

# Introduction to Intellectual Property

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## Intellectual + Property

- intangibles/products of the human mind: innovations, creations, brands, designs, trade secrets
- right to regulate if and how others may use

## Intellectual property $\neq$ real (tangible) property

- ownership of physical book versus ownership of the copyright in the text of the book
- intangibles are non-rivalrous goods (i.e., they can be used by more than one person at the same time, with no loss of value)
- intangibles are easy and cheap to copy
- IP rights are not absolute: a delicate balance between owners and users



## Public domain

- that what is not protected by IP: this space is important for use, innovation and creativity

## Information economy

- yesterday's economy: goods, factories and labour
- today's economy: ideas, information and knowledge

## Delicate balance

- IP rules regulate creation, access to and use of information and knowledge
- setting of the rules and adjudication of disputes is a complex puzzle fought over by users and owners (e.g., Apple vs. Samsung; "Stairway to Heaven"/"Taurus")



# 10 key features of intellectual property systems

IP-like rules well known in pre-existing customary laws

First national patent law: Venice, 1474

First national copyright law: England, 1709

First international patent and trademark treaty: Paris Convention, 1883

First international copyright treaty: Berne Convention, 1886

WIPO predecessor: 1893

WIPO: 1967

WIPO becomes a UN specialized agency: 1974

1. Established and enforced through national laws
2. IP rights are territorial: country by country
3. International treaties set basic standards and enable cross-border enforcement: no “one size fits all”
4. Rights are transferable – by contract
5. Rights are diverse in nature: “exclusive economic rights”, “moral rights”, “rights to compensation”
6. IP rights are subject to exceptions and limitations



## 10 key features of intellectual property systems cont'd

7. IP rights provide owners with choices: to enforce or not; whom to allow to use and on what terms
8. Rights expire after a certain period (only trade mark rights can be extended indefinitely on certain conditions)
9. Most IP rights need first to applied for, examined and then registered – only copyright arises automatically
10. IP systems are in constant evolution – policymakers respond to new forms of intangibles, changing needs and owners and users



# WIPO

## The global forum for intellectual property

- International intergovernmental organization, UN specialized agency
- 192 member states
- 350 + accredited observers
- 1300 staff from 120 countries
- 26 treaties



# Introduction to Intellectual Property

**Ms. Rebecka Forsgren**

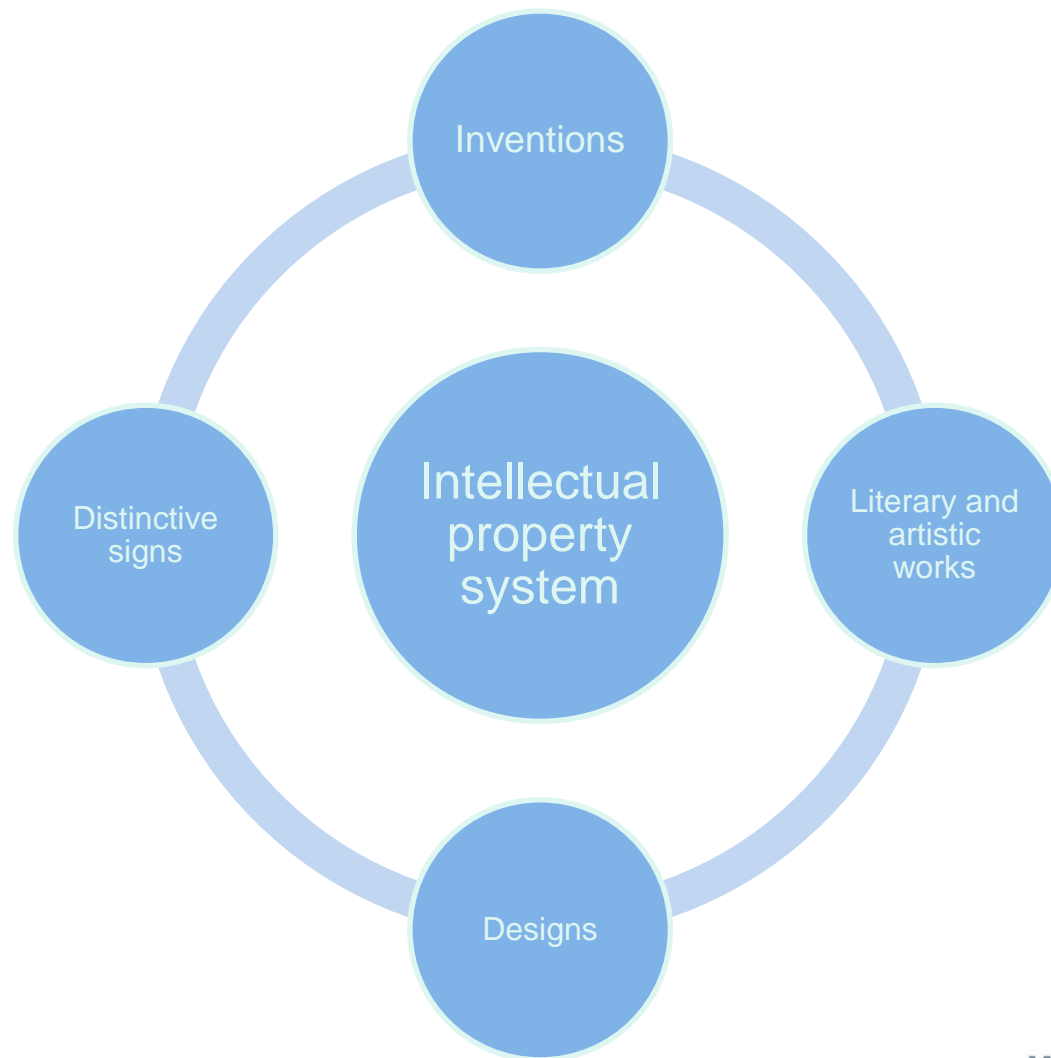


# What is intellectual property

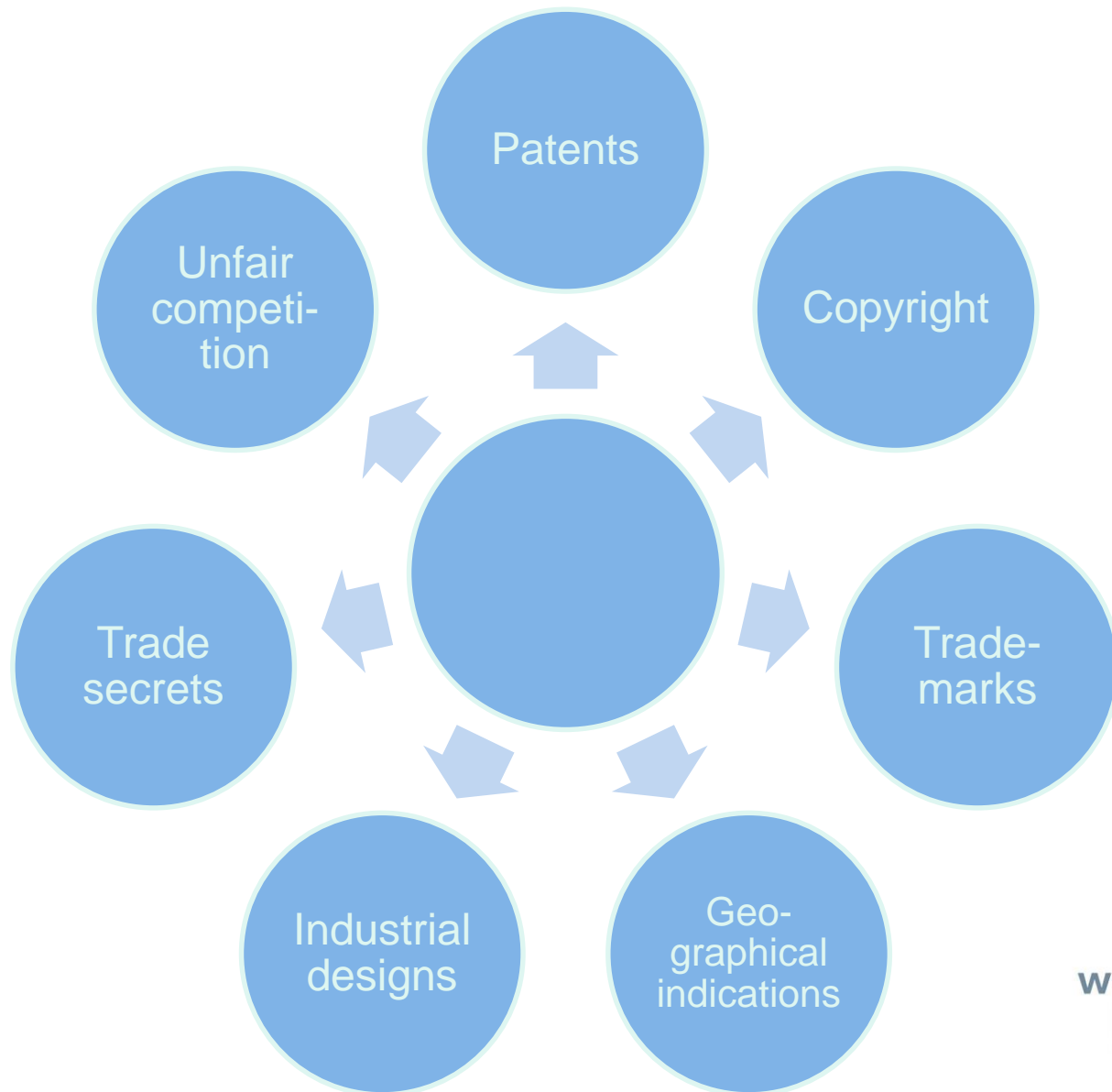
- Creations of the human mind, the results of human creativity and innovation
- The IP system enables people to earn
  - recognition
  - financial benefitfrom what they invent or create
- Encourage inventiveness
  - Inventors and authors
  - Future inventors and authors



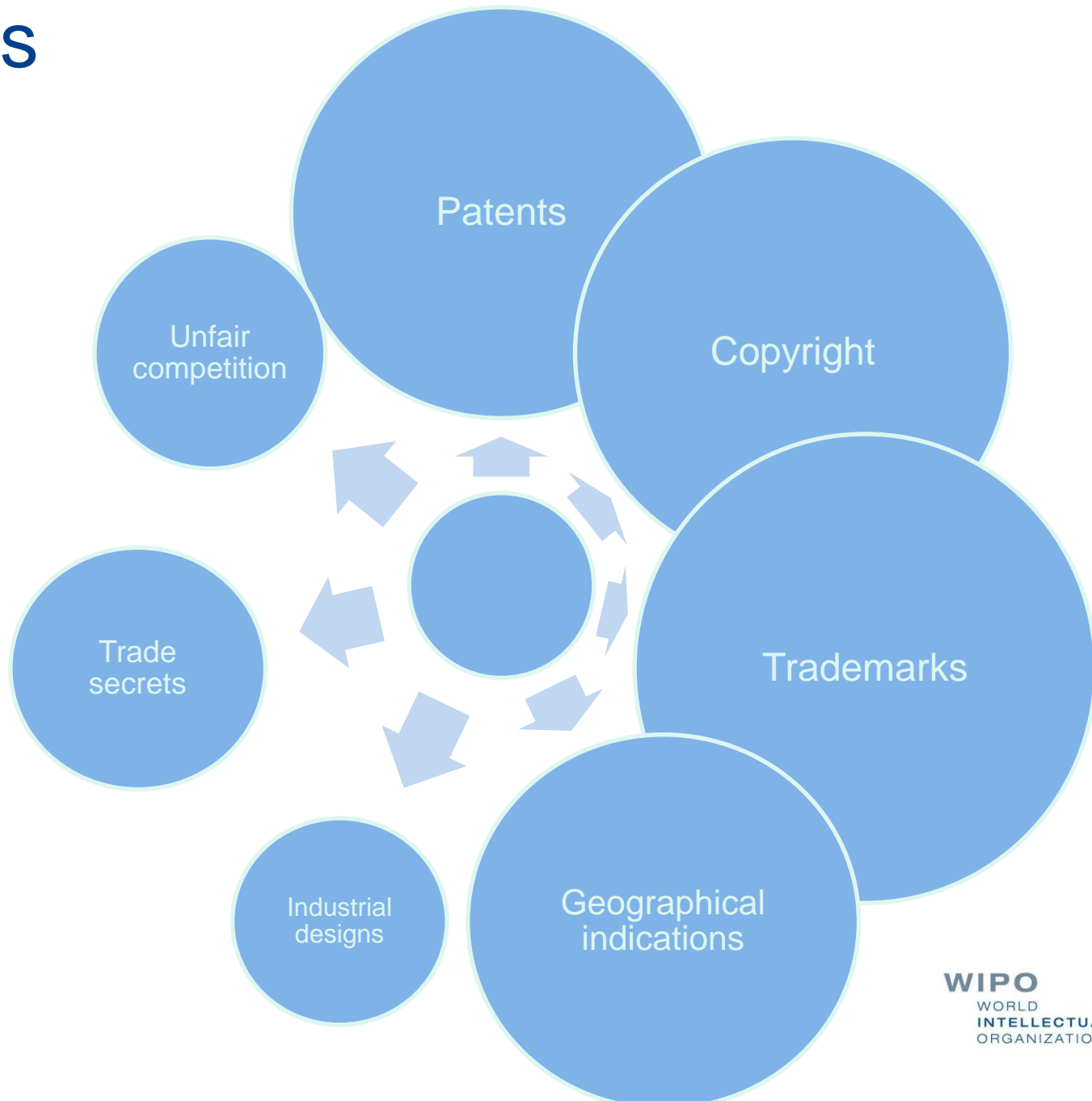
# What can be protected?



# Overview of IP rights



# Focus





# Similarities between the IP rights

- Gives exclusive rights
  - Positive rights for authors/inventors
- Striving for balance
- Some procedures/rules for getting protection
  - Registration is needed *in general*
- Limits to protection
  - In time
  - To territory
- Most rights can be transferred or licensed



# In what ways do IP rights differ?

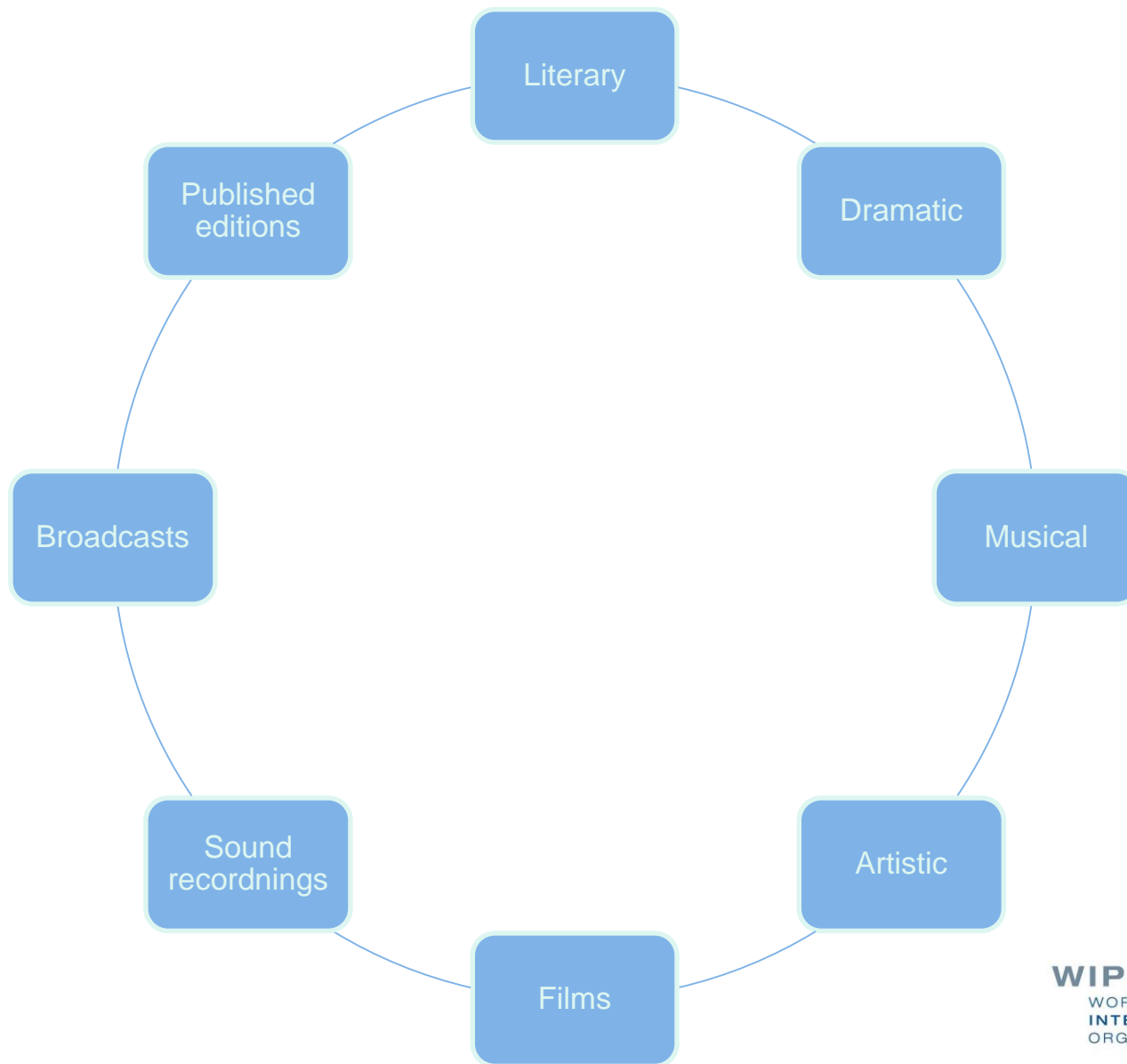
- The subject that can be protected
- Requirements for gaining protection
- Conditions for protection
- Duration of protection
- The nature of protection, which exclusive rights are granted



# Copyright

- Protects the *expression* of ideas not the idea or the knowledge per se
- Different types of works

# Categories of works



# Exclusive rights, nature of protection

- Economic rights
  - Right to copy
  - Derivative works
  - Right to distribution
  - Public performance
  - Right to display
  - Broadcasting – digital audio transmission
  
- Moral rights
  - Attribution – right to recognition
  - Integrity





# Copyright

- Conditions
  - Original
  - Material form
- Duration
  - 50 years after the death of the author in most countries
- Requirements
  - No, automatic protection (when turned into a tangible/material form)



# Exceptions

- Inspiration allowed - not copy!
  - Encourage inventiveness and creativity
- Fair use
  - Private use or research purposes
  - Criticism or reviews
  - Reporting current events
  - Incidental inclusion of copyright protected work in another work (film recording, broadcast etc.)
- Facts can not get copyright protection (but the way facts are presented is protectable)



# Patents

- Inventions – new and inventive products and processes.
  - A technical solution to a problem (a product) or
  - A new way of doing something (a process)



# Requirements

- Novelty - no “prior art”
- Invention – a creation of the human mind
  - Naturally occurring processes and products are not patentable
  - Inventive, non-obvious
- Industrially applicable / useful
- Registration
  - Yes



# Exclusive rights, nature of protection

- A right granted by a state to an inventor
  - to exclude others from making, using, selling or importing
    - in a limited territory
    - for the same sort of goods or services



# Patent

- Conditions
  - You get protection in exchange for a **disclosure of specification** of the invention
    - Someone can reproduce/repeat
    - Best way for reproduction
- Duration
  - Limited period, 20 years in many countries
- Balance + Encourage inventiveness and creativity



# Trademarks

- Right that protects distinctive signs
- Distinguishes goods and services provided by specific person or enterprise
  - Customers can identify the goods and services they need
  - Trademark indicates the nature and quality
  - Marketing strategy

# What is a sign?

- Words
- Designs
- Letters
- Numerals
- The shape of goods or their packaging
- Slogans
- Colours
- Sounds
- Smells
- Gestures
- Taste





# Requirements

- To gain protection, the trademark has to be
  - Used in trade
  - Must be distinctive
  - Should not be generic, descriptive or deceptive
  - Should not be identical or confusingly similar to another trademark



# Trademarks

- Duration
  - 10 years duration; renewable
- Conditions
  - Usually required to be registered
- Exclusive rights, nature of rights
  - Only trademark owner can use the sign

# Geographical Indications

- Sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin
  - Differentiates products for customers
- Geographical origin may be important because:
  - Natural factors – i.e., local soil, climate etc
  - Human factors – i.e., skills, knowledge, practices/traditions
- Exclusive rights, nature of protection
  - Prevents others from using a sign that could be misleading
  - Creates a niche market for the producers of the area



# Geographical Indications

- Requirements
  - Registration
  - Book of requirements/specifications set
- Importance of educating consumers/raising awareness
- Duration
  - Once registered – lasts until registration is cancelled



# Industrial Designs

- Protect the aesthetic or ornamental aspect of a product i.e., how it looks rather than functionality
- Only new designs are protected – must differ from existing designs
- Conditions
  - Usually need registration



# Industrial Designs

- Duration
  - Generally 10 years
- Exclusive rights, nature of protection
  - making, selling or importing your design



# Trade Secrets (or Confidential Information)

- Protects secret knowledge, such as manufacturing processes, secret ingredients etc.
- Duration
  - If kept secret – indefinite protection
- Conditions
  - No registration required
  - Measures needs to be taken to keep it secret
- Exceptions
  - Will not protect where there has been incidental / independent discoveries



# Unfair Competition

- Subject, protects *against*
  - the false labelling of products
  - creating confusion discrediting other brands
  - *Passing off* your product as if they were someone else's
- Can supplement the other IP regimes
- Conditions
  - No registration required
- Falsely using someones rights and/or reputation





	Patents	Copyright	Trademarks	Geographical indications
<ul style="list-style-type: none"><li>• <b>Duration</b></li><li>• <b>Subject</b></li><li>• <b>Registration needed?</b></li></ul>	<ul style="list-style-type: none"><li>• 20 years</li><li>• Idea is protected</li><li>• Yes</li></ul>	<ul style="list-style-type: none"><li>• 50 y. after death of creator</li><li>• Expressions</li><li>• No</li></ul>	<ul style="list-style-type: none"><li>• 10 y. but renewable</li><li>• Sign used in trade</li><li>• Yes (generally)</li></ul>	<ul style="list-style-type: none"><li>• Forever</li><li>• Signs used to indicate place/area of origin</li><li>• Yes</li></ul>



Gäjhtoe!  
Thank you!



# Introduction to IP, TK and TCEs

**Daphne Zografos Johnsson**  
**Legal Officer, Traditional Knowledge Division**



# Outline


- Recap – key features of IP rights
- Are TK and TCEs IP?
- What are IP rights useful for?
- Some examples
- Some tools and resources



# Key features of IP rights

- Protect products of creative intellectual activity
- Criteria of protection
- Confer exclusive rights
- Limitations and exceptions
- Limited in time



- 
- Why do we have intellectual property rights?
  - What is the public domain?



# ■ Are TK and TCEs intellectual property?

- TK/TCEs are creative expressions of indigenous peoples and local communities
- They are **products of creative intellectual activity** so they are “intellectual property”



# TK and TCEs: two sides of the same coin



# Traditional cultural expressions

- Forms in which traditional knowledge and culture are expressed, communicated and manifested
- Ex: songs, performances, crafts, names, symbols, art, narratives, designs, architecture and motifs
- May be tangible, intangible or mixed



# Traditional knowledge



- Content or substance of knowledge which results from intellectual activity in a traditional context
- Includes know-how, skills, innovations, practices, and learning
- Not limited to a specific technical field and may include, traditional agricultural, environmental, medicinal knowledge, and any traditional knowledge associated with cultural expressions and genetic resources



# Characteristics of TK and TCEs

- Are handed down **from generation to generation**, either orally or by imitation
- Reflect a **community's cultural and social identity**
- Are often made by **“authors unknown”** and are regarded as **“belonging”** to a community under customary laws
- Are constantly **evolving, developing** and **being recreated** within a community

- 
- TK and TCEs are intellectual property

- **Traditional** knowledge

- **Traditional** cultural expressions

- They cannot be fully protected by existing IP systems due to inadequacies of the system

# Options for protecting TK/TCEs with IP

- Protection with **conventional/existing** IP systems
- **Adaptation** of conventional/existing IP systems
- ***Sui generis*** protection





# What are IP rights useful for?

## ■ Defensive protection

- Prevent third party uses
- Prevent third party gaining IP rights over TK/TCEs

## ■ Positive protection

- Proactive use of IP rights



# Copyright

- Key features
- Idea/expression
- No protection for style
- Limitations
  - Originality
  - Authorship
  - Term of protection
  - Fixation
- Protection of contemporary TCEs





# Trade marks

- Key features
- Registration system
- First come first served
- Use as a distinctive tool – marketing tool
- Preventing offensive and deceptive marks
- May be licensed



# Collective and certification marks

- Distinctive signs
- Allow for collective use
- Can certify some characteristics of the goods
  - Geographical origin
  - Authenticity
- Possibility of joint marketing campaigns
- Need for education/awareness-raising
- Enable consumer recognition and customer loyalty



# Geographical indications

- Indication used on products
  - specific geographical origin
  - qualities, characteristics or a reputation
- Collective use
- Can help preserve traditional ways
- TK as such not protected
- Premium price
- Heavier implementation



# Designs

- Key features
- Protects aesthetic elements of a products
- “The look and feel”
- 2D or 3D
- Shape or designs

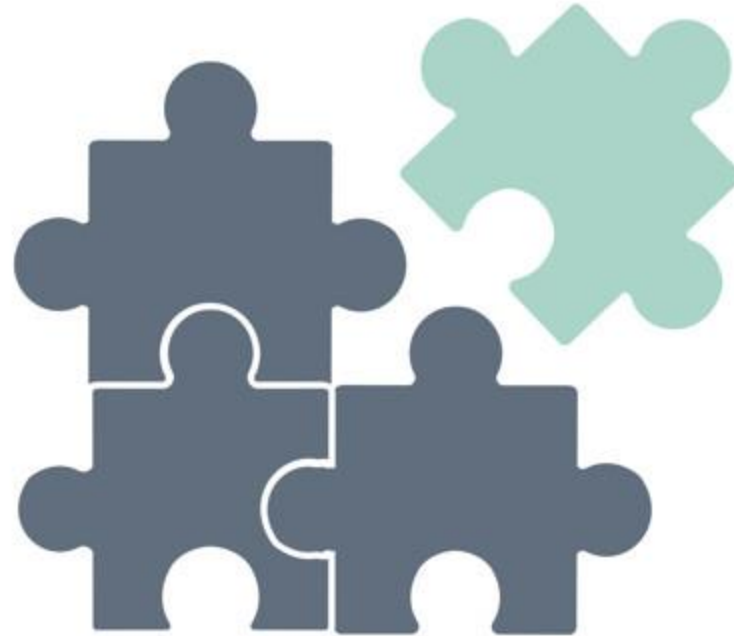


# Patents

- Key elements
- Novelty, inventive step, industrial application
- Defensive element – preventing the grant of erroneous patents
- Positive element – encouraging TK-based innovation

- Nutmeg used since ancient times in India for oral diseases
- Patent filed for “oral compositions containing extracts of nutmeg and related methods”
- Prior art search found references in Indian TK digital library
- Invention did not meet requirements of inventive step
- Rejected





# Protect and Promote Your Culture

A Practical Guide to Intellectual Property for  
Indigenous Peoples and Local Communities

  
**WIPO**  
WORLD  
INTELLECTUAL PROPERTY  
ORGANIZATION

## Nº 5

### La Propiedad Intelectual y la Artesanía Tradicional

#### Introducción

La artesanía tradicional requiere técnicas, capacidades y conocimientos especializados y tradicionales que a menudo son de considerable antigüedad y se transmiten de generación en generación. Los productos artesanales pueden constituir expresiones culturales tradicionales (ECT) por medio de su diseño, apariencia y estilo, y también pueden plasmar conocimientos tradicionales (CC.TT) mediante las capacidades y los conocimientos especializados utilizados para producirlos.

Los CC.TT, y las ECT, incluidos los productos artesanales, constituyen valiosos activos culturales, sociales e históricos de las comunidades que los mantienen, practican y desarrollan; asimismo, son activos económicos que pueden ser utilizados, comercializados o cedidos en licencia para generar ingresos y fomentar el desarrollo económico. Sin embargo, por desgracia, las técnicas tradicionales y el diseño, la reputación y el estilo vinculados a la artesanía están expuestos a la imitación y a la apropiación indebida. Con demasiada frecuencia las imitaciones baratas perjudican las ventas de la artesanía tradicional y la reputación de calidad de los productos genuinos.

Se están planteando propuestas y soluciones para la protección jurídica de los CC.TT, y las ECT a fin de impedir su uso o apropiación indebidos u otra clase de explotación ilícita. Asimismo, es posible utilizar esas soluciones para la protección de la artesanía tradicional. Actualmente en el Comité Intergubernamental de la OMPI sobre Propiedad Intelectual y Recursos Genéticos, Conocimientos Tradicionales y Folklore (CIG) tienen lugar las negociaciones sobre un instrumento jurídico internacional *sui generis* para la protección de los CC.TT, y las ECT.

Esas negociaciones tienen por fin examinar los vínculos existentes entre el sistema de propiedad intelectual (PI) y las preocupaciones de los poseedores de CC.TT, y ECT. Varios países y regiones han desarrollado asimismo sus propios sistemas *sui generis* para la protección de los CC.TT, y las ECT.

Mientras tanto, los artesanos y las organizaciones de artesanía también pueden utilizar los derechos de PI, como las marcas, las indicaciones geográficas, el derecho de autor, los dibujos y modelos industriales o las patentes, para promover sus intereses. Concretamente, se puede utilizar esos derechos para proteger la artesanía tradicional contra la reproducción y la adaptación no autorizadas, y contra el uso engañoso de su estilo y reputación.

En el presente documento se señalan medios prácticos, accesibles y a menudo basados en la comunidad para utilizar el sistema de PI, en favor del reconocimiento, la protección, la gestión, la mercadotecnia y la comercialización de la artesanía tradicional en tanto que activo cultural y económico.

#### ¿Qué es la "Artesanía"?

A veces la artesanía se refiere a los productos artesanales, los productos artesanos, las obras creativas tradicionales o las obras de artesanía artística o tradicional. No hay una definición de artesanía aceptada universalmente, pero cabe señalar las siguientes características comunes:

  
**OMPI**  
ORGANIZACIÓN MUNDIAL  
DE LA PROPIEDAD  
INTELLECTUAL

Reseña

**WIPO**  
WORLD  
INTELLECTUAL PROPERTY  
ORGANIZATION



# Geographical indications

## Copyright



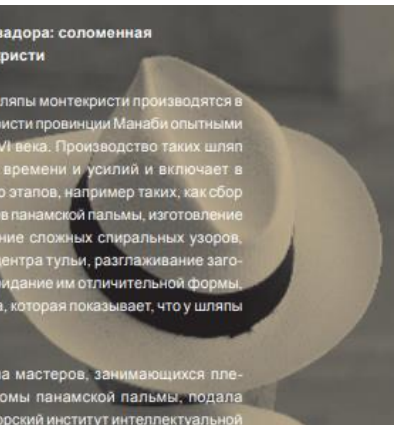
### Пример из Ганы: ткани кенте

Ткани кенте производятся с помощью полосного ткачества. Узоры «вплетаются в ткань таким образом, чтобы при сшивании полос друг с другом общий рисунок напоминал шахматную доску»<sup>3</sup>. Это мозаичная ткань, состоящая из разноцветных нитей, а узоры на ней иллюстрируют исторические события или социальные представления важных для общины людей<sup>4</sup>. Ее производит этническая группа ашанти, а сама ткань часто используется королевской семьей ашанти<sup>5</sup>.

### Пример из Эквадора: соломенная шляпа Монтекристи

Соломенные шляпы монтекристи производятся в городе Монтекристи провинции Манаби опытными мастерами с XVI века. Производство таких шляп требует много времени и усилий и включает в себя множество этапов, например таких, как сбор зеленых листьев панамской пальмы, изготовление соломы, создание сложных спиральных узоров, исходящих из центра тульи, разглаживание заготовок шляп и придание им отличительной формы, а также отделка, которая показывает, что у шляпы нет швов<sup>1</sup>.

В 2005 г. группа мастеров, занимающихся плетением из соломы панамской пальмы, подала заявку в Эквадорский институт интеллектуальной



## Trade secrets

### Пример из Австралии: священный секрет Совета питджантджантджара

Австралийскому Совету питджантджантджара удалось остановить продажи книги «Кочевники австралийской пустыни», написанной Чарльзом Маунтфордом. В ней раскрывалась важная и секретная церемониальная информация, принадлежащая народу питджантджантджара<sup>1</sup>. Совет питджантджантджара заявил, что информация о религиозных и священных вопросах была раскрыта Маунтфорду по секрету. Он зафиксировал ее с помощью «фотографий, рисунков и описаний»<sup>2</sup>.

## Collective marks

### Пример из Кении: таитские корзины

В округе Кении Таита-Тавета женщины из местных общин занимаются производством сизальных корзин с помощью традиционных методов. Этот навык передается из поколения в поколение.

Сообщество изготовителей корзин учредило Ассоциацию таитских корзин, которой принадлежит коллективный знак «таитская корзина». Этот коллективный знак может использоваться членами Ассоциации для охраны и продвижения своих корзин. Ассоциация установила принципы использования знака и утвердила определенные стандарты качества. Она зарегистрировала знак в целях формирования сильного, узнаваемого и прибыльного регионального бренда<sup>4</sup>.

Как и в случае Sumaq Sonqo, этот пример показывает, что коллективные знаки могут быть полезны для коренных народов и местных общин.



фото: ЮНИС

## Industrial designs

### Гипотетический пример: создание образца диджериду<sup>1</sup>

Проанализировав реестр образцов Австралии, Терри Янке обнаружила несколько образцов, которые были созданы на основе или под влиянием тем, характерных для коренных народов. Например, она обнаружила расписанный вручную диджериду<sup>2</sup>.

Терри Янке встретилась с Льюисом Бернсом, представителем коренного народа из Даббо (Новый Южный Уэльс), который занимается изготовлением, дизайном и росписью диджериду. По словам г-на Бернса, именно он впервые сделал диджериду на ножках несколько лет назад.





Thank you!

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