



European
IP Helpdesk

Your Guide to IP in Europe



www.iprhelpdesk.eu

STAY AHEAD OF THE INNOVATION GAME
The essentials of IP protection in Europe

Intellectual property (IP) management is a key element in improving the competitiveness of any company. Unfortunately, small and medium-sized enterprises (SMEs) often lack the time, resources, or knowledge to address IP matters.

This guide aims at providing answers to some of the main IP issues often faced by SMEs. It has been developed on the basis of the answers provided by the European IP Helpdesk to some of the Frequently Asked Questions (FAQs) submitted by users through the European IP Helpdesk website and Helpline. Moreover, it refers to several reference documents, which are listed at the end of each section for further information.

Each section of this guide is dedicated to one specific IP right, covering essential aspects around its regulation in Europe as well as some additional questions which, based on the experience of the European IP Helpdesk, are of interest to European SMEs.

This guide is making no claim to be exhaustive and is not an official document of the European Commission. It is provided as a service of the European IP Helpdesk.

CONTENTS

1. Trade marks	4
2. Industrial designs	12
3. Patents	18
4. Utility models	24
5. Trade secrets	28
6. Copyright	32
7. Databases	38
8. Domain names	44
9. Geographical indications	50
The European IP Helpdesk	57







1. Trade marks

- *What is a trade mark?*
- *What are the routes to trade mark registration?*
- *What are the requirements for trade mark registration?*
- *What kind of protection do trade marks confer?*
- *What is the obligation of use?*
- *What is a trade name?*



What is a trade mark?

A trade mark is an exclusive right over the use of a **sign** in relation to the **goods and services** for which it is registered. Trade marks consist of signs capable of distinguishing the products (either goods or services) of a trader from those of others. Such signs include:

Words	<i>Berg</i>	Personal Names	<i>Peter Peters</i>
Logos	 ¹	Letters	<i>PB</i>
Numbers	<i>1</i>	Colours	 ³
Shape/Packaging of Goods	 ²	Sounds	

The main function of a trade mark is to identify the **commercial origin** of a product. Besides, trade marks convey a message about the quality of a product, thus facilitating **consumers' choice**. Furthermore, they are used for **advertisement** purposes and can function as an **investment instrument** (e.g. they can be assigned, licensed, etc.).



What are the routes to trade mark registration?

Trade mark registration can be performed at three different levels: national, regional and international. The best route usually depends on the applicant's target markets, business and financial capabilities, as well as commercial expectations.

¹ EU figurative (logo) trade mark no. 1210187, owned by Bayerische Motoren Werke Aktiengesellschaft.

² EU shape trade mark no. 008566176, owned by Intercontinental Great Brands LLC.

³ EU colour trade mark no. 000031336, owned by Kraft Foods Schweiz Holding GmbH.



National route

Registration takes place at national IP offices and protection is obtained only in the territory where the trade mark is registered.

Regional route (EUTM)

Trade mark protection at EU level can be obtained by registration of an EU trade mark (EUTM) at the [European Union Intellectual Property Office \(EUIPO\)](#).



The application procedure is simple, with a single set of fees and in the official language of any Member State plus one of the following: English, French, Spanish, German or Italian. It covers the territory of all [Member States](#). Any natural person or legal entity from any country in the world can apply for an EUTM.



International route (Madrid System)

The [World Intellectual Property Organization \(WIPO\)](#) international trade mark registration system (known as the [Madrid System](#)) allows users to obtain trade mark protection in [more than 100 territories](#) by filing a single application in one language and paying a single set of fees. The applicant must either have a business in, be domiciled in, or be a national of any territory that is a party to the Madrid System.

This application has an international character; however, national laws govern the registration in each territory. A granted international trade mark is therefore a “bundle” of national trade marks that must be validated

by the national IP offices of the countries selected by the applicant for it to be effective in those countries. Therefore, an international application may be successful in some designated territories and refused in others.



What are the main requirements for trade mark registration?

Clear and precise representation

The sign whose registration as a trade mark is sought must be capable of being represented in a manner that enables the subject matter of protection to be determined with clarity and precision.

- ✓ a word, a logo, a music sheet...
- ✗ smell of clouds.

Distinctiveness

The sign whose registration as a trade mark is sought must be capable of distinguishing the goods or services bearing the trade mark from those of other traders.

- ✓ “BANANA” in relation to clothing.
- ✗ “BANANA” in relation to bananas.

Non-deceptiveness

The sign whose registration as a trade mark is sought must not deceive the public, for instance, as to the nature, quality or geographical origin of the goods or services.

- ✗ “GLUTENFREE” for a product that contains gluten.

Non-descriptiveness

The sign whose registration as a trade mark is sought must not serve to designate the characteristics of the goods or services bearing the mark, such as their kind, quality, quantity, intended purpose, value, geographical origin, etc.

- ✘ “BANK” for financial services.

Non-customary in the language

The sign whose registration as a trade mark is sought must not be a sign or indication which has become customary in the current language or in the good faith and established practices of the trade.

- ✘ “STIMULATION” for energy drinks.

Non-contrary to public order and morality

The sign whose registration as a trade mark is sought must not be contrary to public policy or morality.

- ✘ “SCREW YOU”.

What kind of protection do trade marks confer?

The exclusive right conferred by a trade mark allows its owner to prevent others from using the same or similar signs for identical or related goods and/or services as those protected by the trade mark in the course of trade, without the owner's prior permission. The trade mark owner may sell its trade mark to someone else who will then become the new owner of the trade mark, or give permission to others to use the trade mark on mutually agreed terms (i.e. trade mark licensing agreement).

Territorial protection

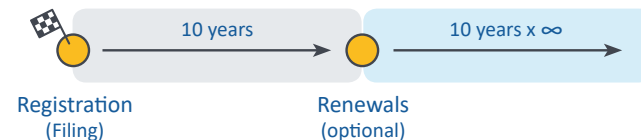
Trade marks are territorial in nature, which means that trade mark rights are granted and enforceable within the geographical boundaries of the country or region where they are registered.

Protection for goods and services

Registration is always performed in one or more **classes** of specific goods and/or services, which should correspond to those goods and/or services commercialised by its owner. The [classes for goods and services](#) are established by the Nice International Agreement on the International Classification of Goods and Services, an international agreement administered by [WIPO](#).

Duration of protection

Trade mark protection is limited in time: in most countries, protection lasts for **10 years** from the date of filing of the trade mark application and it can usually be renewed indefinitely for periods of 10 years. This protection may lapse if the renewal fees are not paid. Once a trade mark expires, protection ends, and anyone can use it in the course of trade in relation to the goods and services covered by the expired trade mark without infringing it.





What is the obligation of use?

In order to maintain registration, trade marks need to be used in the consumer society in relation to the goods or services for which they are registered. This obligation, which has been adopted in most countries, means that if within a period of time after registration (5 years for EUTMs) a trade mark owner does not use the trade mark, they will lose their exclusive right, and therefore third parties will be able to use and to register the “unused” trade mark for the same goods and services.



What is a trade name?

Trade names and trade marks are different things and must not be confused. A trade name is simply the **name of a company or business** and its only function is to identify that company or business. On the other hand, as explained above, a trade mark’s function is to identify the origin of the trader’s products or services, distinguishing them from those of other traders.

While trade names can be trade marks and vice versa, they are not automatically interchangeable. The way in which they are used will determine whether they are trade names or trade marks. For example, trade names are usually words and not logos, which are not used in connection to the products or services commercialised by the company in question, except when a company name and trade mark are coincidental.

E.g. “Smith and Clark Limited” could be the trade name of a fashion company and “BANGIO” the trade mark used by such company to commercialise shoes.

Further Information

Fact Sheets

How to Search for Trade Marks

Commercialising Intellectual Property: Assignment Agreements

IPR Charts

IPR Chart on EU Trade Mark

IPR Chart on International Trade Mark (Madrid System)

Guide

Your Guide to IP Commercialisation

All these documents can be found in our [library](#).

Useful Documents

Guide to the International Registration of Marks under the Madrid Agreement and the Madrid Protocol

Trade Mark Basics Fact Sheets (INTA)

Trade Mark Basics in the European Union

WIPO Intellectual Property Handbook: Policy, Law and Use



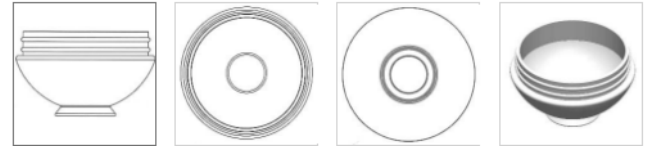
2. Industrial designs

- *What is an industrial design?*
- *What are the routes to design protection?*
- *What are the requirements for design registration?*
- *What kind of protection do designs confer?*



What is an industrial design?

An industrial design is the outward appearance of the whole or part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation. An example of a protectable designs is:



What are the routes to design protection?

Designs can be protected by different means: through a registration system, through a system of non-registration and through copyright. Registration can be obtained at three different levels: national, regional and international. The best route usually depends on the markets in which the applicant intends to operate.



National route

Registration takes place at national IP offices and protection is obtained only in the territory where the design is registered.

Regional route (RCD and UCD)

Industrial design protection at EU level can be obtained either through registration or not:



⁴ EU design no. 002384685-0002, owned by Lifetime Brands Europe Limited.

Registered Community Design (RCD)

Design protection at EU level can be obtained by registration of an RCD at the [EUIPO](#). The application procedure is simple, with a single set of fees and in the official language of any Member State plus one of the following: English, French, Spanish, German and Italian. It covers the territory of [all Member States](#). RCDs can be applied for by any natural person or legal entity from any country in the world.

Unregistered Community Design (UCD)

This type of protection does not require registration and protection is obtained automatically for a period of three years from the design's public disclosure within the EU.

This route is commonly used in sectors where designs have a very short market life (e.g. fashion industry) as it is not a renewable right and does not entail any registration fees.

International route (the Hague System)

[WIPO's](#) international design registration system (known as [the Hague System](#)) allows users to obtain a bundle of national designs in over [65 territories](#) by filing a single application in one language and paying a single set of fees. This option may suit applicants who expect to operate in numerous territories. The applicant must either have a business in, or be domiciled in or be a national of any territory that is part of [the Hague System](#).



Although this application has an international character, national laws govern the registration in each territory. Therefore, an international

application may be successful in some designated territories and refused in others.



What are the requirements for design registration?

Novelty

A design is considered to be **new** if it has not been disclosed to the public previously.

Individual character

Assessing individual character consists of verifying whether the **overall impression** produced by the design differs from the overall impression produced by the designs made available earlier.

Non-functionality

Those features of the design that are dictated solely by a **technical function** do not receive protection.



What kind of protection do designs confer?

An RCD confers to its holder the **exclusive right** to use their design and to prevent third parties from using it commercially without prior consent.

An UCD only protects against **deliberate copying**, in other words, the design owner can only prevent third parties from making a commercial use of their design if it has been copied and not if such third parties have created a similar or identical design independently. Design owners, including UCD owners, may sell their design to someone else, who will then become the new owner of the design, or give permission to

others to use the design on mutually agreed terms (i.e. design licensing agreement).

Territorial protection

Designs are territorial in nature, which means that design rights are granted and enforceable within the geographical boundaries of the country or region where they are registered.

Protection of the appearance of the product

Design protection covers the appearance of the whole or part of a product resulting from its **aesthetical features** which must not be solely dictated by their technical function.

Duration of protection

RCD protection is limited in time: **5 years** from the date of the filing of a design application in most countries, which can be renewed for periods of five years, up to a **total term of 25 years**. The design may lapse earlier if the renewal fees are not paid.



UCD protection lasts for **3 years** and cannot be renewed. Once a design expires, the protection ends and anyone can commercially use the design without infringing the expired one.



Further Information

Fact Sheets

Design searching
Commercialising Intellectual Property: Assignment Agreements

IPR Charts

IPR Chart: Community Design
IPR Chart: International Design (Hague System)

Guide

Your Guide to IP Commercialisation

All these documents can be found in our [library](#).

Useful Documents

Design Basics in the European Union
WIPO Intellectual Property Handbook: Policy, Law and Use



3. Patents

- *What is a patent?*
- *What are the routes for patent protection?*
- *What are the requirements to patent registration?*
- *What kind of protection do patents confer?*
- *What is a unitary patent?*
- *Can I patent a computer program?*



What is a patent?

A patent is an exclusive right granted for the protection of **inventions** (products or processes) offering a new **technical solution** or facilitating a new way of doing something. The patent holder enjoys the exclusive right to prevent third parties from commercially exploiting their invention for a limited period of time. In return, the patent holder must disclose the invention to the public in the patent application.



What are the routes to patent protection?

Patent registration can be performed at three different levels: national, regional and international (through the [Patent Cooperation Treaty \(PCT\) System](#)). The best route usually depends on the territories where a company intends to exploit the patent.



National route

Registration takes place at national IP offices and protection is obtained only in the territory where the patent is registered.

Regional route (European patent)

A European patent can be obtained for all the [European Patent Convention \(EPC\) contracting states](#) by filing a single application, under a single set of fees with the [European Patent Office \(EPO\)](#) in one of its three official languages (English, French or German). This application has an international character; however, national laws govern the registration in each territory. A granted European patent is then a “bundle” of national patents that must be validated at the national IP offices of the countries



selected by the applicant for it to be effective.

International route (PCT)

WIPO administers the [PCT system](#) that allows users to obtain patent protection in more than 150 territories by filing a single application in one language and paying a single set of fees. The applicant must be a national or resident of a [PCT contracting state](#). This application has an international character; however, national laws govern the registration in each territory. Also in this case, the applicant will then obtain a “bundle” of national patents whose granting remains under the control of the relevant national or regional patent office.



Patent procedures demand a high degree of technical and legal expertise. It is strongly advised to seek professional assistance.

What are the requirements for patent registration?

Novelty

The invention must be **new** in comparison to the existing knowledge in the relevant technical field -that is, not being part of the **state of the art**.

Inventive step

The invention must be **non-obvious**, in other words, it cannot be deduced easily by a person with average knowledge in the relevant technical field.

Industrial application

It must be capable of **industrial application** (i.e. it can be made or used in any kind of industry, including agriculture).



What kind of protection do patents confer?

The exclusive right conferred by a patent allows its owner to prevent others from making, using, offering for sale, selling or importing a product or a process based on the patented invention, without the owner's prior permission. The patent owner may give permission to others to use the invention on mutually agreed terms (i.e. patent licensing agreement). The owner may also sell the patent to someone else, who will then become the new owner of the patent.

Territorial protection

Patents are territorial in nature, which means that patent rights are granted and enforceable within the geographical boundaries of the country or region where they are registered.

Duration of protection

Patent protection is limited in time: **20 years** from the date of filing of the patent application in most countries. The patent may lapse earlier if the annual fees are not paid. Once a patent expires, the protection ends, and anyone can commercially exploit the invention without infringing the patent.





What is a unitary patent?

A **European patent with unitary effect** (unitary patent) is a European patent granted by the [EPO](#) to which unitary effect in the territory of the **26 participating EU Member States** (Spain and Croatia being the only EU Member States that do not take part in this scheme) is given after grant, at the patentee's request. Although not yet in force when this guide is being written, the unitary patent will provide applicants with a means for obtaining patent rights in each of the 26 participating states simultaneously without the need for national validation in each country, as it is the case for the European patent.

Once the unitary regime enters into force, patent applicants will be able to choose between various combinations of classical European patents and unitary patents, for example:

- a **unitary patent** for the 26 Member States of the European Union which participate in the unitary patent scheme together with
- a **classical European patent** taking effect in one or more EPC contracting states which do not participate in the scheme, such as Spain, Switzerland, Turkey, Norway, Iceland, etc.



Can I patent a computer program?

Software patentability in Europe is excluded by law but the issue is under debate. As a consequence, a computer program claimed “as such” is not a patentable invention. Under specific conditions, a patent could be granted for a **computer-implemented invention** where a technical problem is solved in a novel and non-obvious manner. Further information is available on the [EPO website](#).

Furthermore, as mentioned in [section 6](#) of this Guide, computer programs receive **copyright protection** in Europe, as long as they comply with the requirements for copyright protection.

Further Information

Fact Sheets

Commercialising Intellectual Property: Assignment Agreements
Technology Licensing-in
Automatic Patent Analysis
Inventorship, Authorship and Ownership
Publishing v. Patenting
How to Search for Patent Information

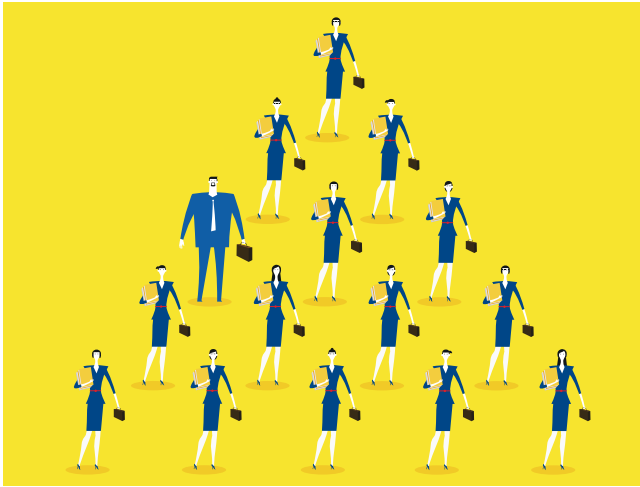
Guide

Your Guide to IP Commercialisation

All these documents can be found in our [library](#).

Useful Documents

How to Get a European Patent, Guide for Applicants
Inventors' Handbook
Patent Litigation in Europe
The PCT Applicant's Guide
WIPO Intellectual Property Handbook: Policy, Law and Use
EPO Unitary Patent Guide



4. Utility models

- *What is a utility model?*
- *What are the routes to utility model protection?*
- *What are the requirements for utility model registration?*
- *What kind of protection do utility models confer?*
- *What are the main differences between utility models and patents?*
- *Can I convert a patent application into a utility model?*



What is a utility model?

Also referred to as a “petty patent”, a utility model is an exclusive right granted for an **invention**, which allows its owner to prevent others from commercially using the protected invention, without their authorisation, for a limited period of time.



What are the routes to utility model protection?

In the EU, utility models can be granted at **national level** in the following countries: Austria, Bulgaria, Czech Republic, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Poland, Portugal, Slovakia and Spain. There is no European or international utility model protection.



What are the requirements for utility model registration?

The rules for utility model registration vary from country to country. Consequently, although **novelty and inventive step** are generally required, the conditions for utility model protection will vary depending on the applicable national legislation.



What kind of protection do utility models confer?

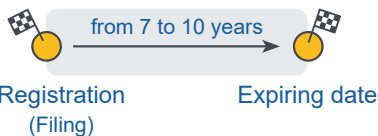
The exclusive right conferred by a utility model generally allows its owner to prevent others from making, using, offering for sale, selling or importing a product or a process based on the protected invention, without the owner’s prior permission.

Territorial protection

Utility models are territorial in nature, which means that the exclusive rights are granted and enforceable within the geographical boundaries of the country where they are registered.

Duration of protection

Utility model protection is limited in time. Its duration varies depending on the applicable national legislation. In Europe, it generally lasts from **7 to 10 years** from the date of filing of the utility model application. Once a utility model expires, protection ends, and anyone has the right to commercially exploit the invention without infringing the utility model.



What are the main differences between utility models and patents?

The main differences between utility models and patents are the following:

- The **requirements** for acquiring a utility model are less stringent than those of patents. While the requirement of novelty is always to be met, that of inventive step or non-obviousness is much lower. Therefore, protection for utility models is often sought for inventions with a **limited inventive step**, which may not meet the patentability criteria.
- The **term of protection** for utility models is shorter than for patents and varies from country to country (usually between 7 and 10 years without the possibility of extension or renewal).
- The **fees** for obtaining and maintaining utility models are generally lower.



Can I convert a patent application into a utility model?

Many countries allow the conversion of a patent application into a utility model application (or vice versa) under specific conditions. This mechanism is often used when a patent application is refused by the relevant IP office for lack of compliance with the patentability requirements and the applicant decides to convert the patent application into a utility model application.

Further Information

Fact Sheets

Inventorship, Authorship and Ownership
Publishing v. Patenting
How to Search for Patent Information

All these documents can be found in our [library](#).



5. Trade secrets

- *What is a trade secret?*
- *How are trade secrets protected?*
- *What kind of protection do trade secrets confer?*
- *What is a non-disclosure agreement?*



What is a trade secret?

Any **confidential business information** providing a competitive advantage to an enterprise can be considered a trade secret. The type of information that can be protected as a trade secret is therefore highly diverse.

It can include know-how, technical knowledge (potentially protectable as a patent), but also business and commercial data such as lists of customers, business plans, recipes or manufacturing processes.



How are trade secrets protected?

Trade secrets do not require administrative or procedural formalities in order to be protected. There are, however, some conditions for the information to be considered and, hence, be protected as a trade secret.

The information must:

- be **secret**, meaning that it is not generally known;
- have **commercial value** due to its secrecy; and
- have been subject to **reasonable measures**, by the person in control of the information, to keep it secret.

These reasonable measures may include:

- storing confidential information safely;
- concluding **non-disclosure agreements** where trade secrets must be discussed with business partners;
- including **non-disclosure clauses** within agreements such as licence agreements, employment agreements, consortium

agreements or partnership agreements, where the exchange of confidential information is very likely and/or necessary.

What kind of protection do trade secrets confer?

Trade secrets do not confer “proprietary rights”, meaning that the holder of a trade secret does not have exclusive rights over the information. However, if the information is leaked by someone under the obligation to keep it confidential, such a disclosure would constitute a breach of contract allowing remedies for the trade secret holder.

Moreover, if a person obtains the trade secret by dishonest means (such as in the case of espionage), most European countries and [all EU Member States](#) offer protection under **unfair competition laws**.

Duration of protection

A trade secret can be protected for an **unlimited** period of time as far as the conditions for the information to be considered as a trade secret are fulfilled.

What is a non-disclosure agreement?

A non-disclosure agreement (**NDA**), also called a confidentiality agreement, is a legally binding contract in which one party (the disclosing party) agrees to give a second party (the receiving party) confidential information and the latter agrees not to disclose this information under the conditions set by the contract.

Depending on the number of parties disclosing information, non-disclosure agreements may be “**one-way**” (also known as unilateral) with

one party disclosing information and one party receiving information, or “**two-way**” (also known as bilateral or mutual) when each party discloses confidential information to the other. Sometimes NDAs can be **multilateral** agreements, with more than two parties involved.

Further Information

Fact Sheets

Trade secrets: An Efficient Tool for Competitiveness
How to Manage Confidential Business Information
Non-Disclosure Agreement: A Business Tool

Guide

Your Guide to IP Commercialisation

Templates

Mutual Non Disclosure Agreement
One-Way Non-Disclosure Agreement
Non-Disclosure Agreements

Except for the Template “Non-Disclosure Agreements” all these documents can be found in our [library](#).

Useful Documents

WIPO Intellectual Property Handbook: Policy, Law and Use
Exchanging Value - Negotiating Technology Licensing Agreements: A Training Manual



6. Copyright

- *What is copyright?*
- *Can ideas be protected by copyright?*
- *How does copyright arise?*
- *What are the requirements to obtain copyright protection?*
- *What kind of protection does copyright confer?*
- *What are neighbouring rights?*



What is copyright?

Copyright (or **author's right**) is the term used to describe the rights that creators have over their **literary, scientific and artistic works**. There is not an exhaustive list containing the works that can be protected by copyright. However, there is a number of works usually covered by copyright at international level:

- literary works such as novels, poems, plays, newspaper articles;
- computer programs, databases;
- films, musical compositions, and choreographies;
- artistic works such as paintings, drawings, photographs, and sculptures;
- architecture; and
- advertisements, maps, and technical drawings.



Can ideas be protected by copyright?

No, ideas as such cannot obtain copyright protection. It is the expression of those ideas that can be copyrighted.



How does copyright arise?

Automatic protection

In the EU, copyright protection is obtained automatically from the moment when the work is created and **no registration** or other formality is required. However, some countries allow for the voluntary registration/deposit of works protected by copyright. Therefore, registration is not constitutive of the right but can be useful in some situations (e.g. to solve disputes over ownership or creation, to facilitate financial transactions).

Copyright notice

While no formalities are required to obtain copyright protection, it is common practice to attach a copyright notice to the work, such as the mention “**all rights reserved**” or the **symbol** © together with the year in which the work has been created, to inform others of the existence of copyright and therefore reduce the likelihood of infringement.

What are the requirements to obtain copyright protection?

Although copyright is regulated at national level and, therefore, the requirements can vary from one country to another, to qualify for copyright protection a work must in general:

- Be **original**: There is no total harmonisation at EU level, nor at international level on what is to be understood by “original”. However, based on EU case law, it can be said that the originality requirement is satisfied when **the author expresses his creativity** by making free and creative choices, resulting in a work that reflects his personality.
- Exist in **some form**: There is no harmonisation at EU level regarding whether the work has to be fixed in a material form in order to receive copyright protection. It is for Member States to freely prescribe that works in general or any specified categories of works shall not be protected unless they have been fixed in some material form. Therefore, non-fixed works such as unrecorded speeches, may receive protection in some countries but not in others.

What kind of protection does copyright confer?

Territorial protection

Copyright is territorial and national in scope, therefore, the national laws of the country in which the author seeks protection apply. However, a number of international treaties and conventions (e.g. the [Berne Convention](#)) allow authors to enjoy protection in several countries of the world including the EU Member States.

Scope of protection

The [Berne Convention](#) grants authors a series of rights that can be classified into two categories:

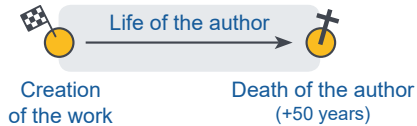
- **Economic rights**, which enable right holders to control the use of their works and be remunerated for their use, by selling them or licensing them to others. They normally take the form of exclusive rights, notably to authorise or prohibit the making and distribution of copies as well as communication to the public. They are **harmonised at EU level**.
- **Moral rights**, which in general are **non-transferable**, include the right of authors to claim **authorship**, as well as their right to object to a distortion or mutilation of their work, which would negatively affect their honour or reputation. They are **not harmonised at EU level**, so their scope of protection may vary from one country to another.

Duration of protection

While moral rights have usually no time limit (they last forever), economic rights are limited in time. The [Berne Convention](#) establishes that economic

rights must last at least during the author's lifetime plus 50 years from his death.

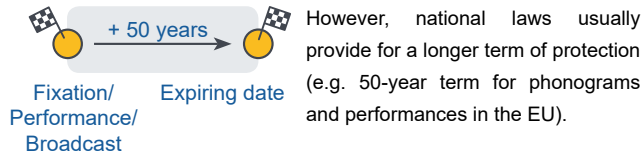
However, national legislations can provide longer protection (e.g. in the EU, 70 years from author's death).



What are neighbouring rights?

Neighbouring rights, also known as media rights or related rights are those rights, which, although related to copyright, have a specific subject matter and protect the interests of certain right holders different to the work's author, such as performers, producers (e.g. of films), broadcasting organisations and publishers.

These rights are regulated at international level by the [Rome Convention](#), which establishes a term of protection of **20 years** from the end of the year in which (i) the fixation was made (for phonograms and performances incorporated in them), (ii) the performance took place, (iii) the broadcast took place.



However, national laws usually provide for a longer term of protection (e.g. 50-year term for phonograms and performances in the EU).

Further Information

Fact Sheets

Copyright Essentials
 Inventorship, Authorship and Ownership
 IPR Management in Software Development
 Technology Licensing-in

Guide

Your Guide to IP Commercialisation

Useful Document

WIPO Intellectual Property Handbook: Policy, Law and Use

Except for the "WIPO Intellectual Property Handbook" all these documents can be found in our [library](#).



7. Databases

- *What is a database?*
- *What are the routes to database protection?*
- *What are the requirements for obtaining protection of a database?*
- *What kind of protection do databases rights confer?*



What is a database?

In the EU, a “database” consists of a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means.



What are the routes to database protection?

Copyright protection

- **Original databases** can be protected by copyright.
- Copyrighted databases must be original “intellectual creations” ([see section 6](#)).
- Copyright is the highest level of protection that can be obtained by databases in the EU.
- The owner of the database is the person who creates it.

Sui generis protection

- **Non-original databases** – which do not meet the requirements for obtaining copyright protection - can be protected in the EU by a specific **EU database right** known as the *sui generis* database right.
- *Sui generis* databases do not need to be an “intellectual creation”, but they must show that there has been “qualitatively or quantitatively a **substantial investment** in either the obtaining, verification or presentation of the contents” of the database.
- The owner of a *sui generis* database is the person who creates the database, that is to say, the person undertaking the initiative of creating the database and assuming the associated investment risks.

- Some examples of protected non-original databases include telephone listings or compilations of legislation.

What are the requirements for obtaining protection of a database?

Copyright

- To obtain copyright protection, databases must be **original intellectual creations**. In the EU, databases which, by reason of the selection or arrangement of their contents, constitute the author's own intellectual creation shall be protected as such by copyright.
- No other criteria shall be applied to determine their eligibility for copyright protection.

Sui generis right

- To obtain *sui generis* protection it is required that a substantial investment is made in obtaining, verifying and presenting the contents of the database.
- Substantial investment is understood as a **financial and/or professional investment**, which may consist in the deployment of financial resources and the expending of time, effort and energy in obtaining and collecting the contents.

What kind of protection do database rights confer?

Territorial protection

Copyrighted databases

Copyright protection arises automatically in all states which are party to the [Berne Convention](#), which include [all EU Member States](#). Because of the **national scope** of copyright, there can be some nuances among national laws.

Sui generis databases

This is a purely EU right with no equivalent at international level. Only creators of databases who are nationals of a Member State or who have their habitual residence in the territory of the EU can benefit from this right.

Scope of protection

Copyrighted databases

Protection is conferred to the structure of the database and not to its contents. That is, a reward is given to the efforts made in **selecting and arranging** the contents, rather than in creating them. However, an individual item of the contents may enjoy separate copyright protection if it complies with the applicable legal requirements (e.g. a photograph included in a database).

The author of a database has the exclusive right to carry out or to authorise its reproduction, adaptation (e.g. translation), distribution, communication,

as well as the reproduction, distribution or communication of the results of any adaptation.

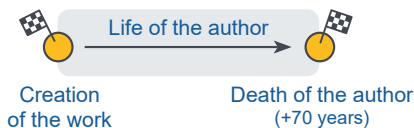
Sui generis databases

Unlike copyright databases, the *sui generis* database right protects the **contents** of a database. The owner of a *sui generis* database has the right to prevent the extraction and/or re-utilisation of the whole or of a substantial – qualitative or quantitative - part of the contents of the database:

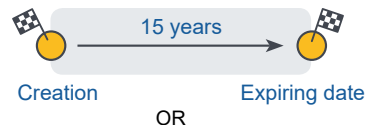
- The right to prevent extraction: The term “**extraction**” refers to the permanent or temporary transfer of the whole or of a substantial part of the contents of the database to another medium, by any means or in any form. It implies that some degree of choice or individual appreciation of the content to be extracted is made.
- The right to prevent reutilisation: The term “**reutilisation**” consists of making available to the public the whole or a substantial part of the contents of the database by any form of distribution, including the renting/lending of the database, online or through other means.

Duration of protection

- Copyrighted databases: In the EU, the term of protection corresponds to the life of the author plus 70 years after his death.



- *Sui generis* databases: The term of protection is **15 years** from the end of the year in which the making of the database was completed or in which the database was first made available to the public.



Further Information

Guide

Your Guide to IP Commercialisation

This document can be found in our [library](#).

Useful Document

WIPO Intellectual Property Handbook: Policy, Law and Use



8. Domain names

- *What is a domain name?*
- *What are the requirements for domain name registration?*
- *What kind of protection do domain names confer?*
- *What is the Uniform Domain Name Dispute Resolution Policy (UDRP)?*
- *What is cybersquatting?*

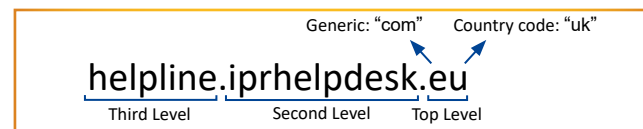


What is a domain name?

According to [WIPO](#), “domain names are the human-friendly forms of **Internet addresses**, and are commonly used to find web sites”. For example, the domain name [iprhelpdesk.eu](#) is used to locate the European IP Helpdesk web site at <http://www.iprhelpdesk.eu>. Apart from this function, domain names also serve the purpose of identifying a company or a trade mark on the Internet.

What are the types of domain names?

- **Top Level Domain (TLD):** It is located after the last dot (“.”), e.g. [iprhelpdesk.eu](#). There are two types of TLD:
 - **generic Top Level Domain (gTLD):** indicates the area of activity (e.g. “.com” for any purposes or “.biz”, restricted to businesses).
 - **country code Top Level Domain (ccTLD):** indicates the geographical area where the domain owner intends to operate (e.g. “.uk” or “.fr”, for the UK and France respectively).
- **Second Level Domain:** It is located directly to the left of the top-level domain (e.g. [iprhelpdesk.eu](#)). Most domain names disputes concern this type of domain.
- **Third Level Domain:** It is located directly to the left of the second-level domain (e.g. [helpline.iprhelpdesk.eu](#)). Not every address has this type of domain, also known as subdomain. It is often used to identify departments in large organisations.



What are the requirements for domain name registration?

The registration of a domain name can be done at any of the different **registrars** around the world that are accredited by the [Internet Corporation for Assigned Names and Numbers \(ICANN\)](#). ICANN is a not-for-profit public-benefit corporation in charge of coordinating the Internet's domain name system.

The only requirement for registration is that the domain name applied for is not registered already (i.e. **first-come, first-served principle**). If the domain name is not registered by a third party, the registrar will simply authorise registration upon payment of a fee.

What kind of protection do domain names confer?

International protection

Domain names have an international character. Unlike trade marks or designs, domain names are **not territorial** so their registration at any accredited registrar confers them worldwide protection.

Scope of protection

The scope of protection of a domain name is determined by the top-level domain (e.g. .eu) and by the second-level domain (e.g. iprhelpdesk). Such protection also depends on whether the second-level domain enjoys trade mark protection:

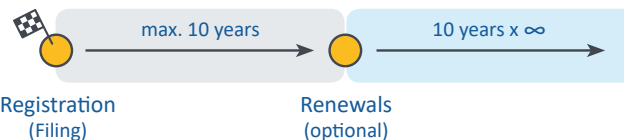
- Trademarked second-level domain: If the owner of a domain name has also registered its second-level domain as a trade mark (e.g. if "iprhelpdesk" is registered as a trade mark), the owner will have a

stronger right to stop others from registering its second-level domain with different top-level extensions, such as ".com" or ".biz".

- Generic second-level domain: If the second-level domain is a generic term that does not enjoy trade mark protection, its registration with different top-level extensions by different owners will be possible. As explained before, the top level determines the area of activity or the operational geographical area of the domain owner, so coexistence of different second-level domains is possible as long as the top-level domain differentiates them and avoids a conflict among them.

Duration of protection

Each registrar is free to establish the duration of protection in annual terms up to a maximum of 10 years. Upon expiration, domain names can be renewed indefinitely.



What is the Uniform Domain Name Dispute Resolution Policy (UDRP)?

The **UDRP** is a system established by [ICANN](#) for the resolution of disputes regarding the registration and use of domain names. It is applied by all accredited registrars.

When applicants apply for a domain name they declare not to infringe the rights of third parties and accept to submit themselves to the [UDRP](#).



What is cybersquatting?

Cybersquatting consists of the practice of making abusive registrations of domain names that are already registered either as domain names in one or more top-level extensions or as trade marks or trade names. Cybersquatters register such domain names and later offer them for sale – often to the owner of the previous domain name or trade mark- at a much higher price than the original registration fee.

The [UDRP](#) provides an **expedited administrative procedure** to solve these issues without the need to submit to court proceedings.

Further Information

Fact Sheets

Domain names and cybersquatting
Intellectual Property considerations for business websites

All these documents can be found in our [library](#).



9. Geographical indications

- *What is a geographical indication?*
- *What type of products can be protected by GIs?*
- *How are geographical indications protected?*
- *What kind of protection do GIs confer?*
- *What are the routes to GI protection?*



What is a geographical indication?

A geographical indication (GI) is a sign used on products having a specific geographical origin and whose qualities and/or reputation are attributable to that origin.

Geographical indications are often **place names**. However, **non-geographical names** can also be protected if they are linked to a particular place. For example, Feta cheese is not named after a place, but after the Italian word “fetta”, meaning “slice”, which was incorporated into the Greek language in the 17th century. However several factors such as the fact that 85% of EU consumption of feta cheese per capita and per year takes place in Greece or the fact that feta is usually marketed with labels referring to Greek cultural traditions and civilisation, make EU consumers perceive feta as an inherently Greek product.

In order to function as a GI:

- the sign must identify a product as **originating in a given place** (e.g. Chianti identifying a wine originating in the Italian region of Chianti or Roquefort cheese originating in the Roquefort-sur-Soulzon region in France);
- the **qualities, characteristics or reputation** of the product should be due to the place of origin (e.g. the qualities of Chianti are due to the grapes grown in the soil of that specific Italian region, while the qualities of Roquefort result from the characteristics of the milk obtained from indigenous breeds of sheep fed according to the tradition and the characteristics of the caves in which the cheese is aged).

What type of products can be protected by GIs?

Geographical indications are used for agricultural products, foodstuffs, wine and spirit drinks, handicrafts, and industrial products.



However, at EU level, most non-agricultural products or industrial goods (like textiles, wood, ceramics, etc.) are not protectable with a GI. Nevertheless, some Member States of the EU (e.g. Bulgaria) provide for the protection of these products as GIs at national level.

How are geographical indications protected?

Protection for a GI is obtained by acquiring a right over the name that constitutes the indication (e.g. Chianti).

Although in many countries and at EU level this right over a name can be acquired through the registration of a **collective trade mark** and/or a **certification mark**, a specific right protecting the GI can also be obtained.

This GI right may be, depending on the country, a protected GI, a designation of origin or an appellation of origin. **Appellations of origin** (AOs) and **designations of origin** (DOs) are special kinds of GIs generally implying a stronger link with the place of origin (e.g. the quality and characteristics of a product protected as an AO and a DO must

generally result exclusively or essentially from its geographical origin, as explained below in more detail).

What kind of protection do GIs confer?

Territorial protection

GIs are territorial in nature. Thus, where a specific right over a GI is obtained in one territory, it is protected there but not abroad.

Scope of protection

GIs do not confer individual rights (such as in the case of patents and trade marks) but rather “**collective rights**”. Indeed, once protected, the exclusive right to use the geographical indication belongs to all producers in a given geographical area, who comply with the specific conditions of production for the product.

Duration of protection

GIs are not subject to a specific period of validity. This means that the protection will remain valid unless the GI registration is cancelled.

What are the routes to GI protection?

National route

National legislations may provide specific GI protection systems at national level.

Regional route (European Union)

Two types of GIs, indicating different levels of connection with a

geographical area, confer exclusive rights on geographical names in the whole territory of the EU:

- Protected Designations of Origin (PDO)** identify products that are **produced, processed and prepared** in a specific geographical area, using the recognised know-how of local producers and **ingredients** from the region concerned. These are products whose characteristics are strictly linked to their geographical origin and they must adhere to a precise set of specifications and may bear the **PDO logo**. PDO products thus require **all stages of the food production process** to be carried out in the area concerned. Some examples of PDOs include Bordeaux PDO (France, wine), Cava PDO (Spain, wine), Manouri PDO (Greece, cheese).
- Protected Geographical Indications (PGI)** identify products whose quality or reputation is linked to the place or region where they are **produced, processed or prepared**, although the ingredients used need not necessarily come from that geographical area. Products bearing the **PGI logo** have a specific characteristic or reputation associating them with a given place, and **at least one stage in the production process** must be carried out in that area, while the raw materials used in production may come from another region. Some examples of PGIs include České pivo (Czech Republic, beer), Lammefjordskartofler PGI (Denmark, vegetable) or Primorska PGI (Slovenia, wine).



International route (Lisbon System)

The [Lisbon Agreement](#) provides for an international protection system (the Lisbon System) of appellations of origin. The Lisbon System, administered by [WIPO](#), offers a means of obtaining protection for an AO already protected in one contracting party in the territories of [all contracting parties](#). This can be done through a single registration called “an international registration”.

Further Information

Fact Sheet

The Value of Geographical Indications for Businesses

This document can be found in our [library](#).

Useful Document

WIPO Intellectual Property Handbook: Policy, Law and Use

IP rights in a nutshell

IPR	What for?	Duration of protection	Priority	Routes to registration
Trade marks	Distinctive signs	Renewable indefinitely for periods of 10 years	6 months	National EU trade mark (EU) Madrid System
Industrial designs	Appearance of products	RCD: renewable every 5 years up to 25 years UCD: 3 years, not renewable	6 months	National Community design (EU) Hague System
Patents	Inventions	20 years	12 months	National European Patent (EPC) PCT
Utility models	Inventions	7-10 years	12 months	National
Trade secrets	Confidential business information	Unlimited	No	None
Copyright	Literary, scientific and artistic works Neighbouring rights (media or related rights)	Moral rights: no time limit Economic rights: at least the author's lifetime + 50 years (in the EU, 70 years from the author's death) Neighbouring rights: at least 20 years from the end of the year in which the fixation was made or the performance / broadcast took place (in the EU, 50 years instead of 20 for phonograms and performances)	No	None
Databases	Collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible	Copyrighted databases: within the EU: life of the author + 70 years Sui generis databases: 15 years from the end of the year in which the making of the database was completed or in which the database was first made available to the public	No	Copyrighted databases: automatic <i>Sui generis</i> databases: EU right only
Domain names	Internet addresses	Renewable indefinitely for periods of a maximum of 10 years	No	Worldwide protection when registered at any accredited registrar
Geographical indications	Products having a specific geographical origin and whose qualities and/or reputation are attributable to that origin	Unlimited	No	National EU Lisbon System

The European IP Helpdesk

We believe that knowing how to manage your IP effectively, can help you promote your business or maximise the impact of your research & innovation project – make sure you stay ahead of the innovation game.

Our main goal is to support cross-border SME and research activities to manage, disseminate and valorise technologies and other IP rights and assets at an EU level. The European IP Helpdesk enables IP capacity building along the full scale of IP practices: from awareness to strategic use and successful exploitation.

This strengthening of IP competencies focuses on EU SMEs, participants and candidates in EU-funded projects and EU innovation stakeholders for an increased translation of IP into the EU innovation ecosystem.



THE EUROPEAN IP HELPDESK SERVICES

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The heart of our service portfolio to keep you updated



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Our Helpline team answers your individual IP questions



TRAINING

Gain IP knowledge in our free online and on-site training sessions



PUBLICATIONS

Detailed IP knowledge provided through our high level publications



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Our regional ambassadors provide IP support throughout Europe



EVENTS

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GET IN TOUCH

Please feel free to get in touch with us anytime for further information or if you have questions regarding our services.

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