, the videogram and satellites.

These technological developments made possible the fixing of performances on a variety of material, viz., records, cassettes, tapes, films, etc. What was earlier a localized and immediate phase of a performance in a hall before a limited audience became an increasingly permanent manifestation capable of unlimited and repeated reproduction and use before an equally unlimited audience that went beyond national frontiers. The development of broadcasting and more recently, television, also had similar effects.

These technological innovations, since they have made it possible to reproduce individual performances by performing artists and to use them without their presence and without the users being obliged to reach an agreement with them, have led to a reduction in the number of live performances. This creates what has come to be known as technological unemployment among professional artists, thus giving a new dimension to the protection of the interests of performers.

Likewise by the very same token, the increasing technological development of phonograms and cassettes and, more recently, compact discs (CDs), and their rapid proliferation, was pointing to the need of protection of producers of phonograms. The appeal of the phonogram, as also the easy availability in the market of the variety of increasingly sophisticated recording devices, created the growing problem of piracy, which by now has become a worldwide scourge. In addition, there is the increasing use of records and discs by broadcasting organizations; while the use of these by the latter provides publicity for the phonograms and for their producers, these also have, in turn, become an essential ingredient of the daily programs of broadcasting organizations. Consequently, just as the performers were seeking their own protection, the producers of phonograms began to pursue the case of their protection against unauthorized duplication of their phonograms, as also for remuneration for the use of phonograms for purposes of broadcasting or other forms of communication to the public.

Finally, there were the interests of broadcasting organizations as regards their individually composed programs. The broadcasting organizations required their own protection for these as well as against retransmission of their own programs by other similar organizations.

Thus the need was felt for special protection for performers, producers of phonograms and broadcasting organizations. The performers through their organizations at the international level sought a study leading to their protection. While a performer would be paid once for recording a performance, and the recording of the performance could be played repeatedly for the benefit of a third party, the performers felt that they would not only not derive any income from such secondary use, but would also be placed in the awkward position of having to compete with their own recordings in respect of their employment potential for live performances in theaters, restaurants, cafés, etc.

Unlike most international conventions, which follow national legislation and provide a synthesis of existing laws, the Rome Convention was an attempt to establish international regulations in a new field where few national laws existed. This meant that most States would have to draft and enact laws before adhering to the Convention. Since the adoption of the Convention in 196l, a large number of States have legislated in matters related to the Convention, and a number of others are considering such legislation.

The notion of Related Rights is understood as meaning rights granted in an increasing number of countries to protect the interests of performers, producers of phonograms and broadcasting organizations in relation to their activities in connection with the public use of authors’ works, all kinds of artists’ presentations or the communication to the public of events, information, and any sounds or images. The most important categories are: the right of performers to prevent fixation and direct broadcasting or communication to the public of their performance without their consent; the right of producers of phonograms to authorize or prohibit reproduction of their phonograms and the import and distribution of unauthorized duplicates thereof; the right of broadcasting organizations to authorize or prohibit rebroadcasting, fixation and reproduction of their broadcasts. An increasing number of countries already protect some or all of these rights by appropriate rules, codified mainly within the framework of their copyright laws. Several countries also grant a sort of moral right to performers to protect them against distortion of their performances and grant them the right to claim the mention of their name in connection with their performances. Some countries also protect the interests of broadcasting organizations by preventing the distribution on or from their territory of any program-carrying signal emitted to or passing through a satellite, by a distributor for whom the signal is not intended. No protection of any related right can, however, be interpreted as limiting or prejudicing the protection secured to authors or beneficiaries of other related rights under a national law or an international convention.

Protection of performers is provided in order to safeguard the interests of actors, singers, musicians, dancers, or other persons who act, sing, deliver, declaim, play in or otherwise perform literary or artistic works, or expressions of folklore, against certain unlawful uses of their performances. The term “producer of phonograms” denotes a person who, or a legal entity which, first fixes the sounds of a performance or other sounds. A phonogram is any exclusively aural fixation of sounds of a performance or of other sounds. A duplicate of a phonogram is any article containing sounds taken directly or indirectly from a phonogram and which embodies all or a substantial part of the sounds fixed in that phonogram. Gramophone records (discs), magnetophone cassettes and compact discs are duplicates of a phonogram. Broadcasting is usually understood as meaning telecommunication of sounds and/or images by means of radio waves for reception by the public at large. A broadcast is any program transmitted by broadcasting, in other words, transmitted by any wireless means (including satellite transmissions) for public reception of sounds and of images and sounds.

Communication to the public by wire is generally understood as meaning the transmission of a work, performance, phonogram or broadcast by sounds or images through a cable network to receivers not restricted to specific individuals belonging to a private group.

By first fixation of sounds is meant the original embodiment of sounds of a live performance, or of any other sounds not taken from another existing fixation, in some enduring material form such as tapes, records or any other appropriate device permitting them to be perceived, reproduced or otherwise repeatedly communicated. First fixation of sounds is not to be confused with first publication of a phonogram.

Another notion, that of rebroadcasting, is either simultaneous transmission of a broadcast of a program being received from another source, or a new, deferred broadcast of a formerly recorded program transmitted or received earlier.

Finally, it must be stated that since in the cultural life of countries, including the developing countries, due importance is attached to the artistic heritage, the protection of related rights affords rights to those who contribute to the interpretation and dissemination of that heritage. It is particularly important for some developing countries whose tradition is largely oral and where the author is often the performer as well. In this context, the place occupied by works of folklore must be borne in mind, and the interests of the artists performing and thus perpetuating them must be safeguarded when use is made of their performances. By also protecting the producers of phonograms, particularly in developing countries, the basis for setting up an industry in the tertiary sector of the economy is ensured. Such an industry, while guaranteeing the dissemination of national culture, both within the country and throughout the world, can additionally constitute a substantial source of revenue for the country’s economy and, in those cases where its activities extend beyond the country’s frontiers, can represent an inflow of foreign currency. The part played by the broadcasting organizations in developing countries should also not be forgotten, nor that such organizations have a natural interest in the protection of their programs against rebroadcasting, reproduction and communication to the public.

The owner of copyright in a work is generally, at least in the first instance, the person who created the work, that is to say, the author of the work.There can be exceptions to this general principle. Such exceptions are regulated by the national law. For example, the national law may provide that, when a work is created by an author who is employed for the purpose of creating that work, then the employer, not the author, is the owner of the copyright in the work.

It is to be noted, however, that the “moral rights” always belong to the author of the work, whoever may be the owner of the copyright.

In many countries, copyright (with the exception of moral rights) may be assigned. This means that the owner of the copyright transfers it to another person or entity, who becomes the owner of the copyright.

In some other countries, an assignment of copyright is not legally possible. However, very nearly the same practical effect as the effect of assignment can be achieved by licensing. Licensing means that the owner of the copyright remains the owner but authorizes someone else to exercise all or some of his rights subject to possible limitations. When such authorization or license extends to the full period of copyright and when such authorization or license extends to all the rights (except, of course, the moral rights) protected by copyright, the licensee is, vis-à-vis third parties and for all practical purposes, in the same position as an owner of copyright.

**Lec 6. Selection Achievement Rights.**

      1. Right to selection achievement shall be protected by the legislation of the Republic of Kazakhstan and confirmed by patent. Patent shall certify the exclusive right of patent holder for use of selection achievement, its priority and authorship of a breeder.

Volume of legal protection provided by patent for selection achievement shall be determined by a set of characteristics included to description of variety, breed.

Validity term of patent for plant varieties is 25 years, animal breeds – 30 years, varieties of grapes, tree decorative, horticultural and forestry crops, including their parent stocks is 35 years from the date of filing the application to expert organization.

      The validity period of a patent may be renewed at the request of the patent holder, taking into account the payment made for each year of renewal, but not more than ten years.

1. Authorized state body in the scope of protection of selection achievements (hereinafter – authorized body) – state body determined by the government of the Republic of Kazakhstan and carrying out state regulation in the field of protection of selection achievements.

      2. The competence of the authorized body shall include:

      1) participation in implementation of state policy in the field of legal protection of breeding achievements;

      2) development and approval of:

      the rules for conduct of a preliminary examination of applications for breeding achievements;

      the rules for registration of breeding achievements in the State register of breeding achievements and issuance of protection documents and their duplicates, cancelation and early termination of patents;

      the rules of registration in the State register of breeding achievements of transfer of exclusive rights, granting the right to use a breeding achievement, open or compulsory license;

      the rules for providing extracts from the State register of breeding achievements;

      the rules for consideration of objections by the appeal board;

      the rules for consideration of applications for breeding achievements in accordance with international treaties ratified by the Republic of Kazakhstan;

      provisions on the certification commission;

      provisions on the appeal board;

      provisions on the appeal commission;

      3) determination of the procedure for publication of information in the bulletin, relating to the registration of breeding achievements;

      4) certification of candidates for patent attorneys and their registration in the register of patent attorneys;

      5) organization of the activities of the certification commission, appeal board and appeal commission;

      6) the exercise of other powers provided for by this Law, other laws of the Republic of Kazakhstan, acts of the President of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan.

1. An expert organization, established by the decision of the Government of the Republic of Kazakhstan in the legal form of a republican state enterprise on the basis of the right of economic management, subordinate in its activities to the authorized body, shall:

      1) conduct a preliminary examination of applications for breeding achievements;

      2) register breeding achievements in the State register of breeding achievements and issue protection documents and their duplicates, annul and terminate patents ahead of schedule;

      3) register in the State register of breeding achievements the transfer of the exclusive right, the granting of the right to use the breeding achievement, an open or compulsory license;

      4) maintain the State register of breeding achievements, a bulletin and post them on its Internet resource;

      5) provide extracts from the State register of breeding achievements;

      6) publish information in the bulletin, relating to the registration of breeding achievements;

      7) search for information on registered breeding achievements based on the requests from interested parties;

      8) consider applications for breeding achievements in accordance with international treaties, ratified by the Republic of Kazakhstan;

      9) carry out other activities not prohibited by the legislation of the Republic of Kazakhstan.

      2. The expert organization, in agreement with the authorized body, shall approve the prices of services in the field of protection of breeding achievements, provided that the full reimbursement of the costs incurred by this organization for their rendering, break-even of its activities and financing from its own revenues is ensured.

 1. Patent shall be granted on selection achievement that has a novelty, distinguishability, homogeneity and stability.

      2. Variety, breed shall be considered as new if on the date of filing application, the seeds or other planting material, breeding material of this selection achievement was not sold and transferred to other persons by the author or his (her) legal successor for using the variety, breed in the territory of:

      1) Republic of Kazakhstan – earlier than one year before until the date of filing the application;

      2) any other state – earlier than four years before on annual crops and earlier than six years on permanent crops, breeds until the date of filing the application.

      A breed that, on the date of inclusion of the corresponding genera and species in the State registers of selection achievements, is registered in the State register of selection achievements, recommended for use, may be recognized as patentable without making the requirements of novelty to the breed.

      Validity term of patent mentioned in Article 3 of the Law to such selection achievements shall be reduced for the period from the year of admission to use to the year of granting patent. In respect of such selection achievements, temporary legal protection provided by Article 9 of the Law shall not be remained in force.

      3. Variety, breed shall meet the criteria of distinguishability, if they obviously differ from any other variety, breed, the existence of which to the moment of filing the application is commonly known. Filing of application for receipt of a patent or introduction of the variety, breed to official registers of new varieties, breeds in any country shall make a variety, breed as commonly known from the date of filing the application, in condition that in result of filing of this application, the patent or variety were granted, the breed was included to mentioned registers.

      Common knowledge of varieties, breeds may be established also in fact of growth, use and publication. Characteristics allowing determination of descriptive and differential special aspects of the variety, breed shall be restorable and describable.

      4. Variety, breed shall be considered as homogeneous if in recognition of special aspect of their propagation, the plants of this variety or breed are homogeneous according to selecting characteristics.

      5. Variety, breed shall meet the stability criteria, if their main characteristics remain unchanged after each propagation, and in case of special genesial cycle – in the end of each genesial cycle.

1. Application for grant of patent shall be filed to expert organization.

      Right to filing of application for grant of patent shall belong to author or his (her) legal successor.

      In case if selection achievement is created, discovered or bred upon performance of duty assignment or official duties, the right to filing of application for grant of patent shall belong to an employer, unless otherwise is provided by the author and employer.

      Application may be filed by several applicants, if they created, discovered or bred selection achievement jointly or that are legal successors of authors.

      Application may be filed through the representative that in virtue of powers based on power of attorney shall process the cases linked with receipt of patent.

      1-1. Employees of state commissions on variety testing of agricultural crops within the whole period of work in commission shall not have the right to file applications for grant of patent of the Republic of Kazakhstan for selection achievement, with the exception of cases of selection work on creation, discovery and breeding of selection achievement conducted before carrying out of labour functions in the state commission.

      2. Individuals residing beyond the borders of the Republic of Kazakhstan, or foreign legal entities shall process the cases on receipt of patents and their keeping in force shall file objections to appeal board and shall take participation in their consideration through the patent administrators registered in the authorized body.

      Individuals permanently residing in the Republic of Kazakhstan but temporary staying beyond its borders may process the cases linked with patents without patent administrator upon specification of address for correspondence within the Republic of Kazakhstan.

      Powers of patent administrator shall be certified by power of attorney issued to him (her) by the applicant or patent holder.

      3. Application for issuance of patent for selection achievement shall be drawn up for each plant varieties, animal breeds and shall contain:

      1) application on grant of patent;

      2) form of selection achievement;

      3) power of attorney in case of maintenance of record management through the representative.

      The application for grant of patent for selection achievement shall be accompanied by the document confirming payment of filing the application in established manner, and document confirming the ground for reduction of its amount that may be represented together with application or within two months from the date of acceptance of application. Upon condition of the relevant payment, this term may be prolonged but no more than two months.

      Upon non-representation of documents on payment in established term, the application shall be considered as non-filed.

      4. Application for grant of patent shall be represented in the Kazakh or Russian language.

      5. Requirements to documents of application and procedure for their consideration shall be determined by the authorized body. Other documents and materials required for examination of discovered variety, breed shall be provided upon request of the state commission.

      The procedure for considering an application for examination and testing of patentability shall be determined by the authorized body in the field of development of the agro-industrial complex.

      6. The application and information on the progress of its consideration shall not be provided to third parties, except for the cases, provided for by the laws of the Republic of Kazakhstan.

Lec 7. International legal protection of inventions, useful models, industrial prototypes.

As regards the various forms of protection of geographical indications on the national level, three main categories can be distinguished. The first category comprises all possibilities of protection which are not based on a decision taken by the competent authority establishing protection with respect to a particular geographical indication, but which result from the direct application of legislative provisions or principles established by jurisprudence. The second category covers the protection of geographical indications through registration of collective marks (including agricultural labels) or certification marks (or guarantee marks). The third category includes all special titles of protection of geographical indications which result from a decision made by the competent government authority establishing the protection.

Special Titles of Protection

Already early in this century it was felt that the protection of indications of source against false or deceptive use was insufficient. In addition, the need for the protection and the encouragement of local, traditional methods of production emerged. It was in France where the first statute was enacted which provided for the protection of geographical indications through a special title of industrial property, namely appellations of origin.

The French Law of May 6, 1919, recognized the existence of appellations of origin and laid down conditions for their protection. According to this law, an appellation of origin consists of the name of a country, region or locality that serves to designate a product originating therein, the quality and characteristics of which are due to the geographical environment, including both natural and human factors. This means that only such products are protected under this special title which originate from a specific area and which owe their specific quality to their place of origin. In order to ensure that the products possess the specified qualities, a control mechanism has been set up by the competent authorities, and quality controls are carried out regularly. Only products which comply with the quality standards are protected by an appellation of origin. Initially, appellations of origin only concerned wines and spirits, but later the concept was extended to include other products (such as dairy products, mainly cheese and butter), poultry and plant products.

Because of the success of the French appellations of origin, the same or a similar system was introduced also in other countries, mainly in the sector of wines and spirits.

Registration of Collective Marks or Certification Marks

The protection of a given geographical indication may not only be based on a public or administrative act, but may also result from a private initiative. With regard to the latter approach,

collective marks or certification marks provide a means for the protection of geographical indications independent of statutory or judicial measures. The concepts of collective mark and certification mark (or, in some countries, guarantee mark) differ from country to country. Depending on the applicable national law, a collective mark or certification mark may serve to indicate, *inter alia*, the origin of goods or services, and therefore may to some extent be suitable for the protection of a geographical indication.

A collective mark is a mark the use of which is only allowed to the members of a collective body. Such a body can be an association or cooperative of manufacturers, producers or traders. The collective mark is owned by the association which exclusively grants its members the right to use it. The association may be a domestic one or a foreign one. Normally, the use of the collective mark is governed by regulations which have to be submitted to the industrial property office together with the application for registration. The question whether a geographical indication is registrable as a collective mark depends entirely on a given national law. Some national trademark laws exclude the registration of geographical indications as collective marks, although, more recently, that exclusion has been abolished by some countries.

Once a geographical indication has been registered as a collective mark, the association that owns it has the right to prohibit its use by persons who are not members of the association. However, in case of conflict with a senior right, the members of the association may be excluded from using the collective mark. Moreover, the registration of a geographical indication as collective mark may not, *per se*, prevent the mark from becoming a generic term. Furthermore, the laws of some countries contain strict use requirements which may result in the cancellation of the registration of the collective mark in case it is not continuously used.

In contrast to collective marks, certification marks and guarantee marks are not owned by a collective body such as an association of producers, but by a certification authority. Such authority may be a local council or an association which is not engaged in the production or the trade of the products concerned. The latter is of particular importance because it is the owner of the certification mark who must ensure that the goods bearing the certification mark possess the certified qualities. A certification mark may be used to certify, *inter alia*, the origin of products or services. The application for the registration of a certification mark has to be accompanied by regulations which govern the use of the certification mark. Regarding the registrability of geographical indications as certification marks and guarantee marks, the same principles as for the registration of collective marks apply.

Where a geographical indication has been registered as a certification mark or guarantee mark, it may normally be used by everybody whose products comply with the requirements set out in the regulation. Such right to use, however, may not exist in case of conflict with a senior right. The institution which owns the registered certification mark or guarantee mark has the right to prohibit the use of that mark by persons whose products do not comply with the requirements set out in the regulations. In general, the protection of a geographical indication through registration as certification mark or guarantee mark is equivalent to that conferred by registration as a collective mark.

A special form of protected geographical indication resembling the concept of collective marks is the French “agricultural label” (in French “label agricole”). An agricultural label is a collective mark that certifies that a foodstuff or a non-nutritious and non-transformed agricultural product (such as cereal seeds) possesses a combination of specific characteristics and a level of quality which is higher than that of similar products. An agricultural label can be a national label (known as “red label”) or a regional label, the latter referring to characteristics which are specific, traditional or representative of a region. Products in respect of which an appellation of origin has

been established and some categories of wines (even if not benefitting from an appellation of origin) may not be the subject of protection by way of an agricultural label. The agricultural label is registered in the name of the entity that controls its use. The application of the Decree is not limited to French products, but so far only little use has been made of the possibility of applying the Decree to foreign products. An example of a foreign product is the label for “Scottish salmon”.

The Law of Unfair Competition

The use of a certain geographical indication for goods or services not originating from the respective area may be misleading and thus may deceive consumers. Furthermore, such use may constitute a misappropriation of the goodwill of the person who is truly entitled to use the geographical indication. An action for unfair competition—which, depending on the national law, is either based on statutory provisions, as interpreted by court decisions, or on common law—can be instituted in order to prevent competitors from resorting, in the course of trade, to such misleading practices.

Although the conditions for a successful action for unfair competition vary from country to country, the following basic principles appear to be generally recognized. In order to be protectable, a given geographical indication must have acquired a certain reputation or goodwill. In other words, the potential buyers of the product must associate the geographical indication with the place of origin of the goods or services. Such an action further requires that the use of the geographical indication on goods or services not originating from the respective geographical area is misleading, so that consumers are deceived as to the true place of origin of the products or services. Under some national laws, proof of damages or the likelihood of damages caused by such misleading practices is required.

Whereas the principle that misleading use of a geographical indication may give rise to an action for unfair competition is generally recognized, the outcome of such an action is uncertain. In particular, the extent to which the geographical indication in question must have acquired a reputation may vary from country to country. It may be required that the geographical indication must have been used in the course of trade for a certain time and that an association between the geographical indication and the place of origin of the products and services must have been created amongst the relevant circles. Therefore, a geographical indication, the reputation of which is not yet established on the market, may not be protectable against misleading use by competitors through an action for unfair competition. Furthermore, a geographical indication which has not been used for a certain time may lose its reputation and therefore may no longer be protectable by an action for unfair competition. Geographical indications which become generic terms in a particular country lose their distinctive character and are no longer protectable in that country.

Protection of Geographical Indications on the International Level through Multilateral Treaties

Three multilateral treaties administered by WIPO contain provisions for the protection of geographical indications: the Paris Convention for the Protection of Industrial Property, the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods (hereinafter referred to as the Madrid Agreement), and the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (hereinafter referred to as the Lisbon Agreement).

The Paris Convention for the Protection of Industrial Property

Several provisions of the Paris Convention deal specifically with indications of source or appellations of origin: Article 1(2) contains a reference to “indications of source” and “appellations of origin” in the list of objects of industrial property; Article 10 deals with the protection of indications of source; Article 9 provides for certain sanctions which are applicable*, inter alia*, in cases of direct or indirect use of false indications of source; and Article 10*ter* reinforces the provisions of Articles 9 and 10.

Article 1(2) provides that the protection of industrial property has as its object, among others, “indications of source” or “appellations of origin.” The obligation to protect indications of source is specifically provided for in Article 10, but there are no special provisions in the Paris Convention for the protection of appellations of origin. Nevertheless, Articles 9, 10 and 10*ter* are applicable to appellations of origin since each appellation of origin by definition constitutes an indication of source.

Article 10(1) is the basic provision of the Paris Convention on indications of source. It provides that the sanctions prescribed by Article 9 in respect of goods unlawfully bearing a trademark or trade name apply to any use of a “false indication of the source” of a product. This means that no indications of source may be used that refer to a geographical area from which the products in question do not originate. For the provision to be applicable, there is no need for the false indication to appear on the product, since any direct or indirect use, for example in advertising, is sanctionable. However, Article 10(1) does not apply to indications which, without being false, may mislead the public, or at least the public of a certain country: for example, where certain geographical areas in different countries have the same name but only one of those areas is internationally known for particular products, the use of that name in connection with products originating from another area may be misleading, but not sanctionable.

As regards the sanctions in the case of the use of a false indication of source, Article 9 establishes the principle that seizure upon importation must be provided for, or at least prohibition of importation or seizure inside the country but, if those sanctions do not exist in a particular country, the actions and remedies available in such cases are to be applied.

Article 9(3) and Article 10(2) determine who may request seizure on importation or the imposition of other sanctions: the public prosecutor, any other competent authority, any interested party. Article 10(2) defines what is meant by “interested party”, stipulating that “any producer, manufacturer, or merchant, whether a natural person or a legal entity, engaged in the production or manufacture of or trade in such goods and established either in the locality falsely indicated as the source, or in the region where such locality is situated, or in the country falsely indicated, or in the country where the false indication of source is used, shall in any case be deemed an interested party.”

Article 10*bis* concerns the protection against unfair competition and as such provides a basis for protection against the use of confusing, false or misleading geographical indications. Article 10*bis* obliges countries of the Paris Union to assure effective protection against unfair competition, sets a general definition of what constitutes an act of unfair competition and contains a non-exhaustive list of three types of acts which, in particular, must be prohibited.

Article 10*ter* is also relevant inasmuch as it obliges countries of the Union to provide, on the one hand, appropriate legal remedies and to permit, on the other, federations and associations representing interested industrialists, producers or traders to take action, under certain conditions, with a view to the repression of false indications of source.

The main advantage of the protection afforded by the Paris Convention to indications of source lies in the extent of the territorial area covered by the member countries of the Paris Union; information on the number of member countries can be found in the appropriate document inserted in the back flap of this publication. On the other hand, the question of indications which, in countries other than the country of origin, are generic names of a product in other countries is not dealt with in the Paris Convention, so that member States of the Paris Union can be entirely free in that respect. Finally, sanctions, although specifically mentioned in the Paris Convention, are not in all cases mandatory and apply only to false but not to misleading indications of source.

The Madrid Agreement for the Repression of False and Deceptive Indications of Source on Goods

The Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods is a special agreement within the framework of the Paris Union. The Agreement aims at the repression not only of false, but also of deceptive, indications of source.

Article 1(1) of the Madrid Agreement provides that any product bearing a false or deceptive indication by which one of the States party to the Madrid Agreement or a place situated therein is directly or indirectly indicated as being the country or place of origin, must be seized on importation into any of the States party to the Madrid Agreement.

The other paragraphs of Articles 1 and 2 specify the cases and the manner in which seizure or similar measures may be requested and carried out. There is no express provision to the effect that private individuals may request seizure directly. Thus, member States are free to provide that such persons have to apply through the public prosecutor or any other competent authority.

Article 3 authorizes a vendor to indicate his name or address on goods coming from a country other than that in which the sale takes place, but obliges him, if he does so, to have his name or address accompanied by an exact indication in clear characters of the country or place of manufacture or production, or by some other indication sufficient to avoid any error as to the true source of the wares.

Article 3*bis* obliges the States party to the Madrid Agreement to prohibit the use, in connection with the sale or display or offering for sale of any goods, of all indications capable of deceiving the public as to the source of the goods.

Article 4 provides that the courts of each country have to decide what appellations, on account of their generic character, do not fall within the provisions of the Madrid Agreement. Only regional appellations concerning the source of products of the vine are excluded from the reservation inherent in the provision. The reservation substantially limits the scope of the Madrid Agreement, in spite of the important exception constituted by the case of regional appellations concerning the source of products of the vine, for which protection is absolute.

A list of States that are party to the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods can be found in the appropriate document inserted in the back flap of this publication.

The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration

The limited geographical scope of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration is due to particular characteristics of the substantive provisions of the Agreement.

Article 2(1) contains a definition according to which appellation of origin means “the geographical name of a country, region or locality which serves to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors.” It follows that only names conforming to the definition may be protected by virtue of the Lisbon Agreement. Simple indications of source (which can be used for products whose characteristics do not result from the geographical environment) are excluded from its purview. This limitation has prevented the accession of countries which do not know the concept of appellation of origin.

The first element of the definition is that the appellation must be the geographical name of a country, region or locality. The second element of the definition is that the appellation of origin must serve to designate a product originating in the country, region or locality referred to. The third element of the definition is that there must be a qualitative link between the product and the geographical area: the “quality and characteristics” must be due exclusively or essentially to the geographical environment; if the qualitative link is insufficient, that is, if the characteristic qualities are not due essentially, but only to a small extent, to the geographical environment, the name is not an appellation of origin but merely an indication of source; as for the geographical environment, it includes natural factors, such as soil or climate, and human factors, such as the special professional traditions of the producers established in the geographical area concerned.

Even if interpreted broadly, the definition of appellation of origin in Article 2(1) has a serious drawback for countries whose denominations typically do not apply to agricultural products or products of handicraft but to products of industry. The difficulty arises from the fact that Article 2(1) requires the existence of a qualitative link between the geographical environment and the product, even though the presence of purely human factors would be considered sufficient. This link, which may have existed at the start of the manufacture of an industrial product, may subsequently have been stretched to the point that its existence is difficult to prove. Moreover, traditions in manufacture and skilled staff can be shifted from one geographical area to another, in particular in view of the increasing mobility of human resources in all parts of the world.

Article 1(2) provides that the countries party to the Lisbon Agreement undertake to protect on their territories, in accordance with the terms of the Agreement, the appellations of origin of products of the other countries party to the Lisbon Agreement, recognized and protected as such in the country of origin and registered at the International Bureau of WIPO. Therefore, in order to be protected under the Lisbon Agreement, the appellation of origin must fulfill two conditions. The first condition is that the appellation of origin must be recognized and protected as such in the country of origin (the latter being defined in Article 2(2)). This condition means that it is not sufficient for the country in question to protect its appellations in a general way. Each appellation still has to benefit from distinct and express protection, deriving from a specific official act (a legislative or administrative provision, or a judicial decision, or a registration). Such an official act is required because the specific elements of the object of protection (the geographical area, the lawful users of the appellation of origin, the nature of the product) must be determined. Those elements must be indicated in the application for international registration in accordance with Rule 1 of the Regulations under the Lisbon Agreement.

The second condition laid down by Article 1(2) is that the appellation of origin must be registered with the International Bureau of WIPO. Articles 5 and 7 of the Agreement itself and the Regulations set forth the procedure for international registration.

Article 2(2) defines the country of origin as being “the country whose name, or the country in which is situated the region or locality whose name, constitutes the appellation of origin which has given the product its reputation.”

**Lec 8. The right to topology integrated circuits – its concept, principle.**

1) bulletin - the official periodical on the protection of integrated circuits topologies;

      2) an integrated circuit - a microelectronic product of final or intermediate form, designed to perform the functions of an electronic circuit, which elements and connections are inseparably formed in the volume and (or) on the surface of the material on which basis the product is made;

      3) the topology of an integrated circuit (hereinafter - the topology) - spatial-geometric arrangement of the set of elements of the integrated circuit and connections between them fixed on the material carrier;

      4) the right holder - the author, his successor, as well as any individual or legal entity who has the exclusive right obtained by virtue of the law or the contract;

      5) license contract - an contract under which the right holder (licensor) grants the other party (licensee) the right to use temporarily the topology in a certain way;

      6) patent attorneys - citizens of the Republic of Kazakhstan who, in accordance with the legislation of the Republic of Kazakhstan, have been granted the right to represent individuals and legal entities before the authorized body;

      7) the exclusive right to topology - the property right of the right holder to use the topology in any way at his discretion;

      8) use of topology – application, importation, offer for sale, sale or other introduction of topology, an integrated circuit with this topology or a product, including such an integrated circuit, in civil circulation, carried out for commercial purposes, unless otherwise provided by this Law;

      9) the authorized body - the central executive body, carrying out, within its authority, the leadership in the field of legal protection of the integrated circuits topologies.

The competence of the authorized body shall include:

      1) participation in the implementation of state policy in the field of legal protection of rights to topologies;

      2) development and approval of:

      the rules of examination of applications for registration of topologies;

      the rules of entering topologies in the State register of integrated circuits topologies and issuing of certificates of registration, certificates of authors;

      the rules of registration in the State register of integrated circuits topologies of the exclusive right transfer, granting the right to use topologies;

      the rules for provision of extracts from the State register of integrated circuits topologies; the rules for consideration of objections by the appeals council;

      the provisions on the attestation commission;

      the provisions on the appeals council;

      the provisions on the appeals commission;

      3) determination of the order of publication in the bulletin of information on registered topologies;

      4) certification of candidates for patent attorneys and their registration in the register of patent attorneys;

      5) organization of the activity of the certification commission, the appeals council and the appeals commission;

      6) carrying out other powers provided for by this Law, other Laws of the Republic of Kazakhstan, acts of the President of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan.

1. An expert organization established by the decision of the Government of the Republic of Kazakhstan in the organizational and legal form of a republican state enterprise on the right of economic management, subordinated in its activity to the authorized body shall:

      1) examine applications for registration of topologies;

      2) enter the topologies in the State register of integrated circuits topologies and issue certificates of registration, certificates of authors;

      3) register in the State register of integrated circuits topologies a transfer of the exclusive right, granting the right to use topologies;

      4) keep the State register of integrated circuits topologies, a bulletin and place them on its Internet resource;

      5) provide extracts from the State register of integrated circuits topologies;

      6) publish in the bulletin of the expert organization information on the registered topologies.

 1. The legal protection provided by this Law extends only to the original topology.

      2. The original one is the topology created as a result of the creative activity of the author. The topology is recognized as original until proven otherwise.

      3. Topologies, which set of elements is well known to developers and manufacturers of integrated circuits on the date of its creation, shall not be given legal protection by this Law. Topologies consisting of elements that are well known to developers and manufacturers of integrated circuits on the date of its creation shall be given legal protection only if the set of such elements as a whole meets the requirements of paragraph 2 of this Article.

      4. The legal protection provided by this Law shall not extend to ideas, methods, systems, technology or coded information that may be embodied in a topology.

Article 6. Authorship on the topology

      1. The author of a topology is an individual whose creative work it is.

      2. If several individuals participated in the creation of the topology, all of them are considered to be its authors (co-authors). The procedure for the use of the rights belonging to the co-authors is determined by contract between them.

      1. The author of topology shall be recognized an individual by whose creative activity it has been created.

      2. If several individuals participated in the creation of the topology, all of them shall be recognized its authors (co-authors). The procedure of use the rights belonging to co-authors shall be determined by the contract between them.

      3. Individuals who did not make a personal creative contribution to the creation of the topology, but who provided the author only technical, organizational or material assistance or who contributed to the design of the right to it and its use, shall not be recognized as authors

      4. The right of authorship on the topology shall be an inalienable personal non-proprietary right and is protected indefinitely.

Article 7. Exclusive right to topology

      1. The exclusive right to topology belongs to the author of the topology or to the employer, or the customer in the cases provided for in Article 9 of this Law, or their successors.

      2. The right holder shall have the right to use the topology in any way at his discretion, in particular, by making integrated circuits with such a topology, including the right to prohibit other people from using this topology without the relevant permission of the right holder, except as provided for in Article 10 of this Law.

      3. The procedure for the use of the exclusive right belonging to several authors of the topology or other right holders shall be determined by contract between them.

      In the absence of such a contract, each of them may use the protected topology at his own discretion, but does not have the right to grant a license to it or transfer the exclusive right to another person without the consent of the other right holders.

      4. A violation of the exclusive right to a topology shall be the performance of the following actions without the permission of the right holder:

      1) copying the topology in whole or in part by incorporating it into an integrated circuit or in any other way, with the exception of copying only that part that is not original;

      2) application, import, offer for sale, sale and other introduction of topology into civil circulation, an integrated circuit with this topology or a product including such an integrated circuit.

Article 8. Transfer of the exclusive right

      1. The exclusive right to the topology may be transferred in whole or in part to another person under the contract, as well as transferred in the order of universal succession by inheritance and as a result of reorganization of the legal entity - the right holder.

      2. Under the license contract, the right holder (licensor) shall grant the other party (licensee) the right to use temporarily the topology in a certain way.

      3. The license contract may provide for the provision of a licensee:

      1) the right to use the topology while retaining the ability of the licensor to use it and the right to issue a license to others (a simple, non-exclusive license);

      2) the right to use the topology without preserving the licensor's ability to use it and without the right to issue a license to others (exclusive license)

Article 9. The exclusive right to topology, created in the order of performance of official duties and under the contract with the customer

      1. The exclusive right to a topology created in the order of performance of official duties or a specific task of the employer belongs to the employer, unless otherwise provided by the contract between him and the author.

      2. The size, conditions and procedure for paying remuneration to the author for the topology specified in paragraph 1 of this Article shall be determined by the contract between the author and the employer. If it is impossible to measure the contribution of the author and the employer to the creation of the topology, the size, conditions and procedure for paying remuneration to the author shall be determined by the legislative acts of the Republic of Kazakhstan.

      3. The author may assume under the contract the obligation to create a topology and provide the customer, who is not his employer, with exclusive right to the topology.

1. The author of the topology or other right holder shall have the right to register the topology by submitting an application for registration to an expert organization.

      The application for registration of the topology and the documents attached thereto shall be submitted in the Kazakh and Russian languages. If the specified documents are submitted in another language, the expert organization shall have the right to request the translation of information contained in the documents attached to the application. The translation must be submitted simultaneously with the application or no later than two months from the date of receipt of the application.

      2. Application for registration can be made in a period not exceeding two years from the date of the first use of the topology, if it has taken place.

      3. Application for registration must refer to one topology and shall contain:

      1) an application for registration of the topology indicating the author and the persons in whose name the registration is requested, as well as their place of residence or location, date of first use of the topology, if it has taken place;

      2) materials identifying the topology, including the abstract;

      3) a letter of attorney if the application for registration is filed through a representative;

      4) (is excluded)

      Requirements for the preparation and design of an application for registration shall be established by the authorized body.

      4. On the received application for registration of the topology, an examination shall be carried out.

      If the result of the examination is positive, the topology shall be registered in the State register of integrated circuits topologies and a certificate of registration shall be issued.

      Before registration, the applicant shall have the right to add, clarify and correct the application materials.

      The author of the topology, who is not the right holder, shall be issued the author's certificate by the expert organization.

      5. Information entered into the State register of integrated circuits topologies shall be considered reliable until the contrary is proved.

      The applicant shall be responsible for the accuracy of the information.

**Lec 9. International legal protection for facilities of individualization of participants of civil circulation, commodities, works and services.**

Intellectual property (IP) refers to **creations of the mind: inventions; literary and artistic works; and symbols, images, names and logos used in commerce**. Businesses are often unaware that their business assets include IP rights.

Intellectual property (IP) pertains to any original creation of the human intellect such as artistic, literary, technical, or scientific creation. Intellectual property rights (IPR) refers to the legal rights given to the inventor or creator to protect his invention or creation for a certain period of time.[[1](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3217699/" \l "ref1)] These legal rights confer an exclusive right to the inventor/creator or his assignee to fully utilize his invention/creation for a given period of time. It is very well settled that IP play a vital role in the modern economy. It has also been conclusively established that the intellectual labor associated with the innovation should be given due importance so that public good emanates from it. There has been a quantum jump in research and development (R&D) costs with an associated jump in investments required for putting a new technology in the market place.[[2](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3217699/" \l "ref2)] The stakes of the developers of technology have become very high, and hence, the need to protect the knowledge from unlawful use has become expedient, at least for a period, that would ensure recovery of the R&D and other associated costs and adequate profits for continuous investments in R&D.[[3](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3217699/" \l "ref3)] IPR is a strong tool, to protect investments, time, money, effort invested by the inventor/creator of an IP, since it grants the inventor/creator an exclusive right for a certain period of time for use of his invention/creation. Thus IPR, in this way aids the economic development of a country by promoting healthy competition and encouraging industrial development and economic growth. Present review furnishes a brief overview of IPR with special emphasis on pharmaceuticals.

The laws and administrative procedures relating to IPR have their roots in Europe. The trend of granting patents started in the fourteenth century. In comparison to other European countries, in some matters England was technologically advanced and used to attract artisans from elsewhere, on special terms. The first known copyrights appeared in Italy. Venice can be considered the cradle of IP system as most legal thinking in this area was done here; laws and systems were made here for the first time in the world, and other countries followed in due course.[[4](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3217699/" \l "ref4)] Patent act in India is more than 150 years old. The inaugural one is the 1856 Act, which is based on the British patent system and it has provided the patent term of 14 years followed by numerous acts and amendments.[[1](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3217699/" \l "ref1)]

Originally, only patent, trademarks, and industrial designs were protected as ‘Industrial Property’, but now the term ‘Intellectual Property’ has a much wider meaning. IPR enhances technology advancement in the following ways:[[1](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3217699/" \l "ref1)–[4](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3217699/" \l "ref4)]

(a)

it provides a mechanism of handling infringement, piracy, and unauthorized use

(b)

it provides a pool of information to the general public since all forms of IP are published except in case of trade secrets.

A patent is awarded for an invention, which satisfies the criteria of global novelty, non-obviousness, and industrial or commercial application. Patents can be granted for products and processes. As per the Indian Patent Act 1970, the term of a patent was 14 years from the date of filing except for processes for preparing drugs and food items for which the term was 7 years from the date of the filing or 5 years from the date of the patent, whichever is earlier. No product patents were granted for drugs and food items.[[9](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3217699/" \l "ref9)] A copyright generated in a member country of the Berne Convention is automatically protected in all the member countries, without any need for registration. India is a signatory to the Berne Convention and has a very good copyright legislation comparable to that of any country. However, the copyright will not be automatically available in countries that are not the members of the Berne Convention. Therefore, copyright may not be considered a territorial right in the strict sense. Like any other property IPR can be transferred, sold, or gifted.

Protection of undisclosed information is least known to players of IPR and also least talked about, although it is perhaps the most important form of protection for industries, R&D institutions and other agencies dealing with IPR. Undisclosed information, generally known as trade secret or confidential information, includes formula, pattern, compilation, programme, device, method, technique, or process. Protection of undisclosed information or trade secret is not really new to humanity; at every stage of development people have evolved methods to keep important information secret, commonly by restricting the knowledge to their family members. Laws relating to all forms of IPR are at different stages of implementation in India, but there is no separate and exclusive law for protecting undisclosed information/trade secret or confidential information.[[10](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3217699/" \l "ref10)]

Pressures of globalisation or internationalisation were not intense during 1950s to 1980s, and many countries, including India, were able to manage without practising a strong system of IPR. Globalization driven by chemical, pharmaceutical, electronic, and IT industries has resulted into large investment in R&D. This process is characterized by shortening of product cycle, time and high risk of reverse engineering by competitors. Industries came to realize that trade secrets were not adequate to guard a technology. It was difficult to reap the benefits of innovations unless uniform laws and rules of patents, trademarks, copyright, etc. existed. That is how IPR became an important constituent of the World Trade Organization (WTO).

Lec 10. Rights to production secrets (know-how) – its role, conception.

In a group of countries with a civil law tradition, which follow the approach consisting of the protection of the honest businessman, such protection is usually to be found in the general tort law. In another group of countries which follow common law traditions, the actions for passing-off and for violation of trade secrets developed by the courts (at least originally) remain the main basis for the protection of competitors. As for the protection of consumers, a number of the same two groups of countries have, in addition, enacted separate sets of laws regulating specific cases of undesirable market behavior, such as misleading advertising, price comparisons, lotteries, games and bonuses; those laws are essentially independent of the protection of competitors under civil law or common law principles.

Most countries party to the Paris Convention—even those that at first attempted to regulate unfair competition by means of general tort law—provide for a combination of general civil code principles, case law and special laws. In many countries with a federal structure, the division of legislative competence between the federal legislature and the legislatures of the federated States has led to an even more complex combination of the various forms of protection. In some of those countries, the federal legislator even has no jurisdiction over unfair competition to the extent that it is considered a State common law tort. Where, in such countries, protection is granted by the States, it is in general better developed than that granted at the federal level. In the United States of America, in particular, the limited availability of common law remedies against unfair competition was first dealt with in federal law through the establishment of an administrative authority (the Federal Trade Commission), and more recently through the extension of a federal law provision on trademarks (Article 43(a) of the trademark law (Lanham Act)) to a wide variety of misleading representations. Yet the most progressive regulation is to be found in the “business laws”, “little

In spite of the different approaches mentioned above, all countries that have introduced effective safeguards against unfair competition take particular care over the enforcement of the law, and usually allow their courts considerable discretion. The success of an unfair competition law depends largely on what the courts make of it. A few words in a general tort provision may be a sufficient basis on which to develop an efficient system of unfair competition law, while a most impressively drafted statute may give disappointing results. This does not mean, however, that an explicit and detailed regulation of unfair trade practices is not useful: it will at least have some preventive effect on market behavior; but it will remain ineffectual if it is not activated by the courts. In the ever-changing world of competition, even the most perceptive legislator cannot possibly anticipate all future forms of unfair market behavior and must rely on interpretation of the law by the courts. Many countries have therefore supplemented their explicit provisions against certain market practices with a general provision, which allows the courts to include new forms of unfair market practice in the general system.

According to Article 10*bis*(2) of the Paris Convention, unfair competition consists of “any act of competition contrary to honest practices.” Most countries with special laws on unfair competition have adopted the same or similar definitions for their general provision—using such terms as “honest trade practices” (Belgium and Luxembourg), “the principle of good faith” (Spain and Switzerland), “professional correctness” (Italy) and “good morals” (Germany, Greece and Poland). In the absence of specific legislation, the courts have defined fair competition with phrases like “the principles of honesty and fair dealing” or “the morals of the marketplace” (United States of America).

It is true that describing unfair competition as acts contrary to “honest trade practices”, “good faith” and so on does not make for clear-cut, universally accepted standards of behavior, since the meaning of the terms used is rather fluid. The standard of “fairness” or “honesty” in competition is no more than a reflection of the sociological, economic, moral and ethical concepts of a society, and may therefore differ from country to country (and sometimes even within a country). That standard is also liable to change with time. Furthermore, there are always new acts of unfair competition, since there is ostensibly no limit to inventiveness in the field of competition. Any attempt to encompass all existing and future acts of competition in one sweeping definition— which at the same time defines all prohibited behavior and is flexible enough to adapt to new market practices—has so far failed.

This does not mean, however, that unfair competition cannot be encompassed by any general definition. It has been generally recognized that certain acts of commercial behavior are always (or, as Article 10*bis*(3) of the Paris Convention puts it, “in particular”) considered to constitute unfair competition. The most notable of those acts are the causing of confusion, discrediting and the use of misleading indications. The common aspect of these most important, but by no means exhaustive, examples of unfair market behavior is the attempt (by an entrepreneur) to succeed in competition without relying on his own achievements in terms of

quality and price of his products and services, but rather by taking undue advantage of the work of another or by influencing consumer demand with false or misleading statements. Practices that involve such methods are therefore doubtful at the outset as to their fairness in competition.

Another reference point could be the subjective element in the unfair act. At first sight, the notion of “honesty” seems to refer to a moral standard, and some sort of legal/ethical standard is indeed involved. This, however, has to be distinguished from the question whether an act of unfair competition can be established in the absence of any fault, bad faith or negligence. Where unfair competition law has been developed on the basis of general tort provisions, the “tort of unfair competition” requires some kind of subjective element such as “fault” or “bad faith.” In practice, however, the element of fault or bad faith is often assumed by the courts.

The most important factor for determining “unfairness” in the marketplace, however, is derived from the purpose of unfair competition law. In this respect, unfair competition law was initially designed to protect the honest businessman. In the meantime, consumer protection has been recognized as equally important. Moreover, some countries put special emphasis on the protection of the public at large, and especially its interest in the freedom of competition. Modern unfair competition law therefore serves a threefold purpose, namely: the protection of competitors, the protection of consumers and the safeguarding of competition in the interest of the public at large.

One party who is always “concerned” is the honest businessman. Since unfair competition law started as a special law for the protection of the honest businessman, a businessman’s standard of behavior logically serves as a starting point. A practice that is condemned as improper by all businessmen can, therefore, hardly qualify as a “fair” act of competition.

On the other hand, certain practices may be generally accepted within a branch of business but nevertheless considered “improper” by other market participants. In such cases, there has to be some ethical correction of the actual standards of behavior. Ethical standards dictate in particular that the interests of consumers must not be unnecessarily impaired, for example, by disregard for the principle of truthfulness (on which the consumer relies in his transactions), by enticement of the consumer into unsocial or even harmful behavior or by invasion of his privacy.

Furthermore, there may be practices that at first sight are not prejudicial either to other businessmen or to consumers, but nevertheless may have unwanted effects on the economy at large. For example, selling at dumping prices may in the long run destroy small- and medium-sized businesses, and thus have adverse effects on free competition. Where these economic aspects are incorporated in unfair competition law, such behavior will often be expressly labelled as “unfair.”

When determining “honesty” in business dealings, all these factors have to be taken into account. In practice, the concept of unfair competition has increasingly become a balancing of interests. Differences in the evaluation of what is “fair” or “unfair” can generally be explained by the different emphasis placed on the aspects referred to above. For example, a particular kind of market behavior may well be seen differently in countries where the traditional law of unfair competition still focuses on the protection of the honest competitor, as opposed to countries that put special emphasis on the protection of consumers or the public at large.

On the other hand, there is broad agreement that at least some acts and practices are always irreconcilable with the notion of fairness in competition. These are discussed in detail below.

For the purposes of establishing categories of acts of unfair competition and facilitating their analysis in this study, two broad groups of acts of unfair competition are distinguished, namely acts of the types expressly mentioned in Article 10*bis* of the Paris Convention and acts not expressly mentioned in Article 10*bis*.

Article 10*bis*(3) contains a non-exhaustive list of three types of acts of unfair competition, namely, acts likely to cause confusion, acts that discredit a competitor, and acts that may mislead the public. Because the acts that are likely to cause confusion and those that may mislead the public are akin to one another and sometimes overlap, they are dealt with before the act of discrediting a competitor.

There are a number of acts not mentioned in Article 10*bis* which have been recognized by the courts as unfair practices and which, increasingly, have become the subject of legislative provisions. Of particular interest in this connection is the trend towards explicit protection of trade secrets by express provisions in unfair competition laws, and the continuing evolution of provisions governing the practice of comparative advertising. Moreover, there has been an increasing recognition of the need to grant protection against undue “misappropriation” of, or “free riding” on, the achievements of competitors, regardless of the availability of specific industrial property rights, provided that, under the circumstances of the case, such acts are found to be unfair.

Article 10*bis*(3)1 of the Paris Convention obliges member States to prohibit all acts that are of such a nature as to create confusion, by any means, with the establishment, the goods or the industrial or commercial activities of a competitor. The scope of Article 10*bis*(3)1 is very broad, as it covers any act in the course of trade involving a mark, sign, label, slogan, packaging, shape or color of goods, or any other distinctive indication used by a businessman. Thus not only indications used to distinguish goods, services or businesses but also the appearance of goods and the presentation of services are considered relevant for the prohibition of confusion.

Under Article 10*bis*(3)1 of the Paris Convention, the “intent” to confuse is immaterial for the purposes of determining whether such an act constitutes an act of unfair competition. However, bad faith on the part of the imitator may have a bearing on the sanctions to be applied. Also, it is not usually necessary for confusion actually to have occurred, as the likelihood of confusion is often sufficient for an action based on unfair competition. Finally, protection against confusion is provided without any limitation in time. Protection is available as long as confusion is likely, but sufficient latitude is allowed for the use of non-confusing indications in respect of products, services and businesses, so that competition in the relevant market is not stifled. However, as soon as the marketable creation becomes generic or commonplace, it loses its original or distinctive character, and likelihood of confusion may no longer be assumed to the same degree.

There are two main areas in which confusion frequently occurs. These are indications of commercial origin on the one hand, and the appearance of goods on the other. However, this does not preclude or limit the protection of other attributes or achievements against confusion.

Confusion can be established in different ways. The test for the basic type of confusion is whether the similar mark so resembles the protected mark that it is liable to confuse a substantial number of average consumers as to the commercial source of the goods or services. Factors frequently considered in determining confusion are the degree of distinctiveness of the protected mark, the size and reputation of its owner, the sophistication of the consumers concerned and, of course, the similarity of the marks and the goods or services involved. In many countries, confusion is not restricted to basic confusion as to the commercial source, but also includes that which gives the impression of a strong business connection between the two users of the same trademark or similar trademarks, i.e., confusion as to affiliation. However, the use of an identical or similar mark on clearly unrelated or completely different goods usually falls outside the scope of protection, as a large degree of dissimilarity of the goods or services involved will lead consumers to assume that the source of the goods or services is not the same and also that there is no particular business connection between the users.

A third form of confusion that has been referred to, for example, under Section 43(a) of the Lanham Act of the United States of America and under Section 53 of the Australian Trade Practices Act, is called confusion as to sponsorship. Under this test for confusion, consumers will assume both that the goods or services do not originate from the same source and that the two enterprises do not entertain business relations so intensive and continuous as to cause confusion as to affiliation. Nevertheless, the consumer will expect, from the similarity of the marks, from the types of product or service that the mark is used for and from the manner of use by the second user, that the use of the protected mark by the second user has been authorized by agreement for a certain period of time. This type of confusion can be relevant, for example, in cases where the third party uses the mark (without authorization) for ornamental purposes on goods. However, unlike confusion as to source or affiliation, this third type of confusion has not the same status as other fully established grounds for relief under statutory trademark laws, as its exact boundaries are still developing.

This concept of confusion may be relevant to so-called “publicity” rights, relating to well-known artists and media or sports personalities, and to “merchandising” rights, relating to fictional characters in literary or artistic works. These rights concern relatively new marketing techniques whereby enterprises are “licensed”, for a certain period of time, to make use of the popularity or fame symbolized by the names or likenesses of certain personalities or characters, as this use is expected to stimulate consumer demand for the product or service of the “licensee.” Consumers would generally be misled by the use of the name or likeness of the personality or character in connection with the product or service into believing that the personality or the owner of rights in the character, which could also be a registered mark, had expressly authorized the use of their personality or character.

**Lec 11. Legal safeguard of unconventional objects of intellectual property – its essence, conception.**

An indication can be any sign, symbol or device that conveys to the consumer the message that a product or service on the market comes from a particular commercial source, even if this source is not known by its name. Indications may therefore consist of two-dimensional or three-dimensional signs, labels, slogans, packaging, colors or tunes, but are not limited to these. Protection against confusion with respect to indications is already available under specific legislation on trademarks, service marks and trade names. However, this protection is often limited in several ways. The limitations may concern the applicability of the specific law to certain types of indication, or the exact scope of protection. Thus protection against confusion under unfair competition law may still be relevant where the specific legislation does not afford overall protection against

confusion. This aspect is also relevant to the protection of well-known marks against confusion, as required by Article 6*bis* of the Paris Convention.

The general applicability of trademark law is usually confined to particular indications. Some countries do not, for example, recognize titles of single literary works or films, get-up (product appearances), shop interiors, colors or color combinations, or trade dress under statutory trademark law. As regards service marks, although most countries have a system for the registration of such marks in the same way as trademarks, in those that do not, protection under the rules of prevention of unfair competition is needed. Also, even in countries where three-dimensional trademarks are recognized and registrable, particular shapes may nevertheless be excluded. For example, shapes determined solely by the nature of the goods, appearances resulting from some technical or industrial function of the goods and product configurations determining the essential value of the goods are expressly excluded by the EC Directive to Approximate the Laws Relating to Trade Marks. The “functionality” doctrine, particularly developed in the United States of America, produces similar results.

Apart from this, protection under trademark law can sometimes be invoked only for marks that have been properly registered in the country where protection is sought. In this respect Article 6*bis* of the Paris Convention constitutes an exception in favor of a well-known mark, which does not need to be registered in order to be protected against the potentially confusing use of a mark that is a reproduction or an imitation of the well-known mark and is used for identical or similar articles. It is to be noted that a trademark may be well-known in a country before it is registered or even used in that country, as a result of the advertising or reputation of the mark in other countries. The obligation to protect unregistered well-known marks is clarified and supplemented in the Joint Recommendation Concerning Provisions on the Protection of Well- Known Marks adopted by the WIPO General Assembly and the Assembly of the Paris Union in September 1999.

Unfair competition law may provide protection against confusion for indications or signs that are not protectable under trademark law. However, the availability of protection for a sign under unfair competition law will depend partly on the reasons for the lack of protection for unregistered signs under the special laws. If a sign can in principle be covered by the specific legislation but does not meet the substantive requirements of that legislation, it would not seem consistent with a balanced system of protection to grant that sign the same protection under unfair competition law as would be granted to it under the special law. It is therefore argued that protection against confusion should only be available under unfair competition law if the indication or sign to be protected has sufficient distinctiveness to distinguish the products, services or other business activities concerned from the same or similar activities of other traders. Nevertheless, in order to promote the registration of marks, some unfair competition laws require more than just a minimum degree of distinctiveness for the protection of unregistered indications. For example, Article 2(1) of the Unfair Competition Prevention Law of the Republic of Korea requires the indication to be “widely known”, which could in some cases restrict actual protection to one particular region.

The degree of distinctiveness of an indication that is not protected under statutory trademark law is assessed in relation to the same factors as apply to registered marks, including the meaning and the appearance of the indication, and its uniqueness compared with other indications for the same or a similar activity. Even if distinctiveness is inherently lacking, for example, owing to the descriptive nature of the indication for particular goods or services, the indication can be protected if it has acquired “distinctiveness by use”, or secondary meaning, in the country where protection is sought. Secondary meaning implies that, as a result of continuous and exclusive use of the mark on the market, a substantial number of consumers have become aware of it and will

associate the activity carried on under it with a particular commercial source. In Germany, for example, the trademark “4711” for perfume has been considered sufficiently distinctive as a result of public awareness that the goods under that mark come from a particular source. In fact the degree of secondary meaning depends on the market for the goods or services involved and the degree of descriptiveness of the indication in relation to those goods or services. The degree of secondary meaning (or percentage of consumers) necessary to achieve sufficient distinctiveness varies according to the practices of the court concerned. In some countries, opinion polls or market surveys on consumer reactions often provide empirical data with which to determine the degree of secondary meaning, whereas in other countries the courts themselves will judge whether an indication has acquired sufficient distinctiveness.

Secondary meaning analysis also applies to indications that have been expressly excluded from statutory trademark protection. For example, the configurations or shapes of goods that are deemed to be excluded from statutory protection under trademark law by the EC Directive to Approximate Laws Relating to Trade Marks may still acquire secondary meaning among consumers in a particular market. Under those circumstances, protection against confusion is justified if consumers could be led to believe mistakenly that other goods using the configuration come from the first user. It may not always be easy, however, to establish the necessary degree of secondary meaning, since the particular configuration of the goods must be recognized by the relevant consumers as indicating a particular source. If the exclusion in the specific legislation is clearly intended to dismiss the indication as not worth protecting at all, for example, in the case of purely descriptive words, protection is likely to be denied also under unfair competition law.

Limitations on the scope of protection afforded by trademark law may also have the effect of allowing indications to be protected against confusion under unfair competition law. Although trademark laws usually grant protection against any potentially confusing use of a registered trademark, there may still be differences with respect to the exact scope of the protection against confusion. For example, protection against the use of the same or a similar mark might be restricted to those goods or services for which the mark is registered. If a mark identical or similar to the registered trademark is used for other goods or services and that use is likely to cause confusion, such protection might only be available under unfair competition law or passing-off principles. Generally, trademarks are protected against the use of identical or similar signs not only in respect of identical goods or services but also in respect of similar goods or services. This type of protection derives from what is sometimes called the “principle of speciality”, as the protection is related to the trademark’s primary function of distinguishing the goods of one enterprise from those of competitors and other market participants. Thus if trademark protection is not available because the goods or services involved are held to be dissimilar (although confusion as to source may in fact be possible), protection against confusion can be sought under unfair competition law. However, there are also trademark laws that consider the likelihood of confusion to be the sole criterion for protection, regarding the similarity of the goods or services involved as not decisive in itself, but only as one of several determining factors. This kind of statutory protection would encompass all types of confusion.

The criteria used to judge the similarity of indications are, with some minor differences, the same throughout the world. The determining factors include the common elements of appearance, pronunciation and meaning or verbal translation of the marks involved, but the decisive factor is the overall impression on the average consumer of the goods or services involved. Particularly if the goods are for mass consumption, the individual elements of the marks involved are less carefully examined by the average consumer. Since the two marks are as a rule not closely examined side by side, in practice the similarities between the indications are more important than the differences. The similarity of the goods or services depends largely on the question whether consumers would

generally expect the goods or services to originate from the same source. However, they do not need to be either functionally interchangeable or competitive.

Protection against confusion may be too limited for so-called “well-known” marks and, in particular, for marks with an even higher reputation. Article 6*bis* of the Paris Convention requires member States to protect trademarks that are well known in their country against any potentially confusing use of similar trademarks, but that obligation is only relevant for identical or similar goods. In certain cases, the unauthorized use of well-known marks for different goods or services may nevertheless cause confusion among consumers. For example, if the mark has been used for a broad range of products and has been extensively advertised or is well known for the particular “image” of its proprietor, consumers might associate such a mark with a certain origin and quality consistency rather than with goods or services of a specific kind. Such associations can also cause confusion. The member States are not obliged under Article 6*bis* to grant this extended protection, but unfair competition law may be relevant. The question whether a trademark is “well-known” in a given country for the purposes of Article 6*bis* of the Paris Convention has to be decided in each case on the basis of the facts. Usually, the factual determination of the notoriety of a trademark is based on its reputation and image in the mind of the trade circles and consumer groups concerned at the place and time relevant in the particular case. Factors such as the mark’s inherent distinguishing power, the length of time that it has been used in the given country, the amount of advertising and other publicity given to it in various media and its established association with particular goods or services are often taken into consideration. The Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks obliges member States to protect well-known marks even beyond confusion under certain circumstances. According to Article 4(1)(b) of the Joint Recommendation a well-known mark has to be protected against the use of an identical or similar mark for dissimilar goods or services if such use:

would indicate a connection between these goods or services and the owner of the mark and would be likely to damage his interests;

is likely to impair or dilute in an unfair manner the distinctive character of the well-known mark; or

would take unfair advantage of the distinctive character of the well-known mark;

in the two last-mentioned cases, Member States may require that the well-known mark be well known by the public at large (Article 4(1)(c) of the Joint Recommendation).

Statutory trademark law frequently requires that the use of a similar mark must be a form of trademark use, that is, use as an indication of the commercial source of the products or services. Thus ornamental use, such as use on advertising material or as a mere decoration on goods, for instance on ballpoint pens or ashtrays, or even as the configuration of an actual product such as an earring in the shape of the mark, is not always regarded as falling within the scope of statutory trademark protection. Protection against this type of use could, however, be sought under unfair competition law. One example of a trademark law that is very extensive in the above respects is the Uniform Benelux Trademark Law of 1971, which provides a broad definition of registrable marks and protection against any use of an identical or similar trademark by others without proper justification that is likely to cause prejudice to the trademark proprietor.

Similar limitations on protection against the unauthorized use of traders’ or businesses’ indications are to be found in the protection of trade names. Trade names serve to identify and to distinguish an enterprise and its business activities from those of other enterprises. Article 8 of the Paris Convention imposes the obligation to protect trade names in all countries of the Paris Union,

without specifying what kind of protection should be granted or how it should be given. Nevertheless, trade names must be protected without any obligation of filing or registration. Most countries already protect trade names against the risk of confusion. This protection applies not only where trade names are covered by a special law, but also where they are protected under special provisions of unfair competition law, civil law, company law or commercial law. As a general rule, a direct competitive relationship between the enterprises concerned is not decisive, but remains relevant in determining whether the use of the same or similar trade names might confuse consumers regarding the identity of enterprises or the relationship between them. The protection may extend beyond the particular field in which the prior trade name is used, as trade practice or the likelihood of expansion and diversification of the activities of the enterprise is frequently taken into account by the courts. Thus the scope of protection of trade names against confusion may sometimes be a little wider than the scope of protection of trademarks under trademark law.

The actual shape of a product could also lead to confusion among consumers. If the shape is so well known that consumers will relate the product with a particular commercial source (as in the case of the “Coca-Cola” bottle), then the shape can be regarded as a protectable indication.

It must also be noted that specific legislation is available in many countries for the protection of industrial designs, either to complement or to replace copyright protection for works of so-called “applied art.” Such legislation usually prohibits the use of identical or similar product appearances for identical or similar goods. However, as with trademark legislation, protection under special laws on industrial designs is also limited in several ways, which vary significantly from country to country. In a manner similar to the specific protection under trademark laws, such limitations may concern the general applicability of the designs law to certain product appearances and also the exact scope of the protection granted by the specific legislation. For example, if the design protection of a surface decoration is limited to the use of the decoration on products for which the design is registered, protection against copying of the design for the decoration of other products may be obtained under unfair competition law, if the copied design is misleading or causes confusion as to the commercial source.

**Lec 12. Rights to means of individualization of legal entities, goods and enterprises – the conception.**

**Lec 13. The right to use the results of intellectual activity as part of a single technology – its conception.**

|  |
| --- |
| Copyright covers scientific, literary or artistic work that is the product of creative activity regardless of the value, type or mode of expression of the work. Copyright protects both disclosed and undisclosed works. Copyright protection arises when a work is created. There are no registration requirements.  Chapter 70 of the Civil Code gives an author certain rights over his/her work. It sets out exclusive property rights over the work, as well as moral rights for the author of the work.  These exclusive rights include (among other things) the:  right of reproduction;  right of distribution;  right of demonstration to the public;  right to import or export originals; and  right to provide access to the work by any means of telecommunication (including the Internet).  Moral rights include in particular the:  right of authorship;  right to the name;  right to preserve the integrity of the work; and  right of publication.  The exclusive rights to the works are protected for the lifetime of the author plus 70 years.  Infringement of copyright may lead to civil, criminal and/or administrative liability. |
| Neighbouring rights | Neighbouring rights cover the creation and use of performances, phonograms, broadcasting programmes, cable distribution organisations, and databases.  The owner of neighbouring rights may be the performer of phonograms, the creator of databases or the broadcaster of media.  Under the Civil Code, performers enjoy both exclusive property rights and moral rights, whilst radio and television broadcasters only enjoy exclusive property rights.  The holding and the exercise of neighbouring rights is not subject to any mandatory registration formalities.  The rights enjoyed by owners of neighbouring rights may be granted by virtue of a licence agreement or a contract for the exclusive assignment of rights. |
| Online audio-visual platforms | Regulations governing online platforms used for the creation and distribution of audio-visual works came into force on 1 July 2017. The regulations cover the following platforms, in particular:  websites;  information systems; and  computer programmes.  The owners of audio-visual platforms must comply with a number of obligations. These include, for example, a prohibition on the dissemination of certain information, specific requirements on the dissemination of information to the general public and the ensuring that its content is subject to age-based restrictions, where appropriate. |
| Patents |  |
| National registration | Patent protection covers:  inventions, which are a technical solution in any field related to a product or a process;  utility models, which are the devices that are the result of intellectual activity in the scientific and technical spheres; and  industrial designs, which are the result of intellectual activity in relation to the appearance of the product.  Civil Code regulates the protection of inventions, utility models and industrial designs.  Patent protection is subject to conditions, which depend on the type of object being protected.   |  |  | | --- | --- | | An invention can only be protected if it: | • is new; • has an inventive step; and • is capable of industrial application | | A utility model can only be protected if it is: | • new; and • capable of industrial application | | An industrial design can be protected only if it is: | • new; and • original |   The concepts of dependent invention, dependent utility model and dependent industrial designs are defined in the Civil Code. To use them, it will be necessary to be authorised by the patent holder of the inventions, utility models or industrial designs. Without such authorisation, the dependent objects of intellectual property cannot be used. Unlike copyright, which protects the author's work from the day of its creation, a patent is only protected after being registered with Rospatent. The right to obtain a patent belongs to the inventor, his/her employer (in case of an employee's invention) or to their assignee(s). The patent application is filed with Rospatent for examination. Rospatent will grant the patent if the relevant criteria are met.  The maximum duration for patent protection is as follows:  20 years from the filing date of a patent application for an invention, with the possibility of up to a five-year patent term extension for pharmaceutical products, pesticides and agrochemicals;  ten years from the filing date of a utility model application; and  five years from the filing date of an industrial design application, with the possibility of up to a five-year term extension, which may be renewed so that the entire period of life of a design patent may be up to 25 years.  According to the Civil Code, inventions and, as of June 2019 industrial designs, are also subject to temporary protection during the registration process. Once the relevant patent is granted, the owner may demand payment of remuneration for the use of the invention/industrial design during the registration term.  The patent licence and/or any assignment agreement need to be registered with Rospatent. It is also possible to obtain a compulsory licence, following the decision of a court.  Industrial design applicants no longer need to file a list of essential features of the design by registration, which had traditionally been serving as the basis for determining the scope of protection of the design. This means that designs are protected within the scope of the image of the design and its description. This change has narrowed the scope of protection of industrial designs. |
| International and regional registration | In addition to national registration, there are also two levels at which inventions can be protected, namely: at international and regional levels.  At international level, an invention can be protected by the International Patent System. By filing one international application under the Patent Cooperation Treaty (PCT), applicants can protect an invention in more than 153 PCT contracting states.  Alternatively, an invention can be protected at regional level on the basis of a single Eurasian patent valid within the territory of the nine member states of the Eurasian Patent Convention (EAPC). |
| Trade secrets and know-how | IP-related information and professional activity methods which have actual (or potential) commercial value can be defined as a trade secret or know-how as long as the necessary criteria are met. In particular, the information must be unknown to third parties because there is no free access to it. Further, the owner of the trade secret must take active measures to protect the secret and ensure that there is no free access to it (in particular, by implementing the so-called “trade secrecy regime”).  [The Law on Trade Secrets](https://seamless.legal/en/rus/publication/doing-business-in-russia-2020/intellectual-property/rights-over-the-results-of-intellectual-activity#Rightsovertheresultsofintellectualactivitynote2) defines the information that constitutes a trade secret and lists the measures that the right owner should take in order to ensure the protection of know-how. The law also provides for civil, administrative and criminal liability for a breach of trade secret rights. |

**Lec 14. Transition, grant, assignment of exceptional rights and methods of defense.**

**Lec 15. Right of defense from an unfair competition in the field of intellectual property.**

Competition law promotes and seeks to maintain market competition to a certain degree by regulating, detecting, and punishing anti-competitive practices exercised by companies or other business organizations. Competition law authorities implement competition law policies through private and public enforcement. Competition law is referred to as antitrust law in the European Union. Lastly, Competition also stabilizes the market condition by regulating monopoly and unfair business practices.

Intellectual property rights refer to rights given to a person or a group of people over the creation of their minds or an invention. The freedom obtained is exclusive ownership, use, and possession of the trademark name or design. Intellectual property rights give a person or a company exclusive right to use its plans and ideas or intangible assets without worry of rivalry, at least for a specific period. Intellectual property rights can include copyrights, patents, trademarks, and trade secrets, to name a few.

The researchers diligently conducted this research bearing in mind that several researchers have made research and studies about Unfair Competition in the area of Intellectual Property rights. However, there is no existent research that has been made in this domain that has directly addressed Unfair Competition in the field of Intellectual Property rights: analyzing concepts, Unfair Competition acts, and laws. Therefore, there is no existing literature review that directly analyzes Unfair Competition in the field of Intellectual Property rights and makes particular reference to concepts, Unfair Competition acts, and laws. Nevertheless, there is a literature review and data on Unfair Competition, protection against Unfair Competition, and other studies that provide us with some literature review in this domain.

Firstly, Vivien Chan (2020) argues that article 2 of the Chinese Anti-Unfair Competition Law plays a vital role in curbing new types of unfair competition acts. According to the Chinese Anti-Unfair Competition Law (AUCL), business operators must adhere to the general principle of voluntary participation, equality, integrity, and fairness in the production and business operation sectors. With the help of cases, this article's authors illustrate how the Chinese AUCL is implemented on other unfair competition infringements in China to deal with Intellectual Property law's loopholes.1 The Paris Convention (1883) addresses Unfair Competition in article 10 bis of the Convention, and it is explicitly applicable to member countries. Member countries of the Paris Convention are obligated to ensure that citizens of those countries enjoy sufficient protection against unfair competition practices. Thereby promotes a fair-trade atmosphere and a certain level of Competition that is stable and conducive for market operations and businesses, thereby enabling the market's economic efficiency and protecting consumers. However, Tim W. Dornis (2017), author of the book Trademark and Unfair Competition Conflicts, presents the historical-comparative, doctrinal, and economic aspects of trademark and unfair competition conflicts law.

Furthermore, during this research work, we discovered an intersection between competition law and Intellectual property rights. Intellectual Property Rights give exclusive usage and ownership to an individual for their invention. But if he/she uses this right to stifle Competition, Anti-monopoly or competition law comes in to break and control this right and freedom in cases the inventor may have used this right to exercise a dominant position in the market.

Intellectual property concerns the right to exclusivity over the economical use of the artistic mind fruits (invention) and such signs used by business owners. This right, conferred to the creator, gives them the freedom to exploit this invention. If an operator or a company uses his exclusive right to exercise an anti-competitive act thus, stifling Competition in the market at this point, Competition law comes in to intervene and make sure that this anti- competitive practice is punishable according to the law. Thus, at this level, Competition law and Intellectual Property Rights conflict. Competition law enforces sanctions against Unfair Competition practices; therefore, these two laws complement each other. Intellectual property licenses can improve economic efficiency2.

Besides, after providing a brief analysis on the concept of competition law and intellectual property rights and exploring how these doctrines interact or overlap, we shall move on to our focal point of unfair Competition in the area of intellectual property rights.

Unequal Competition in the Area of Intellectual Property Rights

The doctrine of Unfair Competition in intellectual property rights derives from the fact that there is an illegal, deceptive trade that legislation, rule, or common law forbid. Unfair Competition is a term that refers to fraudulent or unlawful Competition in trade and commerce.

Unfair Competition can be through false, fraudulent, or unethical commercial conduct like predatory pricing, counterfeiting or imitation, dumping, misleading advertisement, trademark, or trade secret infringement. Some other actions that fall under Unfair Competition's concept include infringement of patents, trademarks, copyrights, Wrongful appropriation of trade names, trade dress and trade secrets, and actions for publication of defamatory, false, or misleading representations.

It is a phenomenon (Unfair Competition) that, for some reason, occurs in the domain of intellectual property rights, including the fact that a consumer economy facilitates and supports Competition between industrial and commercial organizations. Competitors, industrial magnates, and corporations are out to succeed and make a massive amount of profit. Some operators quench their search for success by using malicious means such as misleading the public to the detriment of an entrepreneur. Some companies or individuals do not want to go through the process or stress of inventing ideas and trademarks. So, they prefer to use already registered patents and trademarks illegally, and it facilitates patent and trademark registration and all other procedures involved.

We discovered that most unfair competition practices are already regulated by most countries' international and national laws during this research. However, these practices persist and are more evident in the 21st century, especially with the rapid technological advancement.

Acts of Unfair Competition according to Paris Convention 1883

Unfair Competition acts of rivalry are strongly associated with intellectual property. The Paris Convention (1883) is enforceable in countries that are members of this Convention, and each country's national laws that govern this field is also applicable. For Unfair Competition, Article 10 bis of the Paris Convention is explicitly relevant3.

(1) To union countries are obligated to ensure that citizens of those countries enjoy sufficient protection against unfair competition Article 10 bis of the Paris Convention Article 10 bis (1).

(2) An act of Unfair Competition, Article 10 bis (2) of the Paris Convention, constitutes Competition contrary to ethical standards in industrial or economic matters.

(3) Article 10 bis (3) shall be excluded as follows4:

1. Acts of a kind that can cause conflict by whatsoever with a competitor's established, established products, or industrial or commercial practices.

2. During a trade, false accusations can discredit the state's industrial or commercial practices, the products, or competitors.

3. The signs or claims used in the course of commerce are liable to deceive the public as to the existence, method of production, specifications, suitability for their intent, or the quality of the products.

Unfair Competition Actions That Damage Goodwill

*a- Trademark Infringement*

Trademark infringement is an act or activity that causes doubt about another's enterprise or practices during manufacturing or business activities. An Act of Unfair Competition constitutes an act, especially concerning the goods or services provided by such an undertaking. Trademark misuse happens when the brand on the market is used by another person who confuses the public.

A registered trademark is a right of copyright in which the owner receives exclusive permission to use the trademark. Article 8 of the Paris Convention of 1883 states that a brand name is protected in all the Union countries, whether it is part of a trademark without the need to file or register.

Section 5(3) of the Law Against Unfair Competition of the People's Republic of China describes the Trademark Trespass as an activity to use, without authorization, the corporate name or personal name of the other person on its goods, which causes people to misinterpret them in the interests of another person. There is a guiding case in China on trademark infringement, which falls under an unfair competition dispute. *Suremoov Automotive Technology Company Limited v. Tianjin Xiaomuzhi Car Servicing and Repairs Services Co. Case No. 30, LAN Jianjun and Hangzhou Inc. Ltd et al.*

Acts Damaging Reputation

*b-Patent Violation*

Patent infringement means the manufacture, use, distribution, or import of a patented product or method without the patent proprietor's consent. Article 60, 1(1) of the Patents Act 1977 (as amended) Article 4ter of the Paris

Convention states that inventors' novel inventions shall receive patent certificates; the patentee must be mentioned in the patent certificate5. In a case where there is a patent violation, a patentee has the right to a court argument.

However, there are exceptions to Article 60, 1(1) of the Patents Act. Under Section 60(5)(a) of the Patent Act 1977 (as amended), there is a list of defenses against patent infringement6. Also, if it is for individual use and non- commercial reasons, it is appropriate to use a patent7.

Section 64 of the Patents Act 1977 grants third parties the ability to continue actions that would otherwise infringe a patent if such an act establishes itself before enacting (or before the coming into force of) the legislation. The deed must have been executed in good faith8. The case on patent violation is related to China, *guiding case No. 20 Shenzhen Siruiman Fine Chemicals Co., Ltd v. Shenzhen Kengzi Water Supply Co., Ltd and Shenzhen Kangtalian Water Supply Co., Ltd.* The above case is a Patent Infringement Dispute.

*c-Infringement of Trade Secrets*

Firstly, a trade secret means technological knowledge and organizational information that is not known to the public. It can provide economic gains to the rights holders and has practical applicability, and the rights holder has taken action to keep it confidential. Consequently, infringement of a trade secret by extracting trade secrets from the rights holders by cheating, threatening profits, returning coercion, or other improper means. Under Article 10 of the Law on unfair Competition of the People's Republic of China, the operator shall in no way take the following standards to infringe trade secrets:

(1) Extracting trade secrets from the rightsholders through cheating, threatening profits, restoring coercion or, other unethical means.

(2) Disclosure. Use or authorize others to use the rights holders' trade secrets, employing the subsection mentioned earlier (1).

(3) Revealing, using, or authorizing someone to use the trade secrets acquired by violating the agreement by failing to comply with the duty of the holder of the rights to keep the trade secrets private9.

In compliance with Article 10(1), (2), and (3), when a third party obtains, uses, or discloses the trade secrets of another, these acts shall be considered as a violation of the trade secrets of others. And if it is clear that the third party has or should have been entirely aware of the criminal activities alluded to in the preceding paragraph10.

*c- Industrial/Economic Espionage*

Industrial Espionage is when an employee discloses a company's confidential information to another company or people. It may be a secret of a company; it could involve producing its goods or maybe packaging. To be called a secret, it must have been by the owner of the trade secret.

In Argentina, for example, Section 85 of the Labor Law (Law number 20,744) states that employees have a loyalty obligation per the duties they carry out11. Employees may not disclose confidential information they have access to because of their activity.

According to the International Espionage Act of 1996 Section 1831(a), Economic espionage in general, is anyone, meaning or believing that the crime would profit any foreign nation, foreign instrument, or foreign agent, knowingly:

(1) Gives away, brings away or conceals, or obtains a trade secret utilizing theft, cunning, or deceit, or without authorization;

(2) Clones, duplicates, models, illustrations, images, scans, uploads, alters, kills, photocopies, copies, transmits, delivers, gives, emails, shares, or conveys a trade secret without authorization12;

(3) Collects, purchases, or possesses a trade secret, knowing the same to have been stolen or appropriated, gained or transformed without the authorization;

(4) Attempts to commit any of the crimes mentioned in any of paragraphs (1) to (3);

(5) Collusion with one or more other persons to commit an offense referred to in either of the provisions of paragraph (1) (3). One or more of such persons shall commit any conduct with the intent of plotting, and, according to subsection (b) of the Economic Espionage Act, a fine of not more than $500,000 or incarceration of not more than 15 years or both13.

However, digitalizing information has made Intellectual Property rights more available to spies, particularly patents and trade secrets. Patent offices have become more functional, digital documents have expanded in reach, and companies have made more of their business online. Thus, this is one of the reasons why industrial espionage is so simple and so widespread.

Every country has many laws that aim at regulating Competition. China has several laws that aim at promoting good competition practices, but a particular focus will be made on the Ant-Unfair Competition Law on Trademark Practice. This law was enacted in the year 1993, and China only recently amended the law in 2018. This amendment law has been approved by the Standing Committee of the National People's Congress on November 4, 2017, and entered into force on January 1, 201814.

The amendment had a significant impact on trademark practice. Firstly, the removal of clauses 5(1) and 2(1) avoids duplication with China's Trademark Law15. The Trademark Law at the same time regulates violations outlined in clauses 5(1) and 2(1) of the previous Anti- Unfair Competition Law, so the clauses are taken to avoid overlapping applications of the law16.

Clause 5 of the previous Anti-Unfair Competition Legislation established that "any business owner shall not use any of the following unfair ways of carrying out transactions during a business venture and causing harm to market riders: (1) counterfeiting the registered trade name of an individual."

If a business owner counterfeits another registered trademark, uses the name, or gives authorization to another corporation, counterfeits or fraudulently uses quality symbols such as identification symbols and emblems of well- known and high-grade products. Alters the source of products and allows untruthful statements that are deceptive to the grade of the commodities. Clause 21 provides that he/she is sanctionable under the Trademark Law of China and the Product Quality Law of China. The previous overlap between these clauses and the Trademark Law caused inconvenience for intellectual property (I.P.) owners seeking protection on the Anti-Unfair Competition Law grounds. Their removal has, therefore, streamlined the legal process.

Besides, by widening the scope of the concept of I.P., the second law allows for wider coverage and protection of I.P., for example, about trademarks and trade names. Trade dress and trade names are discussed for the first time in Clause 6, which specifies that companies shall not perform such acts of misunderstanding to confuse customers. A number of new terms such as "trade name", "social organization name ", pseudonym", "stage name", "website name", and "webpage"17 have been defined. The addition of these terms, which represents a major step forward for China, illustrates that new terms that emerged in recent landmark cases can drive Chinese trademark law changes. China's AUCL is a powerful supplement to the specific intellectual property laws. It has reinforced protection against unauthorized use of brands, product packaging, store design, business practice, and trade secrets.

Other International legal frameworks and treaties that regulate this sector include the World International Property Organization (WIPO), World Trade Organization (WTO), and the TRIPS.

Unfair Competition in IPR is a concept and doctrine that is overly complex. It has become quite common to find actions considered as unfair practices in the market sector. The elaboration of stricter or stringent laws to regulate this sector will assist IPR owners and protect consumers and help in one way or the other to curb down the growing trend of unfair competition practices in our modern world, especially with the ever-increasing technology. Also, most laws only provide civil liability. This makes infringers careless. If there are more and more criminal liabilities in a crime concerning unfair Competition, these practices will undoubtedly lessen in their numbers.

Moreover, enacting more stringent laws against unfair Competition in intellectual property rights will do an excellent job for the business sector. It will also protect the consumer financially and the health of consumers. Implementing anti-competitive Laws against unfair competition practices will also help the owners of business enterprises and inventors do business in a fair environment and play legally, thereby protecting all parties' rights. Enacting Laws will assist significantly in the economic sector by ensuring economic efficiency. Some legal experts say that fair Competition sustains and provides economic efficiency. The dream of every country is to have a strong economic power; Joseph A. Schumpeter rightly stated, "the sovereignty of a country is determined from how strong its economy is or from how its economy is fairing." Thus, each state must ensure fair Competition in its market to secure and sustain economic growth.

• Also, there are some limitations to the protection of some IPR. Such as geographical limitations on the protection of patents. Patents are geographically protected. Thus, it makes it easy for someone in another country to use another one's patent with ease and without the owner having the right or capacity to prosecute him/ her.

• Laws and legal principles have limitations, and as law students, professors, legal experts, and lawyers, we need to realize that some of these limitations may have a negative effect. We highly recommend that this section of intellectual property law be revised and updated to account for cases in which a company's patent is used in a country where the patent is not registered. The perpetrator should be charged and prosecuted for his behavior.