

Introduction to IP Law

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Content

1. What is Intellectual Property?
2. Elements of IP
 - *Music and IP*
3. Characteristics of IP Rights
4. Sources of IP Law
5. Authorship and ownership
6. Economic and Moral rights

THE APPLE IPHONE: WHAT IP RIGHTS MIGHT BE HERE?

THE APPLE IPHONE: WHAT IP RIGHTS MIGHT BE HERE?



Trademarks:
apple TM

Copyright:
on software and app

Patents:
*On fingerprint scanner,
touch screen displays etc.*

The Concept of Intellectual Property

Why is it difficult to define?

- ❖ Encompass a big group of different substantive rights that have emerged at a different time for different purposes;
- ❖ One of the most quickly developing legal areas (new objects emerge);
- ❖ Different states protect different intellectual property rights;
- ❖ Different legal protection mechanisms for some IP rights (e. g. right to the image can be protected either as intellectual property right or by the general norms of civil law).

Intellectual:

- ❖ Subject-matter - intangible goods (e. g. invention, work, commercial sign).

Property:

- ❖ Most intellectual property rights (IPRs) are property-like (absolute) rights in intangible subject-matter.
- ❖ The nature of rights to intellectual property objects and rights to tangible property are analogous by nature: both types of rights are absolute, i. e. exclusive towards all the third parties.

Justification of existence of IP laws

1. Natural rights theory

creators have a natural right to the products of their intellect, similar to the rights associated with physical property, as their creations stem from their labor and ingenuity

2. Economic theory

giving creators exclusive rights to their work encourages them to invent and create, which helps the economy grow and benefits everyone

3. Deterrence theory

strong protection of IP rights discourages infringement and theft, ensuring that creators are less likely to be harmed by others copying their work.

Justification of existence of IP laws

4. Reward theory

granting exclusive rights to creators provides them with financial rewards, encouraging more innovation and creativity by making it worthwhile for them to invest time and resources in their work.

5. Democratic justification

laws reflect the values of a democratic society by balancing the rights of creators with the public's access to knowledge, promoting fairness and encouraging participation in cultural and technological progress.

Definition of Industrial Property Law

- ❖ **Industrial property law** - one of the two branches of intellectual property law, that regulates the rights to certain immaterial creations in the world of industry.

Protect **objects** that are:

- ❖ the result of creative intellectual effort (such as inventions, designs) or
- ❖ serve to distinguish products and services on the market (such as trade marks).

Classification of IP Objects

Copyright	Industrial property
Rights to literary, scientific and artistic works (copyright in a narrow sense)	<ul style="list-style-type: none">• Trade marks• Company (trade) names• Industrial design
Performers' rights to the performance, the rights of phonogram producers to phonograms, the rights of broadcasters to broadcasting, the right of the audiovisual record producers to the first audiovisual record (related rights)	<ul style="list-style-type: none">• Patents (legal protection of inventions) Semiconductors topographies• Trade secrets, know how• Geographical indications• Plant varieties• Domain names• Protection against unfair competition
Rights of databases' producers (<i>sui generis</i> rights)	

Music copyright

Copyright is the cornerstone of the music industry. It protects the originality of songwriters (recognized as authors in copyright laws) in creating songs and ensuring that they are able to monetize their intellectual creations in the vibrant creative industries, including live entertainment, the recording industry, the audiovisual sector, video games, etc. It is the starting point of the music value chain.

Authors need to understand how they can manage their intellectual creations and their respective rights in the music marketplace in order to make the best decisions for them as creators.

Music publishing rights

Authors are the starting point of the music industry. They might reach the market directly or through music publishers. Publishers represent songwriters by authorizing the recording of the song, licensing to streaming platforms, and even to audiovisual productions while also fostering the career development of artists. A music publisher, acting on behalf of authors, ensures that the use of the song is done with the respective remuneration and credit, ensuring that creators are rewarded for their creativity.

- Rights for a song recording
- Rights for musical work copies
- Rights for music performances
- Rights for use of music in movies and video games
- Rights for use of music in TV programs and the radio
- Rights for printing lyrics or music notes

Who earns music royalties?

Royalties are payments made to rights holders for the use of their music. This includes creators (songwriters, musicians, and performers), publishers in representation of authors, record labels (phonogram producers), and even someone who obtained or licensed the rights over songs and/or recordings, such as a company that bought an artist's music catalog. Royalties are compensation payments for the exploitation of the music and/or recording.

This could be from a synchronization license granted by a collective management organization.

Trademarks and music

Musicians and bands besides owning copyright over their songs, musicians and music bands might also protect their names and logos as trademarks. The protection through trademarks enables artists to engage with fans through memorabilia and merchandising. As the band expand its fanbase, trademarks will ensure exclusivity over the use of their names and logos. For that purpose, artists and bands should ensure they register their trademarks in order to ensure protection.

Patents for musical innovations

Patents might not come to mind when we talk about music, but inventions play a significant role in different areas of the music industry. For a start, they revolutionized how we access and listen to music, from vinyl players to inventions allowing us to easily access music on mobile phones.

More technical inventions such as music mixing technologies to improve musical instruments such as guitars and patents paved the way into technological advancements for the benefit of musicians and fans around the world.

Peculiarities of IPR'S



Non-rivalry: many people can use them at the same time – different protection mechanisms and legal remedies necessary;



In case of IPR, not only material property rights but also personal non-property rights are often granted;



IPR's are characterized by territoriality;



IPR's are subject to restrictions, different from those of rights to tangible property;

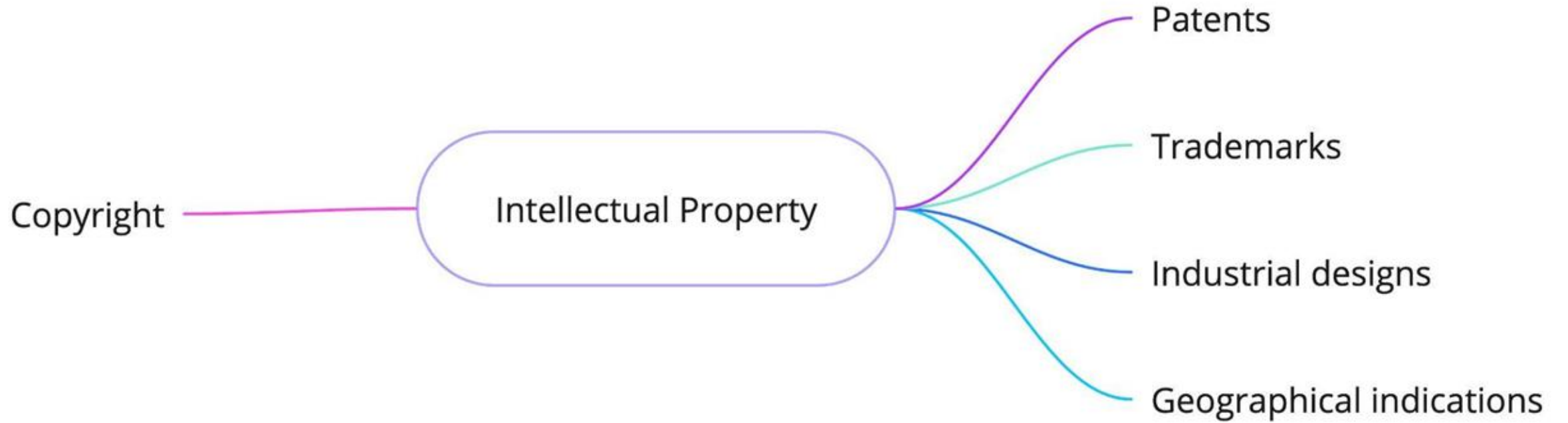


IPR's are usually of a temporary nature;



In some jurisdictions even today as a synonym for „intellectual property“ the term „the rights to intangible assets“ is used (e. g. Swedish „Immaterialrätt“ or German „Immaterialgüterrecht“).

Elements of IP laws



Elements of IP laws

Copyright law:

- automatic protection = NO formalities
- exterritorial
- limited but long period of protection
- may be transferred only in full (as a rule)
- contains non-transferable group of rights (moral rights)



Patent law:

- requires registration
- territorial effect, but novelty is checked worldwide
- limited time to claim protection

Elements of IP laws

Trademark law:

- requires registration
- potentially unlimited time of protection
- distinguishes the goods or services of one enterprise from those of others
- may be expressed in various forms



Design law:

- basically requires registration, but may protect unregistered assets
- limited time of protection
- difficult to enforce

Elements of IP laws



Geographical indications:

- requires registration
- unlimited time of protection (as long as meet the criteria)
- points to quality and reputation of the goods caused by its origin from particular territory
- designations of origin (DO) = a specific type of GI that indicates a product is produced, processed, and prepared in a specific geographic area, using recognized know-how

Scope of protection

Copyright	<p>literary, musical, dramatic, artistic, audiovisual works, software, architectural works, databases (=original works of creative character)</p> <p><i>E.g.: "War and Peace" by Lev Tolstoy, "Yesterday" by Paul McCartney, Microsoft Word, film "Interstellar"</i></p>
Patent	<p>inventions, processes and methods, software algorithms (?) (=solves technical problem)</p>
Trademarks	<p>brands, logos, names of the products, other product identifiers (=distinguishes the goods or services of one enterprise from those of others)</p>
Industrial design	<p>aesthetic features, including shape, color, texture, and materials (=visual appearance of the products)</p> <p><i>E.g.: clothes design, packaging of the products, furniture design</i></p>
Geographical indications	<p>mentions of a specific geographical origin which causes particular qualities or a reputation of the products</p> <p><i>E.g.: Champagne, Parmesan, Tequila</i></p>

Sources of Intellectual Property Law

- ❖ Conventions for protection of foreign IP objects (Berne Convention, Paris Convention, TRIPS Agreement, etc.)
- ❖ Treaties regulating international IP objects' registration (Madrid Agreement, Patent Cooperation Treaty, etc.)
- ❖ Treaties providing international classifications of IP objects (Nice, Locarno Agreements, etc.)

Legal basis

Paris Convention for the Protection of Industrial Property (1883)

- ❑ trademarks, patents, industrial designs
- ❑ right of priority
- ❑ national treatment

Berne Convention for the Protection of Literary and Artistic Works (1886)

- ❑ covers copyrighted works
- ❑ automatic protection
- ❑ recognition of moral rights
- ❑ national treatment

Madrid Agreement and Protocol (1891, 1989)

- ❑ centralized system for international trademark registration
- ❑ single application for trademark protection in multiple jurisdictions

Patent Cooperation Treaty (PCT) (1970)

- ❑ single application for patent protection in multiple jurisdictions
- ❑ provides time to decide in which countries to pursue patent protection

Legal basis

Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (1994)

- ❑ patents, copyrights, trademarks, geographical indications
- ❑ dispute resolution mechanisms
- ❑ national treatment and most-favored-nation treatment principles

WIPO Performances and Phonograms Treaty (WPPT) (1996)

- ❑ similar to the WIPO Copyright Treaty but focused on performers' and producers' rights
- ❑ rights related to sound recordings

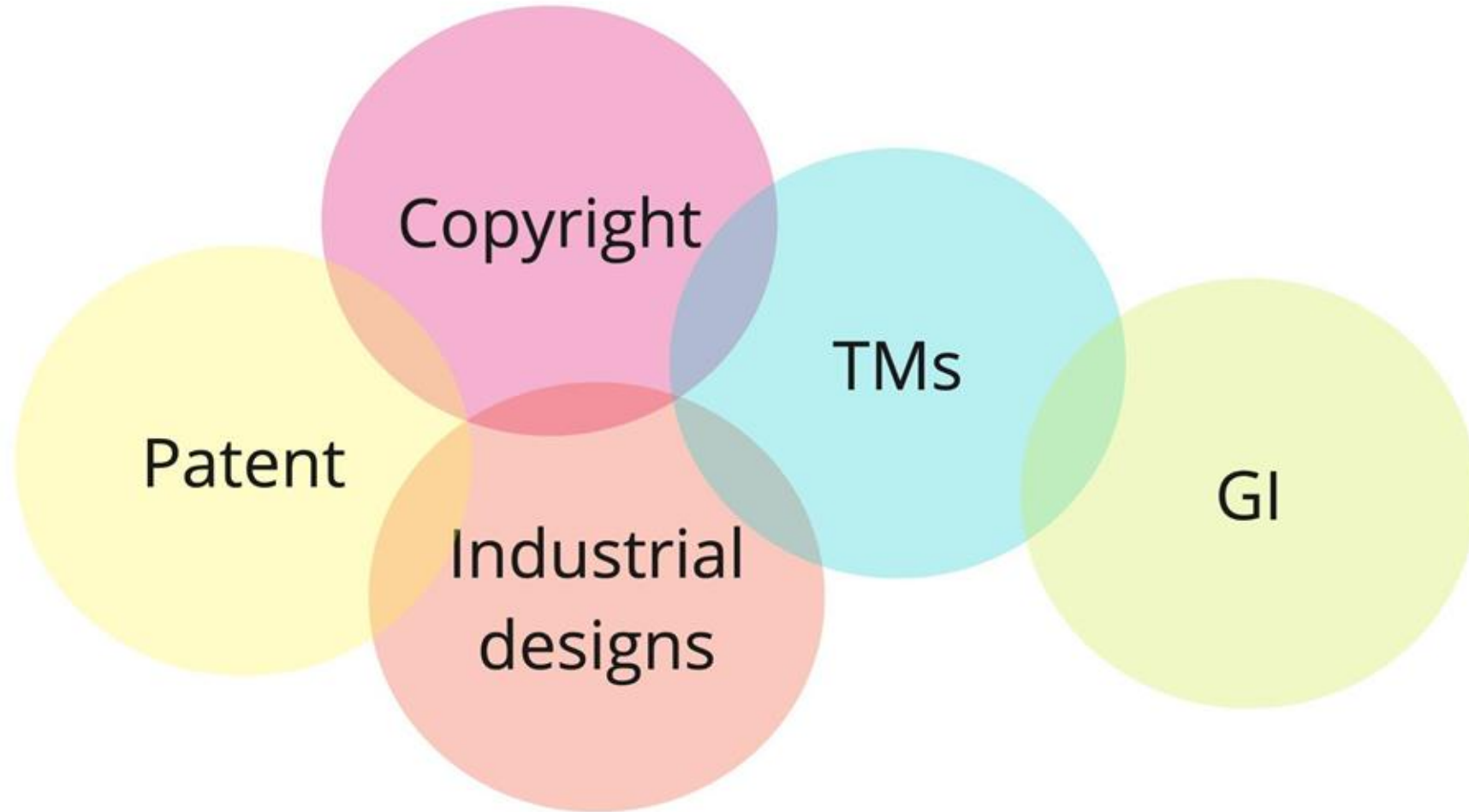
WIPO Copyright Treaty (1996)

- ❑ protects the rights of authors in digital formats
- ❑ deals with online copyright infringement

Hague Agreement Concerning the International Registration of Industrial Designs (1925)

- ❑ single application for design protection in multiple jurisdictions
- ❑ centralized system for international design registration

IP overlaps



Classification of IP Objects

- ❖ Unregistered rights: copyright and related rights, but also some industrial property rights (e. g. trade names, well known trademarks, unregistered community design)
- ❖ Registered rights: most industrial property rights (e. g. patent, plant variety right, trademark, design)
- ❖ Protected as property-like (absolute) rights (e. g. trademark, design, patent)
- ❖ Protection based on the concept of tort (e. g. trade secrets, unregistered commercial signs)

Principles of Industrial Property Law

- ❖ **Territoriality**: protection afforded by a certain country's industrial property laws exists only within the territory of that country, not beyond its borders.
- ❖ Allows for differences in industrial property laws among different countries.

Reasons of territoriality: sovereignty of states, IPRs as tools of economic policy, no central IP rights registrar.

Problems:

- Difference of laws may result in lower standards and discrimination based on nationality.
- Administrative inconvenience: need for multiple applications.
- Territorially restricted rights might clash on the internet.

Copyright subject matter

❖ idea/expression dichotomy

- Idea, concepts, methods are not protected, BUT expressions of them are protected.
- Expression requires therefore something more than a raw idea. As an expression it should have a kind of an outer form, at least perceivable by third parties.

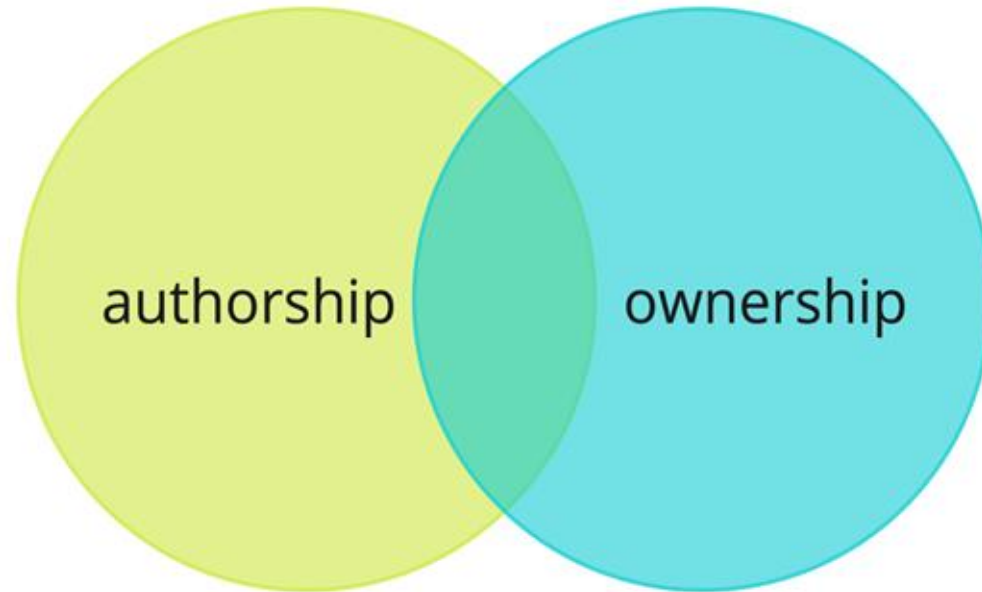
❖ fixation

- No particular 'form' required, it must however be able to be perceived objectively by a third party.

❖ originality requirement

- UK/USA approach: original works (=not copied)
- European approach: refers to notion of 'creation'

Authorship and ownership



miro

- ❖ **Author** is the creator of the work.
- ❖ **Owner** is the owner of the economic rights.

Authorship and ownership

Author is always a human. (= common approach)

The author is the one who contributes a particular amount of creativity in the work / whose identity is expressed in the work.

Joint contribution results in joint authorship:

- ❖ the nature of collaboration
- ❖ the properties of the contribution made
- ❖ the degree to which different contributions are integrated

Authorship and ownership

Owner can be both a human and an entity.

Owner is the one who can use / decide how to use the copyrighted work.

Rules on establishing the ownership can be different depending on the type of the owner (e.g. employer).

Problems with AI in IP

Use of third party IP in:

(a) AI training

- is it allowed to use third party IP for AI training?
- if not, who is responsible for the violation of third party IP rights?

(b) generation of the AI works

- is it allowed to use third party IP for generation of works for commercial / non-commercial purposes?
- if not, who is responsible for the violation of third party IP rights?

Problems with AI in IP

- text and data mining for scientific research (e.g. DSM directive)
- non-commercial purposes (education, research)
- technological process (e.g. InfoSoc directive)
- works not covered by the copyright
- fair use

Responsible is the one who uses the third party IP (AI-user / AI-owner).

Regulatory approaches

US:

- authorship is one of the requirements for work to be protected by copyright (US Copyright law)
- author is a human (opinion of the US Copyright Office)

=> AI cannot be considered as an author; AI-generated works cannot be protected by copyright.

Regulatory approaches

EU:

- author is a human (Software Directive, Database Directive)
- author's own intellectual creation (Software Directive)

=> AI cannot be considered as an author; AI-generated works cannot be protected by copyright.

EU AI Act does not provide protection for "intellectual property" created by AI.

Regulatory approaches

UK:

- generally author is a human (UK Copyright, Designs and Patent Act)
- in the case of ... work which is computer-generated, the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken (UK Copyright, Designs and Patent Act)

=> AI cannot be considered as an author; AI-generated works are protected by copyright.

Authorship and ownership

moral rights

author

economic
rights

author
owner

Moral rights

Moral rights protect the non-economic “moral” interest of the author (a bond arises between the author and his work).

Basic characteristics:

- inalienable and cannot be waived;
- independent of the economic rights;
- maintained after the death of the author;
- not inheritable, but after the death of an author his or her heirs may exercise these rights.

Right to claim authorship (right to attribution); right to object to certain modifications and other derogatory actions.

Economic rights

InfoSoc Directive (2001/29): is not a general directive for copyright law, although in the case law it is the most referred copyright directive. There are no general provisions on copyright law in any directive in the EU (the EU legislative has no competence to do so).

Economic rights:

- **reproduction rights:** any activity that results in multiplication of work;
- **communication to the public:** any activity that allows the public get acquainted with the content of work;
- **distribution rights:** any legal action that constitutes a transfer of property of a work exemplar;
- **rental rights:** any other legal action that is not transfer of property.

Limitations and exceptions

- used to achieve a balance between the interests of the author and those of society as a whole;
- allow a work to be used without the consent of the author;
- has two forms:
 - ❖ **permitted use**, when work can be used without the author's consent and such use does not have to be paid for;
 - ❖ “**compulsory license**”, when work can be used without the author's consent, subject to the payment of remuneration to the copyright owner.

Types of agreements

Assignments (transfer agreements)

The author / owner transfers his/her rights and a third party acquires them.

Licenses

License agreements authorize the use of a work in certain ways by a third party without transferring the copyright.

Two types:

- exclusive (no one can use except the licensee)
- non-exclusive (others can also use)

(?) Sole license - licensee and the licensor can use

Types of agreements

Assignments (transfer agreements) checklist:

- subject matter
- assigned in whole (?)
- moment of transfer
- price
- form of the agreement

Licenses

- subject matter
- scope of rights
- territory
- time
- price
- form of the agreement