INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS

Research program report

INNOREGIO: dissemination of innovation and knowledge management techniques

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CHAPTER ONE

INTELLECTUAL PROPERTY RIGHTS - COPYRIGHT

1. WHEN DOES COPYRIGHT ARISE?

1.1. Works protected by copyright

The law protects all original literary, artistic or scientific works expressed in any mode or form, such as:

- Written or spoken texts in whichever form they may appear, namely:
  i) Hand-written or printed texts, on paper or computer discs, such as novels, short stories, scientific or press articles, poems, scripts, video recorder manuals, the text of an advertisement appearing in print, a book review on the internet etc, and
  ii) Spoken texts, such as interviews, speeches, university lectures, etc.

- Musical works with or without lyrics, irrespective of technique, rhythm or style such as symphonies, electronic music, jazz, rock n' roll, disco, country music, popular or folk-style traditional music etc.

- Theatre plays with or without accompanying music, such as prose, satire, musicals etc.

- Choreographies and mime, the definition of choreography excluding familiar dances such as, by way of example, the tango, fox trot, rumba, cha-cha, syrtaki and other folk dances, as they are part of the folk cultural heritage of their country of origin.

- Audio-visual works, such as cinema and television films, documentaries, TV series, television and cinema advertisements, video-clips, animation (both hand and computer animation). However, the broadcast alone of a play or a football game or a current event such as the explosion of the Challenger or the Concorde crash, does not constitute an audio-visual work.

- Works of graphic and plastic arts, which include drawings, paintings and sculptures, etchings and prints, in other words both two-dimensional and three-dimensional works. This category includes familiar cartoon characters (Character Merchandising). The copyright in these characters belongs to their authors. Consequently, both the reproduction of a Donald Duck drawing and the production and marketing of a Superman doll or a Lion king stuffed animal, a bath towel depicting Pocahontas or the Batman mobile, which constitute dimensional shift copying, require the authorisation of the cartoon's author or copyright owner.

- Works of architecture, such as bridges, buildings, churches, houses, parks etc. when these are plans or creations exceeding the creative level needed to solve a simple technical problem. In this case, the protection given exists on two levels: as well as the completed works of architecture themselves, the plans and drafts of these works are also protected. This means that reproducing the plans, i.e. creating the building (which is independently protected), depends on the permission of the creator of those plans (which are also independently protected). For example, as regards the construction of the cathedral designed by Gaudi or the church designed by Le Corbsier, despite the fact that these works were protected from the moment they were constructed, the permission of the architects was requested and granted before construction begun because, in reality, their construction constituted dimensional shift copying. The same applies to the adaptation of

a novel into a film script, despite the fact that the completed script will constitute in itself an original work and be protected; however, for that script to be written, the authorisation of the original author, i.e. the novelist, is necessary.

- Photographs, both artistic and everyday photographs. Photographs are protected by copyright, irrespective and independent of the subjects being photographed. If these subjects are also works, they are independently protected and therefore the permission of their author is required before they can be photographed.

- Works of applied art, meaning works that, as well as being works of art are also of practical use. Therefore, Fornazzetti lightings and plates, Philip Stark toothbrushes and chairs, Allessi coffee pots and lemon squeezers, Versace coffee sets and ashtrays, Rosenthal porcelain etc. may be protected as works of applied art. This category includes designs and industrial articles, meaning utilitarian objects such as the above, mainly relating to mass consumption products such as machinery, tools, devices etc. in so far as they qualify as "works" (regarding the protection of designs and industrial articles, also see Industrial Property Rights, unit 4, below).

- Illustrations, maps and three-dimensional works relating to geography, topography, architecture or science.

The following works are also protected by copyright:

- Translations, adaptations, conversions and other adaptations of works or expressions of folk heritage, such as encyclopaedias, anthologies or databases (concerning their construction, for example the arrangement of the information delivered by the Yahoo search engine in response to the specific keywords "competition and advertising"), in so far as the selection or arrangement of their content is original. However, in the case of these works royalties are due to the owners of the pre-existing works from which these works were created. For example, where a play is translated, the author of the work in its original language is entitled to royalties. In the same way, where a song is adapted royalties must be paid to the lyricist and composer of the original song, where a poetry collection is compiled royalties must be given to all the poets whose poems, whole or as abstracts, were used for its creation, etc.

- Computer programs (software) including the preparatory design work leading to their creation, if they are original works, i.e. they originate from the author personally and irrespective of their value, are protected as literary works. Following the recent amendment to the European Patent Convention (EPC), computer programs are now protected as part of a patent (see also below), whereas hardware has always been and still is protected by patent only and not by copyright.

- In addition, according to legal theory, the titles of works may also be protected provided that they contain an element of originality, such as "The old man and the sea" or "Ten little Negroes" or "War and Peace". The same applies to "minor" works such as recipes or the usage instructions for a detergent or a telephone and so on, provided that there is enough creative input for these works to qualify as "works".

1.2. Works not giving rise to copyright / works not protected by copyright:

- Texts relating to government, state and judicial proceedings, being texts which are addressed to all citizens and aimed at their awareness, such as laws, presidential decrees, ministerial decisions, circulars, decisions of local government etc.

  Example 1: A lawsuit drafted by a lawyer is protected by copyright because, although the lawyer carries a state-related function, he is nonetheless a private individual and the texts he drafts constitute literary works unrelated to state proceedings. On the

contrary, a judgement delivered in the same protected lawsuit is not protected by copyright, as it is a text relating to judicial proceedings.

Example 2: An information leaflet issued by the local council to explain the advantages of recycling and invite locals to support a new glass-recycling initiative may be protected by copyright, because such texts are not related to government proceedings and may therefore constitute literary works.

- Expressions of folklore, such as proverbs, legends, folk music and dances, works of folkloric art etc. which are considered to be part of common cultural heritage (public domain).

- News, events or facts and actual events are not protected by copyright, not only as current events (which are not protected anyhow) but also as literary works because news only report an event and as such do not contain an element of originality. For example, the historic Dreyfuss affair is not protected by copyright as an event that occurred in reality and can therefore be the subject of any novel by any author. However, the Dreyfuss affair as specifically rendered in an original form by Emil Zola when he expressed it in a material form, namely as a document, is protected. In the same way, it is not the story of life of Alexis Zorba that is protected, but the specific form given to it by Nikos Kazantzakis when he expressed it in a material form (paper). In the same vein, the news of Princess Diana's death or its announcement and reports relating to it on television and radio are not protected. However, an article written by a journalist in a newspaper on this event is protected by copyright.

- Ideas, before they are expressed in a material form. Copyright can exist in the expression of the idea in a material form. For example, the idea, or inspiration, behind "Crime and Punishment" is not only protected in the way Dostoyevski expressed it in material form, but also as the content of a story, as an inspiration or idea which was expressed in a material form by a writer and therefore cannot be the used as the subject of another writer's work.

- Also constituting ideas and therefore not benefiting from copyright are the following:
  - Styles and techniques, for example, art deco, art nouveau, surrealism, impressionism, cubism, the gothic rhythm, iconography, stained glass, camallieu, silk printing, glass blowing, mosaics etc.
  - Scientific theories, because they belong to the field of humanity's intellectual heritage. They are however protected in the way they are expressed in material form. For example, the content of the Theory of Relativity is not protected by copyright, and other scientists may use it to further their own research. However, the form in which Albert Einstein expressed his theory and its expression as a document is protected and therefore cannot be reproduced without the permission of its owner.
  - Legends, because they form part of the intellectual heritage of humanity.
  - Games
  - Works that do not result from human creativity, for example a rock that has been shaped by waves over the years into an artistic and aesthetic shape.
  - Technological achievements, such as inventions, which are protected by the law governing patents, as explained in Chapter 2 below.

1.3 Conditions for the copyright protection of a work. The "what is worth copying is prima facie worth protecting" rule.

A work **must be original** in order to benefit from copyright protection. According to the law, the notion of "originality" does not imply a good and imaginative idea or a notable work of aesthetic appeal or artistic quality. An original work, in law, means both a work

created for the first time and which is new in the sense that it has not previously existed and a work that is singular and individual and can be differentiated from previous similar works.

For a work to benefit from copyright, **it need not have artistic or aesthetic value** in addition to originality. Judging whether a work has aesthetic or artistic merits is extremely subjective and depends on many factors, such as the critic's education, the aesthetic criteria he applies, his training, emotions, experiences and attitudes and therefore cannot be a matter for a judge to decide.

Finally, a work **need not have some moral value or even be legal**, in addition to being original, in order to be protected by copyright.

- Example 1: Someone who "steals" extracts from a Picasso and a Dali work and then combines the two into a new work has copyright in the new work he has created, despite the fact that his action is criminally condemnable. This is because the new work he has created is original. Furthermore, he has exclusive copyright in the new work that cannot be exploited by the copyright owners (of the Dali and Picasso works) of the previous works whose combined extracts led to the new, illegal work and chose copyright has been infringed. Nonetheless, the copyright owners of the first two works may attempt to prevent the new, illegal work from being circulated.
- Example 2: Someone who adapts a novel into a screenplay without the writer's permission has copyright in that screenplay despite the illegal nature of his act. Again, that is because the work he has created is original. At the same time, the novelist may not use the screenplay without the permission of the screenplay's writer; he may however attempt to obtain a ban against the use of the screenplay or the screening of the film based on it.

Therefore, given that the issue of when a creation is also a "work" is unclear, the notion that "what is worth copying is prima facie worth protecting", i.e. is a "work", has prevailed in legal theory as the criterion in determining whether a creation is a "work".

1.4 <u>Who can be an "author" and therefore the owner of copyright and moral rights in the works?</u>

Any natural person who created the work (the creator principle). That can therefore include a minor, a person who creates a work without being aware that he does so or a prisoner. Companies are legal persons and as such are not creators, except in the three cases discussed below (see sections 1.1.5 v, vi, vii). Companies exploiting copyright and owning the rights flowing from it are not the creators of those works. They have simply acquired the right to exploit them through copyright exploitation agreements concluded with the works' creators-natural persons.

1.5 <u>Specific cases of authorship</u>

i) <u>Works made by employees.</u> The copyright and moral rights in a work created by an employee in the course of his employment primarily belong to the employee/creator. The employer automatically acquires the copyright necessary for the fulfilment of the employment contract. For example, in the case of an illustrator employed by a publishing house in order to illustrate children's books, the copyright and moral right in the illustrations created primarily belongs to the illustrator. However, the right to reproduce the illustrations, market copies and sell them plus all rights necessary for the completion of the agreement to illustrate children's books pass to the editor as of right. Without that automatic transfer of those rights from the illustrator to the publisher, the contract between the two

would be without purpose. An employer and employee may conclude an agreement to the contrary.

ii) Works made by employees working in the public sector or Legal Persons in Public Law: The copyright in works made by these employees in the course of their employment passes to the employer as of right. The parties involved may sign an agreement to the contrary.

iii) Works created by joint authors: These are works created by two or more people in cooperation, for example, a group of architects who cooperate and jointly design the plans for a group of holiday homes, or a group of writers co-writing the script for a television series. In these cases, the copyright and moral rights belong to all the joint authors in equal measure. Joint authors may conclude an agreement to the contrary.

iv) Collaborations: These are works composed of various independent works that have been separately created. For example, a scenery designer, a choreographer, a costume designer, a composer, a lyricist etc. who have contributed their independent works in the creation of a theatrical production. In cases such as this, all these creators are first authors of their own creation and may exploit separately that part of the compiled work that they have created. For example, the composer would be entitled to enter into an agreement with a record company to exploit his work by reproducing and marketing his music as a cd. At the same time, all the collaborators are joint authors of the final work and are entitled to its exploitation in equal measure. The collaborators may sign an agreement to the contrary. The independence that each creator enjoys regarding the exploitation of the part of the joint work belonging to him usually leads to lawsuits when the issue of exploiting the final work arises. An example is the recent legal dispute between the successor in title of Manos Hadzidakis and owner of the copyright in his music and the successor in title and owner of the copyright in the lyrics written by Alekos Sakellarios to the music of the former. The dispute arose when a theatre entrepreneur wanted to mount a production of two works jointly created by the two ("Laterna, ftohia kai filotimo" and "Garyfallo st'afti", two very famous Greek films), as one owner gave permission for the production to go ahead and the songs to be publicly performed but the other refused.

v) Compilations: These are works created by the independent contributions of various creators under the direction and coordination of one natural person. That person is the first owner of the copyright and moral rights in the compiled work, whereas the creators of the contributions own copyright and moral right in the work they have contributed provided that it can be independently exploited. A newspaper is a classic example of a compilation. Every journalist contributing an article to the newspaper has copyright in his articles, whereas the person directing the collective work (usually the publisher, even where he may be a legal person) has copyright in the final collective work.

vi) Computer programs: Copyright in a computer program created by an employee in the course of his employment or under the directions of his employer passes to the employer as of right (even where the employer is a legal person). The employer and employee may enter an agreement to the contrary.

vii) Audiovisual works: Many people contribute to the creation of an audiovisual work, such as a TV film or a movie: the director, the scriptwriter, the scenery designer, the choreographer, the costume designer, composer, lyricist, cameramen, editors etc. Of all these people cooperating in the creation of an audiovisual work, the director is considered the work's author under the law, subject to proof.

Moreover, the dialogue writer, scriptwriter, composer, director of photography, scenery designer, costume designer, sound recorder and editor are also considered as authors, although authors of their own contribution to the work only. Therefore, for the audiovisual work to be exploited all the authors contributing to the work, i.e. the director and the other authors, transfer the rights needed for the work to be exploited to the producer.

2. OBTAINING COPYRIGHT

2.1 Formalities to be completed for copyright to exist

None. The creator obtains all the rights recognised by law (i.e. both copyright and moral rights) without having to complete any formalities (in contrast with patents, certificates of utilitarian industrial articles (PYX), industrial articles and designs, see Chapter 2, Units 1, 2 and 4) from the moment the work is created, and, more specifically, from the moment the preliminary plans or drafts for that work are created. For example, Picasso (and now his successors in title) not only has the copyright in Guernica but also all the sketches and plans for that work, which are numerous enough to fill a museum on their own.

2.2 Proving the authorship of the original and true creator

The absence of formalities for obtaining copyright may facilitate the acquisition of those rights, it does, however, create practical difficulties in proving authorship of a work. As there is no public authority formally recognising the creator of a work as that work's author and thus create proof (even contestable proof) of authorship, the creator must on his own take measures to prove his authorship relying on any proof, even witnesses. Evidence which may be used to prove the authorship of a creator include: for a novel, the receipts of the payment of printing expenses; a photograph, the date of its publication in a recognised publication; a theatre play, the day the actors received their scripts and started rehearsing; the content of a computer disk or printed architectural plans, the date of entry in a notary's books of an envelope containing a copy of the plans or the disk or a printed copy of the disk's content; an unpublished thesis, the date a copy was sent to the national library etc.

2.3 Date at which copyright starts and duration of copyright

Copyright in the work starts from the moment the work is created and, more specifically, the moment it takes a material form that becomes perceptible to human senses, for example, is recorded on paper, film, computer disc, negative, clay or marble, canvas etc. However, as regards interviews, lectures, etc, in particular, the voice of the speaker is considered as the material form and, as regards choreographies and pantomime, the movement is considered the material form. As a result, protection is not restricted to a recorded choreography only but extends to a choreography spontaneously performed in public for the first time.

Copyright lasts for the life of the author and seventy (70) years following his death. At the expiry of 70 years following the author's death, the work becomes part of humanity's cultural heritage. Copyright in work created by joint authors (e.g. a group of architects designed together a housing complex, see 1.1.5 iii above) ends seventy years following the death of the last surviving joint author.

3. THE CONTENT OF THE AUTHOR'S INTELLECTUAL PROPERTY RIGHTS IN WORKS

3.1 The author's intellectual property rights

The author has two sets of rights:

1) Copyright, from which various rights relating to the commercial exploitation of the work derive.
2) Moral rights, which are various rights relating to the protection of the link between the author and his work.

3.2 Rights flowing from the author's copyright and moral rights include the following:

A. Rights flowing from copyright are mainly the following:

i) The right to authorize or prohibit the recording or reproduction of the work in any manner or form, e.g. using mechanical, photochemical or electronic means. The recording would have to be in a material form capable of being used for the work's reproduction, for example recording music in a matrix so that it can then be reproduced in cd form, recording a lecture on film so that it could later be produced, recording an audiovisual work in a video matrix so as to make numerous copies etc. The disputes that took place in the American and British courts when double deck cassette players were first marketed, with the associations of the authors' copyright managers claiming that these devices that enabled copies of the tapes to be made were by nature aimed at infringing copyright and should therefore be banned, have become legendary. However, the court held that these devices could be produced and marketed because the author may not prevent his work from being recorded and reproduced for private use, which is allowed. (See unit 5 below, *Legal use of works without the author's authorisation or payment*).

ii) The right to authorise or prohibit the translation of his work into another language. The author's copyright in the translated version of his work does not end at translation. The author continues to have all the rights flowing from copyright, for example, the rights pertaining to the adaptation of his translated work into a screenplay, the transfer of his translated work onto the screen etc. The author has the right to prohibit the translation of his work for public purposes, but not translation for private use, which is allowed.

iii) The power to authorise or prohibit the adaptation or other arrangements of his work, when they relate to the public use and financial exploitation of the adapted work, for example the adaptation of a novel for film or television. As a result, anyone is allowed, without the author's authorisation, to adapt a well-known song and sing it at a party for his friends and family, in other words his close social circle. He cannot, however, financially exploit that adaptation, i.e. present to a record company to be recorded, reproduced and circulated or sing it in a club where he works at night, without authorisation from the author.

iv) The right to authorise or prohibit the circulation of the work, whether of the original or copies. This right relates to works incorporating a material form such as paintings, engravings, sculptures, books, videotapes, cassettes and cds, cd-roms etc. Circulation could be the sale of the work (e.g. the painting), renting out of copies (e.g. renting out the videotapes) or public borrowing of the work (e.g. borrowing books from a public library). It should be pointed out here that by acquiring a work one does not acquire the copyright. Therefore, when someone buys an Andy Warhol for his house, he does not automatically acquire any of the rights flowing from copyrights in that work, such as the right to photograph the work and reproduce it as a print or any other right to financially or commercially exploit that work.

v) The right to authorise or prohibit the presentation of his work to the public, i.e. communicate his work to the public in any form (excluding the work's reproduction, discussed above at paragraph i). The presentation to the public could take any form. It could be live, as in a concert, a theatre production, an exhibition in an art gallery etc. or mechanical or electronic, as in the screening of a film at a cinema or a dance production through giant screens, the radio or television broadcast of a song or a cd being played at a club.

vi) The right to authorise or prohibit the performance of his work in public. A performance is considered to have been made in public when the work is made accessible to a group of people wider than immediate family or one's close social circle. Moreover, the performance is public when it occurs in a public place, meaning places where access is available to everyone, such as town squares, theatres, stadiums, restaurants, airplanes etc.

vii) The right to authorise or prohibit the broadcast of his work to the public, through radio and television, electromagnetic fields or cable or any other material conductors or any other means, on the surface of the earth or through satellite.

viii) The right to authorise or prohibit imports of copies his work produced in an EU country but without his consent, in other words, "pirate" copies or copies that have been legally produced in a non-EU country but whose right to import has been contractually retained by the author.

All of the acts discussed above, which constitute the primary rights of an author in his work cannot be carried out by a third party without the written authorisation of the author or his successor in title.

B. The rights flowing from the author's moral rights are the following:

i) Rights over the publication of the work, i.e. the right to decide as to the time place and way in which the work will become accessible to the public.

ii) The right to be shown as the author of the work, and more specifically, the right to demand that copies of his work bear his name or, on the contrary, that his anonymity be preserved or pseudonym be used. The right to be shown as the author of the work does not end upon the expiry of 70 years following the author's death but continues to be exercised by the State, represented by the Ministry of Culture.

iii) The right to maintain his work intact and, specifically, the right to object to any mutilation or deformation or other modification of the work that compromises the author's honour and reputation, relating to the way the work is presented to the public. Deformation could be the colouring of the author's black and white painting, mutilation could be the cutting up of a painting and the distribution of the parts as small paintings, the omission of a novel's chapter etc. Compromising the author's honour and reputation in relation to the way the work is presented to the public could for example be the circulation by a publisher of the author's novel in a cheap edition rather than the luxury edition agreed. In a similar vein, Franko Zefirelli won the suit he brought against RAI claiming that the continuous interruption of his work by commercials, interrupted the flow and cohesion of his work to such an extent that it deformed it. In the same way that the right to be shown as the author's work continues beyond the 70 years following the author's death, the right to maintain the

work intact continues to be exercised by the State, represented by the Ministry of Culture.

iv) The right of access to the work, i.e. the right of the author to contact with his work in a manner that least inconveniences the owner of the copyright in the work or the owner of the work. For example, a visit by a painter and photographers to the houses of the buyers of the painter's work in order to photograph the work for its publication in an art book.

v) The right to recant and withdraw from exploitation or transfer of copyright agreements or licences for the exploitation of copyright relating to literary or scientific (not artistic) works, where it is necessary to do so in order to protect the author's personality because of a change in his beliefs or circumstances. Where the author recants and withdraws from a contract he must compensate the other contracting party.

The author's moral rights from which the above rights flow cannot be transferred. Therefore, for example, an author cannot sell or rent out his work's authorship or enter into an agreement waving his right to maintain the work intact and allowing its separation, etc.
Thus, the ways in which the work may be exploited financially and commercially discussed below only concern the rights flowing from copyright, not the author's moral rights.

4. FINANCIAL AND COMMERCIAL EXPLOITATION OF WORKS

4.1 Which rights may be exploited financially and commercially?

Copyright and any or all rights flowing from it can be financially exploited as well as inherited by the author's successors.
Moral rights can only be inherited by the author's successors.

4.2 Ways in which the rights flowing from copyright may be exploited:

Copyright and the rights flowing from copyright can be financially exploited in the following ways:

i) By transfer of the copyright as a whole.

ii) By exploitation agreement, where the author assigns to a third party the responsibility to exercise rights flowing from copyright. For example, a composer of a symphony may conclude an agreement with a record production company under which the company undertakes to record, reproduce and market the copies of the work. In the case of an exploitation agreement the company is obliged to exercise the specific right to reproduce the work and market its copies.

iii) By licence agreement, where the author authorises a third party to exercise rights flowing from copyright. For example, a young artist may sell a furniture textile producer a textile design he has created. The producer is not obliged to reproduce that design on a textile but may do so if he so wishes.

The difference between the two ways in which copyright may be exploited (ii and iii) is that the exploitation agreement obliges the third party to exercise the rights assigned whereas the licence agreement simply enables the third party to exercise the rights flowing from copyright if it wishes to do so.

4.3 What happens when the work is transferred in its material form?

As previously mentioned, when the work is transferred in its material form (i.e. the painting or the book or the tape itself and so on), whether as a copy or an original, the copyright is not transferred nor can it constitute an exploitation or a licence agreement. Therefore, the acquisition of the work does not give the new owner any exploitation rights. Thus, the purchase of the Windows 2000 software does not give the buyer the right to reproduce or copy the program in the same way that the buyer of a Henry Moore sculpture may not produce copies of that work. Beyond the right to exploit the work however, there is a legal void on whether the buyer may destroy the work he has bought given that its ownership, as an object, belongs to him. That may not be an issue in the case of a tape bought at a record shop and thrown away because its content did not please the buyer. It does become a problem however in the case of works of singular material form, i.e. works that are only available as originals. An example is the case that became widely known two years ago, concerning the purchase of Van Gough's Chrysanthemums at auction by a Japanese billionaire. According to the content of the buyer's will, the painting is to be burned with him on the day he dies.

4.4 What may be the content of contracts concerning copyright?

Contracts relating to the transfer of copyright, agreements and exploitation licences are null and void unless they are drawn up in writing. Furthermore, they should specify:

i) The duration of the contract. If the contracting parties have not specified the duration of he contract, the contract is valid for five years.

ii) The area in which the contract is valid. In the absence of provision by the parties, the contract is valid in the country where it was drawn up.

iii) The rights flowing from copyright that are transferred and the means of exploitation.

iv) The author's payment, which as a general rule is a percentage. Exceptionally, it is possible for the author's payment to be a specific amount rather than a percentage, for works created by employees in fulfilling their employment contract, advertisements, computer programs and other cases specified by law.

Moreover, agreements and exploitation licences:

v) a) May be exclusive, meaning that they can even exclude the author from the work's exploitation. For example, a writer may enter into an agreement for the reproduction and circulation of this novel with a publisher, agreeing that the writer may not enter into any other agreement regarding this novel nor publish it on his own simultaneously (reproduction and circulation). b) May be non-exclusive, which means that the author may at the same time conclude a similar agreement with a third party. For example, a playwright may grant a licence to present the play in public to three different theatres at the same time, in Athens, Thessaloniki and Irakleion. According to the law, in the absence of express provision by the parties, the agreement or license is considered non-exclusive, thus allowing the author to exploit his work with another interested party at the same time.

vi) Can never include the total of an author's future works. For example, an art dealer discovers a young and unknown painter who is very talented. In the art dealer's opinion, the works of the unknown painter will greatly increase in value in the future and the painter's unrecognised as yet talent will become recognised and all works he creates in the future will also have great value. However, the agreement concluded

between them can only include the works created by the painter until that point and could never include works that the painter may create in the future.

vii) Cannot include means of exploitation that are unknown at the time the contract is signed. Therefore, continuing from the previous example of the young unknown painter, the contract may refer to all the means of exploiting the work using methods that are known today but it cannot refer to future means of exploiting the work that are unknown at present, for example, by including a clause such as "the work may be reproduced using any mechanical or electronic means currently available and any other technological means that become available or are invented or discovered in the future".

5. LEGAL USE OF WORKS WITHOUT THE AUTHOR'S PRIVATE AUTHORISATION OR PAYMENT?

5.1. Reproduction for personal use. A work that has been legally published and is not unpublished may be reproduced without the authorisation and payment of the author provided it is for the personal use of the person reproducing it. If the reproduction is made using technical means, the owner of the copyright must be paid (through collective management organisations) by the producers or importers of the means of reproduction.

5.2. Information of the public. Works that are heard or seen during the development of current events (e.g. music, political speeches, lecture etc) may be reproduced and made public as part of the description of those current events for the public's information. The source of the work and the name of the author must be indicated.

5.3 Specifically with regard to school books and anthologies, extracts from the works of writers made be reproduced along with the source and the creator's and publisher's name.

5.4 Specifically with regard to teaching or exams in an education institution, published articles, extracts or works of applied arts may be reproduced along with the source and the creator's and publisher's names.

5.5 Where buying a copy of the work is not possible, non-profitable libraries or archive may reproduce a work they already have in their possession in order to keep it or give it to another non-profitable library, or archive.

5.6 The Minister for Culture may authorise the reproduction of a film so that it may be preserved in the National Film Archive where the owner of the film's copyright refuses to do authorise its reproduction.

5.7 A work may be reproduced in order to be used in judicial or administrative proceedings.

5.8 Mass media may occasionally reproduce and distribute images containing works of architecture, applied art, photography or plastic and graphic arts that are permanently exhibited in a public space.

5.9 A work may be performed in public in school productions and formal ceremonies to the extent that the nature of these ceremonies justifies the performance of these works.

5.10 Museums owning a work of plastic or graphic art in its material form may exhibit it to the public.

5.11 A work of plastic or graphic art may be reproduced in a catalogue where that is necessary in order to facilitate its sale.

5.12 Extracts may be quoted from a legally published work for the criticism of that work or to support the opinion of the publisher along with the source and the names of the publisher and the creator.

6. PENALTIES FOR THE ILLEGAL EXPLOITATION OF COPYRIGHT

INTERIM RELIEF

As interim relief measures, the copies in the possession of the infringer may be seized, inventoried and photographed.

CIVIL PENALTIES

The creator may ask the court:

i) to recognise his authorship
ii) to order that the infringement of his rights stop and is not repeated in the future
iii) for compensation and damages for moral injury. The compensation is at least double the amount usually paid for the type of exploitation that took place,
iv) or alternatively for the profits accrued by the infringer in the course of the illegal exploitation of the copyright.

PENAL PENALTIES

The infringer may be sentenced to:

i) the loss of his freedom which may vary between 1 and 10 years in prison and
ii) a fine of up to DRS 20,000,000.
iii) In either case, the publication of the sentence may be ordered at the expense of the condemned. The consequences of publication may only be social where the condemned is unknown but where the infringer is a well known company, publication may result in irreparable financial damages or wholly destroy its reputation with all the inherent consequences of such an event for the company's future welfare.

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WIPO Performance and Phonograms Treaty (WPPT) 1996

CHAPTER TWO
INDUSTRIAL PROPERTY RIGHTS

1. PATENTS

1.1 WHAT IS A PATENTABLE INVENTION? ESSENTIAL CONDITIONS.

A patent is granted only to inventions that meet certain requirements. The invention must be new, involve an inventive step and be capable of industrial application. The invention may relate to a product, process or industrial application or a combination of the three.

1.1.1. New

An invention is considered new if it does not from part of the 'state of the art'. State of the art comprises all knowledge which has been made available to the public anywhere in the world, whether by written or verbal description or in any other way. For example, an invention, which has already been awarded a patent in any part of the world, is not new. The same applies for an invention for which an application for a patent has been made in any part of the world. For that reason, an invention whose content has been made public in any way before an application for a patent has been made is not new. For example, an invention that has been revealed by someone in the course of a public lecture (delivered by the inventor or a third party) or was made public or marketed or revealed in any newspaper article or has been the subject of a thesis that has been published or distributed, and so on, cannot be considered as new.

1.1.2 Involves an inventive step

An invention is considered to involve an inventive step if, in the opinion of an expert in the same field as the invention, its content is not obvious in the light of everything knowable by the public. In other words, for an idea to be considered an invention and obtain a patent, it must not only be new but its content must solve a technical problem in a way that includes an inventive step, in other words a step beyond what is already known to a person expert in that field. Such a step must not be obvious to the expert and not arise easily from the existing state of the art. For example, a bicycle wheel containing more spokes than bicycle wheels normally do, is not an invention, since the addition of the extra spokes solves no existing technical problem and is an idea that could easily be thought by any technician. Consequently, this idea, although it is new in that never before has a wheel with that many spokes been constructed, is not an invention because it does not involve an inventive step. On the contrary, in the case of the bending straw, the addition of an 'accordion' to a part of the straw giving it flexibility and enabling the consumption of a drink from any angle the user may be in relation to the drink, is an invention because it involves an inventive step. That addition, which solved the above technical problem, was an inventive step not obvious to an expert and for that reason the bending straw was granted a patent.

1.1.3. Capable of industrial application

An invention is considered capable of industrial application if it can be made or used in any area of production, for example a fruit juice product or a process for producing natural fruit juice.

According to the law, however, the following are not considered capable of industrial application and therefore cannot be patented:

i) A method of treatment of the human or animal body by surgery;
ii) Diagnosis practiced on the human or animal body.

However, in both cases, the products or substances used in the application of the above methods, constitute inventions capable of industrial application and can be

patented. So, for example, diagnosis made by performing axial or magnetic radiography is not an invention but the device used for the application of that diagnosis, i.e. the radiograph, or the drugs used for a patient's treatment are inventions capable of industrial application.

1.2. WHAT IS NOT AN INVENTION

i) A discovery, scientific theory or mathematical method. A discovery is the knowledge of a material or process that has existed in nature and at some point become known. A discovery is not an invention because it does not involve human creative input. However, the use of that discovery in a product or process or industrial application could constitute an invention. For example, the discovery of electricity was not an invention, however the use of electricity when channelled through a light bulb constructed by Edison, was.

ii) Aesthetic creations, which, if original, are protected by copyright.

iii) A scheme, rule or method for performing a mental act, for playing a game or doing business as well as a computer program. However, following an amendment to the European Patent Convention, computer programs (in addition to the protection they enjoy by copyright, see 1.1.1 above) can be protected as part of an invention and particularly as a process.

iv) The presentation of information.

1.3. WHEN IS A PATENT NOT GRANTED?

i) In the case of an invention that offends public order or social values.

ii) For any variety of animal plant or any biological process for their production. However, a patent may be granted to a biological process and the product of such process.

1.4. WHO CAN OBTAIN A PATENT?

1.4.1. An independent inventor

Firstly, the inventor himself, who is always a natural person. A legal person may be the owner of the invention but can never be the inventor. The inventor may be more than one person in which case the right belongs to all inventors jointly and they have the right to transfer their share independently of the other inventors.

1.4.2. An employed inventor

When the inventor is an employee, he still primarily owns the invention. The following two cases are more specific of this occurrence:

a. Invention as part of the employee's duties. This occurs where the invention was the subject of the contract between employer and employee. In that case, the invention belongs to the employer as a whole, although the name of the natural person who is the inventor is always indicated on the patent. If the patent is of outstanding benefit to the employer, the employee is entitled to additional and substantial compensation. For example, a car manufacturer may employ chemists to create for it a new and innovative non-corrosive car

paint. In that case, the invention is the subject matter of the contract and, when realised, will belong to the employer in its entirety.

b. Invention in the course of employment. This occurs where an invention by an employee was made using the employer's means and materials. In such inventions, 40 % of the invention belongs to the employer and 60% to the inventor(s). For example, chemists who work in the paint department of a car manufacturer and use the labs and facilities of the company may discover in the course of their everyday work a non-corrosive paint. In this case, 60% of the invention belongs to the chemists behind it and 40% to the company whose labs and facilities they used. In the case of inventions arising in the course of employment, the employer has priority over the invention's exploitation provided he notifies the inventor of this within 4 months. If not, the invention belongs to the inventor as a whole. Moreover, the invention belongs to the inventor as a whole where it is unrelated to the use of material, means or information of the employee's work place.

1.5. TERRITORIAL PROTECTION OF AN INVENTION - DIFFERENT TYPES OF PATENTS

1.5.1 In which countries is an invention protected?

The territorial protection of an invention is governed by the principle of locus standi. According to that principle, an invention is only protected in the country in which the relevant authorities have granted the patent. The application of the principle in practice means that an invention for which an application for the grant of a Greek patent was filed and for which a Greek patent was granted, is protected in Greece only and in no other country. For the invention to be protected in another country, the inventor must file a relevant patent application with the relevant national patent office to every other country in which he wishes to patent his invention.

1.5.2. The importance of choosing the countries in which the invention will be patented

A patent gives its owner the absolute and exclusive right to exploit his invention for 20 years, starting at the date on which the application was filed. This means that the patent creates a monopoly of 20 years of its owner, protecting him from any competition by a third party. However, as previously mentioned, the protection of the invention and consequently the owner's monopoly is restricted to the country or countries that have granted the specific invention a patent. That means that without the owner's license and against his will any third party may copy and use his invention in any country in which the owner of the invention did not file an application for a patent in time. For example, an application for a patent for a new mobile telephone is filed only in Greece and Italy. That invention is not protected in the US and therefore anyone may copy, produce and market similar telephones in both the US and any other country he wishes, excluding Greece and Italy where patents have been granted. The owner of the Greek and Italian patents may not take any action against the other producer since the latter is trading the copies of the invention outside the areas in which the invention is protected, i.e. Italy and Greece. However, he can take action if the copier tries to produce copies in Greece or Italy and stop their production and marketing. He can also take action if the copier tries to import copies into the two countries and stop them from being imported and traded. Of course, the owner of the Greek Diploma may also market his telephone in any country he wishes to do so, even if he does not own a patent in those countries, along with any copier there may be. What this means is that in countries where a patent has not been requested, the owner of the invention has no monopoly. For that reason, the inventor or owner who wishes to file for a patent and is not only interested in obtaining a patent in Greece, should carry out market research regarding the product

which is the object of his invention and which will indicate the nations in which it would be financially advisable to patent his invention. For example, it would be useful to patent an invention relating to whiskey in the UK and not France, and vice versa with regard to wine. Following this, and once the owner of the invention has decided on the countries in which he wants to patent his invention, the owner must decide the type of patent he will apply for, as discussed below.

1.5.3. Different types of patents

i) **A national patent obtained through the Industrial Property Organisation (OBI),** in other words a patent for an invention that would only be protected in Greece.

ii) **A European Patent from the European Patent Office**, i.e. a Diploma that would be valid in one or more European countries that have ratified the European Patent Convention (EPC. Munich 1973). The European Patent must not be confused with the Diploma which will be awarded for all EU Member States and which has not yet been adopted by them.

iii) **An international patent through the European Patent Office,** i.e. a diploma for an invention that would be protected in one or more countries, European or otherwise, that have ratified the Patent Cooperation Treaty (PCT, Washington 1970)

iv) **A national patent obtained directly in any country** provided that that country has ratified the Paris Convention for the Protection of Industrial Property (PIP, Paris 1883).

1.5.4. The Principle of International Priority

According to the principle of International Priority, the applicant in a foreign country has a priority right concerning his application in Greece as well, provided he files an application concerning the same invention in Greece within 12 months of his original application. In practice the Principle works as follows:

The applicant for the award of a patent faces a lengthy and expensive procedure. For that reason he first and foremost files an application for a patent in his own country and then undertakes research in order to determine whether his invention would be commercially beneficial and arouse interest before he attempts to take on all the necessary expenses and proceed to patent his invention in other countries as well. If he decides that he truly wishes to patent his invention in other countries, excluding the original country, he must do so within 12 months from the original application he filed. If he files within that 12-month time limit, the second application he files will bear the same date as the first application. In view of the fact that the person who filed an application for a patent first is presumed to be the inventor, any other application filed in that twelve-month period for the same invention is not considered new and therefore is rejected.

For example, an American inventor of a water-saving system files an application on 01/01/2000 for the award of patent in the US. Eleven months later, he succeeds in finding an American company that is interested to commercially exploit his invention and is willing to cover all expenses and fees needed to file a patent application for the same invention in Canada, Greece, Australia, Japan and Israel. If the company files an application in those countries before the 31/12/2000 it will retroactively receive a date of application 01/01/2000. If a Greek inventor in the meantime copies the invention and files an application in Greece six months later, for example on 30/06/200, when the American inventor files his 31/12/2000 application and is given

a retroactive date of application 01/01/2000, the Greek inventor's application will be rejected because his invention will not be considered "new".

For the principle of international priority to apply the rule of reciprocity must apply, meaning that the citizens of one Member State must be treated in the same way as the citizens of another Member State. In the above example, the American inventor would have to be protected in Greece in the same way as a Greek inventor and a Greek inventor be protected in the US as an American inventor.

1.6. PROCEDURE FOR THE AWARD OF A PATTERN- FORMALITIES

The procedure followed for the award of a patent is briefly as follows:

i) The applicant completes the OBI special documents for a written application. For the award of a European or international document the European Patent Office provides similar documents.

ii) Along with the written application, the applicant submits all the necessary documents relating to his invention. Specifically, he submits a description of his invention in which he discloses its content, his claims, where he precisely defines and specifies the aspects of the invention he wishes to patent, an abstract, which is a brief summary of the invention and the drawings, in which the invention is depicted.

iii) A first examiner who compiles a Search Report then examines the file.

iv) A second examiner then examines the file and compiles the Final Search Report based on which the decision on whether to grant a patent or not is taken.

This procedure, which has been briefly described above, can be extremely time consuming and complex. There is very frequent contact between the relevant office and the inventor or his lawyer. In between the steps described above, which are the main steps, several procedural sidetracks may occur. The deadlines arising throughout those procedural acts are particularly short. In practice, the procedure for the award of a patent may last from 18 months up to 7 years.
Finally, because the time in which the description, claims and abstract must be drafted is not indefinite but has a specific structure that must be followed by the applicant, all these documents must be drafted in close collaboration with a lawyer specialised in this field.

1.7. WHAT ARE THE PATENT OWNER'S RIGHTS?

A patent entitles the patent owner to exclusively exploit his invention for the 20 years following the date of his original application, and more specifically entitles the owner to:

i) The right to produce, dispose of and market or keep and use for the same purposes the products protected by his patent.

ii) The right to apply, dispose of or market the process protected by his patent.

iii) The right to produce, dispose of and market or keep and use for the same purposes a product derived from his patented process.

iv) The right to prohibit any third party from exploiting his invention though production of or importing the products protected by his patent.

1.8. WAYS IN WHICH AN INVENTION MAY BE FINANCIALLY AND COMMERCIALLY EXPLOITED

The owner of the invention may exploit it in the following ways:

i) Whilst waiting for the award of a patent, the owner may contractually transfer his right to the award of a patent. In that case, the owner abandons the rights in the patent he is waiting to be awarded. The name of the inventor does not change, however, and will continue to be indicated on the patent awarded to the new owner.

ii) Following the award of a patent, the owner may contractually transfer the patent awarded. In that case, the owner abandons his rights in the patent but the name of the inventor remains the same. Such agreements usually involve the highest sums because the new owner obtains a patent and all the rights flowing from it exclusively. On the contrary, agreements for the transfer of a right to the award of a patent discussed in paragraph i) above, involve lesser sums although they are also exclusive because the new owner also takes the risk that the patent, whose future rights he has purchased, may not be awarded.

iii) Moreover, following the award of a patent the owner may contractually grant a license for the exploitation of the patent to a third party. In this case, the patent owner does not abandon his patent but simply allows a third party to exploit it's object. These licenses may or may not be exclusive.

All of the above ways to exploit a patent must be filed in the Patent Records kept by OBI and published in the special Industrial Property Bulletin as soon as they are concluded.
Both the right to the award of a patent and the patent award (paragraphs i and ii above) may be inherited.

iv) Finally, the future patent owner, before the award of a patent, may conclude agreements for the transfer of technology/know-how concerning the object for which he has filed an application for the award of a patent. (See section 3 below).

1.9. LEGAL RECOURSE AVAILABLE TO THE PATENT OWNER FOR THE PROTECTION OF HIS PATENT

1.9.1. INTERIM RELIEF

As interim relief in an emergency the items in the possession of the infringer may be seized, inspected, evaluated, inventoried, photographed, or be subjected to any other measure the court deems useful.

1.9.2. CIVIL PENALTIES

The owner of the patent, an applicant waiting for the award of a patent and the owner of an exclusive license for the exploitation of the invention can take action against anyone infringing or threatening to infringe the patent or its object, and ask the court that:

a. the infringement stop and is not repeated in the future

b. provided the infringer is found guilty, compensation for the damages incurred or the profits accrued by the infringer through the unlawful exploitation of the patent be paid or payment of the sum they would have received had there been a legal licence for the exploitation of the patent.
c. Where the defendant is found guilty, the court may order the destruction of the items illegally produced or their delivery to the plaintiff as compensation or part-compensation.

2. CERTIFICATE OF UTILITARIAN INDUSTRIAL ARTICLE

2.1. WHAT IS A CERTIFICATE OF UTILITARIAN INDUSTRIAL ARTICLE?

The Certificate of Utilitarian industrial Article (hereinafter PYX) has come to be considered as a type of patent for "small" inventions. For that reason, anyone requesting the grant of a patent may ask that, until the patent is awarded, his application be converted to an application for the award of a PYX. In practice that may happen when the applicant for a patent has doubts as to whether he will obtain a patent and therefore asks for his application to be converted to a PYX application so that he can at least obtain the rights flowing from the award of a PYX.

2.2. IN WHAT CASES IS A PYX GRANTED?

A PYX is granted, following an application by the interested party, for any three-dimensional article of a specific shape or form that is new, capable of industrial application and with the potential to solve some technical problem, such as a tool, instrument, utensil, part etc. A PYX is not granted for a process or industrial application. It lasts for 7 years following the date of the relevant application.

2.3. WHAT ARE THE CONSEQUENCES OF A PYX AWARD?

The same consequences that apply to patents apply to a PYX by analogy. Consequently, both the rights belonging to a PYX owner and the ways in which the PYX may be commercially exploited and the legal recourse available for its protection are the same as those of a patent owner (see Sections 1.7, 1.8 and 1.9 above).

3. AGREEMENTS FOR THE TRANSFER OF TECHNOLOGY

3.1. WHAT ARE AGREEMENTS FOR THE TRANSFER OF TECHNOLOGY?

In an agreement for the transfer of technology, the grantor transfers to the grantee the technology that is the object of his invention and the grantee pays the price agreed. These are usually an agreement for:

i) The exploitation and transfer of a patent or PYX.
ii) The provision of technical manufacturing instructions, designs or services.
iii) The provision of services relating to the organisation, management, control and provision of specialised consultation services.
iv) The disclosure of industrial secrets, using designs, diagrams, directions, conditions, procedures etc and ways in which the products mentioned in the exploitation agreement may be produced. Industrial secrets may be technical information or information concerning processes, practices, skills that can be

practically applied mainly in the production of goods and the provision of the services that have not become widely known, etc.

v) The common research or development of technology, sample or experimental programs or works.

vi) The provision of technical help in the form of education, guidance or personnel training.

All agreements for the transfer of technology are filed in the special Register kept at OBI along with the required fee. A lawsuit or application in court concerning any dispute between the contracting parties that arises from the agreement for the transfer of technology cannot be heard in court without the certification of OBI that a copy of the agreement at issue has been entered into the Register.

4. INDUSTRIAL DESIGNS AND ARTICLES

4.1. WHAT ARE INDUSTRIAL DESIGNS AND ARTICLES?

Industrial designs and articles are the specific external features of an industrial or artisan product such as, for example, its line, contour, colour, shape or form and the material used in the product or its decoration. The term "product" includes the packaging, presentation, graphic symbols, typography, the components intended for the composition of a composite product etc., for example, glasses depicting designs by Dimitri Mytaras, a mouse pad bearing a Dali painting, the Cartier triple wedding rings, Mont Blanc pens, the Gaultier perfume shaped in the female form, Paco Rabanne metallic clothes, Coco Channel suits, the Hermes Kelly bag etc. There are no rights in industrial design and articles when the features of the product are exclusively determined by the use it is intended for.

4.2. WHEN ARE INDUSTRIAL DESIGNS AND ARTICLES PROTECTED?

The protection granted to industrial designs and articles is a mixture between industrial property rights and copyright. They are also protected under the legislation concerning unfair competition.

For an industrial design or article to be protected, it must be new and individual.

a) A design or industrial article is <u>new</u> if at the time the application for its registration has been filed no identical product, i.e. a product that is only superficially different, has been made available to the public.

b) An industrial design or article is <u>individual</u> if the overall impression of a knowledgeable user is different from that which the knowledgeable user forms in relation to another design or industrial article that was made public before the application for its registration. An industrial design or article is considered available to the public if it has been published following registration, exhibited, marketed or communicated in any other way.

Within 4 months from the date the relevant application is filed, OBI issues a registration certificate of the industrial design or article submitted. The applicant is responsible to ensure that the above two conditions are met.

4.3. DURATION OF A REGISTERED INDUSTRIAL DESIGN OR ARTICLE – RIGHTS OBTAINED BY THE OWNER

The duration of a registered design or article is 5 years starting at the date of the relevant application with the possibility of renewal every 5 years for a period up to 25 years.

During the above period the owner and immediately after registration, the owner has the exclusive right to use the industrial design or article and prohibit any third party

from using it. More specifically, he can produce, dispose of, market, import, export and use the product on which the design or article has been incorporated or applied, or store it.

4.4. WAYS IN WHICH DESIGNS AND INDUSTRIAL ARTICLES MAY BE EXPLOITED AND LEGALLY PROTECTED

As regards the ways in which industrial designs and articles may be protected, the same principles applying to patents also apply. (see Section 1.8 i, ii, and iii and 1.9 respectively).

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MAIN RELATIVE LEGISLATION

- Commission Regulation (EEC) No 2349/84 on the application of Article 85(3) of the Treaty to certain categories of patent licensing agreement as amended (particularly by regulation 151/93)
- Law No 1733/1987 «Μεταφορά τεχνολογίας, εφευρέσεις και τεχνολογική καινοτομία»
- Law No 1607/1986 "Κύρωση της σύμβασης για τη χορήγηση ευρωπαϊκών διπλωμάτων ευρεσιτεχνίας που υπογράφηκε στο Μόναχο στις 5 Οκτωβρίου 1973"
- Presidential Decree No 77/1988 «Διατάξεις εφαρμογής της σύμβασης για τη χορήγηση ευρωπαϊκών διπλωμάτων ευρεσιτεχνίας που κυρώθηκε με τον νόμο 1607/1986»
- Presidential Decree No 54/94 "Τροποποίηση διάταξης νόμου 1733/1987 Μεταφορά τεχνολογίας, εφευρέσεις, τεχνολογική καινοτομία και σύσταση Επιτροπής Ατομικής Ενέργειας σε συμμόρφωση προς τη Συνθήκη της ΕΟΚ".
- Νόμος 2417/1996 «Κύρωση του Διακανονισμού της Χάγης, για τη διεθνή κατάθεση των βιομηχανικών σχεδίων και υποδειγμάτων»

- ΠΔ 259/1997 «Διατάξεις εφαρμογής του Διακανονισμού της Χάγης, για τη διεθνή κατάθεση των βιομηχανικών σχεδίων και υποδειγμάτων που κυρώθηκε με τον νόμο 2417/1996 και διατάξεις για τον εθνικό τίτλο προστασίας»