A PRACTICAL GUIDE TO MANAGING INTELLECTUAL PROPERTY RIGHTS IN AN OPEN INNOVATION CONTEXT

INTERREG IVC
INNOVATION & ENVIRONMENT
REGIONS OF EUROPE SHARING SOLUTIONS

euris
EUROPEAN COLLABORATIVE AND REGIONAL OPEN INNOVATION STRATEGIES

European Union
European Regional Development Fund

CONTENTS

1. INTRODUCTION

This document is **the first part** of a practical guide for SME managers on legal issues related to Open Innovation.

The complete guide for SMEs will treat **three different but interrelated legal aspects (and, so, it will have three certain 'parts')**: the present document focuses on intellectual property issues; a second part will look at commercial, exploitation and business-related issues; and finally, a third part will verse on contract guidelines that may be used in an Open Innovation environment.

From a conceptual viewpoint, in an Open Innovation framework, when an SME manager considers a project with another company or player (technology centre, university, etc.) by virtue of a collaboration project (e.g. technology transfer, spin-off, licence, joint-venture or collaboration agreement, etc.), three different periods must be marked out:

This document focuses exclusively on the beginning of the Open Innovation process, i.e. on the legal issues an SME manager needs to consider **before** beginning a collaboration project with another player.

Accordingly, and as already mentioned, this first part of the guide focuses on **legal issues related to intellectual property** and is based on the idea that the SME must first of all look 'within its organisation', analyse its intangible assets and assess how they can be protected.

It is therefore necessary to remember that, on the one hand, **intangible assets** are the company's resources, which, albeit of a non-tangible nature, afford the company value-added. Examples of intangible assets include know-how, lists of customers, technology and production processes, etc.

Consequently, this guide looks at all the intangible assets that may exist in an SME and how they can be protected through registration or other means.

From this point of view, it may be considered paradoxical that, by beginning with a focus on Open Innovation in SMEs, the present first part of the guide looks at the legal issues that are related to intellectual property, i.e. the foundations for an SME to identify and protect all its intangible assets.

In order to show that this is not a paradox, the guide starts including a real case taken from the book by Henry Chesbrough (Executive Director of the Program in Open Innovation at the University of California, Berkeley), *Open Business Models*, which illustrates some risks of adopting an 'underprotected' strategy:

>> **Before starting an Open Innovation process, it is highly recommendable for the SME to draw up a map (section 3) of the situation of its intangible assets. This will allow it to appreciate its strong and weak points and help it identify the best collaborators and means of protection for its requirements.**

"GO Corporation was a software start-up company which developed an operating system for pen-based personal computer products called PenPoint. GO faced the problem of many start-up software companies, the need to attract outside firms (customers, suppliers and third party applications software vendors) to support its technology. In particular, GO needed to recruit software developers to create software applications using its PenPoint operating system. Since Microsoft was the largest applications software developer for both the Windows and Macintosh operating systems, GO met extensively with Microsoft to encourage it to develop applications for GO's PenPoint operating system. To protect GO's business, the two companies met after Microsoft executed a Non-Disclosure-Agreement with GO.

Earning Microsoft's support for the PenPoint operating system had vital strategic ramifications. If Microsoft were to develop applications for PenPoint, other software developers would then be more likely to develop for PenPoint as well. Potential customers would also have been more likely to purchase PenPoint, since they could have expected more applications on the PenPoint platform.

GO could not earn Microsoft's support, though, without disclosing an extensive amount of its proprietary information. Bill Gates himself, the Microsoft CEO, spent an entire day at GO, along with a technical engineer, reviewing GO's technology, product strategy and business plans in detail. Gates's engineering colleague returned later to hold additional meetings with GO personnel. However, instead of building applications for GO's PenPoint operating system, Microsoft elected instead to launch its own competing PenWindows operating system six months later. Much to GO's surprise, the PenWindows effort was headed by the same Microsoft engineer who visited GO on previous occasions.

GO's mistake was fatal because Microsoft was not only an applications developer. First and foremost, Microsoft's business model made it focus on leading the industry in operating systems. Whatever business benefit Microsoft might have obtained from selling applications to a new market segment of pen-based computers, it was dwarfed by the competitive threat to its dominance of the PC operating system. Microsoft's entry into pen-based computing 'froze' many software developers who might otherwise have supported GO and caused potential customers to wait and see what PenWindows would be like. It cost GO tremendous momentum and eventually sank the company".

Some lessons learned:

>> **The case of this SME shows that, before setting off on an adventure in Open Innovation, it is necessary to analyse how the company's know-how, technology and other intangible assets can be protected.**

>> **The example of this SME also shows that it is important to remember that adopting measures to protect its intangible assets (section 3) gives the SME a tool that can be used for its corporate targets.**

>> **Thanks to its team excellence, know-how, etc., a SME can be perfectly able to identify a market gap even in the domain of a technology giant.**

>> **In order that the cooperation between this SME and Microsoft could have been successful for both parties, besides signing a Non-Disclosure-Agreement, as they had already done, they should have patented (section 4.1.1) the PenPoint Operating System key technology. In that way any product which, based on it, Microsoft had wanted to launch without its consent, could have been blocked.**

2. TRADITIONAL INNOVATION VS OPEN INNOVATION

Before analysing the main intangible assets of an SME and how they can be protected in an Open Innovation environment, it is first of all necessary to explain what such an environment is. To do so, the following is a brief reference to the general concept of Open Innovation and clarifies the differences with 'traditional' innovation (i.e. what we could refer to as 'closed' innovation).

▶ Traditional or 'Closed' Innovation

Put simply, the traditional innovation system is similar to a **'linear' process** in which the best ideas are selected in sequence and the best product and service prototypes are created and developed. The former are then perfected for the corresponding market.

Also put simply, this innovation system is usually represented by a 'funnel' into which ideas and technologies are 'inserted' (developed, in principle, exclusively within the company) and from which the product or service that is to be finally placed on the market is 'extracted' at the other end.

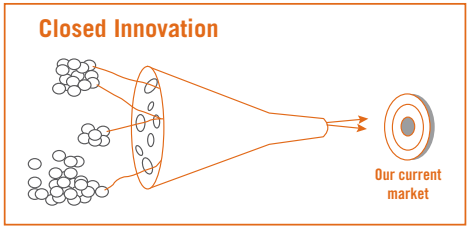


Fig. 1: Closed Innovation System.

Accordingly, the main aim of companies with 'closed' innovation systems is to create value-added products or services through the development of successful ideas that come from the company itself. To do so, the company must have the best R&D team in its area. Consequently, **the two main key factors** for this 'traditional' innovation system are the following:

- The in-house team: it is fundamental for the company to have the best experts in the field in which it wants to develop its products or services.
- Time: one critical part of this innovation system is the time that passes from when the ideas are generated to when they are launched onto the market as products or services.

▶ Open Innovation

One of the first researchers to coin the term of Open Innovation was the aforementioned Henry Chesbrough. Professor Chesbrough maintains that closed R&D models limit the flow of the organisation's intellectual capital, which also limits the possibilities of the company's know-how leading to a return on sales. However, the author considers that the Open Innovation system implies that organisations can **use external practices and resources** to complement the value of their own innovation assets and obtain a higher return on investment.

Therefore, the ultimate goal of organisations with Open Innovation systems is to identify the most successful ideas and the know-how that can make a difference with regard to other competitors on the market, gain access to said know-how and incorporate it successfully to develop new products and services.

In an Open Innovation system, ideas, know-how and technologies, etc. come not only from inside the organisation, but also from outside. Unlike the traditional innovation system ('closed' innovation), there is not only one 'outlet' for the organisation's products and services, but rather numerous opportunities ('pores' in the 'funnel' comparison) that act as 'outlets' for the innovation process before access is gained to the traditional market. Consequently, these 'outlets' can take the form of technology transfers, spin-offs, patent licences, joint ventures and collaboration agreements, etc.

In the opinion of Professor Chesbrough, an Open Innovation environment must have a **global innovation market** on which innovation can be purchased, sold, licensed, loaned and/or reinvested. This market is referred to as the 'innovation marketplace': it is a place where producers/suppliers and consumers/demanders can exchange innovative solutions.

The changeover from a traditional or 'closed' innovation model to an Open Innovation model requires changes that affect not only the innovation process itself; it is also important to transform the organisation's culture, business model and intellectual property management, etc. In short, it is necessary to **change the paradigm** in place in the organisation so that it can become more competitive and provide higher value-added.

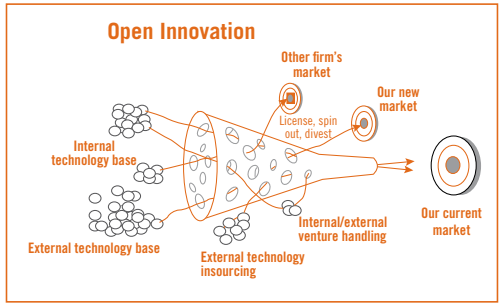


Fig. 2: Open Innovation System.

>> With Open Innovation, the company opens itself up to receiving ideas that are valid for its business from all over the world. In addition, the company's know-how can be used in any sector or market. Protecting these internal and external ideas must be managed appropriately in order to reach an optimal solution that satisfies the market requirements of all the parties involved.

Source: http://www.slideshare.net/abediaga/innovacin-abierta-ms-all-de-la-innovacin-tradicional

3. WHAT ARE THE SME's MAIN INTANGIBLE ASSETS? HOW CAN THEY BE PROTECTED?

The following table provides summarised answers to the above two questions:

Designs		Processes		Market	
Intangible Asset	Means of Protection	Intangible Asset	Means of Protection	Intangible Asset	Means of Protection
Technology	Patent (section 4.1.1)	Production Process	Patent (section 4.1.1)	List of Customers	Business Secret (section 4.1.6)
Product Design	Industrial Design (section 4.1.5)	Manuals	Copyright (section 4.1.10) / Copyleft Licences (section 4.2)	Distinguishing Sign	Trademark (section 4.1.3)
Software	Copyrignt (section 4.1.10) / Copyleft Licences (section 4.2)	Work tools improved in the organisation	Utility Model (section 4.1.2)	Commercial Strategy	Business Secret (section 4.1.6)
Plant Variety	Plant Variety (section 4.1.8)	Know-how	Business Secret (section 4.1.6)	Name by which the company is known on the market	Trade Name (section 4.1.4)
Electronic Circuit	Semiconductor Product (section 4.1.7)				
Agricultural Product	Protected Geographical Indications (section 4.1.9)				

>> It may come as a surprise to see that the above map does not include 'services', which may be the SME's main activity. As there is no specific means of protection, it could be said that services can be protected through the Trademark (section 4.1.3) or through the Business Secret (section 4.1.6).

4. CLASSIC AND NEW MEANS OF PROTECTION

In order to draw up a map like the one on the previous page, an SME manager must be familiar with not only his/her company's intangible assets, but also the various means of protection provided in law.

The following is a simple example that clearly shows the options involved and how said means can be used.

We will look at the case of an SME that designs and manufactures a certain type of chair and, in view of the saturation of its local market, is considering marketing it abroad. As the chair is a product that was invented in ancient times, it would not be considered as a novelty and the SME would not be able to register it as a patent. In that case, the SME could perhaps think that no protection is possible and that it is inevitable for it to be copied by any organisation in the new country (e.g. a company collaborating with the SME to sell its chairs on the new market). However, in that case the SME needs to know that if it meets legal requirements, it could protect the design of the chair by registering it with any of the corresponding offices and obtaining the legal qualification of industrial design. Then, no other company could sell a chair with the same design without the SME's consent.

Anyway, the SMEs shouldn't forget that getting a clear picture of their intellectual property portfolio does not stop at the identification of all their in-house intellectual treasures: it continues with a systematic valuation of each piece of idea, know-how, invention etc. to get a grasp of its market perspectives, all this bringing the SME to a situation where it is able to completely decide which intellectual property item deserves what kind of a protection. This implies that, obviously, the SME shouldn't neglect the financial issues of intellectual property management (otherwise it could spend infinite amounts of money on it!).

It is also important to point out that having an original idea or a technical solution never seen before is nice… but unless the SME realistically sees a market where at least a certain sum of money is returning to the SME from the exploitation of this idea, it should forget some ways of intellectual property such as patenting (section 4.1.1) and go instead with other approaches (e.g., a business secret approach: section 4.1.6), because the SME cannot possibly pay for the patent application, sustainment for years and enforcing anyway.

While valuation of intellectual property items to find their probable market worth, many organizations tend to behave like a locked system (to put simply: they only recognize internal ideas that relate to their main activities or capabilities). That is why maintaining an Open Innovation approach and allowing access to internal knowledge from outside could turn out to be quite disruptive to this valuation system.

From the Open Innovation perspective it can happen any time that some idea previously completely useless (and hiding within the organization) can suddenly turn into a 'cash cow' with external aid. And this is a major challenge

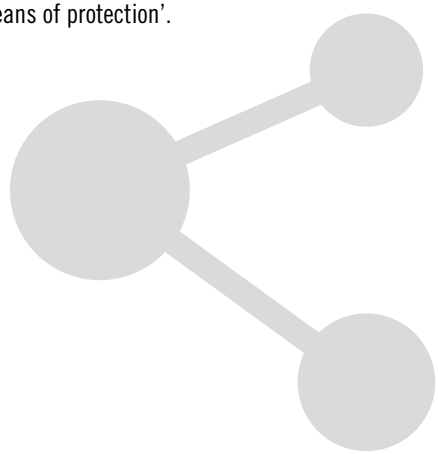
to IP management that is fundamentally changing a company's protection logic.

>> As pointed out by Wim Vanhaverbeke*: "IP is not the issue; it´s how you manage it".

*Professor at Vlerick Leuven Gent Management School, ESADE and Hasselt University, and Co-editor (with Henry Chesbrough and Joel West) of "Open Innovation: Researching a New Paradigm". Oxford University Press.

Moreover, it is important to point out that the means of protecting intangible assets in an Open Innovation environment **are the same as those that have been in operation for years, except for the so-called 'copyleft licences'** (section 4.2). What has changed thanks to the Open Innovation model is **the way in which said 'classic' means are managed and applied**.

Based on this general view, this section on 'means of protection' has been divided into two: 'classic means of protection' and 'new means of protection'.



4.1. Classic Means of Protection

This guide seeks to show all the means of protection that have been used on the market for many years, which is why they have been referred to as 'classic' means of protection. Said means are as follows:

1. The Patent
2. The Utility Model
3. The Trademark
4. The Trade Name
5. The Industrial Design
6. The Business Secret
7. The Semiconductor Product
8. The Plant Variety
9. The Protected Geographical Indication
10. The Copyright

Although it is assumed that each SME in particular may not have any interest in learning about all the means of protection that exist, we have preferred to describe all of them since this guide is for any type of SME, regardless of its sector, activity or market, etc.

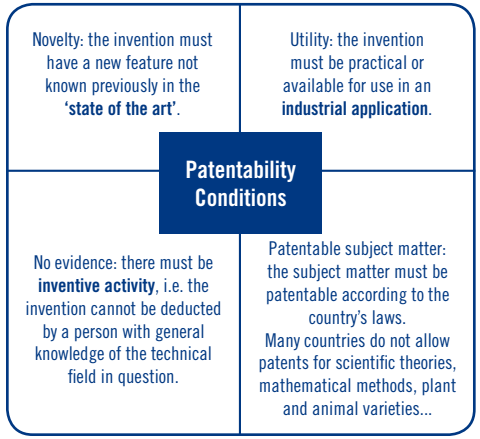
4.1.1. The Patent

▶ What is a patent?

The patent is perhaps the best-known classic means of protection. Technically, it can be said that **a patent protects an invention**. But... what is an invention?

An invention can be defined as **any new solution to a technical problem**. Accordingly, an invention does not necessarily have to be complex (e.g. a computer). As an example, the safety pin was also an invention since it solved a 'technical' problem in a novel way in its day.

Having explained the concept of 'invention', it can be said that a patent consists of a legal title awarded to the inventor of an invention by a state (or by an office acting on behalf of a state), where said title **gives the inventor the right to prevent third parties from exploiting his/her invention on a commercial scale for a limited term** (usually 20 years). However, for a patent to be awarded, a number of requirements must be met:



When a patent has been obtained, it **awards an exclusive right**. This exclusive right is the incentive for the inventor to file for a patent, since it provides him/her with recognition of his/her creative activity and gives him/her a 'legal monopoly' since he/she can prevent third parties from commercialising the patented object. This incentive also fosters innovation, which, in turn, contributes to improving the quality of human life. In exchange for exclusive rights, the inventor is obliged to publicise the patented invention by publishing the patent so that third-party players can benefit from the new know-how and contribute to the development of the state-of-the-art.

Although patents (which of course all have detailed technical documentations in the patent databases) are meant to be legal tools, they do not necessarily grant the ability to implement them: some patent descriptions can be of course self explanatory, but there are others which (with respect to implementation) are nearly useless without the know-how and experiences of the inventor. Therefore (and it is quite common), an additional market exists: after paying high amounts to acquire a licence for a patented technology, the eventual need of buying know-how (in form of consultancy, etc.) from the inventor could exist.

>> The requirements are exclusive, i.e. if one requirement is not met, the invention cannot be patented.

▶ Who can file for a patent?

The patent right belongs to the inventor of the invention and if several inventors create the same invention independently, only the inventor who has filed his/her application with the Administration first will be able to obtain the patent.

If the invention has been made by an employee or worker of a company, recognition as the author of the invention will correspond to the worker, but the ownership of the patent and, therefore, the rights awarded by said title, will correspond to the employer. However, this may vary depending on each country's legislation.

>> **Patent legislation is governed by the legal principle of "Prior in tempore, potior in iure", which implies that the first one to file an invention obtains the patent and, therefore, the protection.**

▶ What rights are awarded by the patent?

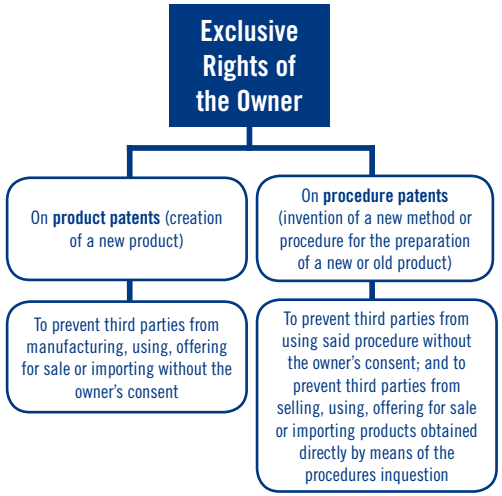
When the patent has been obtained in a specific country, any third party wishing to commercialise the invention in said country must first of all obtain the owner's authorisation.

The protection is awarded for a limited term, **usually 20 years**. After said term, the patent becomes part of the public domain.

It is important to point out that a patent does not award rights to 'do', but rather **rights to 'prevent' third parties from exploiting the invention that is protected** by said patent.

Therefore, based on said right to 'prevent', **the owner of the patent can authorise or license third parties** to use his/her invention under the agreed terms and conditions or he/she can **sell** his/her right over the invention to third parties, whereby the third parties become the new owners of the patent.

The following diagram shows the acts that can be prohibited by the owner of a patent depending on the type of patent:



▶ Are there any limitations?

Patent laws provide for cases in which a patent can be exploited without the need for the owner's authorisation: this is the so-called **compulsory licence**. This licence is possible as long as it is authorised by the government authority. These licences are awarded only in very special cases provided in law. As compensation for the decision to award a compulsory licence, the owner of the patent must be given appropriate financial consideration. One example of such a licence occurred when, on the grounds of public health, the patents that protected certain medicines were 'ignored' and the right was recognised for certain governments to manufacture cheaper generic medicines.

Patents can be filed with national patents offices to obtain national protection, or a European patent can be applied for from the authorised offices. Said application for a European patent does not award one single title for protection everywhere in the EU, but rather a range of patents are awarded for all the territories for which protection has been applied for and the laws of each country in which the patent has been obtained apply.

SUMMARY

PATENTS	
What is a patent?	Legal title that awards protection for any new solution to a technical problem, as long as a number of requirements are met.
Who can file for a patent?	The inventor. If the inventor is a worker hired to develop the invention, the legislation of each country must be taken into account.
Rights awarded	Prohibition of the exploitation of the invention without the owner's authorisation.
Limitations	Compulsory licences.
Term	20 years.
How they are exercised	By means of licences or the sale of patent rights.

4.1.2 The Utility Model

▶ What is a utility model?

It is important to note that **there is no standard regulation for this means of protection** and, consequently, the laws of the country in which it is to be used must be studied.

In general, utility models apply to **inventions with lower levels of technical complexity**. Its denomination may vary in each country (e.g. in Ireland or Slovenia, they are referred to as short-term patents).

In order to illustrate the concept, the following are two examples of two utility models:

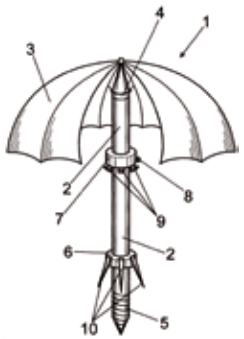


Fig. 3

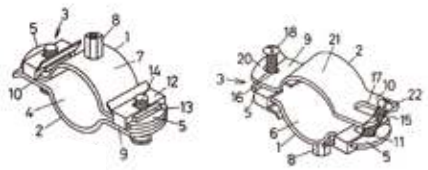


Fig. 4

In the utility model in figure 3, related to a parasol, the parasol itself is not being protected, but rather certain devices that prevent it from turning over after it has been positioned in the floor. In the utility model in figure 4, related to a bracket, the bracket itself is not being protected, but rather the improvements made to it by two specific nut devices. Therefore, the owner of the utility model will not be able to prevent the commercialisation of brackets in general, but rather only the commercialisation of brackets with the two specific nut devices.

>> Utility models follow more or less the same regulations as patents. The only differences lie in the term of protection and the protection requirements, which, in this case, are less strict.

▶ What is the difference between a utility model and a patent?

As already mentioned, the requirements provided in law for utility models vary greatly from one country to another. However, there are a number of differences between utility models and patents:

The **requirements** for obtaining the protection are **less strict**. The requirements for 'novelty' are compulsory, but the requirements for 'inventive activity' and 'no evidence' are either not considered or are less strict. In practice, the protection of the utility model is normally applied for in relation to innovations that provide improvements.

UTILITY MODELS ≠ PATENTS

The **term of protection** is usually **shorter**. In general, the validity of a utility model varies between 7 and 10 years.

The **fees** due for obtaining and maintaining the rights are usually **lower** than for patents.

SUMMARY

UTILITY MODEL	
What is it?	A legal title for the protection of an invention of a lower level of technical complexity than a patent.
Who can file for a utility model?	The inventor. If the inventor is a worker hired to develop the invention, the legislation of each country must be taken into account.
Rights awarded	Prohibiton of the exploitation of the model without the owner's authorisation.
Term	7/10 years, depending on each country.
How they are exercised	By means of licences or the sale of utility model rights.

4.1.3. The Trademark

▶ What is a Trademark?

The concept of 'trademark' can be defined as the **sign that distinguishes a company's products or services from those of other companies** on the market on which they compete. Said signs can comprise words, letters, numbers, photos, shapes and colours and any combination thereof.

▶ How is a trademark useful?

- The trademark guarantees the original identity of the product or service it distinguishes for consumers or end users.
- The trademark is a sign of constant quality since it indicates to the consumer that all the products under the same trademark come from the same company.
- The trademark symbolises the 'goodwill', i.e. the good reputation, good name and image of the products or services distinguished by the trademark among the public.
- The trademark has an advertising function since it not only symbolises the reputation, but also has a powerful advertising function and selling power.
- The trademark represents the 'selling power', i.e. the power or expectations for sales associated with it.

▶ What types of trademarks are there?

Besides the trademarks used to identify the commercial source of products or services, the following categories also exist:

Collective Trademarks: these trademarks are the property of an association.

Certfication trademarks: these indicate compliance with certain standars but do not imply membership of an association.

Services trademarks: these are normally used by hotels, restaurants, airlines, etc.

▶ What rights are awarded by a trademark?

The registration of the trademark awards the owner a right of use. In positive terms, registering the trademark awards the owner an exclusive right to use the trademark; however, in negative terms, the trademark is configured as an exclusive right. However, the owner cannot prohibit the use of the trademark for products that are not similar (e.g. the company that owns the 'Camel' trademark of cigarettes cannot prevent another company from using the 'Camel Active' trademark for its clothing and fashion accessories).

As the purpose of the legal protection of the trademark is not the sign itself, but rather the function of distinction, any sign that involves a risk of confusion by the public because it is identical or similar to the trademark and because the products or services protected by the trademark are identical or similar is prohibited. The risk of confusion includes the risk of association between the sign and the trademark.

Marks can be filed with the National register but they will only be effective in the country in which they have been registered. They can also be registered as Community marks with the OHIM (Office for Harmonisation in the Internal Market), whose offices are located in Spain (Alicante), when they will be effective throughout the Community.

(http://oami.europa.eu/ows/rw/pages/index.en.do).

▶ What is the term of validity of a trademark? What limitations are there?

Trademarks are valid **for ten years as from the date on which the application is filed, and they can be renewed indefinitely** for additional periods of ten years. Trademarks that are contrary to public order and decency cannot be registered.

SUMMARY

TRADEMARK	
What is it?	The sign that distinguishes a company's products or services from those of other companies on the maket.
Who can file for a trademark?	The company that is to commercialise its products or services.
Rights awarded	Exclusive right to use the trademark and the right to prevent others from using the trademark.
Limitations	The use of the trademark for products that are not similar cannot be prohibited. Trademarks thar are contrary to public order and decency cannot be registered.
Term	10 years, renewable indefinitely.
How they are exercised	Trademarks can be sold.

4.1.4 The Trade Name

The trade name is the name or designation that **identifies a company on the market**.

There is no homogeneous law at EU level; therefore, the corresponding national law must be studied in order to register a trade name in a certain country. In most European countries the trade name is usually registered in the Mercantile Register in view of the fact that the register offices of the intellectual property don't usually carry out the registration of the trade names. However, this is absolutely possible in some countries, such as Spain.

It is common for SMEs to confuse the terms **'company name'**, **'trade name'** and **'trademark'**. However, the differences are clear:

- The **Corporate name** is the **official company name**. Its registration in the Mercantile Register is compulsory for the setting-up of the company. It's easily recognizable because it's usually followed by the endings 'Ltd.', 'S.A.'… which indicate its legal form.
- **The trade name** is the sign which **identifies a company** in the market and **distinguises itself from others** that develop similar or identical activities. The trade name can be made up of a real name, a fantasy name, a logo, a picture, a figure, etc.
- The **trademark** is the sign used to distinguish products or services of one company from the products or services of others.

>> The main difference between a trademark and a trade name is the following: the trademark distinguishes products or services. In contrast, the trade name distinguishes the company as a whole. Nevertheless, a trade name can be registered as a trademark, and vice versa. This is the case of Coca-cola company and its product Coca-Cola...

An example that can illustrate these differences is the company called Nestlé. In this case its **corporate name** is "Société des Produits Nestlé, S.A.", whereas its **trade name** is "Nestlé". On the other hand, **one of its registered trademarks** is "KitKat".

>> The marketing strategy used by the SME will determine if it must register a trade name, a trademark or both.

4.1.5. The Industrial Design

▶ What is an industrial design?

An industrial design can be defined as **the decorative and aesthetic appearance of utility items**. The appearance can refer to the shape, model or colour of the item. Furthermore, **it must be possible to reproduce the design by industrial means**, which is why it is referred to as 'industrial'.

Protection by means of an industrial design may be of interest owing to the fact that, in the event of relatively similar technical results, what determines the consumer's decision is the price and the aesthetic appearance.

In general, for a product to be eligible for registration as an industrial design, the designs must be **new** or original, i.e. very different from known designs or any combination thereof.

>> As with trademarks, industrial designs can be registered on a national or Community scale, i.e. for all the territories of the European Union, by means of one single registration with the OHIM (Office for Harmonisation in the Internal Market), which is based in Spain (Alicante).

(http://oami.europa.eu/ows/rw/pages/index.en.do).

▶ What limitations are there?

Besides meeting the above requirements, there is a limitation to protection by means of industrial designs:

Exclusion of protection an Industrial Design

↓

Any design that correponds exclusively to the **function** for which the article has been designed (e.g. the design of a nail)

↓

Otherwise, it would prevent other manufacturers from producing articles that have the same function

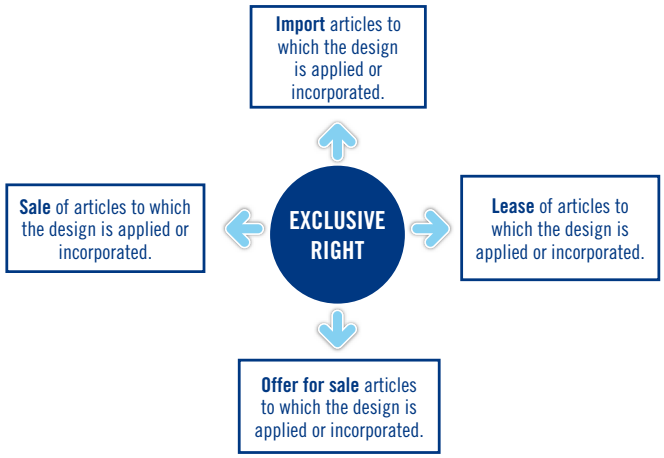
▶ What is the term of validity of an industrial design?

In the European Union, protection by means of industrial designs is awarded **for 5 years as from the date on which the application is filed**. Protection can be renewed for successive terms of 5 years up to a maximum of 25.

▶ What rights are awarded by the industrial design?

When an industrial design is registered, an **exclusive right** is obtained for protection from the unauthorised exploitation of the design applied to industrial articles.

The following diagram shows the various options for exercising said exclusive right:



SUMMARY

INDUSTRIAL DESIGN	
What is it?	A legal title that protects the decorative and aesthetic appearance of utility items.
Who can file for an industrial design?	The author of the design. If the author is a worker hired to develop the design, the legislation of each country must be taken into account.
Rights awarded	Exclusive right to use the industrial design and to prevent any unauthorised exploitation thereof.
Limitations	Designs that correspond exclusively to the function for which the item has been conceived cannot be registered.
Term	5 years, renewable for terms of 5 years up to a maximum of 25.
How they are exercised	By sale or licence of the exclusive right.

Source: http://www.wipo.int/export/sites/www/freepublications/es/intproperty/895/wipo_pub_895.pdf

4.1.6 The Business Secret

▶ Why is the business secret important?

Original confidential information, know-how and skills constitute a competitive quality that contributes to attracting customers to companies. However, many of them only become aware of the importance of their secrets when competitors try to get their list of customers or commercialisation plans or when they try to contact their employees to copy the way they do business.

Experiences such as the following, taken from the press, are relatively frequent: "An Apple employee has been charged with selling secrets to Asian suppliers of the tech giant in exchange for at least one million dollars in kickbacks".

>> One of the key motivating forces for large companies while turning towards Open Innovation is that (due to their employees) they are not ultimately able to block the dissipation of business secrets.

▶ What is a business secret?

The term 'business secret' can apply to **any confidential information that gives a company a competitive edge**. Business secrets include industrial secrets, manufacturing secrets and commercial secrets. Therefore, the unauthorised use of said information by people other than the owner is considered unfair and a violation of business secret.

Unlike the means of protection examined earlier, business secrets are means that **do not require registration**. Consequently, a business secret provides protection for an **unlimited term**. Therefore, it is a means of protection that can be particularly interesting for SMEs.

However, there are certain requirements that need to be met for information to be considered as a business secret. Since said requirements vary from one country to another, the SME that wishes to use this means of protection must comply with the laws of the country in which it carries out its activities. Nevertheless, there are a number of requirements that are common to every country:

Secret information + **Commercial value** due to secrecy + Subjected to reasonable measures for maintaining secrecy = **Bussines secret**

Even negative information, such as **research projects that have not obtained results**, can constitute business secrets. Almost every kind of technical and commercial information can be protected as a business secret as long as it meets the corresponding requirements.

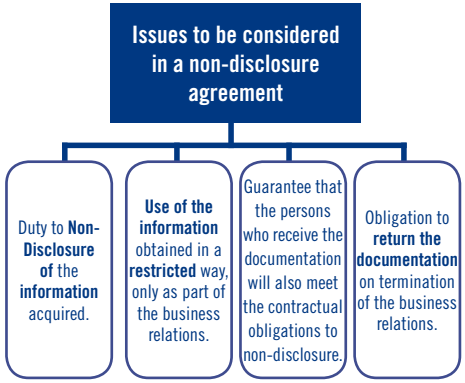
Examples of intangible assets that can be protected by business secret include the following:

- List of customers
- Teaching methods
- Processes, techniques and know-how specialising in manufacturing and repair
- Document-search mechanisms
- Product-manufacturing formulas
- Manuals
- Commercial strategies, activity plans, business methods and commercialisation plans, financial information, etc.
- Products and procedures that cannot be patented, etc.

>> Business secrets are protected without the need for registration; therefore, business secrets can be protected for an unlimited term at no cost. Consequently, the protection of business secrets can be particularly interesting for SMEs.

▶ How is protection by business secret implemented?

The most effective way of guaranteeing protection by business secret is **by contract**. Companies that wish to use this means of protection must impose a broad duty to secrecy not only to the company's personnel, but also to any external personnel with whom commercial relations are maintained.



Finally, it is recommendable for the duty to observe confidentiality with regard to business secrets to be signed **for a specific term**, including after when the personnel have ended their employment or at least until the information protected by the secret has been made public.

Source: http://www.wipo.int/sme/en/ip_business/trade_secrets/trade_secrets.htm

4.1.7 The Semiconductor Product

▶ What is the sense of this means of protection?

Semiconductor products are manufactured in accordance with extremely detailed diagrams or plans, which means that they are creations of the human intellect. If we add to this the high cost of preparing said diagrams and the relative ease with which they can be copied, it is not difficult to see why most countries protect this type of creation. However, **given the diversity of regulations in place in relation to this concept**, to study specific legislation it is necessary to consider domestic laws. On a Community level, there is a directive on the protection of the topography of semiconductor products, which, in general terms, provides the protection given in every country of the European Union.

▶ What is the topography of semiconductor products? Is it the only thing that can be protected?

First of all, it is important to note that the directive protects the topography of semiconductor products and the semiconductor products themselves.

The aforementioned directive defines a semiconductor product as "the final or intermediate form of any product made up of a substrate that includes a layer of semiconductor material and that has one or more additional layers of conductor, isolation or semiconductor materials, positioned according to a predetermined three-dimensional structure and used to carry out, exclusively or in conjunction with other functions, an electronic function". For its part, **the topography of a semiconductor product is defined as follows**: "A number of interconnected images, regardless of the way in which they are set or encoded, that represent the three-dimensional structure of the layers that make up the semiconductor product, in which each image has the structure or part of the structure of one of the services of the semiconductor product in any stage of manufacture".

>> In European Union legislation, when speaking of semiconductor product topography, reference is made, in more general and less technical terms, to 'electronic integrated circuits' and to the diagrams or schematics thereof.

▶ Who can file semiconductor products? What is the term of validity of the protection?

The protection is given to the creators of semiconductor products, i.e. the individuals who belong to a member state or who are usual residents in said state. However, the member states may determine the individuals to whom the right is awarded when the semiconductor products have been made by a worker hired for said purpose or by virtue of a contract other than a contract of employment.

The right will expire **ten years** after the calendar year in which the commercial exploitation of the semiconductor product began.

▶ What rights are awarded by the protection of semiconductor products?

The rights awarded are the **exclusive rights for authorising or prohibiting** the reproduction of a protected semiconductor product and the right for the commercial exploitation or importation for commercial purposes of the topography or semiconductor product whose manufacture has used the topography.

▶ What limitations are there?

The exclusive right for authorising or prohibiting the reproduction **does not apply to reproductions for the purposes of** analysis, assessment or teaching of the concepts, procedures, systems or techniques included in the topography or the topography itself.

SUMMARY

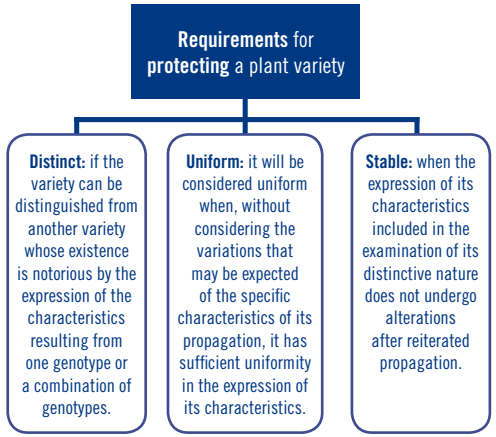
SEMICONDUCTOR PRODUCTS	
What are they?	A legal title that protects electronic integrated circuits and the diagrams or schematics used to produce them.
Who can file for a semiconductor product?	The creator. If the creator is a worker hired to develop the design, the legislation of each country must be taken into account.
Rights awarded	Exclusive right for the commercial exploitation, authorisation or prohibition of its reproduction and for its importation, etc.
Limitations	Designs that correspond exclusively to the function for which the item has been conceived cannot be registered.
Term	10 years.
How they are exercised	By sale or licence of the semiconductor product or its topography.

4.1.8 The Plant Variety

▶ What are plant varieties?

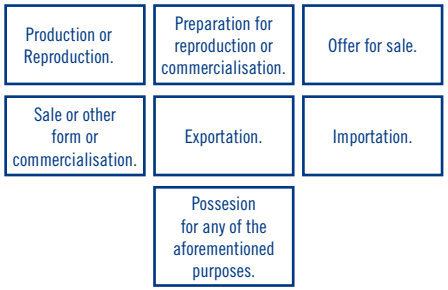
Registration of plant varieties as such awards a legal title that enables the protection of varieties of all botanical species and genera, including hybrids, which can be distinguished from any other set of plants by the expression of at least one of the characters resulting from a specific genotype or from a specific combination of genotypes that can be considered as a unit. The protected variety will be considered as new if the planned multiplication or reproduction material or a harvest product of the variety has not been sold or provided to third parties for the exploitation of the variety.

The following is a diagram of the requirements for the protection of plant varieties:



▶ What rights are awarded by a plant variety?

When a plant variety is registered and the legal title of said variety is obtained, the party obtaining the variety is given an exclusive right that requires his/her authorisation for any of the following acts carried out by a third party:



The authorisation of the party obtaining the variety is also required for the aforementioned acts in relation to the harvest product, including whole plants or parts of plants obtained through the unauthorised use of multiplication or reproduction material of the protected variety, unless the party obtaining the variety has been able to reasonably exercise his/her rights in relation to said reproduction or multiplication material; as well as authorisation for the acts carried out in relation to products manufactured directly from a harvest product of the protected variety.

>> **It is important to note that the plant variety title can be managed collectively, especially when, as a result of a collaboration project between SMEs in an Open Innovation environment, a new plant variety has been created.**

▶ What is the term of validity of the plant variety protection? What limitations are there?

After the plant variety has been awarded, Community protection continues **until the end of the twenty-fifth calendar year after said award, except for vines and arboreal species**: in both, the term of protection extends until the end of the thirtieth calendar year.

The authorisation of the party obtaining the variety is not required for the following acts:

- Those carried out as part of a private agreement for non-commercial purposes.
- Those carried out for experimental purposes.
- Those carried out for the creation of new varieties.

>> Plant varieties can be registered on a Community scale at the Community Plant Variety Office (CPVO), which is based in Angers (France).

(http://www.cpvo.europa.eu/).

SUMMARY

PLANT VARIETIES	
What is a plant variety?	A legar title protects varieties of all botanical species and genera that can be distinguished from any other set of plants by the expression of at least one of the characters resulting from a specific genotype or that can be considered as a unit.
Who can file for a plant variety?	The party obtaining the plant variety. If it has been obtained by a group of individuals, it will belong to the group.
Rights awarded	Exclusive right to authorise certain acts.
Limitations	No authorisation is necessary for experimental acts, to create new varieties or for those carried out under a private agreement for non-commercial purposes.
Term	25 years, except for vines and arboreal species, for which the term is 30 years.
How they are exercised	By sale or licence of the plant variety.

4.1.9 The Protected Geographical Indication

▶ What are protected graphical indications?

'Geographical indications' can be defined as "those that identify a product as an original from a specific territory when a certain quality, reputation or other feature of the product is basically the result of its geographical origin". The classic example is agricultural products whose qualities correspond to the place in which they are produced and which are influenced by specific local factors, such as climate and soil. However, **the use of geographical indications is not necessarily limited to agricultural products**, e.g. the geographical indication of 'Swiss' for the production of watches and clocks. However, it is true that at Community level, the regulation focuses mainly on agricultural products and foodstuffs.

>> It must be noted that winegrowing products are subject to specific regulations. On a Community scale, two categories of these products are distinguished: 'table wines with geographical indication' and 'quality wines produced in certain regions'.

▶ Are there different types of protected geographical indications?

Community legislation differentiates four types of protected geographical indications applicable to agricultural products and foodstuffs:

Types of protected geographical indications

Designation of origin
The name of a region, a specific place or country used to designate an agricultural product or foodstuff that originates from said region and whose quality or characteristics are the result of the geographical environment and which is produced, transformed and prepared in said geographical region.

Geographical indication
The name of a region, place or country used to designate an agricultural product or foodstuff that originates from said region and has a specific quality, reputation or other characteristic that is the result of said geographical origin and which is produced, transformed and prepared in said geographical region.

Traditional designations
They designate an agricultural product or foodstuff that originates from a specific region or place and meets the requirements in place for designations of origin and geographical indications.

Geographical designations
The requirements in place for registering this special type of designation focus on the raw materials of the products they identify. The production area must be delimited. There must also be specific conditions for the production of these raw materials and the corresponding control system.

>> The difference between designations of origin and geographical indications lies in the degree of association between the quality or characteristics of the product and the geographical environment from which it originates.

▶ Who is the owner of the protected graphical indications? What rights are awarded by the protection?

The peculiarity of geographical indications lies in the fact that they are **collective distinguishing signs**. This means that once the geographical indications have been registered, any economic player commercialising products that correspond to the criteria approved for the registration of the indication can use the signs. The system for protecting the geographical indications is structured on the basis of two measures:

Right to prohibit the following market practices:

- The commercial use of a designation registered for products not protected by the register.
- The use, imitation or suggestion of a Protected Geographical Designation.
- The use of false or misleading indications regarding the source, origin, nature or essential characteristics of the products.
- The use of other practices that may mislead consumers regarding the genuine origin of the product.

Prohibition of Geographical Designation **becoming generic**

- The main reason behind this measure lies in protecting said designations from becoming common terms over time.

SUMMARY

PROTECTED GEOGRAPHICAL INDICATIONS	
What are they?	Indications that identify a product as an original from a specific territory when a certain quality, reputation or other feature of the product is basically the result of its geographical origin.
Who can file for a geographical indication?	Any economic player that meets the criteria laid down for its registration.
Rights awarded	Exclusive rights of use and prohibition of the indication becoming generic.
Term	Indefinitive.

4.1.10 The Copyright

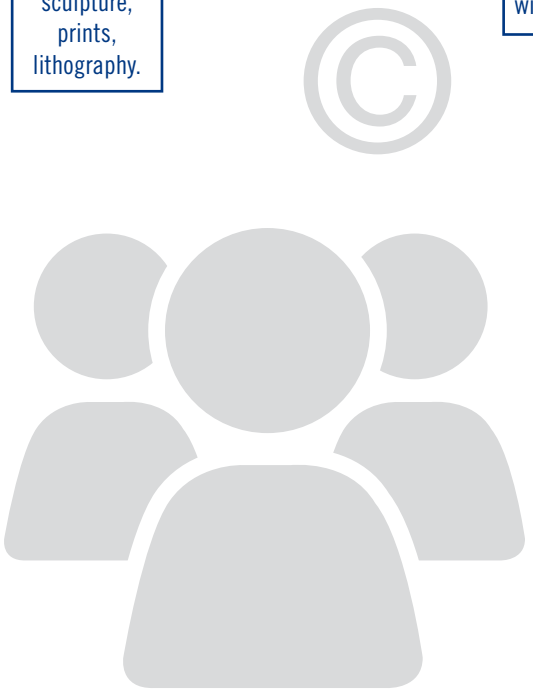
▶ What does copyright protect?

Traditionally, copyright protects **"works of art and literature"**, which comprises "all the productions in the fields of literature, science and art, regardless of the mode or form of expression". It is important to note that **copyright comes with the authorship of the work.** In other words, registration is not necessary for said protection to be obtained. However, registration is usually carried out so that the authorship of the work can be certified in a reliable manner.

The following table shows the different types of work that can be protected by copyright:

Examples of Protected Works

Books, brochures and other written texts.	Drawings, paintings, architecture, sculpture, prints, lithography.	Plays and musicals.	Films and photographs.	Musical compositions with or without lyrics.



▶ What happens with computer programs?

There has been very intense debate on **how computer programs should be protected**, but it has finally been determined that they should be included in what is understood as "production in the fields of literature, science and art" and, therefore, that **they should be protected by copyright**. However, certain computer programs can be **registered as patents (see section 4.1.1)** as long as they contain a **solution to a technical problem**.

On the **authorship of computer programs**, Community legislation provides the following:

- The author of the computer program will be considered to be the individual or group of individuals by whom it has been created (or, when so provided in the legislation of the member states, the body corporate).
- When the program is created jointly by several individuals, the exclusive rights will be common property.
- When a worker creates a computer program in accordance with his employer's instructions, the ownership of the computer program rights will correspond exclusively to the latter.

>> With respect to executable codes the SMEs must know that it could be a great difference between the present approach of the EU and the one of the USA.

▶ What rights are awarded with copyright?

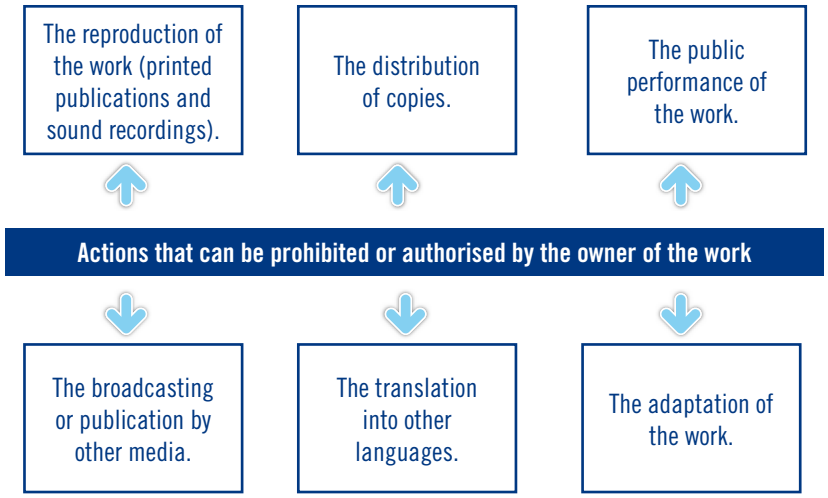
When a work has been registered through copyright, the owner may use his/her work as and when he/she decides and may prevent third parties from using it without his/her consent.

Copyright includes two types of right. Firstly, **economic rights**, which are those that allow the owner to obtain financial consideration for the use of his/her work by third parties. Secondly, **moral rights**, which award the author of the work the following rights:

1. The paternity right: this is the right to claim the paternity of the work.
2. The integrity right: this is the right to oppose whatsoever modification to the work that damages his/her honour or reputation.

It is important to note that moral rights and economic rights are **independent from each other**. Therefore, although the author of a work may convey the economic rights so that a specialised entity can exploit them, he/she may never convey his/her moral rights. Therefore, even in cases in which, for example, a publisher owns the economic rights, the moral rights of the work correspond exclusively to the author.

The following is a diagram of **the actions that may be prohibited or authorised by the owner of the work**. As mentioned earlier, these actions may be exercised by the owner of the **economic rights**, who does not necessarily have to be the person who created the work:



>> It is important to distinguish between the economic rights (financial consideration), which can be conveyed, and the moral rights (right for the author to be recognised and for the work not to be modified), which cannot be relinquished.

▶ Are there any limitations?

There are **two types of limitation**: those related to **certain categories of works** and those related to **certain acts of exploitation.** The first of the limitations may vary depending on the laws of the different countries (in some countries, works that are not in a tangible format cannot be protected, whereas, in other countries, the texts of laws and administrative resolutions cannot be protected).

The second limitation is related to **certain acts of exploitation** that can be carried out **without the owner's authorisation**. There are **two basic types of limitation in this category**:

1. On the one hand, the limitation to free use, i.e. the absence of any obligation to pay the owner of the rights for using his/her work without authorisation. In particular:
   - Quotations taken from protected works, as long as the source and name of the author are quoted and as long as the use is in keeping with honest practice.
   - The use of works for educational purposes.
   - The use of works for the purposes of news reporting.

2. On the other, the limitations related to the so-called **non-voluntary licences**. These licences imply that the protected works can be used under certain circumstances without the need for the owner's authorisation, even though compensation must be provided. One example of this type of limitation may be the possibility of photocopying parts of books at university.

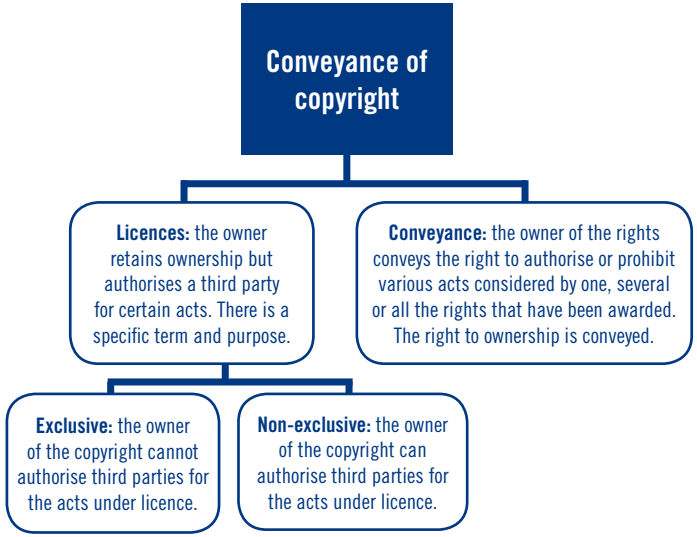
>> Copyright is not absolute, since it does not always allow the owner to prohibit all kinds of acts in which his/her work is used.

▶ What is the term of validity of copyright?

In general, the term of protection usually covers **the author's entire life and a minimum of 50 years after his/her death**. However, a recent tendency has been observed to extend said term to 70 years after the author's death. However, this depends on the country in which the works are to be protected. Consequently, the corresponding laws must be considered.

▶ How can these rights be exercised?

The authors of the works can sell the rights for the works to individuals or businesses that are in a better position for commercialising them in exchange for the corresponding financial consideration. The following is a diagram of the **different ways in which an author can convey the rights for his/her work**:



It is important to note that the award of licences can also take the form of **collective rights management**: in this way, the authors and other owners of rights can award exclusive licences to one single entity, which acts on their behalf, to manage everything related to copyright: the issue of authorisations, collecting and distributing the corresponding financial consideration, preventing and detecting violations of rights, etc.

Furthermore, the owner of the rights can choose to **relinquish the exercise of the rights partially or in full**. For example, he/she can publish material that is protected by copyright on the Internet and make it available to anyone wishing to use it or he/she can restrict his/her relinquishment to uses for non-commercial purposes. This is the case of the so-called 'copyleft licences' (section 4.2).

>> It is important to note that copyright can be managed collectively, especially when, as a result of a collaboration project between SMEs in an open innovation environment, a work that can be protected by copyright has been created.

SUMMARY

COPYRIGHT	
What is it?	Copyright comes with authorship and protects works of literature and art and computer programs.
Who can file for a copyright?	The author of the work.
Rights awarded	Economic rights and copyright.
Limitations	Limitations for certain categories of works (according to the laws of the country) and limitations for certain acts of exploitation.
Term	Lifetime of the author and 50/70 years, depending on the laws of each country.
How they are exercised	Exclusive or non-exclusive licences and conveyances.

Source: http://www.wipo.int/export/sites/www/freepublications/es/intproperty/909/wipo_pub_909.pdf

>> As already mentioned, it is important to know that all the means of protecting intangible assets that have been reviewed on the previous pages ('classic means of protection') are perfectly applicable in an Open Innovation environment. What has changed thanks to the Open Innovation model is the way in which those 'classic' means are managed and applied.

Nevertheless, new means of protection have been created to overcome limitations associated both to the nature of those 'classic' means and to the ways they are frequently managed (e.g., aimed at restricting and blocking competitors and not at the better utilization and evolution of the protected ideas, or offering ground for an intellectual property based 'Cold War' between large companies, disrupted to national registries and procedures).

Let's review those new means of protection…

4.2 New Means of Protection

Copyleft Licences

▶ What are copyleft licences?

The term 'copyleft' started to be used in computing (although it has also been used in the fields of literature and art for some time now) in reference to the legal protection awarded by certain licences that guarantee a number of rights for the author but, at the same time, allow the free use and distribution of the works.

This term started to be used in the 1970s **in opposition to the term 'copyright'** to indicate the freedom of distribution of certain computer programs awarded by their creators. A few years later, it became a key concept of the so-called freeware, which Richard Stallman included in the General Public Licence ('GPL') of his GNU (Gnu is Not Unix) in 1984. The main aim of this licence is to prevent the protected material from being legally subject to copyright.

Copyleft ideas are also being suggested for application to patents and utility models, etc. However, this initiative does not seem to have prospered, perhaps because patents are relatively expensive to obtain whereas copyright is free.

>> **There are also new ways of protecting creations, some of which are very modern and innovative and closer to the spirit of Open Innovation. Although there has been notable development in the field of copyright, they have not yet been used in the world of patents, utility models and industrial designs, etc., perhaps because of the cost of said registration.**

Types of Copyleft Licences

Creative Commons

Creative Commons is a non-profit organisation based on the idea of certain individuals not wanting to exercise all the intellectual property rights awarded to them by law after realising that absolute copyright does not help them achieve a broad distribution of their work.

This organisation seeks to provide tools to solve a number of problems: accordingly, it seeks to create a set of public licences that are **strong** enough to resist the examination of a court, **simple** enough to be used by individuals who do not specialise in legal matters and **sophisticated** enough to be identified by various web applications.

▶ What types of licences are there?

There are a total number of six Creative Commons licences that provide certain rights to third parties under certain conditions. These licences arise from the combination of four conditions:

Attribution: in any exploitation of the work authorised by the licence, the authorship must be acknowledged.

Non-commercial: the exploitation of the work is limited to non-commercial uses.

No Derivate Works: the authorisation for the exploitation of the work does not include transformation to create a derivate work.

Share alike: the authorised exploitation includes the creation of derivate works as long as they maintain the same licence when they are published.

The combination of these four conditions leads to the aforementioned six licences offered by Creative Commons:

Attribution (by): any exploitation of the work is allowed, including commercial use, together with the creation of derivate works. Distribution is also allowed without restriction.

Attribution - Non-commercial (by-nc): the generation of derivate works is allowed as long as there is no commercial use. The original work cannot be used for commercial purposes.

Attribution - Non-commercial - Share Alike (by-nc-sa): The commercial use of the original work or any possible derivate works is not allowed. Distribution must be carried out under a licence that is the same as the licence for the original work.

Attribution - Non-commercial - No Derivate Work (by-nc-nd): The commercial use of the original work or the generation of derivate works is not allowed.

Attribution - Share Alike (by-sa): The commercial use of the original work and any possible derivate works is allowed. Distribution must be carried out under a licence that is the same as the licence for the original work.

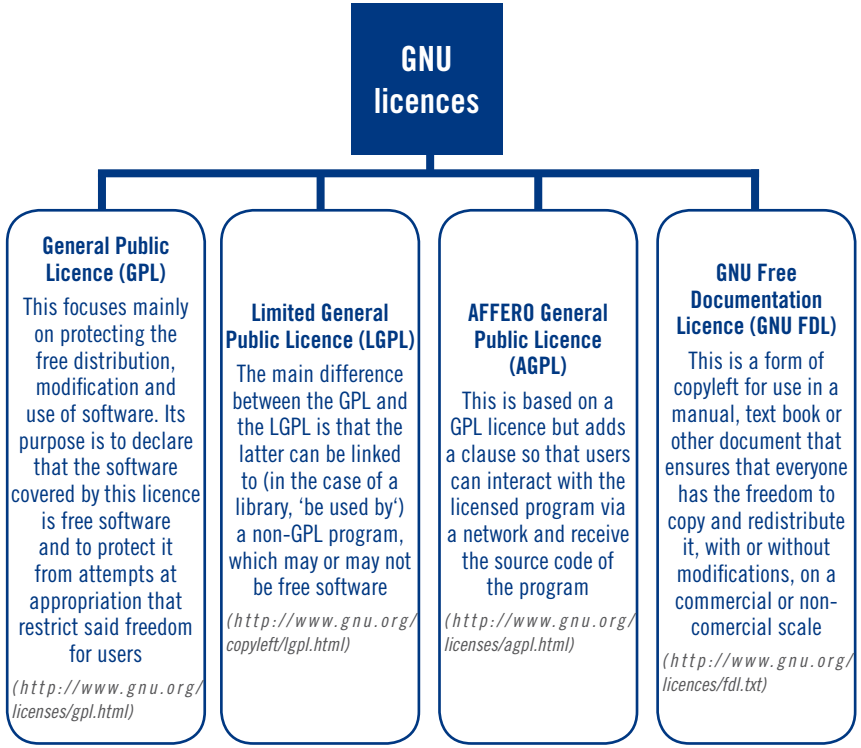
Attribution - No Derivate Works (by-nd): The commercial use of the work is allowed but the generation of derivate works is prohibited.

After the most appropriate licence for the work that is to be legally protected has been chosen, it must be applied for at *http://creativecommons.org/choose/*.

GPL

The GPL (General Public Licence) is a **licence** created by the Free Software Foundation as part of the GNU Project (*http://www.gnu.org/home.en.html*) and focuses mainly on protecting the free distribution, modification and use of software as well as its protection from attempts at appropriation that restrict said freedoms for users.

The following diagram shows the **different licences offered by the GNU**, together with its characteristics:



Coloriuris

This licensing system is for **content creators (writers, musicians, audio-visual experts and photographers)** who use the web for the publication or dissemination of their work and/or for making their work available and who wish to convey the economic rights of their creations both on and off the network. It is a **mixed system of self-management and conveyance of copyright**.

There are various options for using the Coloriuris licence agreements as preferred by the owners of the rights. In this case, the type of colour and its position provide information on the copyright policy applied by the owner.

The following is a **table of equivalences between the colours and the rights** awarded by the various Coloriuris licences (for more information, log on to the website at: *http://www.coloriuris.net/en:index*):

ColorIURIS	This allows for reproduction, distribution and publication for purposes that include or exclude profit. It allows for commercial and non-commercial derivate works.
ColorIURIS	This allows for reproduction, distribution and publication as long as it is non-profit. It does not allow for derivate works.
ColorIURIS	This allows for reproduction, distribution and publication as long as it is non-profit. It allows for non-comercial derivate works as long as the derivate work is conveyed under the same conditions as those in which it was received (chain conveyance).
ColorIURIS	This allows for reproduction, distribution and publication for purposes that include or exclude profit. It allows for commercial and non-commercial derivate works as long as the derivate works is conveyed under the same conditions as those in which it was received (chain conveyance).
ColorIURIS	This allows for reproduction, distribution and publication as long as it is non-profit. It allows for non-commercial derivate works.
ColorIURIS	This allows for reproduction, distribution and publication as long as it is non-profit. It allows for commercial and non-commercial derivate works as long as the derivate work is conveyed under the same conditions as those in which it was received (chain convenyance).
ColorIURIS	This allows for reproduction, distribution and publication as long as it is non-profit. It allows for commercial and non-commercial derivate works.
ColorIURIS	This allows for reproduction, distribution and publication for purposes that include or exclude profit. It allows for non-commercial derivate works.
ColorIURIS	This allows for reproduction, distribution and publication for purposes that include or exclude profit. It allows for non-commercial derivate as long as the derivate work is conveyed under the same conditions as those in which it was received (chain conveyance).
ColorIURIS	This allows for reproduction, distribution and publication for purposes that include or exclude profit. It does not allow for derivate works.
ColorIURIS	ColorIURIS Original Informative Text on copyright as provided in Law. It applies in the absence of more permissive uses decided by the author ("copyright").

Aire Incondicional Licence

This **licence** was specially created by the lawyer Abel Garriga for the 'Aire Incondicional' exhibition. It was drawn up in Spanish and based on Spanish laws, aware of the fact that there are hardly any initiatives of this type in languages other than English.

The aim of the licence is to effectively regulate the conditions under which the work created by an author can be freely reproduced, distributed, published and transformed. The licence does not seek to deny copyright as conceived at the present time, but rather is based on said regulation: that which awards the ownership of the work to the author merely by virtue of its creation. Accordingly, the author exercises his/her independence and free will to choose the way in which he/she allows the use of his/her creation.

For more information, log on to:
http://www.platoniq.net/aireincodicional_licencia.html

>> This type of licence is used only for works that can be covered by copyright, since their registration is free. To date, it has not been used with other means of protection for intellectual property since, to register and renew said protection, a number of fees have to be paid. However, this type of licence is ideal for distributing works which, if in keeping with the terms of copyright, would have a more restricted distribution.

Free Art Licence

This licence appeared in the 'CopyLeft Attitude' event that took place in Paris at the beginning of the year 2000. The basis of the Free Art Licence is that knowledge and creation are resources that should remain free to continue being what they are: knowledge and creation.

This licence authorises the free copying, publication and transformation of the work that is protected, but always in respect for copyright. **This licence is applied to electronic works and others**. Accordingly, it can protect a painting, novel, sculpture, website, etc. In short, it can protect all creations claimed in a specific field of art. For more information, log on to *http://artlibre.org/licence/lal/en*

Source: http://fundacioncopyleft.org/en

>> This type of licence corresponds 100% to projects that can be developed in an Open Innovation environment since it allows the parties involved to work in full freedom to develop new works and manage the results together, as long as they observe the terms and conditions of the corresponding licences.

Traditionally, intellectual property protection had a very strong focus on a singular inventor/author: this person was responsible for the creation of the bright idea and had the chance to decide about its future (e.g. restrict by copyright –section 4.1.10- or quite the opposite, share by GNU –section 4.2-). But in the age of crowdsourcing, or collaborative creation (Wikipedia or such) it is often very difficult to find any individual inventor. Still, the interests of those participating have to be represented by reliable protection measures.

In case of the mentioned Wikipedia the solution is to build a 'product' that is openly accessible to everyone free of charge, a resulting 'product' that is so huge and intricate that it makes it indeed worth to participate for many authors/editors without additional demands. But it is not 'traditional business logic'. Enterprises aim at creation / invention because of the hope that they efforts will return for them at the end (and not necessarily for the rest of the world). And collaborative work (by making it hard to backtrack and measure each contribution and its relevance to reaching the ultimate goals) can create uncomfortable situations while sharing the results between participants.

This is something that can be observed on a day-to-day basis in competence centers collaborations involving multiple enterprises: that initiating collaborations in the so called 'pre-competitive' stage can be fairly easy. A lot of playfield is open for experimenting, so that results could turn out to be interesting for anyone sometime in the future. But collaborations in the competitive stage, where research has direct market consequences, are a rather tough nut. There you really have to keep a clear head, and use even more elaborate Non-Disclosure-Agreements and contracts to make sure to protect your positions...

Anyway, in the new field of collaboration yet each contributor aims at protecting individual success, a challenge that is mostly relevant while considering Open Innovation scenarios.

5. ADDITIONAL CONCLUSIONS

Having looked in this practical guide at the legal issues associated with intellectual property, and having analysed all the means of protection that could be used by an SME to protect its intangible assets, each SME should now analyse its own specific situation in order to adopt a strategy that allows it to carry out commercial activities in an Open Innovation environment.

Accordingly, the SME should first of all analyse the intangible assets it has and then adopt the most appropriate means of protection either by registering the assets or creating a confidential information protocol. To enable this task, the following is a brief self-assessment table:

After analysing the particular situation of its intangible assets and their protection status, the SME should consider **strategies for managing said means** with regard to collaboration with other players. Consequently, the next two parts of the practical guide for SME on legal issues related to Open Innovation (which will look at **commercial, exploitation and business-related issues** in Open Innovation environments and consider **contract guidelines** for said environments, respectively) may be useful for negotiations with other players during collaboration projects with them and also after the completion thereof.

Intangible Assets	YES	NO	DON'T KNOWN	WHICH	PROTECTED? HOW?	LOCATION
Inventions developed by the organisation						
Designs developed by the organisation						
Trademark and goodwill						
Trade name						
Own Databases						
Software developed by the company						
Knowledge and know-how						
Manuals and documents related to R&D						
List of Customers						
Product certificates						

Source: http://www.oepm.es/export/sites/oepm/comun/documentos_relacionados/Publicaciones/Folletos/Guia_Buenas_practicas.pdf

6. REFERENCES

Books

- "Open Business models", by Henry Chesbrough.
- "Open Innovation: The New Imperative for Creating And Profiting from Technology", by Henry Chesbrough
- "El derecho de autor en la Unión Europea", by Antonio Gómez Rosendo del Toro.
- "El secreto empresarial: un estudio del artículo 13 de la ley de competencia desleal", by Aurea Suñol Lucea.
- "El secreto de empresa: Protección penal y retos que plantea antes las nuevas tecnologías", by Esther Morón Lerma.
- "Derecho de la competencia y Propiedad Industrial en la Unión Europea", by Alberto Bercovitz Rodríguez-Cano and Alicia Arroyo Aparicio.
- "Tratado de derecho industrial: propiedad industrial, propiedad intelectual, derecho de la competencia económica, disciplina de la competencia desleal", by Hermenegildo Baylos Corroza and María Baylos Morales.
- "Apuntes de derecho mercantil: derecho mercantil, derecho de la competencia y propiedad industrial", by Alberto Bercovitz Rodríguez-Cano.

Related Links

- EU Website: *http://europa.eu/*
- World Intellectual Property Organization: *http://www.wipo.int/portal/index.html.en*
- Office for Harmonization in the Internal Market: *http://oami.europa.eu/ows/rw/pages/RCD/legalReferences/regulations.en.do*
- Spanish Patents and Trade Marks Office: *http://www.oepm.es/en/index.html*
- IPR Helpdesk: *http://www.ipr-helpdesk.org/*
- Open Innovation.eu: *http://www.openinnovation.eu/index.php*
- Innovation Excellence: *http://www.innovationexcellence.com/*
- Copyleft Foundation: *http://fundacioncopyleft.org/en*
- Creative Commons: *http://creativecommons.org/*
- GNU: *http://www.gnu.org/home.en.html*
- Coloriuris: *http://www.coloriuris.net/en:index*
- 'Open Innovation' Presentation of the University of Mondragón: *http://www.slideshare.net/alizartza/international-executive-master-program-in-intrapreneurship-and-open-innovation*

7. OPINET PROJECT PARTNERS

Centro Europeo de Empresas e Innovación de Navarra, S.L. (CEIN, S.L.), Navarra
Polígono Industrial Mocholí.
31110 Noáin
España
www.navarrainnova.com

Virtual Dimension Center VDC Fellbach, Stuttgart Region
Auberlen Str. 13
70736 Fellbach
Germany
www.vdc-fellbach.de

INNONET, Centre of Innovation and Technology, West Transdanubia
Gesztenyefa Str. 4
9027 Gyoer
Hungary
www.innonet.hu

This guide was created within the European OPINET sub-project OPINET (Open Innovation Networking Platform for SMES) within the European EURIS Program.

Firstly, OPINET pretends to help SMEs to jump over existing open Innovation barriers by providing them with specific knowledge about the various opportunities of opening up their innovation processes and also by promoting specific activities on open innovation. Secondly, OPINET envisages the creation of a network of Open Innovation Contact Points aiming at promoting and facilitating open innovation strategies in SMEs.

EURIS PROGRAMME

European Collaborative and Open Regional Innovation Strategies–EURIS is an inter-regional cooperation programme which aims to help regions to embrace the "Open Innovation" paradigm since it leads, in a globalised knowledge economy, to open and accelerate cooperation rates between Innovation Stakeholders. EURIS is supported by the INTERREG IV C Programme financed by the European Union's Regional Development Fund (ERDF), helping Regions of Europe to share experience and good practice in the areas of innovation and the knowledge economy.

www.euris-programme.eu

INTERREG IVC

The Interregional Cooperation Programme INTERREG IVC, financed by the European Union's Regional Development Fund, helps Regions of Europe work together to share experience and good practice in the areas of innovation, the knowledge economy, the environment and risk prevention. EUR 302 million is available for project funding. But more than that, a wealth of knowledge and potential solutions are also on hand for regional policy-makers.

www.interreg4c.eu

Co-financed by ERDF under INTERREG IVC programme of the European Union.