INTELLECTUAL PROPERTY

FOR ENTREPRENEURS

PATENT OFFICE
OF THE REPUBLIC OF POLAND

EUIPO
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INTELLECTUAL PROPERTY OFFICE

fundacja JWP

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I. Intellectual property rights in the enterprise

Your company is very important to you. You are fighting for a position on the market, you want to stand out from the competition and earn a profit to further develop. That is why you improve products and services, take care of their proper promotion, build a sales network, maybe invest in new technologies or R&D, or hire marketing and accounting specialists, etc. But is there a patent attorney among your advisors? Do you protect intellectual and industrial property rights in your business?

In our publication you will find practical tips on protecting and managing broadly understood intellectual property. You need them to run an effective, modern business. Intellectual property rights affect almost all aspects of organization and operation of the company, as well as relations with employees, partners and competitors. In a modern world based on knowledge and technology, knowing these rights will help you make decisions, optimize costs and reduce investment risk, and, as a result, achieve business success.

1. What is intellectual property?

Intellectual property is the result of the creative activity of the human intellect, having an intangible character and embodied in a material form. In other words, everything that is unique and original that can be made by humans. Intellectual property is present in all spheres of life, in education, entertainment and of course in business, regardless of the size and reach of the company. In creative and innovative industries, intellectual property is often of fundamental importance, but it is also needed by entities in more traditional sectors.

Intellectual property rights are divided into two basic categories:

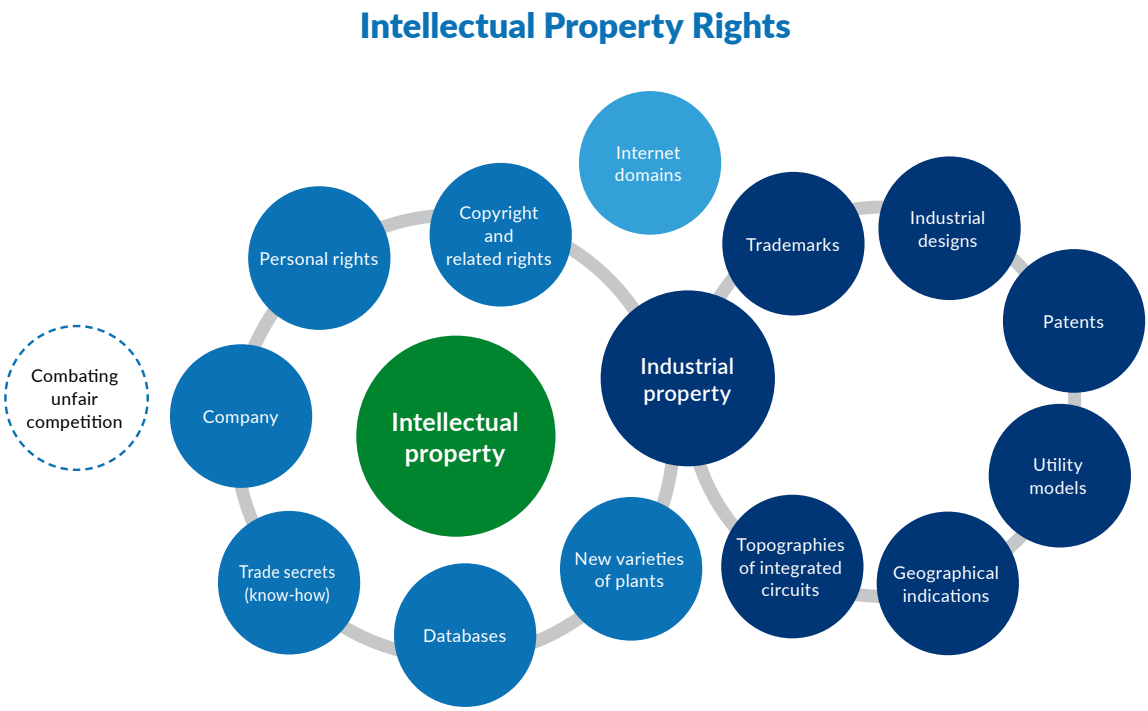
- industrial property rights, including patents for inventions, utility models, industrial designs, trademarks, geographical indications and topographies of integrated circuits;
- copyright and related rights.

It is worth knowing, however, that the broadly understood intellectual property rights also include, for example, the exclusive right to new plant varieties, the right to the company name or the right to the image.

Industrial property rights are obtained through applications or registration with the appropriate institution, e.g. Patent Office of the Republic of Poland. Obtaining industrial property rights involves fees that must be paid both at the beginning of the procedure and later during the protection (both the amount and frequency of payment depend on the type of exclusive right). On the other hand, copyrights in Poland are not subject to registration; they arise spontaneously by law.

Intellectual property rights are exclusive rights, which means that authorized persons or entities have a monopoly on benefiting from them. They are also territorially and time-limited, i.e. they can only be used in a specific area and for a certain period of time. They are

tangible and transferable (with the exception of moral rights), which means that they can be inherited, sold or transferred. Several types of laws may apply to a single product, protecting its different elements.



Source: Fundacja JWP

Below we present a catalogue of selected intellectual property rights that an entrepreneur can use to protect and develop the achievements of his company.

2. What intellectual property rights your company can use

Trademarks

Trademarks are one of the most popular industrial property rights. We meet them at every step, on packaging, everyday objects, on shop signs, in advertisements, etc. Famous trademarks are worth millions of dollars and recognized in the farthest corners of the world.

But is a trademark just a word or picture on a product?

Trademarks play a very important role in the promotional and commercial activities of each company. A trademark can be any sign that makes it possible to distinguish the goods or services of one enterprise from those of other enterprises. Such a designation must be presented in such a way as to enable the unambiguous and precise subject of protection to be determined in the trademark registers. Trademarks are very diverse as to their form.

The most common forms of trademarks are:

- word marks: word marks in the form of e.g. words, sentences, advertising slogans;

- graphic marks: graphic signs such as drawings, ornaments;


- verbal and graphic marks: signs being a combination of word marks and graphic marks;

- spatial marks: three-dimensional forms of objects, goods or packaging;


- non-standard marks: multimedia (messages, video), holograms, sounds or short melodies.


REMEMBER! The right of protection for a trademark gives the entrepreneur a monopoly in relation to the classified products or services indicated in the application. This system is called the Nice Classification. The Nice Classification assigns goods to classes 1–34 and services to classes 35–45. Each class has a heading that provides general information about the type of goods or services covered.

What cannot be a trademark? These are, among others, marks that:

- they are not suitable for distinguishing in trade the goods for which they have been reported, e.g. "chocolate" to mean a chocolate product;
- consist only of elements that may be used in trade to indicate in particular the type of goods, their origin, quality, quantity, value, purpose, method of manufacture, composition, function or usefulness, e.g. "good milk", "sweet sugar";
- have entered common language or are customarily used in fair and established commercial practices;
- contain patriotic, religious or cultural symbols, the use of which may offend religious, patriotic feelings or national tradition;
- are contrary to public order and decency.

Protection Time:

A trademark is protected for 10 years from the date of filing, but its protection can be extended indefinitely through renewal fees paid every 10 years (such as the "Coca-Cola" trademark).

Territorial scope of protection:

We can protect trademarks in the selected territory. The extent of protection should be linked to the company's business strategy and its plans of action in other markets (more on this topic can be found in part II, devoted to the strategy for the protection of intellectual and industrial property rights).

Depending on the needs, the application can be made in three modes:

- **national**, in the patent office of a given country, e.g. in Poland in the Patent Office of the Republic of Poland (PPO). A trademark registered with the PPO will be protected in our country;
- **regional**, at the European Union Intellectual Property Office (EUIPO) in Alicante. One application is made at EUIPO to register a European Union Trademark – **EUTM**, protected simultaneously in all European Union countries. There are also other regional organizations that facilitate the protection of a mark in a given territory, such as the African Industrial Property Organization (ARIPO), granting protection in African countries;
- **internationally**, at the International Office of the World Intellectual Property Organization (WIPO). The application for a trademark in Geneva requires the indication of the countries in which the mark is to be protected. Therefore, 2, 3 or 123 countries can be designated, depending on the needs of the company and its financial capabilities.

Cost:

The costs of registering trademarks depend on the number of classes for which we want to protect the mark and on the selected protection mode. Protection of a word mark in the territory of Poland in one class of goods costs several hundred zlotys, but if you want to extend protection, e.g. to other European countries, then you have to prepare for higher expenses, including the representative's fee. A specialist, e.g. a patent attorney, will help you to estimate and optimize the costs of protection.

Industrial designs

Industrial designs are used in many industries. They refer to the appearance of products, protect their external form and allow you to benefit from ideas for unique design of items, which is why they are a very important element of success in trade. Effectively protected industrial designs are a significant component of the portfolio of industrial property rights.

An industrial design is a new and individual form of a product or its part, given to it in particular by the features of lines, contours, shapes, colours, structure or material of the product and by its ornamentation. In short, an industrial design defines the external appearance of an object. Almost any product or handicraft can be protected as an industrial design. This definition applies to a huge number of goods present on the market or their parts – e.g. car models, household appliances, furniture, clothes, toys.

REMEMBER! An industrial design must meet two conditions to be successfully registered:

- be new – it must not be disclosed anywhere in the world before the date of filing for protection;
- have an individual character – it must be distinctive from other previously published designs.

An industrial design can protect both one-dimensional objects, such as labels, graphic patterns, logos, ornaments, and spatial forms, such as furniture, clothes, footwear, packaging, dishes, handles, bottle shapes, shapes of construction and finishing materials, etc. In registration, industrial designs are subject to the international classification system for industrial designs run by the World Intellectual Property Organization (WIPO), known as the **Locarno Classification**.

What cannot be registered as an industrial design? Obstacles may include:

- features of the form of the product that must be reproduced in exact form and dimensions in order to enable its mechanical connection or interaction with another product;
- the form of the product resulting only from the technical function;
- elements invisible in normal use.

The following cannot be registered as industrial designs:

- patterns contrary to public order and decency;
- patterns that are the product of any part of nature;
- fragrance or sound.

Protection Time:

The maximum period of protection for an industrial design is 25 years, but the application must be renewed and paid regularly and on time every 5 years. Failure to pay the registration fee results in the loss of registration rights.

Territorial scope of protection:

Just like trademarks, industrial designs can be protected in various ways. You should decide which one is appropriate due to the scale of the company's operations, its business plans and, of course, real possibilities, e.g. financial.

There are modes to choose from:

- **national** – you submit an application for registration to the patent office of the country where the industrial design is to be protected, e.g. in Poland the PPO will be competent;
- **regional** – European – you file an application with EUIPO, in Alicante, to obtain a Community design, Registered Community Design – RCD, protected simultaneously in all European Union countries. Other regional organizations that facilitate the protection of an industrial design in a given territory are, for example, the Benelux Office for Intellectual Property (BOIP), the African Industrial Property Organization (ARIPO) or the African Intellectual Property Organization (OAPI);
- **international** (Hague system) – we submit the application to WIPO, in Geneva. WIPO procedures allow you to choose from 91 countries where an industrial design can be protected.

Fees:

Obtaining protection for one industrial design in the territory of Poland means expenses of several hundred zlotys. Broader coverage, either regionally or internationally, will cost more, depending on current government charges.

Inventions and utility models

Both inventions and utility models are protected, and the exclusive rights granted to them concern technical solutions.

An invention is a solution of a technical nature, the creation of which has the characteristics of a creative act – it is a solution to an existing technical problem in a given field of technology.

REMEMBER! A patent is a right to exclusive use of an invention in the territory of a given country or countries, granted by a competent state office (e.g. Patent Office of the Republic of Poland) or a regional office (e.g. European Patent Office). Patents are granted for inventions – technical solutions which are:

- are new (unknown in the current state of art),
- involve an inventive step (are not obvious to a person skilled in a given field of technology),
- are suitable for industrial application.

Patents are granted for four categories of inventions:

- products;
- devices;
- methods;
- new product applications.

What cannot be patented? The following are excluded from patenting:

- inventions which are contrary to national legal or social fundamental principles (against public order and/or decency);
- varieties of plants and animal breeds, and methods of treating humans and animals (the prohibition of patenting does not apply to certain diagnostic methods);
- scientific theories;
- aesthetic creations;
- mathematical formulas, algorithms;
- discoveries of natural substances;
- methods of doing business.

A **utility model** is often called a "small patent". A solution protected as a utility model must be of a **technical nature** and refer to the shape and construction or a combination of an object with a permanent form (spatially determined products). In addition, a utility model must be new, not disclosed in the available state of the art in the world, and useful – it must achieve a goal of practical importance in the manufacture or use of products.

Duration of protection:

Patents lasting up to 20 years from the date of filing, are granted for inventions, subject to the payment of annual fees, and protection rights lasting 10 years are granted for **utility models**. In the case of patents for pharmaceuticals, it is possible to extend the protection for an additional 5 years by obtaining a supplementary protection certificate (SPC).

Procedures and territorial scope:

Inventions and utility models are also protected in a specific territory. The procedure for obtaining a patent is quite time-consuming, as it requires an authority, e.g. the Patent Office, to examine whether the solution is patentable, i.e. whether it meets all the requirements for its protection and granting a patent (it is technical in nature, is new, involves an inventive step and is industrially applicable). Therefore, the choice of protection mode should be consulted with a specialist.

As in the case of trademarks and industrial designs, inventions can be protected in three ways:

- **national** – the invention is submitted to the patent office of a given country (e.g. PPO in Poland). After filing an application in one country, you can claim the priority of an invention within a maximum of 12 months and, on this basis, submit applications in other countries and modes (regional or international);
- **regional** – European (EPC) – you file a patent application with the European Patent Office (EPO) in Munich. Within one application, you can obtain a European patent, which gives protection in 39 countries belonging to the European Patent Organisation. However, for this protection to be effective in the territory of a given country, it is necessary to validate the European patent (confirmation of validity) in the national patent offices in due time from the date of issuing the decision and pay the appropriate fees. You can also submit a patent application in the regional mode, among others, to the Eurasian Office (EAPO) to obtain protection in Russia and neighbouring republics, to African offices ARIPO and OAPI (protection in English-speaking and French-speaking African countries, respectively);
- **international** (PCT) – this procedure is staged and as such does not lead directly to obtaining a patent for an invention (it is mainly organizational in nature). First, you file an application with the International Office of the World Intellectual Property Organization (WIPO) in Geneva, either directly or through a national or regional office. Here your application is pre-examined and you designate the countries/regions where you wish to apply for a patent. You can designate 152 countries in one application. In the second stage, you start national/regional phases – you run parallel application procedures for a given invention directly in previously designated countries/regions. You have a maximum of 30–31 months from the date of your first application to enter the national/regional phase of the application process.

ATTENTION! Before filing the application, do not disclose the invention so that it does not lose its novelty! The patent procedure may take several years, but you gain a temporary right to protect your invention from the moment you apply for it!

Fees:

The costs of obtaining a patent or a utility model depend on many factors, including the length of the patent description, the territorial scope of protection, the current amount of fees in offices, as well as the representative's fee, whose assistance in patent matters is invaluable.

Topographies of integrated circuits

The topography of integrated circuits is a solution that is quite rare today, consisting in a spatial, fluid arrangement of elements, of which at least one is an active element, and all or part of the connections of an integrated circuit. The topography of integrated circuits is protected if it is original, is the result of the intellectual work of the creator and was not widely known at the time of creation. The right in the registration for topographies of integrated circuits is granted without verifying the existence of all essential requirements during the application procedure. The fulfilment of all the conditions for obtaining an exclusive right may be checked after the right has been granted, as a result of a third party's objection, or in the course of a disputed procedure in a case for its invalidation.

Duration of protection:

The right in registration for topographies of integrated circuits is granted for a period of 10 years from the end of the year in which it was introduced to the market or submitted to the Patent Office of the Republic of Poland (depending on which of these dates expires first).

Geographical indications

Geographical indications are used to mark industrial and agricultural products. A geographical indication is a word mark referring directly or indirectly to the name of a place, region, country from which a given product comes (the indication contains an element of the name of the region or city). The right in registration is granted to designations for goods that are strongly identified with a given region or place, and whose high quality and positive opinion are associated with geographical origin. **The application cannot be filed by a single entrepreneur, but only by an organization or a local government administrative body**.

Duration of protection:

The right in registration for a geographical indication is granted for an indefinite period.

Procedure:

Geographical indication applications should be filed with:

- the Patent Office of the Republic of Poland – in relation to industrial goods,
- the European Commission through the Ministry of Agriculture – in relation to agricultural products and foodstuffs.

Copyright

Copyright law protects works, i.e. such works of human creative activity that have an individual character and are established in any form. Copyright protection is independent of the value, purpose or expression of the work.

REMEMBER! Copyright arises automatically when the work is established. You do not have to take any action in this regard – all you have to do is create something original!

There are many categories of works that are protected:

- expressed in words, mathematical symbols, graphic signs (literary, journalistic, scientific, cartographic and computer programs);
- works of art;
- photographic;
- luthier;
- industrial design;
- architectural, architectural and urban planning and urban planning;
- musical and verbal-musical;
- stage, stage and music, choreographic and pantomime;
- audio/visual (including film).

The work must be fixed in a specific form, but it does not have to be finished. You can protect, for example, a fragment of a product description or the source code of a computer program, if they themselves meet the conditions for recognizing them as a work.

We divide copyright into:

- moral copyrights,
- economic copyrights.

Moral copyrights are inextricably linked to the creator and therefore cannot be transferred to other persons. Examples of moral rights include the right to the work's authorship (indication as the author) or the right to decide when the work is made available to the public for the first time.

Economic copyrights, on the other hand, are economic in nature. They consist of the exclusive right to use and dispose of the work in all fields of exploitation and the right to remuneration for the use of the work. You, as the creator, can transfer these rights (for a fee or completely free of charge) to other people. You can also purchase them in a special way provided for by law, e.g. as an employer in relation to the works of your employees that are created as part of the performance of their employee duties (employee innovations).

Copyrights are the most common of broadly defined intellectual property rights. Running a business, you probably do not realize how many works can be created during your endeavours. Even works that are created unknowingly are protected by copyright – you should know what rights you have and how to protect them!

REMEMBER! In some cases, you can use someone else's work, even though you do not own the copyright to it. This happens, for example, in the scope of permitted private use (as in the case of the right to quote) or in the case of using the so-called open licenses (e.g. Creative Commons). In the latter case, however, you should read the terms of such a license first, as their scope is usually limited!

Duration of protection:

If you are the creator, remember that the copyright to the work will last for 70 years after the author's death. If you were a co-author of the work, this time will be counted from the date of death of the last co-author.

Territorial scope of protection:

It is worth noting that copyright to works is protected not only in the country in which a particular work was created. The Republic of Poland, like nearly 180 other countries, has signed the international Berne Convention for the Protection of Literary and Artistic Works, which guarantees the protection of copyright in all contracting states party to the convention. Therefore, if you create a work in Poland, it can also be protected in Germany, France and even Australia. Unlike industrial property rights, copyright knows virtually no borders. If you operate in the creative industry, rights related to copyright, such as rights to videograms or phonograms or rights to artistic performances of works, may also be important to you. They are also protected, albeit on slightly different terms.

REMEMBER! You should also remember that some items may be protected – entirely independently – by several intellectual property laws. Think about furniture, for example: their designs can be copyrighted works, and the furniture itself can also be registered as an industrial design. Technical documentation, useful later for the preparation of a patent application for an invention, can also be protected by copyright. Act wisely and claim protection using various exclusive rights – it always increases your chances!

3. Why is it worth protecting intellectual property?

Creating new solutions, products and services as well as marketing activities require significant expenditures. Unprotected intellectual property items can be used by competitors, leaving their creators and owners without proper remuneration. It is therefore worth taking care of intellectual property protection and including it in the company's business strategy in order to protect its achievements and use them to build its position on the market. Despite the costs associated with obtaining and maintaining exclusive rights, the long-term benefits are worth the effort.

In addition, from the perspective of the entire economy, proper protection of intellectual property stimulates the development of all sectors and encourages creators and inventors to undertake new activities, allowing them to earn money and thus contributing to the development of innovation.

Five reasons to protect your Company's intellectual property

1. Protecting your own solutions and obtaining exclusive use

Industrial property rights are used to protect solutions, products and services produced by a given entity. They provide exclusivity for the use of a solution or designation in a specific territory for the period specified in the regulations. Thus, the owner of exclusive rights obtains a monopoly to exploit the solution and derive profit from it. It may also prohibit the use of a given solution by other trading participants, formulate prohibition and compensation claims against third parties. Possession of exclusive rights helps in combating imitation (counterfeits) and acts of unfair competition.

2. Return on investment in research and development and marketing

Exclusive rights allow the company to make money on a given solution and thus obtain a return on research and development and marketing activities, and invest the surplus.

3. Business strategy implementation tools

Properly managed intellectual property rights are a tool for implementing business strategies, building the company's market position and competitive advantage. They are taken into account in terms of market expansion, work on product and service development and branding and marketing strategies. They should also be included in the company's bylaws to stimulate employee creativity and develop innovation.

4. Increase in company value and profit from turnover

Intellectual property rights are economic in nature. They have a measurable value and constitute the company's assets. Their presence on the asset side increases the value of the company.
The owner of exclusive rights may profit from their trading, e.g. by selling or licensing them. They can also constitute a contribution in kind and be used as a pledge or collateral for a loan.

5. Increase in the company's prestige and the trust of contractors

Having a portfolio of industrial property rights is also a confirmation of the credibility, stability and prestige of the company. Exclusive rights build trust among contractors and investors. They are perceived as an indicator of modernity and innovation of the company.

II. How to effectively protect and manage intellectual property rights in your company

1. Business strategy and protection strategy

More and more commonly, a significant part of the company's assets consists of intangible goods and exclusive rights related to them. They make it possible to build a competitive advantage, and many times determine the success of the brand and its products. A complete and effective business strategy of the company should include the protection of intellectual and industrial property rights from the very beginning.

Before you start creating a strategy for protecting and managing intellectual property in your company, determine:

- what business goal you intend to pursue in the next 3 to 5 years;
- whether your company creates and develops its own solutions;
- in which territory you intend to offer your goods and services;
- how long you want to exercise your rights;
- what human and financial resources you intend to use;
- what solutions and with what rights you intend to protect.

Your business goal

Realizing your vision, you define business goals and look for the right means to achieve them. Innovative solutions (not only technological), know-how, the reputation of a product, service or company brand most often determine the success of an enterprise. Appropriate protection of these resources, as well as enforcement of your rights, will give you a number of tools to achieve your business goals. Failure to protect intellectual property rights may hinder or even effectively block certain activities, significantly reduce the company's competitiveness and weaken your position on the market.

When creating an optimal strategy for the protection of intellectual property rights in the company, take into account both short-term goals and those planned in the 3 to 5-year perspective. Also consider the possible territorial expansion to foreign markets, as well as the strategy of developing brands of individual goods or services, including the development of the company as a whole.

Do you invest in the development of your own solutions or do you prefer to use licenses?

Investments in research and development, building recognizable brands and unique products give a great advantage over the competition, but they usually consume significant financial outlays. The developed solutions are part of the company's assets and increase its value, so if you run an innovative company, the protection of intellectual property should be

particularly important to you. Patents, protection rights for trademarks and, utility models and rights in registration for industrial designs giving exclusivity for the use of the solution (limited in time and territory) make it possible to compensate for the outlays and obtain funds for further development of innovations. Depending on the business strategy adopted by the company, the acquired intellectual property rights can be effectively used by you as their owner, giving you exclusivity on the market and a tool to fight the competition. You can also sell or license them.

ATTENTION! If your company is a start-up with limited financial resources, remember that intellectual property is one of your key assets. Take proper care of its protection in the process of finding an investor or other forms of financing (subsidy, loans, etc) as well.

If, when preparing a product or service, you do not develop your own innovations, but want to use ready-made solutions available on the market, you can decide to purchase a license or find a solution in the public domain.

REMEMBER! When you choose public domain solutions, you do not have exclusivity because they are available to everyone.

Licenses offer many possibilities. They enable one to offer goods and services based on solutions developed by other people, e.g. with the use of inventions protected by a patent, solutions registered as industrial designs or utility models. It is quite common practice for the owner of exclusive rights to present a previously prepared license agreement for your approval. Read the contract carefully before signing it. When making arrangements regarding the rules for using someone else's solution, it is best to consult a professional representative to properly protect your interests.

In the case of a license, the scope of your rights to a large extent depends on its type, e.g.:

- non-exclusive license – may be granted to many different entities (it is used, for example, by software producers);
- exclusive license – other persons, apart from the licensee, are not authorized to use the protected solution;
- free licenses – depending on the type, they grant licensees a number of freedoms, but also restrictions.

ATTENTION! If you intend to use a solution available under a free license for commercial purposes, verify that it has been made available for commercial use.

What do you want to protect and with what rights?

When preparing a strategy for the protection of intellectual property rights, first **determine** which **solutions owned and developed by your company** will constitute the **core of your business**, and which of them may become the **subject of protection**.

Also answer the question whether you want your solution to be **disclosed** and then use industrial property rights, or whether you want to keep it **secret**, under the protection as a business secret, know-how, etc.

Then choose the **protection measures** that best meet your goals, taking into account that each of them has its own specific features, capabilities and limitations. Therefore, in order to qualify for protection, it is necessary to know the individual exclusive rights (described in the first part) and the specificity of each of them.

REMEMBER! Obtaining a patent gives a monopoly, but requires disclosure of the solution, and the protection is limited in time. When you decide to protect a solution as know-how, you keep the solution secret, but you must create regulations protecting the secret inside the enterprise. Pursuing rights in the event of disclosure of a trade secret is also more difficult.
The form of legal protection should also be adapted to the features of the solution that you will protect. If you want to protect the external form of a product, e.g. the characteristic shape of a table, use the right in registration for an industrial design for this purpose, not a patent that protects technical solutions, and not aesthetic ones.

Creating a strategy for the protection and management of intellectual property is based on the selection and use of such types of intellectual property rights that will support the implementation of business assumptions and company development plans.

The protection of intellectual property also uses legal means resulting from the Act on Combating Unfair Competition. This act is outside the scope of intellectual property law, but is closely related to the company's intellectual property rights management strategy.

REMEMBER! The form of protection must be adapted **to the type of solution**, and therefore:

- when you are developing a new **technical solution**, explore the possibilities of obtaining a patent or protection right for a utility model before they are disclosed;
- when you base your activity on **non-technical solutions**, e.g. when designing furniture, protect copyrights or obtain the right in registration for an industrial design;
- in the case of **computer programs** that are not subject to patenting in Poland and the European Union, consult with a specialist on possible methods of protection (more on computer-implemented inventions in the last part of the publication).

In any case, when building a strong company brand, its reputation on the market and the position of the products or services offered, remember to register **trademarks**. Not only will you increase the visibility of your company and its products or services, but you will also gain greater opportunities to combat counterfeiting of your solutions and products.

Where do you want to protect your products and services?

REMEMBER! The territorial nature of industrial property rights means that the **protection provided by individual Offices is limited to a specific country or region**.

You have already decided what you want to protect and with what rights, now specify **in which market you are already present and in which you plan to operate and build a competitive advantage in the future**.

Thanks to this, you will be able to prepare an optimal strategy for obtaining protection and choose from the available **procedures: national, regional or international** (more on this in part II in the section "File the appropriate application").

However, also remember that the greater the territorial scope of protection, the higher the cost of obtaining it and then maintaining it.

In order to fully protect your interests and achieve business goals, also **consider long-term plans**. Even if a given product or service is to be introduced to a foreign market in a few years, it is worth thinking about filing the necessary applications now.

EXAMPLE It may turn out that other entities have filed an application for an almost identical trademark before you, thus limiting your possibilities in a given territory, or your solutions have already become part of the state of the art and you cannot obtain a patent in the selected territory.

Remember to claim priority. From the date of the application, the so-called priority period is counted that allows the extension of protection to further territories. This period lasts:

- 12 months from the date of filing an application for a patent or utility model;
- 6 months from the date of filing an application for an industrial design or trademark.

IMPORTANT! After the priority period expires, it will be **impossible** to file further applications for the same invention, utility model or industrial design, because after this time the design or solution will not meet the "novelty" condition (you can read about the conditions that a solution must meet in order to be registered or patented in Part I).

REMEMBER!

- about the **protection of "novelty"** – do not present and disseminate the idea before submitting the application, as this will destroy the requirement of world novelty, necessary to obtain some exclusive rights. When working with people to whom you need to disclose an idea, be sure to sign confidentiality agreements;
- about the **obligation to use** – possession of a registered trademark imposes an obligation on the owner to use it. Failure to actually use a trademark to designate the goods and/or services for which it has been registered within a certain period of time in a given territory (depending on the jurisdiction, usually about 5 years from the date of granting the right) entails the risk of the right being revoked therefore think before you register a mark "in advance".

How long will you want to use the rights?

REMEMBER! Industrial property rights or economic copyrights are time-limited, so think about how long you intend to use the protection you have obtained. Know-how protection lasts as long as the company decides to keep the solution secret.

When deciding on a specific protection measure, consider:

- time needed for research and development;
- life expectancy of individual products on the market;

- whether you want to disclose the solution or prefer to keep it secret;
- specificity and competitiveness of the industry in which you operate;
- the duration of the procedure for obtaining the right (in the case of patents, this usually means several years).

EXAMPLE In innovative industries, where there is strong competition (e.g. among producers of consumer electronics), expenditures on research and development are huge, and the benefits of having a monopoly on certain solutions are even greater, companies invest in obtaining patent protection, registering trademarks, utility models and industrial designs. On the other hand, e.g. in the clothing industry, where trends change very quickly, rights that can be obtained in a shorter time are selected (e.g. industrial designs).

What budget will you allocate to protect exclusive rights?

An important factor determining the selection of appropriate protection measures is the cost associated with obtaining and maintaining individual rights and possible claims for infringement.

Before you start creating an intellectual property management strategy in your company, think about what budget you can and want to spend on protecting individual solutions. Determining the amount of financial outlays that the company can bear will help you in optimal planning.

ATTENTION! Even with limited financial resources, you can effectively protect your company's interests in the area of intellectual and industrial property protection. Consider the use of copyright protection, know-how, the provisions of the Act on Combating Unfair Competition and obtaining industrial property rights protecting the most important solutions for your business. Try to get funding for your activities, also available in the form of grants.

Strategy examples

Choosing the type and method of implementing an intellectual property management strategy in your company depends on a number of factors described above. Decide on activities that will be appropriate for your industry, company size and will effectively contribute to the implementation of your business goals. Update your intentions on an ongoing basis, adapting them to current trends and circumstances.

The following graph presents the basic types of intellectual property management strategies in the company along with their short characteristics.

STRATEGY EXAMPLES		
Passive 	**Active** 	**Defensive** 
Rights obtained		
Mainly copyrights, arising by virtue of the law itself when the work is recorded, or protection based on the provisions of the Act on Combating Unfair Competition. Not taking other steps or limiting them to the necessary minimum	Many different types of rights, providing extensive protection for your own goods or services	Exclusive rights for solutions that are used in business activities
Actions taken		
• Responding only to violations of those rights that relate to products constituting the main area of business, or no action at all	• Conducting extensive monitoring and research of intellectual property rights. • Responding to cases of infringements of the rights held or those that may pose a threat (mediation, but also court proceedings). • Obtaining revenues from the sale or licensing of rights, especially those that are not used in the current operations of the company	• Monitoring and researching intellectual property rights to the extent necessary. • Responding to certain infringements of rights (if possible through mediation rather than litigation)
Financial outlays		
All costs are kept to a minimum or absent	High expenditure on obtaining and maintaining rights (many applications in different procedures in different territories) and seeking protection against infringements	Expenditures limited to the necessary amount to counteract the loss or reduction of the value/ position of the rights held

2. Building a portfolio of industrial property rights

Use patent databases

Verify whether your solution can be protected, observe technological trends and look for inspiration to develop your own ideas.

Building a competitive advantage is based on knowledge that allows you to set directions for the company's development, and patent search is a tool to acquire it.

Thanks to patent search, you can, among others:

- monitor competitor activities;
- search for market niches;
- define research and development directions;
- adjust business strategy to current trends;
- assess the commercialization potential.

Use them also at the stage of developing your own solution, but before filing an application with the patent office or before introducing it to the market, in order to:

- assess the patentability of an invention;
- assess the clearance of the solution.

Skillful use of available patent databases minimizes the risk of refusal to grant a patent, which is extremely important considering the duration of patenting procedures (up to several years) and the costs incurred. Thanks to them, you can also avoid a potential allegation of infringement of rights granted to third parties.

ATTENTION! Use the help of an expert. If you care about a professional analysis, commission an expert, e.g. a patent attorney, to perform a patent search. Thanks to extensive technical and legal knowledge, the attorney will not only select the appropriate research tools and determine the optimal search parameters, but will also provide an analysis and opinion on the results obtained.

Do a trademark search before filing

Check that you do not violate existing rights. Building a strong, recognizable brand is a process that takes years and consumes significant financial resources. Visual identification, logotypes and product names are valuable components of the company's assets, so protect them to prevent the loss of their value or illegal use.

Perform a trademark search before launching a mark created by a team of marketing specialists. Thanks to this you will learn:

- what are the chances of successful registration as a trademark;
- how not to infringe upon existing trademark rights owned by third parties.

Trademark search will also provide you with information that you can use to create sales and promotion strategies for products and services, as well as to make decisions regarding the development of the umbrella brand and product brands.

REMEMBER! Searches are carried out for a specific territory and for specific goods and services. A professional representative will help you prepare data for the study and indicate any supplementary searches that are worth performing, e.g. for pharmaceutical products, geographical indications, etc.

File the appropriate applications

The type of exclusive right you want to use to protect your solutions determines how it is obtained/secured.

Due to the **way the rights are created, we divide them into**:

- arising under the law itself – in this case it is not necessary to initiate registration proceedings, submit an application or inform the patent office or other public administration office; this concerns: copyright and related rights, personal rights, know-how;
- rights obtained as a result of conducting appropriate proceedings before a competent domestic or foreign authority – in this case, in order to obtain an exclusive right, it is necessary to meet the conditions specified in the regulations, take appropriate actions, and pay the due fees; this applies to all industrial property rights.

Intellectual property procedures and offices

Depending on the territory where you want to obtain industrial property rights, you can use a **national**, **regional or international procedure**.

National procedure / PPO
www.uprp.gov.pl

It makes it possible to obtain protection in the territory of a given state. The proceedings are conducted in their entirety before the competent national authority in accordance with the applicable regulations, which, in Poland, would be the Patent Office of the Republic of Poland.

IMPORTANT! Remember that there are differences in formal requirements, fees, deadlines or stages of proceedings depending on the jurisdiction (country of the application). To be sure that the procedure will be carried out correctly and to minimize the risk of obstacles to registration or obtaining a negative decision, ask for help from a patent attorney.

European-regional procedure / EUIPO, EPO

https://euipo.europa.eu/ohimportal/pl
www.epo.org

Exclusive rights obtained in this procedure are effective in the territory of the states that are parties to the relevant agreements. Special offices were established to conduct these proceedings. In Europe, these include the European Patent Office (EPO) and the European Union Intellectual Property Office (EUIPO).

Proceedings before the European Patent Office (EPO) – A European patent is granted on the basis of one application, in which 39 European countries can be selected for protection.

IMPORTANT! Remember that in some countries (e.g. in Poland), for a European patent to be effective, it is necessary to additionally carry out the procedure of recognizing its validity in this territory – the so-called **validation**.

Proceedings before the European Union Intellectual Property Office (EUIPO) – The exclusive right to an EU trademark or the right in registration for a Community industrial design is effective in the territory of all 27 countries of the European Union.

There are also regional intellectual property organizations on other continents, including the Eurasian Patent Organization – EAPO, or the African Intellectual Property Organization – ARIPO, where you can get protection in several countries with one application.

International procedure / WIPO

www.wipo.int

The International Intellectual Property Organization (WIPO) administers agreements and contracts relating to applications for inventions, utility models, industrial designs and trademarks. Filing internationally is intended to simplify the procedure for obtaining protection in many countries at the same time.

The first stage of the proceedings is pending before WIPO. It is with the International Bureau of this Organization that the application is filed and to this International Bureau the relevant fees are paid.

The procedure then goes into national phases, which means that WIPO forwards the application for consideration to the national offices of the countries indicated by the applicant. Further proceedings are pending before these offices.

There are also other international agreements that help to obtain industrial property rights in a larger territory. For inventions and utility models, it is the Patent Cooperation Treaty (PCT); for industrial designs, the Hague Agreement; for trademarks, the Madrid Agreement and the Protocol to the Madrid Agreement.

ATTENTION! Different countries are parties to individual agreements and conventions, so before applying, verify whether the country in which you want to obtain protection is part of the system you are interested in.

Use the help of a professional representative

Obtaining industrial property rights is associated with a number of official procedures that vary depending on the type of procedure, mode or country. A person with appropriate competence in the field of intellectual property, e.g. a patent attorney, can help in this regard. Thanks to extensive knowledge of both legal and technical issues, as well as knowledge of the current practices of individual offices, a patent attorney will provide your company with comprehensive advice.

The most important benefits of starting cooperation with a patent attorney's office are:

- professional advice at every stage of the procedure, from planning the optimal reporting strategy and actions in the event of obstacles to registration, to enforcing your rights;
- certainty that all formal requirements and deadlines are met;
- substantive preparation of applications (e.g. patent descriptions), taking into account the practice of individual offices;
- access to professional tools ensuring a high level of performance of entrusted tasks, including, for example, patent or trademark search.

ATTENTION! In some cases, taking action before the competent foreign (national) office for intellectual property is mandatory through a local representative (e.g. a patent attorney). Such an obligation exists, for example, before the German Patent and Trade Mark Office (DPMA). Please check the legal requirements in your country before taking action. Also, remember that in cases pending before the European Union Intellectual Property Office in Alicante, you can be represented by, for example, Polish patent attorneys who have been entered on the EUIPO list of professional representatives.

Do not forget to pay renewal fees

Keeping the acquired industrial property rights in force is connected with the obligation to pay renewal fees for protection. The amount and frequency of the fees vary by law and country/jurisdiction.

Therefore, at the stage of granting the right, make sure:

When and how much?	How often and how much should I pay?
To what account?	To which office and to which account should I make the payment?
By yourself or by a representative?	Can you renew the right yourself in the given jurisdiction, or should you do it through a local representative?
What formalities?	Apart from making a transfer to the account of the relevant office, do you need to perform other actions, e.g. should you submit an appropriate application?
Missed a deadline?	Find out if it is possible to pay after the deadline – if so, how much and by when.

It is worth entrusting the monitoring of renewal fees to a professional representative. You will be informed in advance about the upcoming deadline and the current amount of the fee, which will allow you to avoid a situation in which your right will expire.

BEWARE OF MISLEADING CORRESPONDENCES! Industrial property offices, including the Patent Office of the Republic of Poland and EUIPO, warn against fraud attempts. Entities impersonating offices send fake decisions and requests for payment to the applicants.
Before making any payment:

- make sure that the letter you receive is from the appropriate authority;
- verify the correctness of the account number provided in the letter;
- in case of doubt, contact your representative or the office directly.

3. Intellectual property management in the company

Regulate relationships with employees, co-workers and investors

People are the most important element in the entire process of managing intellectual property rights. They create solutions that are the subject of protection and conduct research, search and analysis of existing rights. Often the creators are employees of your company, which gives them a number of rights. Properly prepared internal regulations, such as work regulations or regulations for inventions, relevant provisions in employment contracts or contracts for specific work will allow you to avoid contentious situations and ensure comfort of work for your employees. Remember that these matters are also regulated by law, included, among others, in the Industrial Property Law.

REMEMBER! Equally important is the content of contracts concluded with contractors to whom you entrust the implementation of tasks, as a result of which intellectual property rights arise or may arise. When dealing with investors, take care of protecting your interests at the initial stage by signing confidentiality agreements. When negotiating the terms of cooperation, make sure that aspects related to intellectual property rights arising from the implementation of a joint project are regulated in a way that is favorable to you.

Trade with exclusive rights – buy, sell, license

Intellectual property rights are an important element of business assets, and trading them in can be a source of significant income.

Some solutions relevant to your business may be protected for the benefit of third parties. In this situation, it is reasonable to explore the possibility of obtaining a license or acquiring such rights.

If, on the other hand, your company has created solutions that are not used, then depending on the adopted strategy, you can generate additional income from them by licensing or selling exclusive rights to them.

EXAMPLE There are companies that make a large part of their income from licensing their exclusive rights. Software producers and filmmakers are good examples.

Industrial property rights have their value – they are subject to valuation. Thanks to this, they can make it easier to obtain a loan from a bank. Industrial property rights can be pledged, in which case they can be used as collateral for financial transactions.

Use exclusive rights in your business

As an owner of exclusive rights, you have many rights. The most important of them is a monopoly, i.e. the exclusive use of the subject of protection for profit in a specific territory. Other trading participants need your consent to use the protected solution. The granted monopoly allows you to maintain your position on the market and competitive advantage, and helps obtain return on the cost of investment outlays.

You can exercise your rights, for example, by:

- marketing products manufactured on the basis of owned patents;
- labelling goods and services with registered trademarks;
- marketing products that have been given an original external form protected as an industrial design;
- dissemination of the work;
- operating under your company (name);
- rights trading or licensing.

Monitor the activities of competitors

Make sure that no one is infringing on your rights and that you are not infringing on the rights of others. You should monitor the activities of the competition to fully use the potential of the monopoly created over the years. The information obtained will make it possible to prevent potential infringements on the exclusive rights held.

EXAMPLE As the owner of a registered trademark, you can object to a new trademark application that would infringe on your rights, such as an identical or similar trademark. Many offices, including the PPO and EUIPO, do not examine the similarity of new applications to already registered trademarks, so it is your responsibility to actively monitor the trademarks submitted for protection.

On the other hand, if you find that your exclusive right has been infringed upon, you may take actions leading to prohibiting the use of the solution, withdrawing the goods from trading, discontinuing the infringing activities, as well as demand payment of damages or recover the unduly obtained benefits. Reach for the help of a professional representative, e.g. a patent attorney, legal adviser or attorney who, having familiarized himself with the circumstances of the case, will recommend optimal actions.

At the same time, monitoring the activities of competitors will protect you against the risk of violating the rights of other entities. Litigation, often lasting for years, is exhausting and costly, and can be a serious blow to your image.

EXAMPLE You have manufactured and marketed products which in court proceedings were found by the court to infringe on someone else's industrial design. In compliance with a valid court judgment, you must not only withdraw them from the market, but also cover the costs of court proceedings and publish relevant information in the national press, as well as pay damages. You could have avoided this unpleasant situation by checking what exclusive rights your competitors in the industry had by way of freedom-to-operate that can be carried out by a patent attorney.

Prosecute infringers

The decision on which cases of infringement on your exclusive rights you will respond to and by what means results from the adopted protection strategy and a number of individual factors.

Depending on whether the unlawful actions of the opposing party relate to solutions that are critical to your business, what kind of infringements are involved and on what scale, and how much money you can allocate to enforcing your rights, you can take a number of actions, such as:

- sending a warning letter;
- using of out-of-court dispute resolution methods, such as mediation or arbitration;
- going to court

ATTENTION! It is worth initially sending a warning letter to the opposing party informing about your rights, indicating their infringement and calling for a voluntary cessation of the infringement. If possible, try to resolve the dispute at this stage by reaching a settlement that is favorable to you.

Mediation

Amicable resolution of a dispute through mediation brings many benefits, shortening the time and minimizing costs. It is a voluntary and confidential method which, with the help of a qualified mediator, will give you a chance to settle your case quickly and satisfactorily.

REMEMBER! It is also worth including in contracts concluded with contractors a clause saying that in the event of a dispute, the parties will first try to resolve it through mediation.

Specialized intellectual property courts

In a situation where amicable methods did not bring results, you can decide to go to court.

Since July 1, 2020, specialized courts for intellectual property have been operating in Poland. They deal strictly with matters relating to:

- industrial property rights;
- copyright;
- unfair competition;
- protection of personal rights, as long as they involve the use of a name or image in a marketing manner, e.g. for advertising or promotional purposes.

Courts of first instance examining these types of cases are divisions of District Courts in Warsaw, Gdańsk, Poznań, Lublin and Katowice. The Appellate Courts in Poznań and Warsaw were appointed as courts of second instance.

REMEMBER! All matters relating to inventions, utility models, plant varieties, topographies of integrated circuits, computer programs and business secrets of a technical nature will be considered by the District Court in Warsaw.

The parties are obliged to have a professional representative, i.e. a patent attorney, attorney or legal adviser (if the value of the subject matter of the case exceeds PLN 20,000). Therefore, before taking any action, contact a law firm specializing in intellectual property matters. A qualified expert will assess the factual and legal status, inform you about the chances of success, recommend the optimal strategy, and then take appropriate steps. He will not only support you in all formalities, but will also help you in the preparation of arguments and evidence.

WIPO PROOF

In most countries, including Poland, there are no copyright registers. They arise by operation of law with the moment of fixation of the work. As a copyright owner, you may have found it difficult to prove your authorship, for example in litigation.

The World Intellectual Property Organization (WIPO) met these needs by introducing a new tool – the so-called WIPO PROOF. This service, run on a secure platform, makes it possible to obtain official confirmation of the existence of a specific work on the date of issue of WIPO PROOF (in the form of an electronic token).

Border protection

The issue of counterfeit products affects many entrepreneurs, has an international dimension and reaches exorbitant proportions, as reported by numerous reports of organizations such as Interpol or EUIPO.

To protect yourself from these types of violations, you can use IPR measures at the border to prevent counterfeit products from entering the market. These activities are another tool of an effective strategy for the protection of intellectual property rights and allow minimizing the risk of financial or image losses.

Depending on the territory in which you operate, consider submitting an appropriate application to the appropriate customs chamber for protection of intellectual property rights at the border of Poland, selected countries, or throughout the European Union.

III. Protecting the company's intellectual property in the world of digital technologies

You already know how important strategic protection of intellectual property rights is in running a business and how important these rights are in building a competitive advantage on the market. Almost every industry today conducts activities in the virtual space: the sale or at least the promotion of its goods or services. The presence of a company on the Internet means both opportunities and challenges. Problems you may encounter when you are online may include things like:

- creating websites, using their layouts and individual graphic elements, as well as registering internet domains and disputes in this regard;
- positioning your website on search engine results;
- offering and marketing counterfeit goods on the Internet, including through auction sites;
- e-commerce activities and restrictions provided for by law in relation to the use of, for example, product photographs, their descriptions or manufacturer's trademarks;
- protection of computer programs and computer-implemented inventions;
- creating and protecting databases;
- image protection on the Internet

In this chapter, you will learn in a nutshell what to do to avoid these problems and protect your intellectual property rights more effectively in the world of the Internet and new technologies.

1. Websites and Internet domains

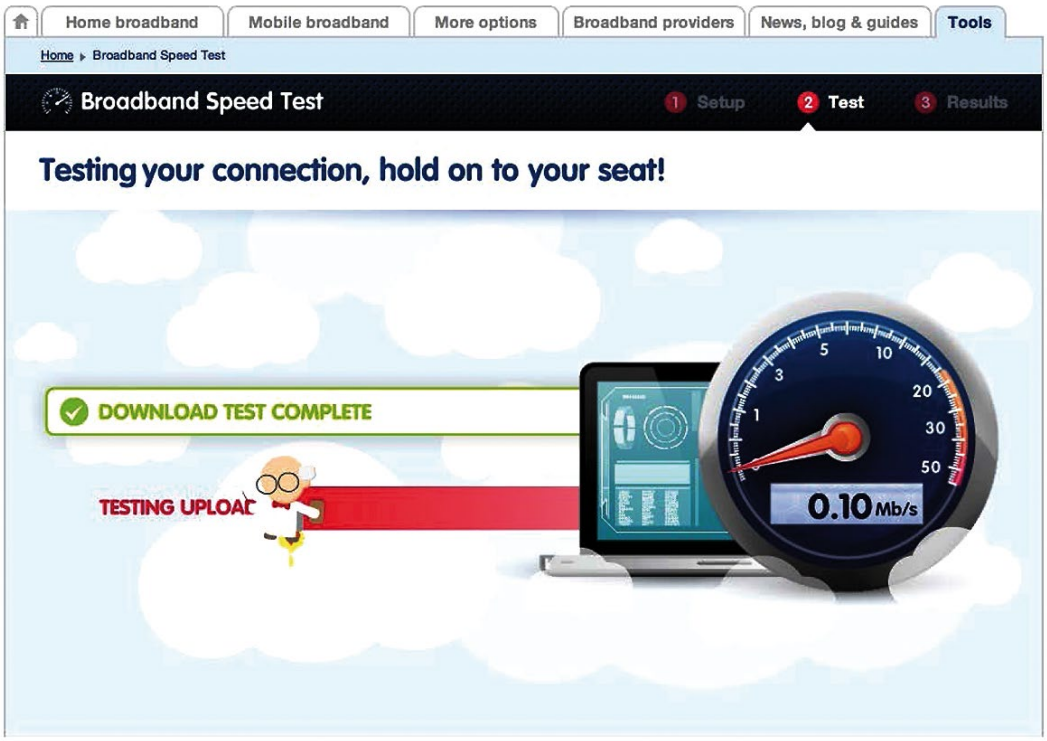
Every entrepreneur wants to reach the widest possible audience. Is there a better place to do this than the Internet? When you enter the virtual space and "assume" your place in it, you need to design a website. You can do it yourself (if you can), or entrust this task to professionals. In the first instance, you will have exclusive rights to personal and property copyrights. However, if someone commissions you to do it, remember to include relevant provisions in the concluded contract transferring to you the proprietary copyrights to both the **layout** (graphical interface) of the website and its **source code**.

REMEMBER! The transfer of economic copyrights to a work (e.g. a website layout) must always be made in writing with a precise specification of both the subject of protection that is acquired and the scope (fields of exploitation) in which the buyer will be entitled to this right.

Once you are sure that the economic copyrights to the website are fully yours, do not forget that in addition to the layout or source code, other content posted on it may be protected by copyright, e.g. longer descriptions of products or services, photographs, etc. They are part of a larger whole, but this does not change the fact that you can assert your rights against third parties who use them without your consent.

ATTENTION! Copyright arises when a given work is established. If you intend to claim their protection, you must prove by evidence in court proceedings how (and to what extent) you acquired them. Keep the necessary contracts, correspondence and other documents that may be needed in such a situation (e.g. WIPO PROOF – we discussed this in part II).

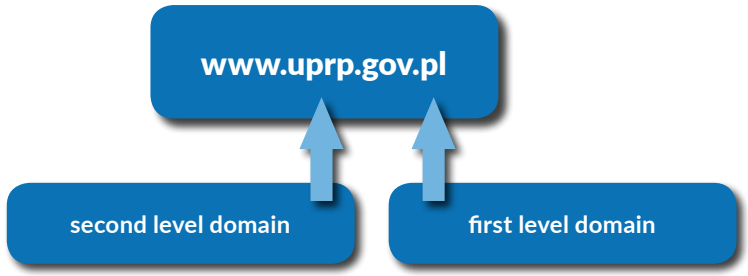
It is also worth considering protecting the layout of your website by registering it as an industrial design. However, this must be done before publishing the website on the web, as one of the conditions for granting the right in registration for an industrial design is its novelty. See how the layout of a website (in this case, one of its tabs) protected as a registered industrial design may look like:



Source: RCD 001652603-0005

After creating a website and properly securing its individual elements, it is time for it to exist in the virtual world, in a place marked with a specific address. This address is the **Internet domain**.

Internet domains are the most important part of an Internet address. They are divided into first and second level domains. In the simplest terms, the second-level domain is the **name** chosen by the entrepreneur, which is the proper distinguishing feature of the Internet address. First-level domains are national or functional names placed last in the Internet address (e.g. "pl" or "gov". They are often called "extensions").



Once you have chosen your domain name, you should register it. First, however, you need to check whether it is available. If so, you should conclude a domain registration agreement and pay for it. In the case of first-level domains with the "pl" ending, the national operator is NASK – Naukowa i Akademicka Sieć Komputerowa (Scientific and Academic Computer Network.

ATTENTION! The mere conclusion of a domain registration agreement does not create any intellectual property rights, but only allows the use of a given domain on the Internet.

If you want to protect your domain and gain exclusivity, you should register its second-level name (proper domain name) as a **word mark**. The use of a trademark in the name of the Internet domain at which the goods or services protected under that trademark are offered is treated in the same way as the actual use of the sign in relation to the goods or services. In this case, a virtual website can be compared to an ordinary shop window, marked with a given trademark, where the entrepreneur displays his products, offering them to visitors.

EXAMPLE The entrepreneur registers the internet domain buksteria.pl and at the same time obtains a protection right from the Patent Office of the Republic of Poland for the word trademark "Buksteria" in class 16 of the Nice Classification for books and magazines. Therefore, if books are sold on the website at buksteria.pl, then the use of this designation in the Internet domain name will also be considered as the use of a protected trademark.

Unfortunately, there are cases that an entrepreneur who is already operating on the market, only when he decides to register a domain (or completely independently), discovers that someone has preceded him and registered a given name. Sometimes third parties will do it on purpose, e.g. in order to conduct similar activities and benefit from the reputation

of the entrepreneur or his signs already developed on the market, or to offer resale of such domains at an exorbitant (totally unreasonable) price. Such cases are called "**cybersquatting**". There are also situations in which third parties register domain names confusingly similar to those used so far by the entrepreneur, e.g. differing only by one – in addition, the middle – letter (typosquatting). This type of behaviour may also be treated as an action contrary to good manners, which violates the interests of the entrepreneur.

REMEMBER! Even if you have not registered your trademark before (it is always a good idea to do so as soon as possible), you're not always defenceless against domain piracy. You can then try to assert your rights based on the provisions of the Act on Combating Unfair Competition.

Internet domain disputes concerning infringement of third party rights as a result of concluding or performing a domain agreement are often resolved by **arbitration**. In the case of registration of domains with the "pl" ending, the subscriber, by signing the agreement, in accordance with NASK's regulations, must agree to submit a potential dispute to an arbitration court. Otherwise, the subscription contract expires within a specified period.

In practice, domain disputes (in relation to domains ending in ".pl") are most often resolved by the **Arbitration Court for Internet Domains** at the Polish Chamber of Information Technology and Telecommunications with its registered office in Warsaw. If, as a result of a final decision of the arbitration court or common court, a violation of the rights of a third party (e.g. protection right for a trademark or right to a company name) by the subscriber is found, in accordance with NASK's regulations, the domain agreement is terminated without observing notice periods.

With regard to disputes concerning popular domains with the "eu" ending, the **Czech Arbitration Court in Prague**, which was appointed by the European Commission, plays an importnant role in hearing cases in this field. On the other hand, if you want to dispute a domain ending with, for example, "com" "net" or "org", you should go to the **WIPO Mediation and Arbitration Centre**, which is competent in such matters.

2. Internet search engines

Once you create a website, conclude a contract for the registration of a selected domain, and register your trademark in the meantime, you will certainly start thinking about **positioning** your website on the Internet. There are over 1.5 billion pages on the web, so to reach potential customers, it is worth using support to "stand out" in the crowd. Imagine a street full of shop windows that offer the same type of products or even products of the same brands. Everyone wants the customer to enter their store and make a purchase there.

Website positioning requires the use of a service called *Google Ads* (previously: *AdWords*). Thanks to it, the positioned website appears in the search results not only as a result of the Internet user searching for words corresponding to, for example, a domain name, but also when searching for other words (the so-called key words), the choice of which depends on the entrepreneur. Website positioning is therefore a type of advertising, the effect

of which is to make search results (and positions in these results) dependent on keywords assigned to a given website.

REMEMBER! Running advertising using keywords is fully allowed and does not in itself violate the rules of fair market competition.

However, imagine that someone offering identical or similar goods starts to rank their website in Google search using your trademark or your company name as a keyword. In such a situation, broadly understood intellectual property rights may be infringed, including the violation of the rules of fair competition. Do not wait to react!

ATTENTION! Often just sending a warning letter to the infringer calling on him to cease infringements can have the intended effect. Amicable resolution of the dispute is then faster and less costly.

3. Auction sites

In the Internet space, a situation may occur when a person infringing on someone else's intellectual property rights acts with the use of services provided by another entity. These services can usually be divided into two types. Some of them are necessary from the point of view of running your own website, e.g. **hosting services** that ensure the operation of the website by providing servers where its data is stored. Others, on the other hand, create a specific space for offering goods or services on the Internet, e.g. auction sites. In both cases, therefore, the question arises about the role and scope of responsibility of the entity providing services to infringing entities.

EXAMPLE You discover that a popular auction site is selling counterfeit goods with your trademark on them. Thus, the infringement takes place via an auction site, even though it is the result of the direct activity of a specific infringer.

Remember that liability for infringement of intellectual property rights is always **individual**. This means that, as a rule, in the situation described in the cited example, civil law liability should be borne by both the entity running the auction site and the entity offering counterfeit goods at the auction.

In practice, however, often a hosting provider or an auction service provider does not have information that their client infringes the exclusive rights of others, and burdening them with the responsibility for verifying such circumstances would be a significant difficulty for them. That is why a special action mechanism has been introduced in such situations: if you notify the infringing service provider of the fact of unlawful use of your exclusive right and substantiate this circumstance, the service provider will have to immediately **prevent access to data** related to the infringer's activity.

In short: the service provider will block access to a website or auction where exclusive rights are infringed on. Most importantly, in such a situation, you must provide eviden-

ce of the existence of your exclusive right and substantiate its infringement. How to do it in the simplest possible way? Use an official document!

REMEMBER! Industrial property rights are always granted by the competent office (e.g. Patent Office of the Republic of Poland), which issues an official document (patent document, protection certificate, registration certificate) to confirm this fact. It is thanks to obtaining such a document that you do not have to prove every time that the exclusive right belongs to you.

4. E-commerce

According to the latest data, 73% of Internet users shop online ("E-commerce in Poland 2020", Gemius report together with the Chamber of Electronic Economy). This means that if you, as an entrepreneur, want to run your business online, it is definitely a good idea!

However, opening an online store involves several "pitfalls" that you should watch out for. They can lead to the infringement on someone else's intellectual property rights, even when it seems to you that everything is fine. Let us look at the following example to illustrate some of them.

EXAMPLE In your online store, you offer original products of other entrepreneurs. You have the right to do that, as you bought them legally with the intention of reselling them to your customers. In the offer, you present a photo of the product and a description that is posted on its manufacturer's website. You also indicate its trademark so that customers can see that the product you offer is genuine.

In the presented situation, both the copyrights of the manufacturer of the offered goods and the trademark protection right vested in him may be infringed upon. You will certainly ask how it is possible – after all, the goods are original!

To begin with, you need to know that the fact of purchasing a copy of a product does not mean that you also acquire the right to freely dispose of someone else's trademark. stated on the packaging of this product. Yes, you can inform your customers about the origin of the goods, but you should only do so in a way that leaves no doubt that it is just a mere information message. Otherwise, you may expose yourself to an allegation of infringement upon the trademark protection right on the part of the rights-holder. Therefore, if you want to indicate on your online store the **names of the products offered by other manufacturers or the names of these manufacturers**, use them only in the verbal version, even if they function on a daily basis in the word-graphic version and are associated by everyone.

A separate problem concerns photos and descriptions of products, including lists of their properties (specifications), which are often included in the content of the offer. The photograph is generally subject to copyright protection, so you cannot download it from the manufacturer's website, and then use it in the content of your online store without his consent. The easiest way to avoid such problems may be to take your own photo of the offered product, then no one will accuse you of infringing on someone else's intellectual property rights. The situation is similar with regard to the product description.

Although, in general, such a description may have a minimal creative level (often it simply presents the functional properties of the goods), it cannot be ruled out that a longer verbal statement, even concerning the most ordinary goods, will be covered by copyright protection.

REMEMBER! When you offer someone else's goods in an online store, do not use their photos or descriptions posted on the manufacturer's official website if you do not have their consent, but create them yourself.

Doubts may also arise when using the **specification of goods**, which is presented on the manufacturer's website, e.g. in tabular form. This sort of compilation may constitute a protected database and, as such, be subject to someone else's monopoly.

5. Social media

If you already have your own website, you have taken care of the Internet domain, which you additionally position, and at the same time you run an online store, you are certainly also present in social media. After all, it is one of the most popular channels that allows you to quickly reach your audience and learn about their reactions. As an entrepreneur, you are well aware of this and perhaps even set up your company's social media account before launching your website.

The same (common) rules for protecting intellectual property rights apply to social media. This means that you cannot, for example, use photos posted in other people's posts for your own purposes without obtaining the consent of the authorized person (unless within the scope of their permitted private use). However, you can share other people's posts in their entirety with an indication of their author (publishing person). This is known as content-sharing.

Important – be careful with the links you share with others! Responsibility for **links** that infringe someone else's copyright is still an issue that raises a lot of doubts. Imagine that you provide a link on your profile that leads other users to materials unlawfully made available on the Internet that are subject to copyright protection. In such a situation, you run the risk of being accused of violating these rights, because as a linker, you disseminate someone else's work without the consent of the rights-holder.

EXAMPLE Ewa posted a post on her company account on a social networking site containing a link directing to a PDF file uploaded by another person on the server. The content of this file contained a scan of a book publication on the effective use of marketing tools in running a business. The publication has been multiplied and then distributed without the consent of the rights-holder.

The presented example shows one more important aspect. If linking is made for **commercial purposes** and refers the recipient to an illegally distributed work, then the linking party is liable for copyright infringement. Remember: as an entrepreneur, you take responsibility online for what you share, so do it wisely!

6. Computer programs

Surely you've heard that computer programs are protected by law, but you may not have thought about what laws regulate this issue. It's time to dispel doubts: of course, this is protection guaranteed by intellectual property rights.

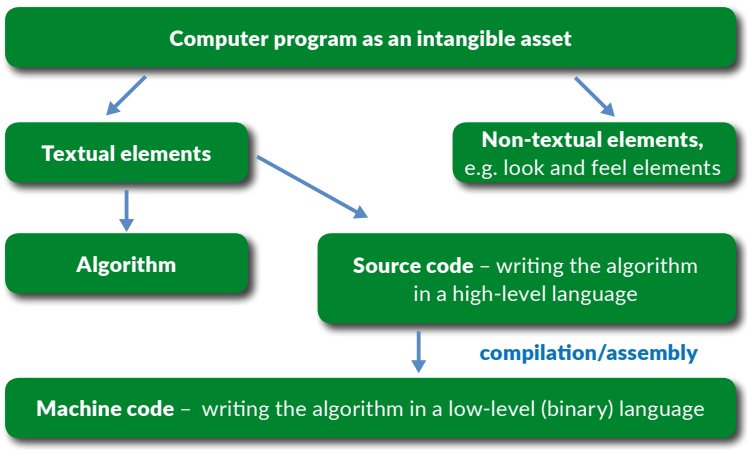
For years, the legal protection of software was not precisely defined in the applicable regulations. It was one of those (increasingly frequent) cases where reality is ahead of existing legal regulations. In this case, you have to look for solutions that may not be perfect, but they already exist and can be adapted to the needs of the protection of a given item. So it was with computer programs.

Finally, it was assumed that computer programs would be protected as works by copyright law. They are protected as… literary works? If you are surprised by this, think for a moment about the form in which software is created – precisely by writing the appropriate code by the author, which is then "read" by the computer. However, in order to answer the question of what is really protected from the perspective of copyright in a computer program, it is necessary to specify the following concepts:

- **algorithm** – these are certain formulas (procedures), the fulfilment of which allows to achieve a specific result;
- **source code** – a record of a computer program in the language in which it was originally created by the software author;
- **machine code** – it is a record of a computer program after its compilation (colloquially speaking: translation) into a language understandable for a computer, i.e. a binary language (zero-one).

All of the above elements make up the textual parts of the software (expressed in words). At the same time, **copyright protection covers both the source code and the machine (binary) code**. Algorithms, like the functions of a computer program, are not protected, because copyright does not protect ideas or principles themselves, but only a specific form of expression.

REMEMBER! You cannot infringe upon someone else's copyright on a computer program by creating software with similar functions if the source codes of the two programs are different.

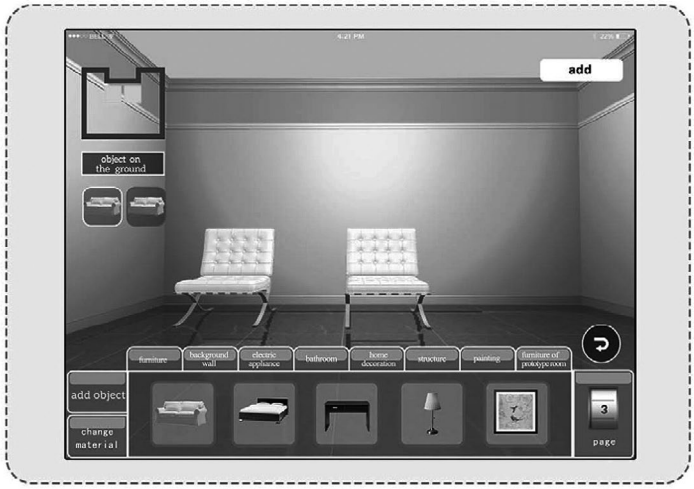


Copyrights to the computer program include:

- the right to **reproduce** the software (including, for example, its installation or reinstallation);
- the right to **translate and adapt** the software and make other changes;
- the right to **distribute** the software or copies thereof.

In addition to textual elements, computer programs also have elements that are not expressed in words, such as **graphical user interfaces** (GUI), thanks to which the user interacts with the software (e.g. through the window of the displayed program). Interfaces are those parts of a program that allow interconnections and interactions between software and hardware components. They may be protected under copyright law as works, but they are not formally treated as computer programs (or parts thereof).

If a given graphical user interface is new and has an individual character, it can be protected independently of copyright protection as a registered industrial design. It is worth remembering to protect your intellectual property rights as individual elements of a computer program as much as possible!



Sample graphical user interface of an interior design program registered as an industrial design, source: RCD 002661728-0001

Some activities related to a computer program are permitted from the point of view of copyright law without the consent of the rights-holder. These are:

- **backup**;
- **observing, examining and testing** the functioning of a computer program in order to learn its ideas and principles by a person having the right to use a copy of a computer program;
- **duplicating the code or translating its form** in certain situations.

REMEMBER! A computer program does not have to work to be protected by copyright law. It is enough that the very fragment of its source code meets the conditions for recognizing it as a work.

7. Computer-implemented inventions

While reading the previous chapter, you must have noticed that the protection of a computer program by means of copyright law has some practical limitations, for example, in terms of the lack of legal protection of the functionality of the software. When we talk about functionality, those elements that may be of a technical nature come to mind very quickly.

In fact, inventions are not computer programs, but only if we consider the computer program **as such**. As you probably guessed, this wording opens the door to patenting inventions, which in themselves (as such) are not only computer programs, but which, as a result of their operation, cause the appearance of the so-called **further technical effect**.

EXAMPLE As examples of computer programs having a further technical effect when it is run on a computer, one can indicate, for example, a computer program specifying the method of controlling the anti-lock braking system in a car or restoring a distorted digital image (after: EPO guidelines, part G.II.3.6.1). Another technical effect may also be the operation of an industrial process under the control of a computer program, in particular by influencing the efficiency or safety of processes (so: guidelines of the President of the Polish Patent Office on inventions and utility models).

Remember: the software itself is never patentable. However, you can apply for patent protection if your technical solution is **supported** by computer software. This means that even before your invention, which is implemented through software, is made public, you should find out whether – and if so, to what extent – it is possible to patent it.

ATTENTION! A patent attorney, as a professional representative for patent applications, will always help you determine whether your invention can be patented, and will prepare and file a patent application on your behalf with the Patent Office of the Republic of Poland.

8. Artificial intelligence

Artificial intelligence is one of those concepts that have recently gained more and more popularity. It is possible that, as a modern entrepreneur, you use this phrase in your business.

Defining what artificial intelligence is is quite a challenge. In simple terms, it can be assumed (although there are many definitions) that this term covers a technology related to the creation of computer programs (or more broadly – machines) that are designed to analyse data and, on this basis, perform specific functions. At the same time, the decision-making process of the machine is supposed to reflect in the best possible way the one that could occur if the decision was actually made by a human.

Currently, more and more products appearing on the market are promoted as operating on the basis of artificial intelligence. If you want to offer your product also using AI, first make sure that your solution does not fall within the scope of someone else's monopoly guaranteed by exclusive rights.

REMEMBER! A technical solution based on artificial intelligence may be protected by exclusive rights. In turn, solutions created by artificial intelligence cannot, in principle, be protected – copyrights or patents for inventions are vested (in the first place) in the creators who are natural persons.

9. Database protection

Surely you remember that a list of various elements (e.g. specification of data concerning goods) may be protected as a work, provided that it is creative and original. However, not always created collections of data or any other materials structured in a specific way can be protected under copyright law. That is why a separate system has been created to guarantee the legal protection of databases that are the subject of intellectual property.

EXAMPLE Imagine the following situation: on your website you have prepared a list comparing the technical properties of the offered products. For the purposes of this list, you have adopted various criteria, thanks to which it is not only comprehensive, but also clearly shows the similarities and differences between the compared products. You spent a lot of time and money on this, primarily to gather the necessary information, analyse it, and then present the dataset. Perhaps the result of your efforts is a work, but it is much more likely that you have created a database, which itself is also subject to intellectual property and is protected.

A **database** is a set of data or any other materials and elements collected according to a specific systematics or method, individually accessible in any way, including electronic communication, requiring a significant investment in terms of quality or quantity in order to prepare verification or presentation of its content. As you have probably pointed out, in order to be protected under intellectual property law, a database does not have to have the characteristics of a work. In this case, the most important thing from the point of view of the creation of exclusive rights to databases is the incurring of a significant investment outlay by the rights-holder (in this case called the producer) in order to create such a database.

REMEMBER! The exclusive right to the database arises spontaneously and does not require – as in the case of works – taking action before the competent industrial property office in order to acquire them.

The producer of the database has the exclusive and transferable right to extract the data and re-use them in whole or in a significant part, in terms of quality or quantity. You will no doubt immediately ask what part of such a protected database can be considered "significant". Such an assessment depends on the circumstances of each case. However, you should

remember that an exclusive right to a database protects the database as a whole, not the individual information (data) categorized in such a database. As a rule, information as such (e.g. technical data of an item, such as its weight, size, etc.) cannot be monopolized.

If you create a database, your exclusive right to it will last for **15 years** following the year in which you created the database. It is a significant amount of time, so do not forget about the protection you get in this area (without incurring any costs).

10. Image protection

The image is what can effectively individualize us, especially in the virtual space, where content is often perceived by recipients primarily visually (eye-catching content). The image – similarly to trademarks, works or industrial designs – may become the subject of dispute from the perspective of intellectual property law. All the more so if it evokes specific emotions among recipients, e.g. it generates trust that customers have for the entrepreneur.

The image is a **personal right** that is subject to legal protection. The dissemination of the image requires the consent of the person to whom the image belongs. There are two exceptions to this. The first concerns the image of a well-known person, if it was made in connection with the performance of public functions. The second exception applies when the image of the person depicted is only a detail of a whole, such as a gathering, a landscape, a public event.

EXAMPLE A well-known manufacturer presents its image on the website, thus promoting the offered product. You have this product in your offer, so you distribute the manufacturer's image in the online store next to the original product. In this case, you run the risk of being accused of disseminating someone else's image without the right-holder's consent.

The image may also be registered (to a limited extent) as a **graphic trademark**. The photograph itself depicting someone's image may, in turn, be protected as a **work**. As you can see, the use of someone else's image must be approached very carefully so as not to infringe various types of intellectual property rights.

Regardless of the above, you should remember that impersonating another person using, for example, their image, in order to cause them material or personal damage, is a crime (commonly referred to as "identity theft"). If such a situation affects you personally, react immediately and report the matter to the law enforcement authorities.

IV. Intellectual property in your company – what to remember

1. 
Do an audit. Check what constitutes your company's intellectual property and what needs protection.

2. 
Verify whether your solutions are original, suitable for protection and whether you do not infringe on the rights of third parties. Remember that researching industrial property rights and patent databases can be a source of knowledge and inspiration.

3. 
Take care of confidentiality. This is especially important in the protection of intellectual property!

4. 
Determine who has the rights to solutions and works, regulate relations with employees and subcontractors.

5. 
Build an intellectual property protection strategy:
   - Define what purpose it should pursue in relation to your business plans.
   - Determine what to protect and with what IP law.
   - Specify the territorial scope. Define where your technology, product or service will be offered and select the appropriate mode of intellectual property protection in these countries/regions.
   - Plan how long you will be protected.
   - Think about how you intend to use the exclusive rights you have obtained.
   - Prepare an intellectual property management plan.
   - Prepare an IPR cost estimate and include it in your company's budget.

6. 
Take care of filing applications for protection with the appropriate patent office or create appropriate regulations.

7. 
Use the help of patent attorneys and other specialists!

8. 
Monitor competitor activities and fight infringements.

9. 
Develop your business - improve technologies, products, services.

10. 
Use your intellectual property rights and earn money on solutions!

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