

INTELLECTUAL PROPERTY LAW

SUBJECT MATTERS OF INTELLECTUAL PROPERTY RIGHTS AND UNFAIR COMPETITION

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INTRODUCTION

INTELLECTUAL PROPERTY LAW

Intellectual property law regulates the legal relationships arising from the results of intellectual creative activity. In connection with the legal protection of intellectual property, we distinguish:

- copyright
- industrial rights to the results of intellectual creative activity (patents, utility models, designs, topographies of semiconductor products)
- industrial rights to designations (trade-marks, protected geographical indications, trade names)
- rights similar to industrial rights and rights related to industrial rights (improvement proposals, know-how, logos as unregistered designations, domain names, the name and good reputation of a legal entity)

Copyright and related rights deal with relationships arising from the creation and use of literary, artistic and scientific works, artistic performances, the production and use of sound and audiovisual recordings, television and radio broadcasting, the creation and use of databases, etc.

Industrial property law is defined as the right to protect subjects of industrial property that arise from creative intellectual activity, e.g., inventions, technical solutions, trademarks, designs, or designations of origin.

SUBJECT OF INTELLECTUAL PROPERTY RIGHTS

The subject of intellectual property rights is intangible property that is the result of thought and creativity.

PROTECTION OF INTELLECTUAL PROPERTY

Basic means of protecting intellectual property:

- **industrial-legal protection** (e.g., by registering a patent, trademark, design) – provides a higher level of protection (however, it is not possible to protect everything this way, and the registration and maintenance of industrial rights are associated with financial costs),
- **contractual protection** (its basis is the confidentiality of the subject of protection, the obligation of secrecy, and sanctions for its breach) – provides a lower level of protection (essentially only in relation to the contractual party, and enforcement is more difficult),
- through certain institutes regulated in the relevant national legal systems (e.g., the right to protection against unfair competition, criminal law).

Ways of protecting intellectual property according to the intangible asset:

INTANGIBLE ASSET	OPTIONS FOR PROTECTION
Trade name	Trademark Contractual protection
Logo	Trademark Copyright Contractual protection
Trade designation (brand) of a product	Trademark
Technology of production (manufacturing processes)	Patent, utility model (unique technical solution) Design (external shape or modification of a product) Copyright (exceptionally) Contractual protection

Technology of production (manufacturing processes)	Patent, utility model (unique technical solution) Contractual protection Copyright (brochures, printed materials describing the technology) – protects only the external form of expression (not the technology itself)
Computer program (software)	Copyright Contractual protection
Integrated circuit, chip	Topography of semiconductor products Contractual protection
Technical drawings	Contractual protection Copyright
Know-how	Contractual protection
Name (address) of a website	Domains Trademark Contractual protection
Photographs and audiovisual recordings	Contractual protection Copyright

COPYRIGHT LAW

- Regulated by Act No. 185/2015 Coll. on Copyright, as amended
- This Act regulates relationships arising in connection with the creation and use of a copyrighted work or artistic performance, in connection with the production and use of a sound recording, audiovisual recording or broadcasting, and in connection with the creation or production and use of a computer program or database.

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The subject of copyright is:

- A copyrighted work in the field of literature, art, or science, which is a unique result of the author's creative intellectual activity perceptible by the senses, regardless of its form, content, quality, purpose, manner of expression, or degree of completion.
- A literary work, verbal work, theatrical work, musical work, audiovisual work, work of fine art, architectural work, work of applied art, cartographic work, or another type of artistic or scientific work, if it meets the conditions set out in the first paragraph.
- A theatrical work, which includes in particular a staged dramatic work with or without music, pantomime, and a staged dance choreography or other choreography; its author is primarily the director who created this work through creative intellectual activity.
- A work of fine art, which includes paintings, drawings, collages, tapestries, engravings, lithographs or other graphics, sculptures, ceramics, jewelry, or other works of fine art and photographic works.
- A photographic work, which is the capture of an image using photographic technical equipment, provided it is the result of the author's creative intellectual activity.
- An architectural work, which is the most general expression of the author's creative architectural idea, especially the graphic and spatial representation of the architectural design of a building or urban arrangement of a territory, a building, as well as works of landscape, interior, and stage architecture, and works of architectural design.
- A work of applied art, which is an artistic creation with utilitarian functions or a work incorporated into a utilitarian object, regardless of whether it was produced by hand, industrially, or by another technological process.

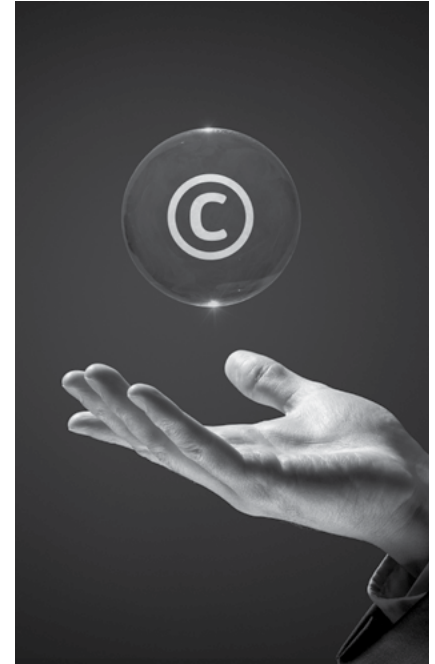
The subject of copyright also includes a part of a work, the title of a work, and the name of a character, if they are the unique result of the author's creative intellectual activity perceptible by the senses.

The following are not considered the subject of copyright:

- an idea, procedure, system, method, concept, principle, discovery or piece of information that has been expressed, described, explained, illustrated or incorporated into a copyrighted work,
- the text of a legal regulation, an official decision or a court decision, a technical standard, as well as preparatory documentation created along with them and their translation, regardless of whether they are the unique result of creative intellectual activity perceptible by the senses,
- urban planning documentation, regardless of whether it is the unique result of the author's creative intellectual activity perceptible by the senses,
- a state symbol, the symbol of a municipality, or the symbol of a selfgoverning region; this does not apply if it is a work that serves as the basis for the creation of such a symbol,
- a speech delivered during the discussion of public matters, regardless of whether it is the unique result of the author's creative intellectual activity perceptible by the senses,
- a daily news report; a daily news report is information about an event or fact, whereas a work that informs about a daily news report or in which a daily news report is included is not considered a daily news report,
- a work of traditional folk culture,
- the result of the activity of an expert, interpreter, or translator under a special regulation.

Authors rights:

The rights of the author are regulated under Act No. 185/2015 Coll. on Copyright. Copyright includes exclusive moral rights and exclusive economic rights.



Exclusive moral rights:

- The author has the right to authorship of their work
- The author has the right:
 - a. to decide whether or not to publish their work,
 - b. to be identified as the author and to decide on the manner of such identification, in particular by name or pseudonym, whenever the work is used, provided that such identification is possible and customary for the given work and the manner of its use,

- c. the right to the integrity of their work, in particular the right to protection against any unauthorized alteration or other unauthorized interference with their work, as well as against any defamatory treatment of the work that would diminish its value or cause harm to the author's honor or good reputation.
- The author cannot renounce his moral rights; these rights are non-transferable and expire upon the author's death.
- After the author's death, no one may claim authorship of the work; the work may only be used in a manner that does not diminish its value, and the author's name or pseudonym must be indicated, unless it is an anonymous work.
- The author may grant consent to an interference with his moral rights. Such consent must be limited to the scope and manner of the interference, and unless otherwise agreed, it may be revoked.

Exclusive economic rights:

- The author has the right to use his work and the right to grant consent for the use of his work.
- The work may be used only with the author's consent, unless otherwise provided by copyright law.
- For the use of the work, the author is entitled to remuneration.
- The granting of consent to use the work does not extinguish the economic rights; the author is obliged to tolerate the use of the work by another person within the scope of the granted consent.
- Economic rights are non-transferable, cannot be renounced, and cannot be subject to enforcement; this does not apply to claims arising from economic rights.

- Economic rights are subject to inheritance. If a co-author has no heirs or if the heirs refuse to accept the inheritance, his economic rights pass to the other co-authors.

Rights of the producer

- The rights of the producer are regulated under Act No. 185/2015 Coll., the Copyright Act
- **Rights of the producer of a sound**
The rights of the producer of a sound recording include exclusive economic rights, namely:
 - a. The producer of a sound recording has the right to use his sound recording and the right to grant consent to the use of the sound recording.
 - b. A sound recording may be used only with the consent of the producer of the sound recording, unless otherwise provided by the Copyright Act.
 - c. By using a sound recording for which the producer grants consent: making reproductions of the sound recording, public distribution of the original sound recording or its reproductions, broadcasting of the sound recording, making the sound recording available to the public, and retransmission of the sound recording, except for cable retransmission.
 - d. The economic rights of the producer of a sound recording are transferable.
- Duration of economic rights of the producer of a sound recording: The economic rights of the producer of a sound recording last for **50 years** from the making of the sound recording.
- The producer of a sound recording is entitled to appropriate remuneration for

the use of the sound recording by technical performance or public transmission.

Rights of the producer of an audiovisual recording

- The rights of the producer of an audiovisual recording include exclusive economic rights, namely:
 - a. The producer of an audiovisual recording has the right to use his audiovisual recording and the right to grant authorization for the use of the audiovisual recording.
 - b. The producer of an audiovisual recording has the right to use his audiovisual recording and the right to grant authorization for the use of the audiovisual recording.
 - c. By using an audiovisual recording, for which the producer of the audiovisual recording grants consent, the following acts are permitted: making reproductions of the audiovisual recording, public distribution of the original or reproductions of the audiovisual recording, technical demonstration of the audiovisual recording, broadcasting of the audiovisual recording, making the audiovisual recording available to the public, and retransmission of the audiovisual recording, except for cable retransmission.
 - d. Proprietary rights of the producer of an audiovisual recording are transferable.
- Duration of proprietary rights of the producer: Proprietary rights of the producer of an audiovisual recording last for **50 years** from the making of the audiovisual recording.
- The producer of an audiovisual recording has the right to receive equitable remuneration for the use of the audiovisual recording by public transmission.

TRADE MARK

Legal regulation of trade mark:

- In the case of a trade mark registered in the Trade Mark Register maintained by the Industrial Property Office of the Slovak Republic for the territory of the Slovak Republic, the regulation is contained in Act No. 506/2009 Coll. on Trade Marks, as amended
- In the case of a European Union trade mark (EUTM), the regulation is contained in Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark
- In the case of an international trade mark, the applicable regulation is the Madrid Agreement Concerning the International Registration of Marks of 14 April 1891, revised at Brussels on 14 December 1900, in Washington on June 2, 1911, in The Hague on November 6, 1925, in London on June 2, 1934, in Nice on June 15, 1957, and in Stockholm on July 14, 1967 (Decree of the Minister of Foreign Affairs No. 65/1975 Coll., as amended), and the Protocol to the Madrid Agreement on the International Registration of Factory or Trade Marks as amended (Notification of the Ministry of Foreign Affairs of the Slovak Republic No. 267/1998 Coll., as amended).



What is a trademark:

- A trademark may consist of any designation, in particular words (including personal names), drawings, letters, numerals, colors, the shape of goods or the shape of their packaging, or sounds, if such designation is capable of
 - › distinguishing the goods or services of one person from those of another person, and
 - › being represented in the register of trademarks of the Industrial Property Office of the Slovak Republic in a manner which enables the competent authorities and the public to clearly and precisely determine the subject matter of the protection granted to the proprietor of the trademark.
- an international trademark is a trademark entered in the register of trademarks of the International Bureau of the World Intellectual Property Organization,
- a European Union trademark is a trademark entered in the register of European Union trademarks.
- A well-known mark is a mark according to Article 6bis of the Paris Convention for the Protection of Industrial Property of March 20, 1883, revised in Brussels on December 14, 1900, in Washington on June 2, 1911, in The Hague on November 6, 1925, in London on June 2, 1934, in Lisbon on October 31, 1958, and in Stockholm on July 14, 1967 (Decree of the Minister of Foreign Affairs No. 64/1975 Coll., as amended by Decree of the Minister of Foreign Affairs No. 81/1985 Coll.), and Article 16 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (Notification of the Ministry of Foreign Affairs of the Slovak Republic No. 152/2000 Coll. on the conclusion of the Agreement Establishing the World Trade Organization).

We distinguish the following types of trademarks:

Word mark – Expressed exclusively by words or by letters, numerals, other standard typographic characters, or their combinations that can be written. Obtaining a word trademark is the most demanding; on the other hand, its protection has the broadest scope. Examples of word trademarks include, for instance, the names of major brands or products, or their slogans.

Figurative mark – This is a trademark in which non-standard characters, stylization, appearance, or a graphic feature or color are used, including marks composed exclusively of figurative elements. Typical figurative trademarks are company logos or images of products.

Figurative mark containing word elements – Combined trademark – This is a combination of a word and a figurative trademark. For example, it may consist of a logo accompanied by text, or a logo containing letters or numerals.

Three-dimensional mark – A three-dimensional trademark consists of or includes a three-dimensional shape. It may consist of containers, packaging, the product itself, or its appearance.

Single-color mark – A single-color mark is nothing more than a trademark consisting exclusively of one color (without contours). A trademark may also consist exclusively of a combination of colors (without contours).

Mark with a combination of colors – A combination of colors without contours is represented by submitting a reproduction showing the systematic arrangement of the color combination in a uniform and predetermined manner and by indicating the code of these colors, including the

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name of the color chart used; a description may also be attached that sets out in detail the systematic arrangement of the colors and corresponds to the representation of the sign applied for.

Sound mark – A trademark consisting exclusively of a sound or a combination of sounds is represented by submitting an audio file reproducing the sound or by precisely recording the sound in musical notation.

Motion mark – A trademark consisting of movement or a change in the position of elements. A trademark consisting of, or including, movement or a change in the position of its elements shall be represented by submitting a video file or a series of still images showing the movement or change of position. If still images are used, they may be numbered or accompanied by a description explaining their sequence. The description referred to in the preceding sentence must correspond to the representation of the sign applied for.

Multimedia mark – a trademark consisting of a combination of image and sound, or including such a combination, shall be represented by submitting an audiovisual file containing the combination of image and sound.

Holographic mark – a trademark containing elements with holographic features shall be represented by submitting a video file, graphic reproduction, or photographic reproduction containing views that enable the holographic effect to be properly recognized in its full scope.

Position mark – a trademark created in a specific way by the manner in which the mark is placed on the product or affixed to it shall be represented by submitting a reproduction that properly identifies

the position of the mark and its size or proportions on the relevant products. Elements that are not part of the subject of registration shall be visually indicated, preferably with dashed or dotted lines. The representation may be supplemented with a description specifying in detail how the trademark is affixed to the product.

DESIGN

- Regulated by Act No. 444/2002 Coll. on Designs, as amended.

What is a design:

- A design means the appearance of a product or a part thereof, resulting from the features which are in particular the lines, contours, colours, shape, texture or materials of the product itself or of its ornamentation.

Conditions of Design Protection:

- A design shall be eligible for protection if it is new and has individual character.
- A design applied to a product constituting a component part of a complex product, or a design embodied in such a product, shall be considered new and as having individual character only if
 - › the component part remains visible after its incorporation into the complex product in normal use
 - › the visible features of the component parts themselves meet the requirement of novelty and individual character.

PATENT

- Regulated by Act No. 435/2001 Coll. on Patents, Supplementary Protection

Certificates and on Amendments to Certain Acts (the Patent Act), as amended.

- A patent provides legal protection for an invention which is the subject of a patent application or a granted patent.

What is a patent:

Patents are granted for inventions in all fields of technology, provided that they are new, involve an inventive step, and are industrially applicable.



An invention is a product or a technical process that represents, for the first time, a practically implemented new idea which either improves the existing state of the art or provides entirely new possibilities. Under certain conditions, a patent may be granted for an invention.

UTILITY MODEL

- Regulated by Act No. 517/2007 Coll. on Utility Models and on Amendments to Certain Acts, as amended.

A utility model protects a new, industrially applicable technical solution that is the result of inventive activity in the field of technology.

What is a utility model:

A utility model may protect a new, industrially applicable technical solution that is the result

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of inventive activity in the field of technology, provided that it is not: a discovery, a scientific theory, a mathematical method, an aesthetic creation, a plan, a rule, or a computer program. A utility model may not protect a technical solution that is contrary to public policy or good morals, nor may it protect plant varieties and animal breeds, methods of treatment, processes for the production of chemical or pharmaceutical substances, or the medical use of substances.

Comparison of a utility model and a patent:

- the effects of protection are the same,
- the term of protection of a utility model lasts only 4 years; upon the request of the owner, it may be extended twice by three years, i.e. the maximum duration is 10 years,
- utility model protection is suitable for objects with a shorter lifespan,
- the registration procedure for a utility model is simpler and faster.

TOPOGRAPHY OF A SEMICONDUCTOR PRODUCT

- Regulated by Act No. 146/2000 Coll. on the Protection of Topographies of Semiconductor Products, as amended.

The topography of semiconductor products protects the interrelated representations of the three-dimensional arrangement of layers from which the semiconductor product is composed.

What is a topography of semiconductor product:

The topography of semiconductor products is a series of fixed or encoded interrelated representations of the three-dimensional arrangement of layers from which the

semiconductor product is composed, and at the same time it represents the pattern of the surface of the semiconductor product at any stage of its manufacture. It must be the result of the creator's intellectual effort and not be commonplace in the given industry.

KNOW-HOW

Know-how is not expressly defined or specifically regulated in the Slovak legal system.

In general, the term know-how may be understood as knowledge, information, experience, skills, or expertise from various fields, particularly from the areas of production, trade, research, science, technology, economics, or business. Know-how may, for example, also include marketing, business or commercial plans, manufacturing or working procedures, business contacts, or strategies.



What characteristics does know-how have and how can it be protected:

- Know-how should meet several characteristics, namely:
 - › it is expressed in an objectively perceptible form (i.e. it must be presented in a way that allows it to be perceived and understood, e.g. described in a contract in an annex thereto),
 - › it consists of knowledge, information, experience, and expertise from various fields,
 - › it is useful for its user,
 - › it is not generally known or publicly available (i.e. it is secret and sufficiently specific so that it is not accessible to the public),
 - › it has a certain economic value,
 - › it can be used by third parties (regardless of whether repeatedly or on a one-off basis),
 - › it can be transferred to another person (i.e. the person to whom the know-how belongs may dispose of it),
 - › it is not protected under special legislation (e.g. as an invention protected by a patent or as a work protected by copyright law).
- Provided that the above conditions are met, know-how may be protected through the conclusion of a "Non-Disclosure Agreement (NDA)" or a "Confidentiality Agreement."

UNFAIR COMPETITION

Unfair competition is conduct in economic competition that is contrary to good morals of competition and may cause harm to other competitors and consumers.

Unfair competition also concerns consumers, since unfair competitive practices may mislead them (e.g. in the case of misuse of a trademark).

Examples of unfair competition in relation to intellectual property:

Misleading advertising = advertising that disseminates information, for example about a product or service, and is capable of deceiving the persons to whom it is directed (e.g. consumers), thereby securing an advantage for the advertiser at the expense of other competitors.

- › An example of misleading advertising may be the use of another party's trade mark in advertising in order to create the impression that the promoted product originates from a certain manufacturer (the trade mark owner).

Misleading labelling of goods and services = is a designation that may create the impression that, for example, a product so labelled originates from a particular country, place, or manufacturer, or that it has certain characteristic features (e.g. the designation "Dutch cocoa" when in fact it is not cocoa from the Netherlands).

Creating a likelihood of confusion

= means the use of a trade name or business designation lawfully used by another competitor, the use of distinctive signs or presentations of products or services that are regarded in customer circles as characteristic of a particular business, or the imitation of another's products or packaging, if such conduct is capable of creating a likelihood of confusion with the business, trade name, or products of another competitor. An example of creating a likelihood of confusion may be, for instance, the misuse of another party's logo or trade name.

Exploitation of reputation = taking advantage of the reputation of another business in such a way as to create the impression of a certain connection with that business. The aim is to obtain a benefit which otherwise, or within a short time, could not be achieved.

Infringement of trade secrets = the unauthorized disclosure, making available, or use of a trade secret by a person who is obliged to protect it and to whom it has been entrusted or made available by the entrepreneur, or who has obtained it unlawfully (by conduct contrary to the law).

What are the possibilities of protection against unfair competition:

- The means of protection, in the event of unfair competition, are regulated by the Commercial Code (Act No. 513/1991 Coll., Commercial Code, as amended).
- A person whose rights have been infringed by unfair competition:
 - › may demand that the infringer of such **conduct refrain and remove the defective state**,
 - › may claim **adequate satisfaction** (which may also be provided in money), **compensation for damage, and restitution of unjust enrichment**,
 - › the right to demand that the infringer refrain from unlawful conduct and remove the defective state may, with the exception of certain cases, also be exercised by a legal entity authorized to protect the interests of competitors or consumers.

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