



## Training Manual on IP Crime Prosecution

### 2. THE NATURE OF INTELLECTUAL PROPERTY

## Nature of IPR

The exclusive right of the right holder of an IPR is dual in nature:

- it usually entitles the right holders to exercise the right and exploit the object to which it relates, and
- it is negative since the right holders have legal remedies at their disposal (particularly actions for infringement) enabling them to prevent any unauthorized use of the exclusive right.



## Sources

- IPRs are generally based on local statute.
- Laws are generally based on international conventions and are accordingly similar and comparative law is thus important.
- There are no “common law” rights to inventions, registered trademarks, copyright and designs.



## International organizations



- World Intellectual Property Organization (WIPO) – Stockholm Convention – UN agency
- World Trade Organization - GATT
- UNESCO: Educational, Scientific and Cultural Organisation – Universal Copyright Convention.
- UPOV –plant varieties



## Role of international conventions



- Establish guidelines for
  - uniform definition
  - uniform protection.
- Require national treatment:
  - citizens and residents of one country receive recognition for and protection of their IP rights,
  - Foreign enterprise is entitled to the same rights as those accorded to nationals.

## TRIPS: “Agreement on Trade-related Aspects of IP Rights”

- Part of GATT (General Agreement on Trade and tariffs).
- Administered by WTO.
- Reasons for TRIPS: Lack of enforcement mechanisms
- Agreement between WTO and WIPO.

## TRIPS: Basics

The TRIPS agreement contains:

- General Provisions And Basic Principles
- Standards Concerning the Availability, Scope and Use of IP Rights
- Standards for Enforcement of IP Rights.

2019/05/06

9

## TRIPS: GENERAL PROVISIONS AND BASIC PRINCIPLES

- All WTO members automatically bound by Trips.
- National treatment
- Public interest exemptions

2019/05/06

10

## TRIPS OBJECTIVES

Protection and enforcement of IP rights should

- contribute to the promotion of technological innovation
- and the transfer and dissemination of technology,
- to the mutual advantage of producers and users
- Be conducive to social and economic welfare,
- And balance rights and obligations.

2019/05/06

11

## TRIPS and classic conventions

- Duplicates many of the provisions of the Paris Convention for the Protection of Industrial Property 1883 and the Berne Convention for the Protection of Literary and Artistic Works 1886.
- These did not, however, deal with criminal law.

## Function of national law

The function of national law is to

- Create IP rights
- Determine remedies
- Provide structures for enforcement
- Provide procedures for enforcement.

## Principle of territoriality



- All conventions respect the principle of territoriality.
- The main consequences of territoriality are that
  - IPR rights exist within any given jurisdiction by virtue of local law and
  - enforcement is a matter for local law.

## Principle of the independence of IPRs

- A consequence of territoriality
- Examples
  - Copyright
  - Trademark
  - Patent



## National treatment

- Each country must treat the nationals of other member countries in the same manner as it treats its own citizens.
- Thus: IP law and practice may not discriminate against foreigners.

2019/05/06

16

## Formalities

Some IPRs depend for their existence on official action, namely registration. These are

- Trademarks
- Patents
- Industrial designs
- Plant Breeders' Rights



On the other hand, copyright does not depend on state action to come into existence.

However, copyright statutes define the circumstances in which copyrights come into existence and the nature and content of authors' rights.



## IPRs and the rights in the goods in which they are embodied are separate

Exhaustion of rights

- Patents
- Copyright
- Trademarks

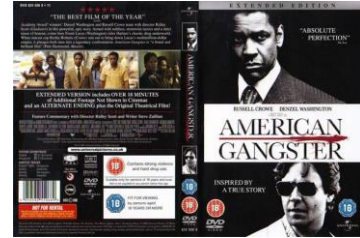
More than one IPR can be reflected or contained in one article

A DVD for instance may consist of

- An artistic work on the cover
- A musical work: the music score
- A literary work: the text of the lyrics
- A sound recording
- A cinematograph film
- And, in addition, performers' rights which are not copyright rights but neighbouring rights protected by other legislation.



One physical object may “contain” more than one copyright work



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More than one IPR can be reflected or contained in one article

Some IP found in a mobile phone ©EPO

<p><b>Trade marks:</b>                  Made by "Nokia"                  Product "N95"                  Software "Symbian", "Java"</p> <p><b>Patents:</b>                  Data-processing methods                  Semiconductor circuits                  Chemical compounds</p> <p><b>Copyrights:</b>                  Software code                  Instruction manual                  Ringtone</p>		<p><b>Trade secrets:</b>                  Designs (some of them registered):                  Form of overall phone                  Arrangement of buttons in oval shape                  Three-dimensional wave form of buttons</p>
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The overlap (duplication) of rights

The one is a trademark and the other a design, and both are artistic works subject to copyright.

Decision of ECJ October 18, 2012 – Joined Cases C 101/11 P and C 102/11 P – *Neuman, Galdeano del Sel and OHIM v Baena Grupo – Neuman*.

