

Report of WIPO IP Diagnostics

WEBSITE

This report has been automatically generated based on your answers.

Registration of domain name

Your answers indicate that you have registered your domain name.

The choice of a domain name has become an important business decision. A domain name is registered by you to enable Internet users to locate your company's site on the web.

Company domain names may be registered in any number of "top-level domains" called "TLDs". You can choose from the "generic top-level domains" ("gTLDs"), such as .com, .net, .org and .info. Or you can choose from the specialized and restricted top-level domains if you qualify (e.g. .aero for air travel and transport businesses, or .biz for commercial enterprises). You can also register your domain name under a "country code top-level domain" ("ccTLD"), for example, .bg for Bulgaria, .cn for China, .ch for Switzerland.

The technical management of the domain name system is in the hands of the Internet Corporation for Assigned Names and Numbers ("ICANN"). However, in the gTLDs, the registrations themselves are handled by a number of Internet registrars accredited by ICANN, that can be found at ICANN's site at <https://www.icann.org/en/accredited-registrars/>. You can check whether a domain name has already been registered, either by searching via a registrar's site, or by using a 'Whois' search, like that offered by ICANN at <https://lookup.icann.org/en>. For registrations in the ccTLDs, you will need to contact the registration authority designated for each ccTLD. To do this, you can consult a ccTLD database set up by WIPO at <https://www.wipo.int/amc/en/domains/>

cctld_db/index.html, that links to the web sites of over 250 ccTLDs, where you can find information about their registration agreement, Whois service and dispute resolution procedures.

Choosing a domain name

Your answers indicate that your trademark is not wholly or partly your domain name.

When you choose your company's domain name, depending on where you register, you may pick a generic or common name, but if you pick a name that is distinctive, users may more easily be able to remember and search for it. Ideally, it could also be distinctive enough to be protected under trademark law, because domain names can be protected as trademarks in some countries. If you picked a very common domain name (e.g. "Good Software"), your company could have difficulty in building up any special reputation or goodwill in this name and more difficulty in preventing others from using your name in competition. If, however, your domain name includes a trademark that is owned by someone else you may be liable for infringement and lose the right to use it.

Website development

Your answers indicate that you did develop your own website.

If your website has been developed by your employees who are employed for this purpose, then, in most countries, you (as the employer) would own the copyright over the website, unless you otherwise agreed with your employees. However, for a small business, this is rarely the case.

Most companies outsource the creation of their website design and/or content to an outside contractor, and assume they own intellectual property rights in it because they paid for the work. Beware! You may be surprised to find out that you do not own the intellectual property rights in what has been created for you. Independent contractors (contrary to employees) usually own intellectual property rights in the works they create - even if you have paid for it -, unless otherwise agreed in a written contract.

In practice, this means that the independent web developer will usually own copyright and other intellectual property rights in the website, as well as in the design and elements contributing to that design (such as colors, gifs, jpegs, setup, hyperlinks, text coding). Without a valid, written agreement transferring to you all these rights, you may end up owning nothing except perhaps a non-exclusive license to use your own site.

Example: You have your site created by a freelance web designer. There is no agreement transferring all rights to you, so the copyright belongs to the web designer (according to the national laws). A year later, you want to refresh your site and make some changes to its presentation. Under most copyright laws, you will need authorization from the web designer, and may be required to pay an additional fee, to substantially update your website.

Development of materials for the website

Your answers indicate that the materials that you upload on the website like written content, photos, videos, graphics etc., are developed within the company.

A typical website is a collage of components often owned by different persons. For example, one company may own rights in the navigation software; others may own copyright in photographs, graphics and text; and yet another person may own copyright in the design of your site. It may not be necessary for your business to own the intellectual property rights in all elements of your website, but you should at least find out what you own, what you have rights to use and in what way, and what you do not own or have rights to use.

Current technology makes it fairly easy to use material created by others - film and television clips, music, graphics, photographs, software, text, etc. - on your website. The technical ease of using and copying these works does not give you the legal right to do so. Using material without getting permission - either by obtaining an "assignment" or a "license" - can have dire consequences.

Linking

Your answers indicate that your website does provide links to material stored on other websites.

Hyperlinks to other websites are a useful service to your customers but in many countries, there is no clear law on when and how you can use links. In most cases, links are completely legal and no permission is needed from the linked site to include a link. However, some types of links can create legal liability:

- Links that lead web users to sites containing illegal content (a pirated copy of a song, perhaps, or an unlawful software program) may subject you to legal liability.
- Links that comprise a company's logo (for example, using the Nike logo) may violate copyright, trademark or unfair competition laws. It makes sense to get permission for them.

- Deep links are links that go straight to a specific page other than a website's home page. For example, instead of linking to the home page of a newspaper, a deep link might take the user directly to a newspaper article within that site. Deep linking is generally not allowed if it is a way of bypassing a subscription or payment mechanism, or if it is expressly forbidden by the site itself. It is necessary in such cases to obtain permission.
- Framing means that you divide your webpage into separate framed regions and display the contents of someone else's site within a frame at your site. The difference with normal linking is that the user is linked to another website in such a way that it is not obvious that what he is viewing is from another website. Inlining or mirroring occurs when you incorporate (or "inline") a graphic file from another website into your own website. For example, if a user at your website can, without leaving your site, view a picture featured on another site. Framing and inlining are controversial practices, because they can create the impression that the information belongs to the website doing the framing or inlining. Always get written permission before doing this.

Platform and user-uploaded content

Your answers indicate that users do not upload material onto your website and that the website is not generally speaking a platform for activities of other users.

Certain websites can be used by users to trade physical goods as well as upload, share and/or trade digital content. Such websites act as a platform with various degrees of control over what material is shared/traded/uploaded. If the material on the website is infringing intellectual property rights - i.e., pirated content like the illegal sharing of movies - these platforms may be held liable for the activities of the user base. While the laws differ across jurisdictions - such as with respect to when and how such platforms become liable, what actually constitutes a "platform" or what actions need to be taken by the platform to counter infringing activities -, it is advisable that you take measures that your platform/website is not used to share/trade/distribute intellectual property infringing material and that you have taken all necessary consents for the material you use on your website.

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Report of WIPO IP Diagnostics

LICENSING

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Licensing to others and from others

One way to use inventions, innovations, creative materials, business identifiers and confidential information that are protected by intellectual property rights owned by others is to obtain from the owners of these rights the right to use them through what is called a licensing agreement. The word "license" simply means permission granted by the owner of the intellectual property right to another to use it on agreed terms and conditions, for a defined purpose, in a defined territory and for an agreed period of time.

A distinguishing factor about these innovative and creative outputs protected by intellectual property rights are that they are intangible in nature. This means that unlike in the case of physical or tangible property, they can be used and exploited by many people simultaneously without impacting in any way on its quality or functionality. Therefore, the owner of an intellectual property right could potentially give many people the right to use his intellectual property right at the same time, that is license it to as many licensees as he wishes. This allows him to maximize the earning potential constrained only by the terms of the agreements that he enters into with the potential licensees.

A license agreement may be exclusive or non-exclusive. If you grant an exclusive license, the licensee alone (even excluding the licensor) has the right to use it in the ways covered by the license. An exclusive license may also be restricted, for example, to a specified territory, for a period of time, for limited purposes, or the continuation of the exclusivity may be conditional upon other types of performance requirements.

On the other hand, if you grant a non-exclusive license, you can give a number of licensees the right to exercise one or more of your exclusive rights and the licensor can also continue to exercise the same rights at the same time. There is also what is called a sole license which usually describes the situation where the licensor as well as the licensee can use the technology in the territory, but no one else can.

Licensing agreements could transfer the right to use patents, trade secrets, copyright, trademarks or designs on their own or in combination with each other.

Patent and trade secret licenses

Often, it is prudent to obtain and use or adapt technology that already exists than invest the time and resources to find the solution oneself. This would be the case, for example, if the required technology cannot be developed in-house for reasons of cost, time, human resources and complementary assets. Sometimes, it may be necessary to obtain licenses for technologies which are part of industry, national or international standards set by standard-setting organizations. A license may also be necessary in a situation where your product inadvertently violates the intellectual property rights owned by another.

Likewise, it may in the interest of a company that owns such technology to transfer that knowledge to another and create an additional revenue stream. Today, even the largest companies are no longer doing everything in-house and depend on outside sources not only for key components and services but also for knowledge and technical know-how.

In patent licenses often the attendant trade secrets will also be included as well as license agreements only transferring trade secrets if that be appropriate.

More references:

- Licensing checklist: https://www3.wipo.int/wipogreen/docs/en/wipogreen_licensingchecklist_061216.pdf
- Successful technology licensing: https://www.wipo.int/edocs/pubdocs/en/licensing/903/wipo_pub_903.pdf
- Exchanging Value: https://www.wipo.int/edocs/pubdocs/en/licensing/906/wipo_pub_906.pdf

Copyright related licenses

Using works based on the copyright and related rights owned by others for commercial

purposes may enhance the value or efficiency of your business, including enhancing its brand value. For example, playing music in a restaurant, bar, retail shop, or airline adds value to the experience of a customer while using a service or while visiting a business outlet. In most countries, for using music in this manner, prior permission of the copyright and related rights owners must be obtained by means of a license to use the music for a specified purpose. Obtaining a license from the copyright and/or related rights owners to use a work for a specific purpose is often the best way to avoid disputes that may otherwise result in potentially time-consuming, uncertain and expensive litigation.

There are various ways in which licensing is managed by copyright holders. The copyright holder may manage it him or herself negotiating individually with every single licensee or offering licenses on standard terms and conditions that must be accepted as such by the other party. This approach, however, would involve considerable administrative workload and often these tasks are entrusted to an agent such as a book publisher or a record producer.

In practice, it is often difficult for a copyright or related rights owner, and even for licensing agents, to monitor all the different uses made of their works. It is also quite difficult for users, such as radio or TV stations, to individually contact each author or copyright owner in order to obtain the necessary permissions. There are what are called collective management organizations (CMOs) who could be relied on to monitor uses of works on behalf of creators of certain categories of works, and who could be placed in charge of negotiating licenses and collecting payment. CMOs act as intermediaries between users and a number of copyright owners who are members of the CMO. Generally, there is one CMO per type of work and per country. However, CMOs exist for only some types of works, such as film, music, photography, reprography (all kinds of printed material), television and video, and visual arts.

To enable the copyright or related rights owners to be represented internationally, CMOs enter into reciprocal agreements with other CMOs throughout the world. The CMOs then grant licenses on behalf of their members, collect the payments, and redistribute the amount collected, based on an agreed formula, to the copyright owners.

Obtaining the right to use the copyright-protected material of others

You have indicated that you do not intend to obtain the right to use the copyright-protected material of others in your business.

Even if you do not consider this for now, please note the following: Businesses often need to use works protected by copyright or related rights works to support their business activities. When using the work of others you must first determine if copyright permission is required. In principle, you will need authorization from the copyright

owner: if the work is covered by copyright and/or related rights law(s); if your planned exploitation implies the use of all or part of the rights granted to the copyright and/or related rights owner; if your intended use is not covered by "fair use" or "fair dealing" or by a limitation or exception specifically included in the national copyright or related rights law (some jurisdictions allow limited use of parts of copyright-protected works, e.g. for research purposes, for translation into Braille for visually impaired persons, etc.).

You may need specific permission for using other people's content outside your business premises (investor "roadshow", company website, annual report, company newsletter, etc.), and inside your organization (distribution to employees, product research, in-house meetings and training, etc.). Copyright protection applies to digital use and storage in the same way as it does to any other uses. Therefore, you may need prior permission from the copyright owners to scan their works; post their works on an electronic bulletin board or a website; save their digital content on your enterprise's database; or publish their works on your website.

It must be noted that copyright is separate from the right of possession of the work. Buying a copy of a book, CD, video or computer program by itself does not necessarily give the buyer the right to make further copies or play or show them in public. The right to do these things will generally remain with the copyright owner, whose permission you would need to do those acts.

After you have determined that you need copyright permission, you can get in touch with your desired partner to obtain a license. Often, this is easy as the name of the copyright holder is mentioned and contact details are given (e.g., on a web page). However, sometimes the needed information is not indicated clearly. Additional research may be then needed, e.g. in national copyright registries (which are voluntary and exist in some countries, while in others not) or in registries for so-called orphaned works (which is copyright material, where the copyright owner cannot be determined and after some time, and the alleged copyright is not claimed by anyone, is considered "orphan" and can be thereafter used). Collective management organizations (CMOs), if available for the specific category of works that you are interested in could also facilitate.

Trademark licenses

Granting others the right to use a trademark is a fairly recent phenomenon. The early view that a trademark indicated the source of a product meant that the use of the trademark by another (which is not the source) was philosophically not possible. The fact that a good or service is produced or delivered by a licensee, a person authorized by the owner to use the trademark, in essence, means that the good or service is emanating from a source other than the owner. As such it would amount to a false or deceptive representation to the consumer as to the true source of the goods or services

involved. This view began to change fairly recently when licensing began to be accepted in some jurisdictions where the owner of the trademark, the licensor, remained in control of the nature and quality of the goods or services sold in association with the trademark. Consumers were, by virtue of this control, assured that the goods and services delivered by the licensee in association with the trademark would not differ in any meaningful way from the goods and services of the licensor and the customer was, by virtue of this controlled use, not being deceived.

Quality control has therefore become the essence of trademark licensing providing the means for ensuring that the licensee's use is consistent with the licensor's interest in the trademark and at the same time ensuring that the consumer will get essentially the same quality product or service no matter where the trademarked product is purchased or the service is experienced. Therefore, provisions relating to the control and monitoring of the character or quality of the licensed products or services provided in association with the licensed trademark are of great importance and in most cases mandatory in order to maintain a strong and enforceable trademark.

Globalization has also meant the increasing focus on building partnerships and alliances. Trademarks being powerful identifiers trademark licensing is an effective way of forging such relationships, extending a business and ultimately for creating additional revenue streams.

Franchising

Franchising is a specialized license where the franchisee is allowed by the franchisor in return for a fee to use a particular business model and is licensed a bundle of intellectual property rights, notably trademarks and supported by training, technical support and mentoring. Admittedly the franchise owner is the proprietor of much more than a trademark. He owns a successful business that includes trademarks and a variety of other intellectual property rights. By licensing another the right to use that business model, along with the attendant intellectual property rights, including the trademark, the franchise owner is able to create "clones", as it were, of his business, with minimum investment and effort from his side. Each new business that is created in this manner creates a new revenue stream and additional exposure to the business. Likewise the franchisee, the party that obtains the right to use the business model and the accompanying intellectual property, acquires a ready-made business model that has already consumer recognition and benefits from support and training from the franchisor.

Merchandising

Merchandising is a form of marketing whereby an intellectual property right (typically a trademark, industrial design and/or copyright) is used on a product to enhance the

attractiveness of the product. University logos, cartoon characters, famous paintings, statues and many other images appear on a whole range of products, such as T-shirts, toys, stationery items, coffee mugs and posters. Merchandising requires prior authorization to use the various rights on the merchandised goods.

Licensing agreements

WIPO has a checklist that can help you identify issues that you may encounter when negotiating an agreement (contract) that relates to intellectual property. Please find it here: https://www3.wipo.int/wipogreen/docs/en/wipogreen_licensingchecklist_061216.pdf

Valuation

Valuation is a difficult exercise and often a subjective one. You are advised to consult with a valuation expert to conduct a professional valuation of your intellectual property asset. Generally speaking, there are several methods used to value technology.

The income method is the most commonly used method for intellectual property valuation. It values the intellectual property asset on the basis of the amount of economic income that it is expected to generate, adjusted to its present-day value. This method is easiest to use for intellectual property assets with positive cash flows, for those whose cash flows can be estimated with some degree of reliability for future periods, and where a proxy for risk can be used to obtain discount rates.

The market method is based on a comparison with the actual price paid for the transfer of rights to a similar intellectual property asset under comparable circumstances. Sellers and purchasers of real estate and used cars know, or can readily ascertain, what other parties have agreed for similar houses in the same area, or for the same make and year of car. The same approach is beneficial in licensing, though perhaps not as useful because there will seldom be identical technology and intellectual property packages. In addition, the commercial details of an agreement will not be ascertainable where they are considered by the parties to be competitor-sensitive

The cost method establishes the value of an intellectual property asset by calculating the cost associated with developing the asset or the costs that would be incurred if the licensee were to obtain, from a different source, the same or similar asset. The licensee is effectively determining the cost of the next best alternative. The cost method is particularly useful when the intellectual property asset can be easily reproduced and when the economic benefits of the asset cannot be accurately quantified. This method does not account for wasted costs, nor does it consider any unique or novel characteristics of the asset.

Licensing, sale or assignment

By your answer you have indicated that you are interested in selling your intellectual property.

In selling or buying rights to an intellectual property asset (where the legal transaction is called an "assignment"), the ownership rights for that intellectual property pass from the seller to the buyer and it is a one-time activity for an agreed price. There will be only a few continuing obligations in the relationship between the seller (assignor) and the buyer (assignee). Frequently, such transactions involve a one-time transfer of funds, but financial compensation might also be entirely or partially deferred and may depend on many factors or contingencies (such as the success of the commercialization). An intellectual property asset owner, who has no experience in bringing a product to market and who is not interested in being involved in such day-to-day matters as intellectual property commercialization, may consider that the ideal solution would be to find a buyer for the intellectual property asset and to complete the whole transaction at one time.

In contrast, a licensing agreement transfers from the licensor to the licensee the right to use the intellectual property in a specified manner for a specified time in a specified region. In other words, the licensor continues to have the proprietary rights over the intellectual property and has only given a defined right to the use of that intellectual property.

Furthermore, entering into a licensing agreement is to enter into a relationship, usually for a certain length of time. It presupposes a continuing interaction where the licensor and licensee work towards realizing their common goal. Assuming that the relationship is successful, and therefore profitable, it would mean that both the licensor and licensee would be financially compensated, usually and primarily in the form of an ongoing incremental income stream on the basis of the success of the product in the marketplace.

Disputes

To refer potential disputes that may arise to WIPO alternative dispute resolution (ADR), parties can include WIPO mediation and arbitration clauses in their licensing or other legal agreements. WIPO mediation and arbitration are often faster and cheaper than court litigation and enable parties to efficiently settle their domestic or cross-border intellectual property and technology disputes out of court. The WIPO Arbitration and Mediation Center makes available model contract clauses in twelve languages at <https://www.wipo.int/amc/en/clauses/index.html>. The WIPO Arbitration and Mediation Center is available to assist parties in drafting such clauses and can be contacted by email at arbiter.mail@wipo.int.

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Report of WIPO IP Diagnostics

EMPLOYMENT ASPECTS

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Employee engagement in innovative activities

By your answers you have indicated that your employees do not invent your new products, processes or technical modifications and/or that they do not engage in the development of creative materials, designs or business signs that are subsequently used in your business.

Often, employees are responsible for many inventive, innovative and creative outputs of a company. If the company wants to use these outputs in the business or, similarly, if an employee would like to use his output inside or outside the business the question arises as to whether they have the right to do so. At the outset, it is important to find out what is provided in the local law for such situations and to that end, local advice should be obtained. In any case, it is advisable that these issues are clearly dealt with at the outset in employment contracts so that employees and employers know and understand their rights and obligations. These terms should, of course, abide by the local law dealing with these situations.

In many countries, inventions developed in the course of employment are automatically assigned to the employer. In some countries, this is only so if it is stated in the employment contract or if the employee was hired to invent. In some cases (e.g., if there is no employment agreement) the inventor may retain the right to exploit the invention, but the employer is given a non-exclusive right for its internal purposes (called "shop rights").

Similarly, if an employee has developed a design during working hours and as part of

his or her regular duties the design and the related rights will belong to the employer, or the designer may be required to transfer them to the employer through a formal written assignment. Likewise, if an employee creates a literary or artistic work within the scope of his or her employment, then the employer automatically owns the copyright, unless otherwise agreed. But this is not always the case. Under the law of some countries, the transfer of rights to the employer may not be automatic and may have to be specified in the employment contract.

Disputes may arise in the event an employee does some work at home or after hours, or produces work not within the scope of the employee's ordinary employment.

In some countries, like in the United States of America, the copyright law defines a category of works called "works made for hire" which is a work created by an employee within the scope of employment or commissioned under contract. With a work for hire, the copyright owner is the entity that pays for it, not the person who creates it. The entity may be a firm, an organization or an individual.

It is therefore important to find out about the specific legislation in the relevant country and to ensure that employment contracts deal with issues of ownership over employee inventive, innovative or creative outputs to avoid possible disputes.

Employees and confidential business information

By your answers you have indicated that you have employment agreements that protect your confidential information from being divulged, that your employees are trained in protecting such information and that procedures are in place to ensure that new employees do not bring with them such information from their former employers.

While the information economy has made trade secrets more important, it has also made them more likely to be lost or stolen. The rise of the Internet, cloud computing, and portable storage devices have seen an increase in the number of reported trade secret lawsuits where the plaintiff alleges that the defendant wrongfully took trade secrets using email, a USB drive, and the like. Business managers, entrepreneurs, and their employees have the duty to take informed actions to protect the company's assets from loss through theft or dissipation ("outbound protection") and to make sure that other's trade secrets come into the company only in a legal way ("inbound protection").

There are a number of low-cost steps SMEs can take vis-à-vis their employees to protect their own trade secrets from unlawful disclosure and also to reduce the risk of being sued for misappropriation of another company's trade secrets.

The first is using an employment agreement that contains adequate protective terms. Above all, employment contracts should prohibit employees from using or disclosing the company's confidential information. This is usually done through a confidentiality (non-disclosure) agreement or provision that prohibits the recipient from making unauthorized use or disclosure of confidential information.

The contract also should prohibit employees from using or disclosing confidential information acquired during previous jobs. When a new employee is hired, he or she must confirm that a complete search of personal media for information belonging to a former employer was done and returned (or destroyed, depending on the terms of the new hire's prior employment agreement). Taking this step forces newly-hired employees to divest themselves of information they should not possess, and thus prevents future lawsuits.

It is a good practice to provide employees with regular training on how you define your trade secrets, and what responsibilities you assign to your employees to protect against improper disclosure. It also allows a company to reiterate its own rules regarding the use and disclosure of company information - such as at industry conferences, in conversations with customers, during a work-related phone conversation when the employee is in a public place (such as an airport or a trade show) and on social media.

If the company engages in competitive intelligence gathering, guidelines should be adopted that proscribe unlawful and unethical practices which can reduce the risk that mistakes are made. For example, such guidelines should instruct employees and business partners not to use false identities to gain access to restricted material on websites, at restricted sessions at industry conferences, when ordering a competitor's product or when using a competitor's service.

When employees leave the company, it is important to actively require the return of company information. To reduce the risk that employees leave with company information in emails, cloud accounts, or home computers, the best practice is to require an exit interview with each departing employee, affirmatively request that the employee conduct a search for and then return such information, and that the employee sign a certification verifying the full and complete return of all such information.

Some jurisdictions allow companies to prohibit departing employees from engaging in competition or from contacting the company's customers, for a period of time. These types of terms are similar to trade secret protections but are not the same thing. A local attorney should be consulted to determine local rules before such terms are used in employment contracts. The rules governing such terms, including their enforceability, can vary from jurisdiction to jurisdiction.

A company's interest in trade secret protection needs to be balanced against the employee's fundamental freedom to change employers or start his or her own business. Information that includes the general knowledge, skill, training and experience of an employee cannot be claimed as a trade secret by the employer. The employee is usually free to use such skills in his or her next job. Whether particular information is to be regarded as your trade secret or as part of the general knowledge, skill, training and experience of an employee depend on the circumstances of a particular case.

Traditionally, the most common trade secret lawsuits have arisen when one or more employees leave one business and join a competitor - or start a new business themselves. In such cases, the former employer may sue both the individual employees and the company that hired them.

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Report of WIPO IP Diagnostics

INVENTIVE OR INNOVATIVE PRODUCTS OR PROCESSES

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Patents and utility models

Patentability

Given your answers, your first IP diagnostic - to be confirmed by examination e.g. through a patent office - would indicate that your new product/production process or technical modification may be patentable.

In order to obtain a patent, the following criteria must ALL be met:

- **The invention must be "new":** An invention is new or novel if it does not form part of the prior art. In general, prior art refers to all the relevant technical knowledge available to the public anywhere in the world prior to the first filing date of the relevant patent application. It includes patents, patent applications and non-patent literature of all kinds. The exact definition differs, though, from country to country. Therefore if someone else has already patented what you consider to be a new product, process or technical modification your invention will not be "new". The invention would also not be considered new if it has been disclosed publicly before filing an application. Such public disclosure might be through testing it, working with a third party, or through publicity. These and other such acts would destroy the novelty. However, some countries have a so called "grace period" where if that disclosure had been made within that grace period the possibility to secure a patent might still be open. It is important to talk to an expert to understand if patent protection is still an option in

this case. Given your answers, this might not be the case for you.

- **The invention must have an "inventive step":** An invention is considered to involve an inventive step (or to be non-obvious) when, taking into account the prior art, the invention would not have been obvious to a person skilled in that particular field of technology. The non-obviousness requirement is meant to ensure that patents are granted only for truly inventive achievements, and not for developments that a person with ordinary skill in the field could easily deduce from what already exists.
- **The invention must be "capable of industrial application":** To be patentable, an invention must be capable of being used for an industrial or business purpose. An invention cannot be a mere theoretical phenomenon; it must be useful and provide some practical benefit. The term "industrial" is meant here in the broadest sense as anything distinct from purely intellectual or aesthetic activity, and includes, for example, agriculture. In some countries, this criterion is expressed as utility.
- **The invention must not be on a list of things that are by definition not patentable:** Most national or regional patent laws exclude certain types of inventions from patent protection. While there are considerable differences between countries, these exclusions may include diagnostic, therapeutic and surgical methods of treatment; plants and animals; and computer programs per se. It can be difficult to determine whether a particular invention falls into an excluded category for a particular country and it may be useful to consult an expert to analyze the potential for protecting a given invention.

Please note that depending on the laws of each country, not all patents are examined. When there is no examination, no official has compared your invention to existing knowledge bases, or "prior art" to determine if it is truly new and/or inventive. When asserting a patent, someone else could find a reference that questions its validity. This can even happen when a patent has been examined. Therefore, despite being issued a patent, a court may later find the asset invalid.

Therefore, it is recommended:

- That you check patent databases to see whether what you intend to patent has not already been patented by someone else. See <https://patentscope.wipo.int/search/en/search.jsf>
- That you do not disclose any information prior to filing a patent (at a trade fair, exhibition, etc.)
- If you need to talk for example with an investor or other development partner, make sure that you do so having signed a Non-Disclosure Agreement (NDA).
- Seek professional advice of a patent agent/patent attorney soon.

However it is important to note that while patents are an important means to protect

and commercially exploit technical inventions, they may not always be the best choice under all circumstances. Below are some situations where you may consider that patent protection may not be the best option and other options including trade secrets may be preferable depending on the strategic interests of the business. Please consult with your local patent agent/attorney to determine what the right decision is for you.

- **Patenting costs and enforceability:** Small firms with limited budgets may be able to file a patent application but may find it difficult to allocate the money to go through the whole process up to obtaining a patent right and once obtained to enforce it. As a small entity, you may benefit from fee reductions. Some fee reductions may also be available within the Patent Cooperation Treaty (PCT), based on your nationality. With respect to the costs involved with securing a patent, WIPO's Inventor Assistance Program may help. The Program matches inventors with pro bono legal assistance to help inventors' secure patent protection in certain countries (see <https://www.wipo.int/iap/en/>). However, if these costs are insurmountable, trade secret protection may provide some level of security in appropriate circumstances.
- **If your invention is used only within your company** (for example it may relate to a production process), or it is not easy to reverse engineer, trade secret protection may provide better protection.
- **Ability to always stay in the lead:** If you are confident that you will always be one step ahead of your competition and that your business will not suffer from competitors using your last generation inventions, patents might not be necessary.
- **Shorter product lifecycles:** A patent can take anywhere from several months to a few years to grant. If the expected life of the product is very short, patents may not be an effective tool to provide protection in the market, and it might make more sense to go with the trade secret option or rely on other commercial strategies for obtaining a sustainable competitive advantage.
- **Protection beyond 20 years:** Patent protection is provided usually for a maximum period of 20 years. While there are exceptions to this rule in many jurisdictions - for example, for patent-protected pharmaceutical products which had to undergo lengthy market authorization processes - the term of patent protection is finite. After expiry, anyone will be able to use the invention as published in the patent specifications. If you need protection beyond the maximum term of patent protection, and if you can reasonably assume that the working principles behind the invention can be kept secret, you may want to choose trade secret protection over patents.

Patent databases

You indicated that you know of the existence of patent databases that can be freely consulted for information on technical issues.

The patent system is a bargain between the state and the inventor. The inventor

discloses his invention in sufficient detail so that a person with ordinary skill in the art could carry it out and the State grants the inventor, assuming the required criteria for obtaining a patent are satisfied, the right to exclude all others from using that invention for a limited period of time. This results in a tremendous amount of new knowledge entering the public sphere allowing others to learn from them and build on them. This knowledge is organized and made available in what are called patent databases. This information is a unique and up to date source of organized technical information which can be very valuable for strategic business planning. With over 40 million patents granted worldwide, and millions of printed publications which are potential prior art (i.e., already existing and published inventions) against the patent application, there is a serious risk that some reference, or combination of references, may render the invention unpatentable. Generally, before embarking on R&D and also as the first step to patenting, it is advisable that you conduct a prior art search using (also) patent databases. Aside from revealing whether an invention is patentable, searching patent databases may provide very useful information on:

- the R&D activities of current and future competitors;
- current trends in a given field of technology;
- technologies available for licensing;
- potential suppliers, business partners or researchers;
- possible market niches at home and abroad;
- relevant patents of others to ensure that your products do not infringe them ("freedom to operate");
- expired patents that have contributed technology to the public domain; and
- possible new developments based on existing technologies.

WIPO offers free online access to all published international patent applications processed through the PCT System, together with millions of patents from the collections of many national and regional offices, through its PATENTSCOPE search service at www.wipo.int/patentscope. If you did not know of such patent databases before, you can familiarize yourself with PATENTSCOPE. If you already know and have used such patent databases, you may want to enquire into more sophisticated functionalities and search strategies such as described in the video tutorials for PATENTSCOPE (<https://patentscope.wipo.int/search/en/help/tipsAndTricks.jsf>) .

Furthermore, WIPO provides innovators in developing countries with access to locally-based, high-quality technology information services, so-called Technology and Information Support Centers (TISCs). These centers also provide for patent database search services and provide assistance in this matter (<https://www.wipo.int/tisc/en/>) .

Attracting investment

In today's knowledge-based economy, the intangible assets of companies constitute a larger share of the overall value of companies. The physical assets of companies make up an increasingly lower percentage of the share of company value. Therefore a company that has taken steps to protect its innovations and has granted patents or applications filed will have powerful business assets, assets that are tradeable. They may constitute an important component of the value of the company and as such will be carefully considered by investors in determining whether they should invest in that company. In this regard it would be important to know the value of the patents. This necessitates, of course, the ability to value patents. Valuation needs may also arise for other reasons (such as in litigation; for financial reporting purposes, etc.). There are well-established methods for assessing the value of a patent and a valuation expert may be consulted for this purpose.

There are three main methods for conducting a valuation. They are the Cost, Market and Income methods. Through the cost method the value of an intellectual property asset is calculated by determining the cost of developing a similar (or exact) intellectual property asset either internally or externally. The Market method is based on a comparison with the actual price paid for a similar intellectual property asset under comparable circumstances. The income method values the intellectual property asset on the basis of the amount of economic income that the intellectual property asset is expected to generate, adjusted to its present-day value.

Invention created by a third party for you

You indicated that the invention you are using was not created for you by a third party. If it was created by an employee, in some countries, inventions developed in the course of employment are automatically assigned to the employer. In other countries, it is so if stated in the contract. In any case, it would be prudent to ensure that all employee contracts provide for the assignment of inventions to the employer. If it was developed by an independent contractor, the rights will usually be owned by the contractor unless otherwise specifically agreed in writing.

The issue of inventions that are developed by third parties, or jointly with third parties or developed by you for third parties has acquired particular importance today in the context of the increasingly collaborative environment of open innovation. Open innovation as opposed to closed innovation accepts that to truly create innovative products there must be an environment that is open to ideas from those outside the organization in question. In the past, innovation was in a closed environment produced within the four walls of an organization with little input from outside. Today, there is an increasing tendency towards a more collaborative approach where many organizations seek the input of external parties to their projects. The rights of such external parties to

the results of their innovative work is something that needs to be ascertained at the outset. This is also an environment that small companies are increasingly looking to participate and if they have taken proper steps to manage the intellectual property in their innovations they become attractive candidates for big companies to work with.

In such cases where SMEs are contracted by bigger players to perform certain tasks or to provide solutions to specific technical problems, the ownership to the results of the work they undertake must be determined before it undertakes the work in question. These complex issues need careful preparation and thought prior to embarking on such collaborations.

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Report of WIPO IP Diagnostics

CREATIVE MATERIALS

This report has been automatically generated based on your answers.

Creation of original material

In your answers you declared that the creative material that is generated in your business is original.

Most companies create a variety of original material such as computer programs or software; content on websites; product catalogs; newsletters; instruction sheets or operating manuals for machines or consumer products; user, repair or maintenance manuals for various types of equipment; artwork and text on product literature, labels or packaging; marketing and advertising materials on paper, billboards, websites, and so on. Such material may be protected by copyright. Copyright protected materials are literary, artistic, dramatic and other types of creations, which are usually referred to as "works". Copyright law grants authors, composers, computer programmers, website designers and other creator's legal protection for these works.

In addition to this, there are also so-called "related rights" that may need to be considered: the rights of performers (e.g., actors, musicians) in their performances; the rights of producers of sound recordings. Copyright and related rights protect works of different categories of right holders. While copyright protects the works of the authors themselves, related rights are granted to certain categories of people or businesses that play an important role in performing, communicating or disseminating works to the public that may or may not be protected by copyright.

How do copyrights come into existence?

To qualify for copyright protection, a work must be original. That is, the work was independently created and was not copied from the work of another or from materials in the public domain.

Originality relates to the form of expression and not to the underlying idea. For example, two authors of two distinct novels may tell the same story - for example, about the life of a celebrity - but will not infringe each other's copyright, if they tell the story, respectively, in their own words (the "original expression"). However, if one author copies the text of the other author literally, he/she will commit copyright infringement.

Copyright arises automatically once the work is created. There is no registration procedure required. Many countries require that the work is written on paper, stored on a disk, painted on canvas or recorded on tape or "fixed" in some way. However, some countries like the United States of America operate a voluntary copyright registration system, where creators can register their copyrighted works. Doing so provides these creators evidence of the existence of a valid claim to copyright protection which is helpful in pursuing a lawsuit for copyright infringement.

In most countries, a copyright notice is not required for protection. Nevertheless, it is strongly advisable to place a copyright notice on or in relation to your work, because it reminds people that the work is protected and identifies the copyright owner. Such identification helps all those who may wish to obtain prior permission to use your work. Placing a copyright notice is a very cost-effective safeguard. It requires no significant extra expense but may end up saving costs by deterring others from copying your work, as well as facilitating the process of granting prior permission by making it easier to identify the copyright owner.

Copyright protects works that are in print as well those created or stored in electronic or digital media.

For most works, and in most countries, copyright lasts for the lifetime of the author plus an additional period of at least 50 years. In a number of countries, this period is even longer (for example, 70 years after the death of the author in Europe). It is, thus, not only the author who benefits from the work but also the author's heirs. Once copyright protection over a work has expired, it is considered to be in the "public domain", which means it can be freely used without obtaining consent. It should be noted that with related rights different (and by country diverging) terms of protection apply.

Copyright provides what are called economic rights and moral rights. Economic rights give the owner/holder of copyright the exclusive right to authorize or prohibit certain

uses of a work. That is, as a copyright owner you can prevent others from copying or commercially exploiting these "works" without your authorization. Moral rights protect an author's creative integrity and reputation as expressed through the work.

There are many ways to commercialize creative works: You may simply sell the works that are protected by copyright or make copies and sell the copies; you may allow someone else to reproduce or otherwise use the works. This can be done by licensing your economic rights over the works; and you may sell (assign) your copyright over the works, either entirely or partly.

If, however, you are using original works of others without their authorization you may be liable for copyright infringement

Looking for investors

In your answers, you stated that you would be interested in looking for investors. Companies that own copyright and related rights assets (e.g., a portfolio of distribution rights to a number of movies/films) may be able to borrow money from a financial institution by using such a bundle of rights as collateral or raise financing by letting investors take a "security interest" in them. Start-ups with such rights would find it easier to attract investment funding from venture capitalists and angel investors.

Ownership of copyrights

In your answers, you have indicated that the creative or artistic material that you are using was not created for you by an outside party.

Generally, copyright in a work initially belongs to the person who actually created it, that is to say, the author. Therefore, in most countries, the creator owns the copyright in commissioned work, and the person who ordered the work will only have a license to use the work for the purposes for which it was commissioned. Many composers, photographers, freelance journalists, graphic designers, computer programmers and website designers work on this basis. The issue of ownership most often arises in connection with the re-use of commissioned material for the same or a different purpose.

In some countries, like in the United States of America, the copyright law defines a category of works called "works made for hire." Where commissioned work is considered a work made for hire, the copyright owner is the entity that pays for it, not the person who creates it unless there is an agreement to the contrary.

The situation changes if the work was created by an employee. In many countries, in this case, the employer automatically owns the copyright, unless otherwise agreed. But this may not be the case in all countries. Under the law of some countries, the transfer of rights to the employer may not be automatic and may have to be specified in the employment contract.

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Report of WIPO IP Diagnostics

DESIGNS

This report has been automatically generated based on your answers.

Registration of design

Your answers indicate that you have not registered your design with a national or regional intellectual property office.

In everyday language, an industrial design generally refers to a product's overall form and function. From a legal perspective, an industrial design refers to the ornamental or aesthetic aspects of a product. In most countries, to obtain an industrial design right an application must be made at the appropriate intellectual property office and once that application is granted a design right comes into force allowing the owner of that right to prevent unauthorized third parties from making, selling or importing articles for commercial purposes bearing or embodying a design, which is a copy, or substantially a copy, of the registered design. This gives the owner of a design right a strong business tool for developing a solid market position as follows:

- Preventing competitors from using the design as outlined above.
- Using the design to make the product attractive and appealing and differentiating it from those of the competitors in the marketplace and thereby adding to its market value.
- Attractive designs can create a loyal customer following which can increase the commercial value of the company and its products.
- The exclusivity provided by a registered design right allows an owner to license others to use the design for a fee or to assign or sell the design right to others.

In some jurisdictions, it is possible to obtain limited industrial design protection for unregistered designs, but only for a short period. This is the case, for example, in the European Union, where unregistered design protection is available and lasts three years from the date on which the design was first made available to the public within the territory of the European Union.

Ownership of design rights

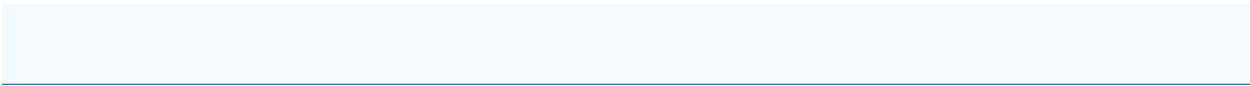
Your answer indicates that you are using a design that was not developed for you by an outside party.

This question pertains to the issue of who owns the design right. The creator of a design, i.e., the designer, is usually the first owner of the design unless there are special circumstances. For example, in most jurisdictions, if an employee has developed a design under the terms of his or her employment contract - that is, during working hours within the enterprise and as part of his or her regular duties - the design and the related rights will belong to the employer, or the designer may be required to transfer them to the employer through a formal written assignment.

If the design was developed by an external designer under contract, the rights will generally belong to the company that commissioned the design. In such cases, it is considered that the design was produced for the use of the person who commissioned the design, who is, therefore, the owner. Misunderstandings at a later date can be avoided by clarifying the issue of ownership of rights in the original contract with the designer. Bear in mind that the designer of the product may have automatic copyright protection over the design, so this issue should also be covered in the contract.

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Report of WIPO IP Diagnostics

CONFIDENTIAL INFORMATION

This report has been automatically generated based on your answers.

Reasonable steps to protect valuable business information

You indicated that you have taken reasonable steps to protect your business information that you consider valuable. This means that you have fulfilled one major requirement for enjoying trade secret protection, the other two being that the information is secret and that it has commercial value by virtue of being kept secret, i.e. not known to the public.

Trade secret protection can apply to a range of information. They may include technical and scientific information (for example manufacturing and development information, test results and quality control methods, product information, computer technology, research results, pending unpublished patent applications), strategy information (for example business, marketing and investment strategies, business methods, market research), financial information (for example pricing information, financial forecasts, sales data) and commercial information (for example supplier information, customer information, pricing mechanisms, databases). Some of this information might be patentable but the company could choose to keep even information that is patentable as a trade secret and avoid disclosing the information required in a patent application.

Trade secret protection allows the owner to control access to and use of the information and as such can take legal action against individuals or companies who have misappropriated the trade secret. If for example the trade secret has been acquired by improper means like through fraud, inducement, coercion, espionage, etc the trade secret would have been misappropriated. Unlike patents, trade secrets do not give the owner the right to prevent others from using that information if they independently discovered that information. Protection is provided only against improper acquisition,

use or disclosure of the trade secret information. This means that there is no legal remedy against a competitor who independently develops the same information, a competitor who reverse engineers the product and discovers the information that is embedded in a product or a competitor who uses the information that has accidentally leaked.

It is important to bear in mind that the conditions for, and scope of, trade secret protection may vary significantly from country to country depending on the existing statutory mechanisms and case law, and that the courts may require very significant and possibly costly efforts to preserve secrecy. Patent or utility model protection, wherever possible, will provide much stronger protection.

Trade secret embodiment in products or processes

Generally speaking, if the confidential information is embodied in a product that is provided to customers outside the company then there is the possibility that the information can be discovered by taking the product apart. If this is a real possibility then trade secret protection may not be the best approach to protect that information. If, however, the information is used only within the company (for example in a production process) then trade secret protection might be a better option. A trade secret does not protect from independent discovery. It is also possible for someone else to file a patent on the same technical concept. Depending on the jurisdiction, you may have some rights in these cases to use the invention. However, your ability to exploit it will be weaker.

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Report of WIPO IP Diagnostics

TRADEMARKS

This report has been automatically generated based on your answers.

With your answers, you have indicated that you have already a trademark for your business registered at the national or regional intellectual property office or you have applied for one. This means that you have protected or applied to protect a sign that identifies and distinguishes your products and/or services from those of others in the marketplace.

You now have a powerful business asset; it might even be the most powerful asset you own. You can prevent competitors from making unauthorized use of your trademark (that is from marketing identical or similar products under an identical or confusingly similar trademark) and you can use it to build your brand image and reputation allowing you to create a relationship of trust with your consumers and thus establish a loyal clientele and enhance the goodwill of your business. Trademarks are a powerful instrument to capture the consumer's attention and make your products stand out. Consumers are willing to pay more for a product bearing a trademark that they recognize, and which meets their expectations. Trademarks also encourage companies to invest in maintaining or improving the quality of their products in order to maintain or further improve their reputation. Trademarks are one of the most valuable and enduring business assets. They can last a very long time, and thus provide your business with a long-term competitive advantage.

They also have value beyond your core business and often pave the way for the expansion of your business into other products. They may be licensed or merchandised, and so provide an additional source of income through royalties; they are a crucial component of franchising agreements, and they may be sold along with or separately from your business. Trademarks also may be used to provide collateral security in obtaining financing.

However, it is important to remember that it is not enough to obtain protection through trademark registration. The protection may get lost if your trademark is not properly used. A trademark may become generic if it becomes so widely used that it becomes a common name to designate the relevant good or service. In such instances, the trademark will not be registrable and a previous registration for such a trademark may be canceled. For example, Trampoline has been ruled generic in the United States of America, so other companies may use that name for an athletic jumping apparatus as well. In most countries, registered trademarks must be used in order to remain valid, otherwise, they may be canceled. Failure to use may mean that the trademark has been abandoned and make the trademark vulnerable to an attack by a third party to have it invalidated for non-use. You indicated that you are using the trademark, so this is not likely to be an issue for your company.

Investors

Your answers suggest that you are interested in attracting investment.

In today's knowledge-based economy, the intangible assets of companies constitute a larger share of the overall value of companies. The physical assets of companies make up an increasingly lower percentage of the share of company value. Therefore, a carefully selected and nurtured trademark is a valuable business asset for most businesses. It may even be the most valuable asset they own. APPLE® is estimated by Interbrand in its 2019 report to be the world's most valuable brand with a value of almost USD 235 billion, followed by GOOGLE®, estimated at over USD 167 billion, and Amazon® at USD 125 billion. As an intellectual property right, trademarks can be dealt with like physical assets and can be sold, licensed or donated. It is therefore a tradeable asset that may constitute an important component of the value of the company and, as such, will be carefully considered by investors in determining whether they should invest in the company. This necessitates, of course, the ability to value the trademark. Valuation needs may also arise for other reasons (such as in litigation, for financial reporting purposes, etc.). There are well-established methods for assessing the value of a trademark and a valuation expert may be consulted for this purpose.

Trademark designed by a third party for you

You indicated that the trademark you are using was not created by an outside party. However, if you consider hiring an outside party perhaps a designer to design an attractive trademark for you, it is important to be aware that there might be design rights and copyright involved and it is important to clarify who owns these rights.

In the context of copyright, the owner is the person who would have the exclusive right to exploit it through use, copy, sell and make derivative works. In most countries, the

creator is the owner of the copyright of such output with the person who ordered the work only having a license to use the work for the purpose for which it was created unless it was expressly agreed otherwise in the contract. In the case of design rights, the rights will generally belong to the company that commissioned the design. In all cases, it is advisable to clarify all outstanding issues through a contract.

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