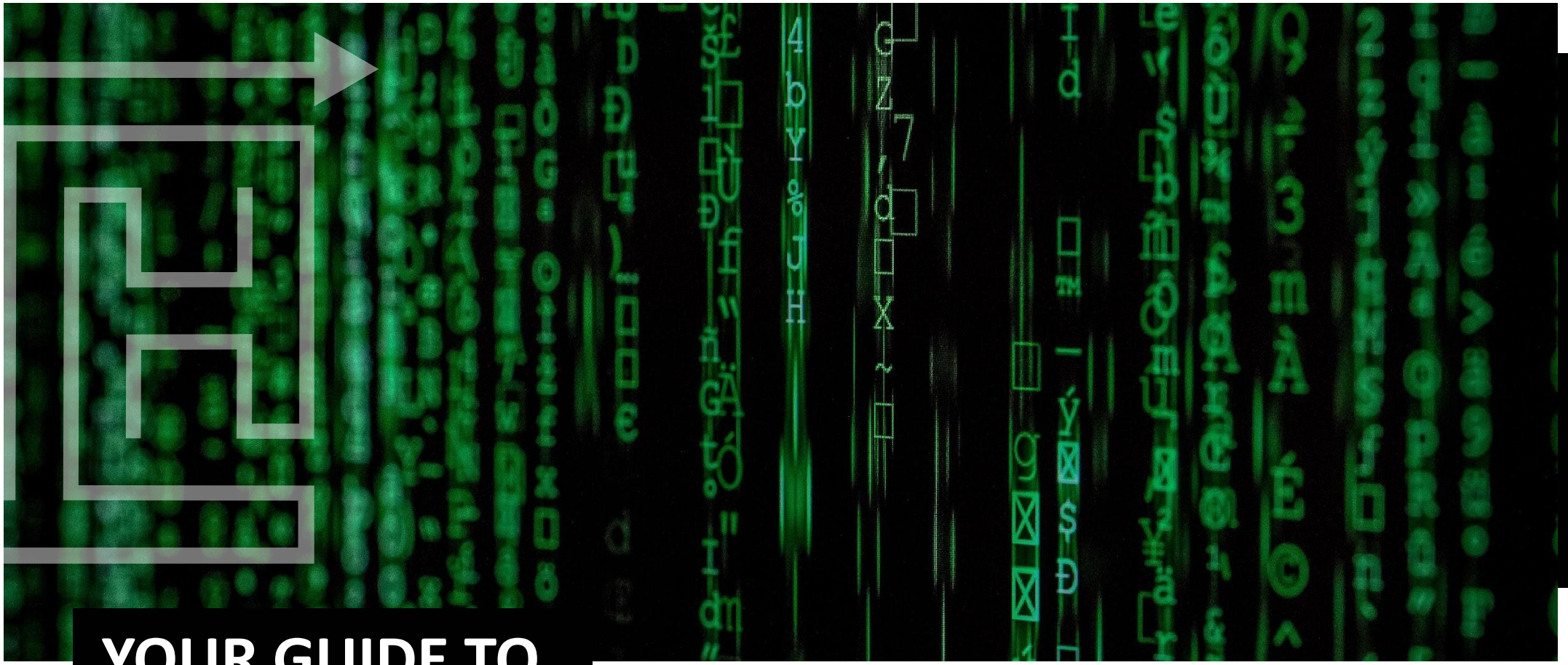

CULTURAL HERITAGE

YOUR GUIDE TO

INTELLECTUAL PROPERTY

Giovanna Berera – Erica Brandolino – Samuela Franceschini

Co-funded by the Erasmus+ Programme of the European Union

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CULTURAL HERITAGE 2.0

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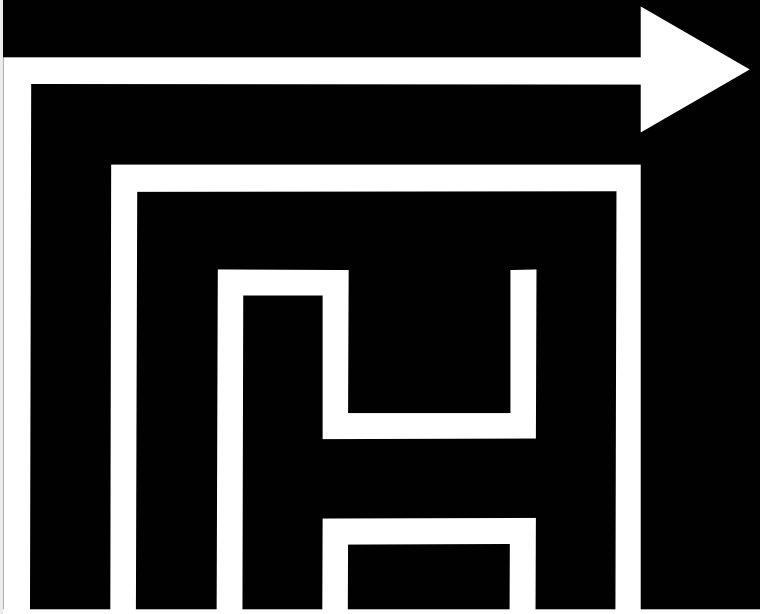
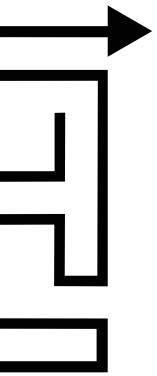


INTRODUCTION

INTELLECTUAL PROPERTY

The results of creative efforts from the human intellect (inventions, original creative or artistic forms, know how, etc.) have intangible nature and are recognised by the legal system as intellectual property (IP). Different types of IP:

INDUSTRIAL PROPERTY	COPYRIGHT	«SOFT IP»
Patents	Literary and artistic work	Trade secrets
Trade marks	Related rights	Know-how
Utility models	Databases	Confidential information
Registered design	Software	



THE IMPORTANCE OF INTELLECTUAL PROPERTY

Trade marks
- Apple
- iPhone
- Native app icons
- …….

Design
- Form of overall smartphone
- Layout and shape of the button
- Camera arrangement and shape
- …….

Patents
- Touchscreen technology
- Interference reduction
- …….

Trade secrets
- Technical know-how kept secret unpublished

Copyright
- Software
- Users manuals
- Images
- ……..

THE IMPORTANCE OF INTELLECTUAL PROPERTY

Intellectual property is an essential business asset in the knowledge economy:

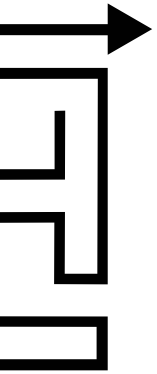
- to fostering technological innovation
- to promote competition and investment
- to provide information on the latest technical developments
- to promote technology transfer

Without IPR many innovative projects would not be profitable because the results would be easily copied by anyone who wanted to. Companies may not be willing to make large investments in research and development without a guarantee of economic return - thus holding back innovation

THE IMPORTANCE OF INTELLECTUAL PROPERTY

IP is also required when no profit is being pursued and allow the IP to be released into the public domain, verifying the conditions of such release:

- **GENERAL PUBLIC LICENSE (GPL)** - free use provided that any improvements are subject to the same GPL license
- **CREATIVE COMMONS LICENSE** - a set of licenses through which authors can grant free use, but may require, for example, that their name be indicated or that the use be noncommercial.



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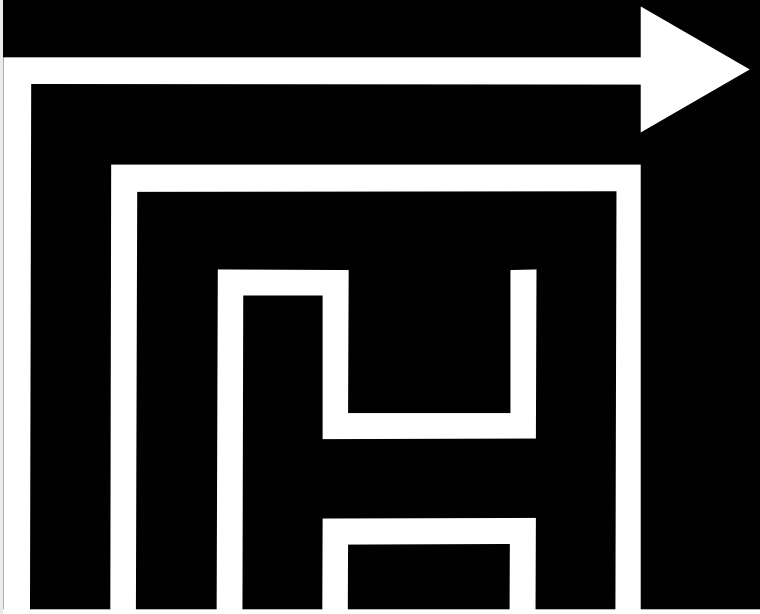


PATENTS

PATENTS

What is a patent?

- Legal title that grants the holder the exclusive right to prevent others from exploiting the invention (to prevent or stop others from making, using, selling, importing the patented invention)
- The exclusive right is justiciable in the Countries for which the patent was granted for 20 years.
- “Contract” between the State and the inventor: in return of the protection the holder has to disclose the invention to the public.

PATENT REQUIREMENTS

An **INVENTION**, belonging to any field of technology

NEW
i.e. not available to the public anywhere in the world

SUFFICIENT DESCRIPTION
i.e. it can be carried out by a person skilled in the art

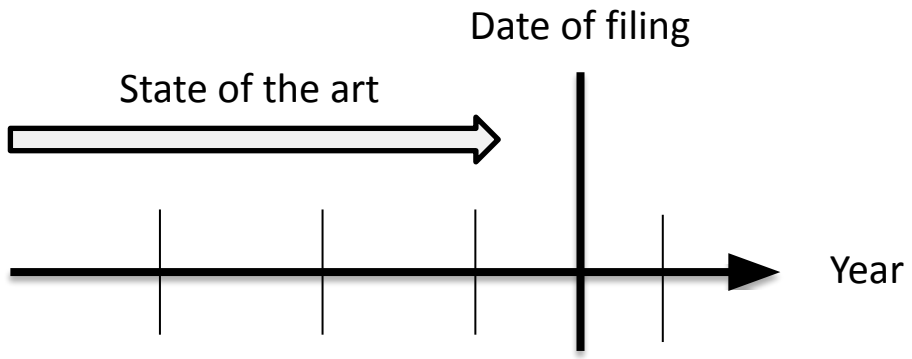
TECHNICAL CHARACTER
i.e. relate to a technical field, concerned with a technical problem and have technical features

Involve an **INVENTIVE STEP** i.e. not an "obvious" solution

Susceptible of **INDUSTRIAL APPLICATION**

WHEN IS AN INVENTION NEW?

- When it is not part of the state of the art
- State of the art = everything made available to the public before the date of filing

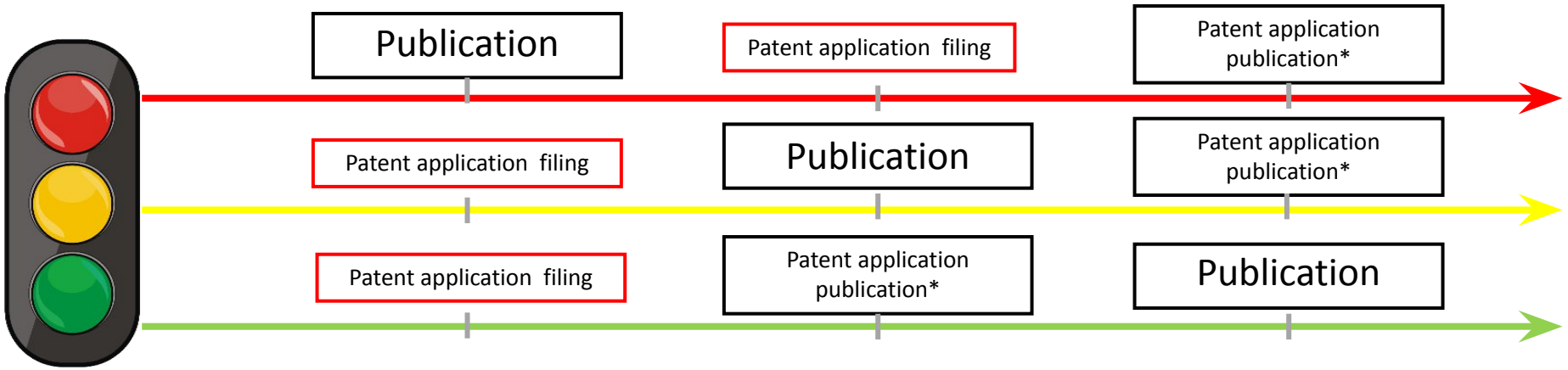


DON'Ts

- Do not publish any articles, press releases, conference presentations/ posters/ thesis, proceedings, lectures or blog posts, etc. before you file
- No sale of products incorporating the invention prior to filing
- No lecture or presentation prior to filing

WHAT TO CONSIDER BEFORE PUBLISHING

Patents and scientific publications are compatible, it is only a matter of timing and strategy.



* The publication of a patent application will be:

- 18 months after the first filing date or
- 90 days in case of advance publication.

WHEN IS AN INVENTION INVENTIVE?

When it is not obvious to the person skilled in the art
in view of the state of the art

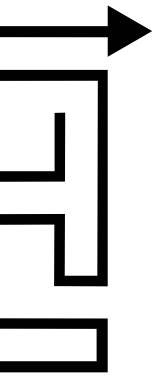
The person skilled in the art
is a skilled practitioner in the relevant technical field has access to the entire state of the art is aware of general technical knowledge is capable of routine work

He knows EVERYTHING,
but has ZERO imagination!

WHAT CAN AND CANNOT BE PATENTED

CAN

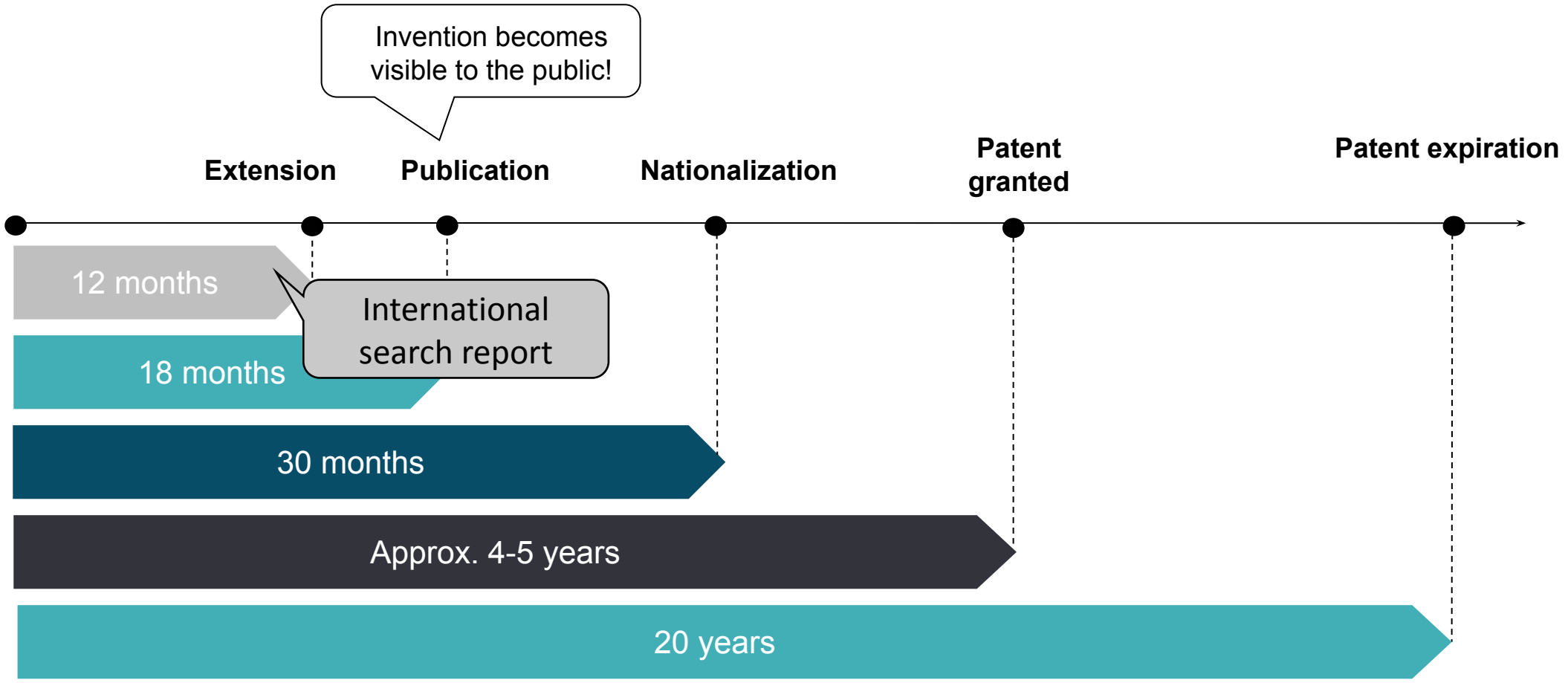
- Products, devices, systems
- Processes, methods
- Use, second medical use
- Chemical and pharmaceuticals substances
- Software???



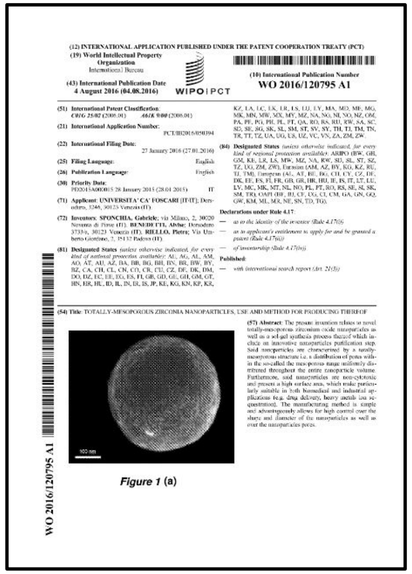
CANNOT

- Discoveries, scientific theories and mathematical methods
- Aesthetic creations
- Business methods or rules of games as such
- Programs for computers as such
- Presentations of information
- Inventions contrary to morality
- Plant or animal varieties
- Methods for treatment of the human or animal body by surgery or therapy

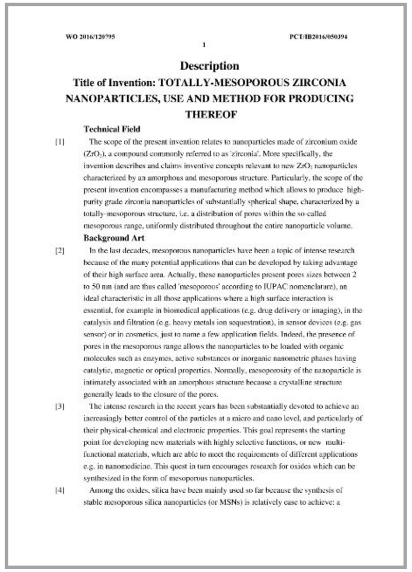
LIFE OF A PATENT



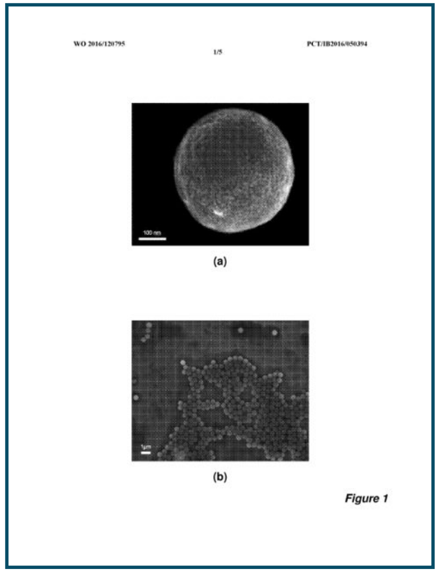
WHAT DOES A PATENT LOOK LIKE



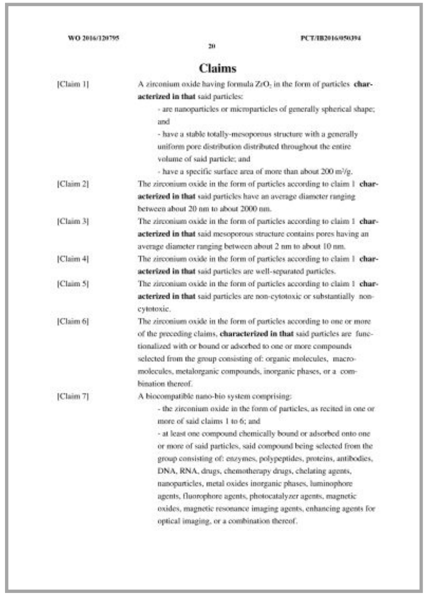
Bibliographic information



Description



Drawing(s)

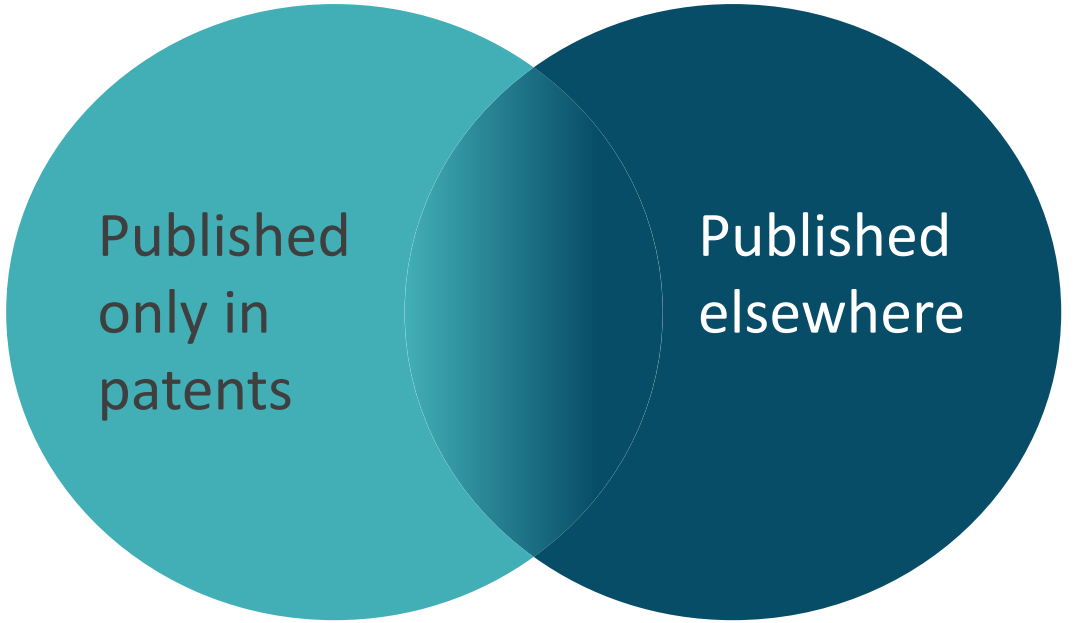


Claim(s)

CULTURAL HERITAGE 2.0

SOLUTIONS FOUND IN PATENTS

Approximately **80%** of the information which can be found in patents is not available anywhere else in comparable detail.



Search patents as a complement to scientific literature!

- 15-25% of all R&D efforts are wasted each year on inventions that have already been invented.
- ***Don't start your R&D until you have done a search!***

TYPES OF PATENT SEARCH

	Freedom To Operate search	Prior art search	Patentability
Objective of the study/search	Is the market open for my product?	What is the state of art?	Is my invention new and inventive?
Geographical	Limited to the area in which you want to operate	Searches are always conducted on a worldwide basis.	Searches are always conducted on a worldwide basis.
Patent analysis	Is the patent valid? What is the scope of protection? Can you get round the patent?	All the documents	All the documents
What kind of documents are examined?	Only patents and patent applications that have already been published.	Patent literature as well as other literature	Patent literature as well as other literature

SEARCHING FOR PATENTS IS EASY…
BUT A KNOWLEDGE OF PATENT JARGON IS NEEDED!

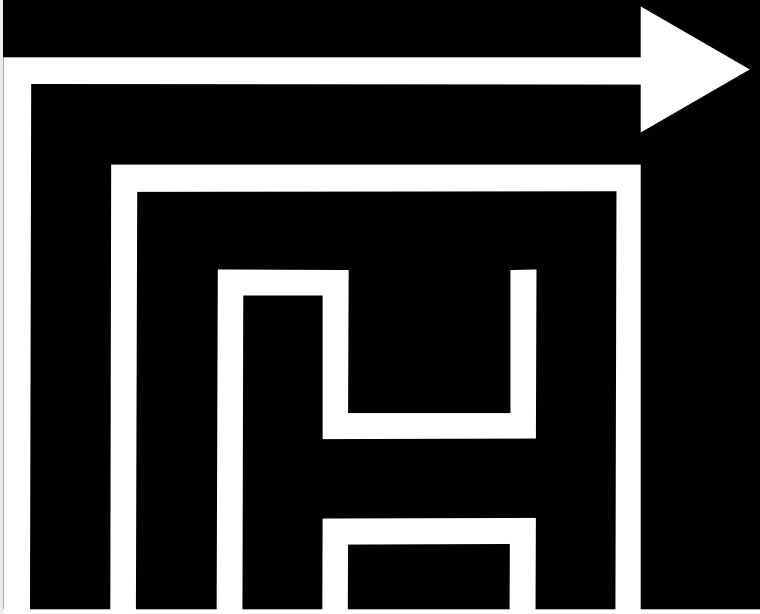
Commercial databases

- LexisNexis — Total patent
- minesoft global patent solutions — Patbase
- ProQuest — Dialog
- STN THE CHOICE OF PATENT EXPERTS™ — STN; CAS
- THOMSON REUTERS — Thomson Innovation
- Questel — Orbit

Free databases

- Europäisches Patentamt / European Patent Office / Office européen des brevets — Espacenet
- WIPO — PatentScope
- Ministero dello Sviluppo Economico — UIBM
- Google — Patents
- uspto — PatFT/AppFT
- JPO Japan Patent Office — J-Plat Pat

03



TRADE MARKS

TRADE MARKS

What is a trademark?

It is any sign, capable of being represented graphically, which distinguish the goods or services of one company or organization from those of another.

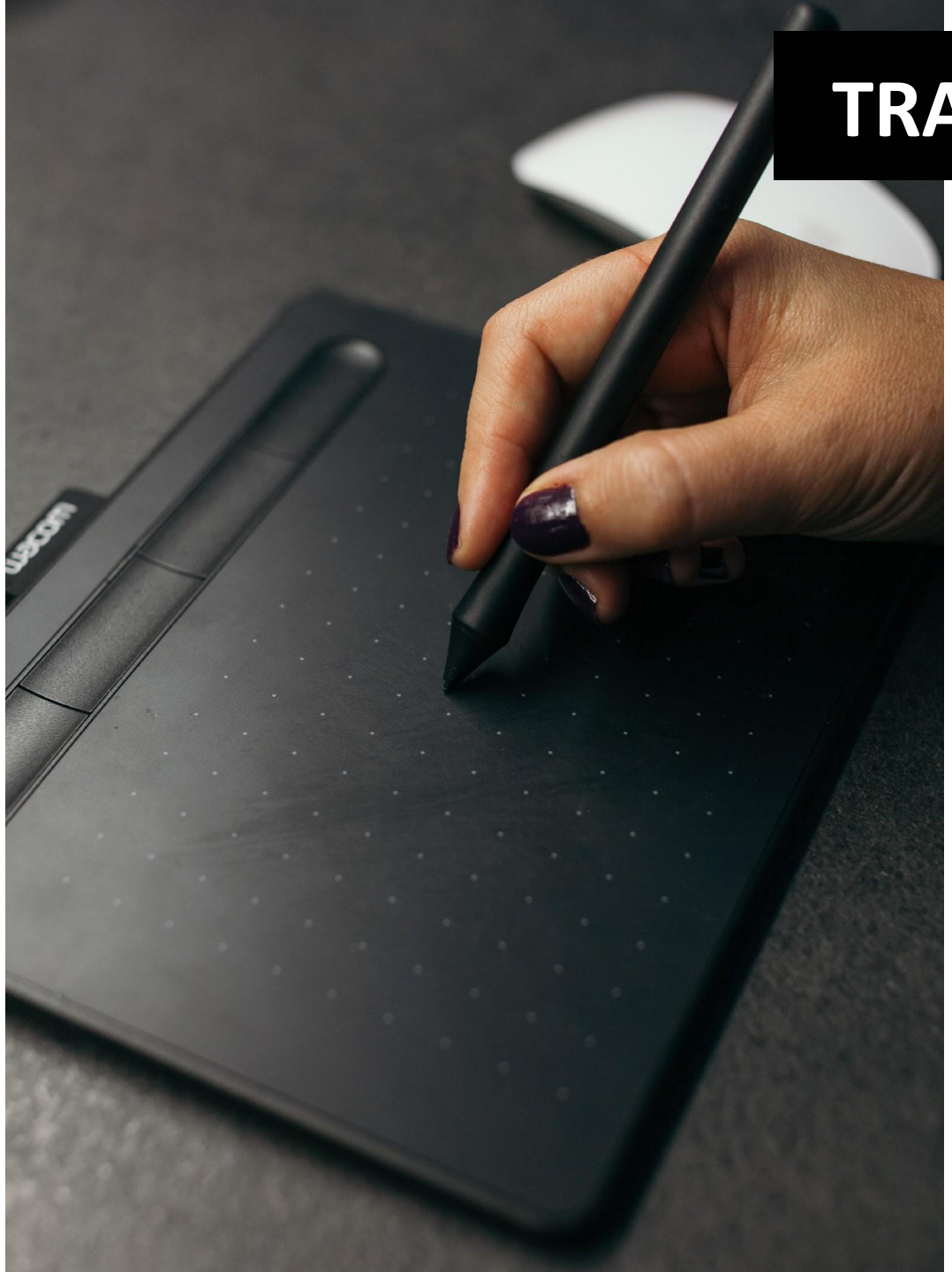
What is the scope of protection?

The owner of a trademark is granted the exclusive right to use it for the goods or services for which it is registered.

Principles of specialty and territoriality

Potentially perpetual (renewal every 10 years)

Risk to lose protection in case not used (5 years) or found invalid



TRADE MARKS

The main function of trademarks is to indicate the commercial source of the goods and services concerned: they serve as quality standards and give consumers confidence that they will receive the product or service they expect.

Only signs that can be represented in such a way as to enable the competent authorities and the public to determine the clear and precise subject matter of the protection granted to their owners can be trademarks.

TRADE MARKS: REQUIREMENTS

Distinctive: e.g. a square could not be distinctive

Not descriptive: no word that describes a feature of your goods or services e.g. “comedy” for television programmes, “Apple” for

Not deceptive: no misleading. e.g. "sugar sweet" for candy sweetened with artificial sweetener

In conformity with public order and morality: your trademark may not include profane language, obscene visuals or racial slurs.

CONVENTIONAL TRADE MARKS

You can protect as trade mark: words, letters, pictures, shape, colours, sounds, and their combination.

Coca-Cola

STARBUCKS COFFEE

JUST DO IT

LEGO

PHILIPS

UNCONVENTIONAL TRADE MARKS

- Sounds (e.g. Metro Goldwyn Mayer lion),
- music, jingles
- Signs with movement
- Smells? (e.g. “smell of freshly cut grass" in class 28 for tennis balls - Woerden) Tastes?
- Other: holograms, position marks, tracer marks

Sign capable of serving as a trademark, although in certain cases it cannot be registered because it does not meet representational requirements

OTHER CATEGORIES OF PROTECTION

CERTIFICATION MARKS: certify the nature or origin of the goods or services to which they have been applied (e.g., CE mark).

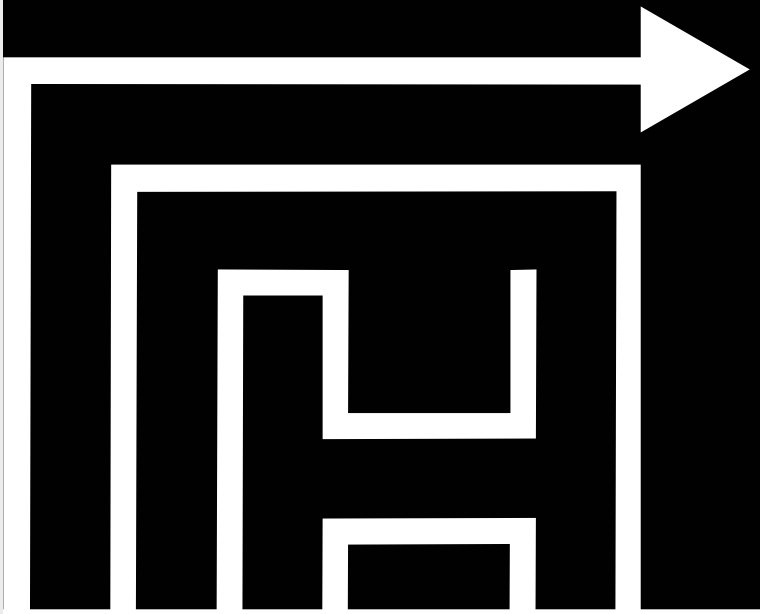
COLLECTIVE TRADEMARKS: trademarks owned by an organization and used by its members to identify themselves with a level of quality or accuracy, geographical origin, or other characteristics established by the organization (e.g. Woolmark)

PROTECTED DESIGNATIONS OF ORIGIN (PDO): describe foods produced, processed and prepared in a specific geographical area with recognized know-how

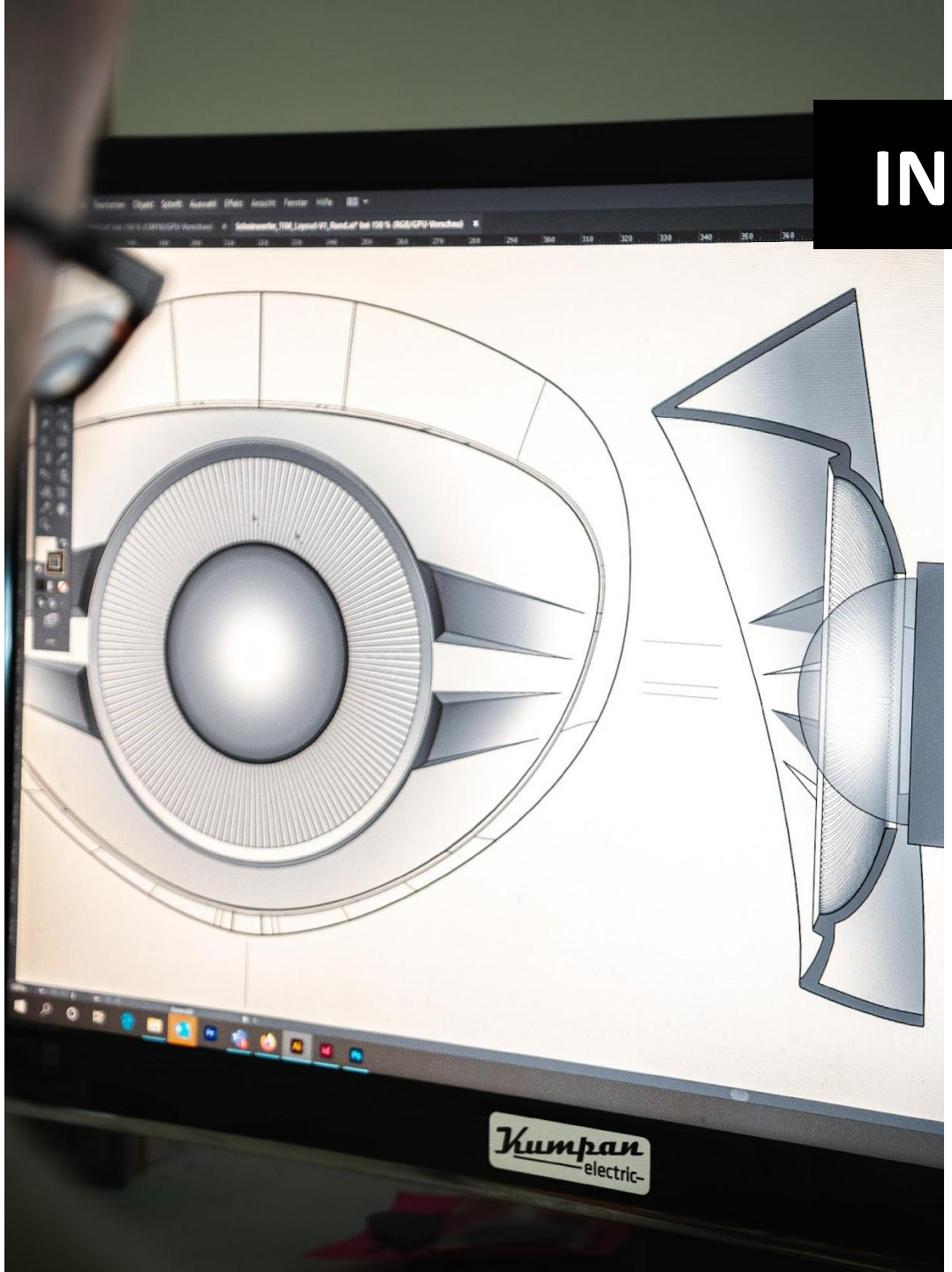
PROTECTED GEOGRAPHICAL INDICATIONS: describe a link to the territory in at least one of the stages of production, processing or preparation

TRADITIONAL SPECIALTIES GUARANTEED: relate to products made from traditional raw materials and characterized by a traditional composition or a method of production or processing that corresponds to a traditional method

04



INDUSTRIAL DESIGN

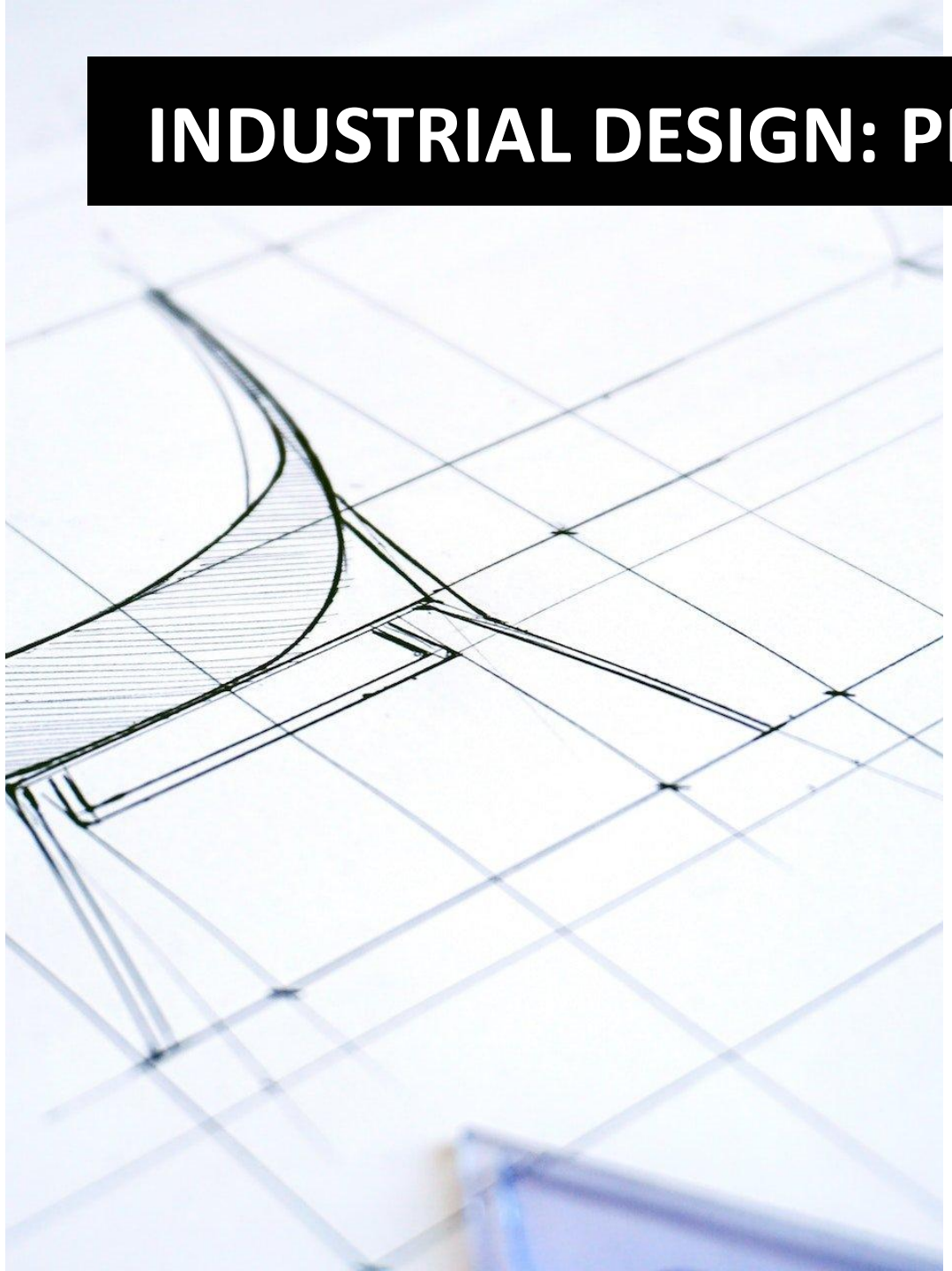


INDUSTRIAL DESIGN

- **What is an industrial design?**
  It is the outward appearance of the whole or parts of a product resulting from its non functional features. Examples of design features: lines, colors, shapes.

- **What is the scope of protection?**
  A design owner is granted the **exclusive rights to use the design**. Different scope of protection are afforded to registered and unregistered designs:
  - unregistered rights protect the design against copying only, and for a limited time period (3 years)
  - registered design rights are stronger: no need to prove copying by the infringer; protection for an initial period of five years, and can be renewed up to four times (25yrs total).

INDUSTRIAL DESIGN: PROTECTION REQUIREMENTS



The design must:

- be **NEW**: no other identical design has been made available to the public.
- have **INDIVIDUAL CHARACTER (originality)**: this requirement is not met if another design which creates the same overall impression on the informed user has already been disclosed

The design could be register at national level, at EUIPO (Unitary design rights) or at the international level (WIPO).

Protection in the whole EU is possible without registration: Unregistered Community Designs can be useful for products and designs that have an exceptionally short lifespan.

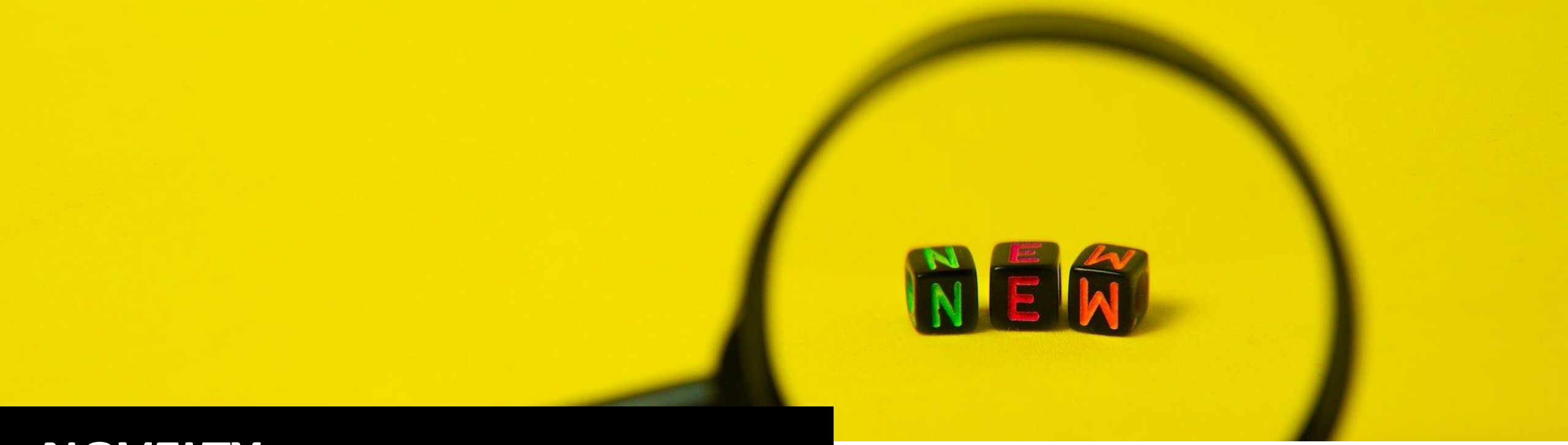
WHY DESIGNS SHOULD BE PROTECTED

Designs are used to enhance the attractiveness and value of products, but attractiveness is not a legal requirement to be protected as a design.

Designs can be a great asset to a company (e.g., Apple), and if it doesn't protect them others could benefit from its investment.

Unlike trademarks, a design does not have to indicate the commercial origin of the product.

Unlike patents, the design is not tied to the technical functionality of the product



NOVELTY

No identical design (differing only in "irrelevant" details, e.g., color shade) must have been made available to the public on a date prior to the filing date, but there is a 12-month grace period preceding the filing date granted exclusively to the designer. If the creator does not register his design within that period, it is no longer new.

Not considered disclosed if: not known in specialized circles; disclosed only under condition of confidentiality

INDIVIDUAL CHARACTER

It gives to the informed user an overall impression different from any previously disclosed design

The "informed user" is an intermediate character, located somewhere between a designer or technical expert and an average consumer. His or her level of attention and awareness of previous designs is relatively high

OVERLAP WITH OTHER IP RIGHTS

Protection through a registered design does not exclude protection through other intellectual property rights such as trademarks, patents and utility models.

Copyright law can also serve design protection, but copyright law is not harmonized at the European level, so the conditions for obtaining protection are determined by national law

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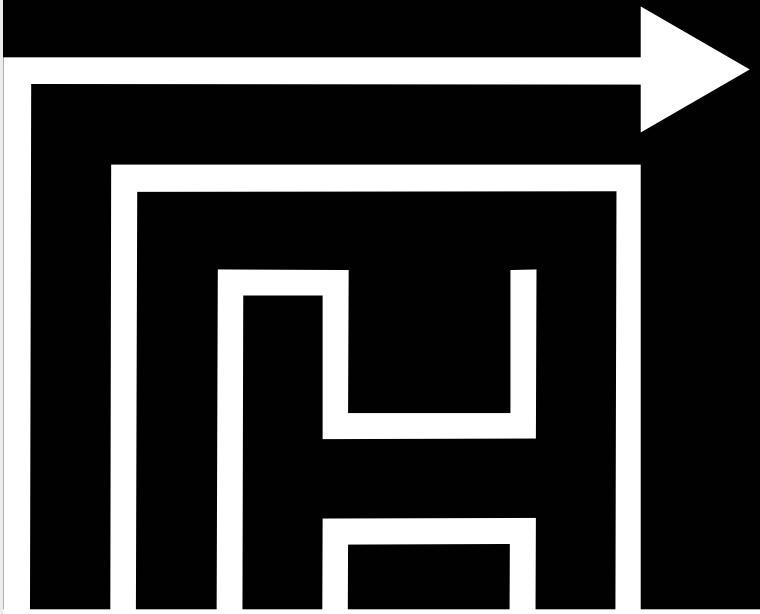


COPYRIGHT

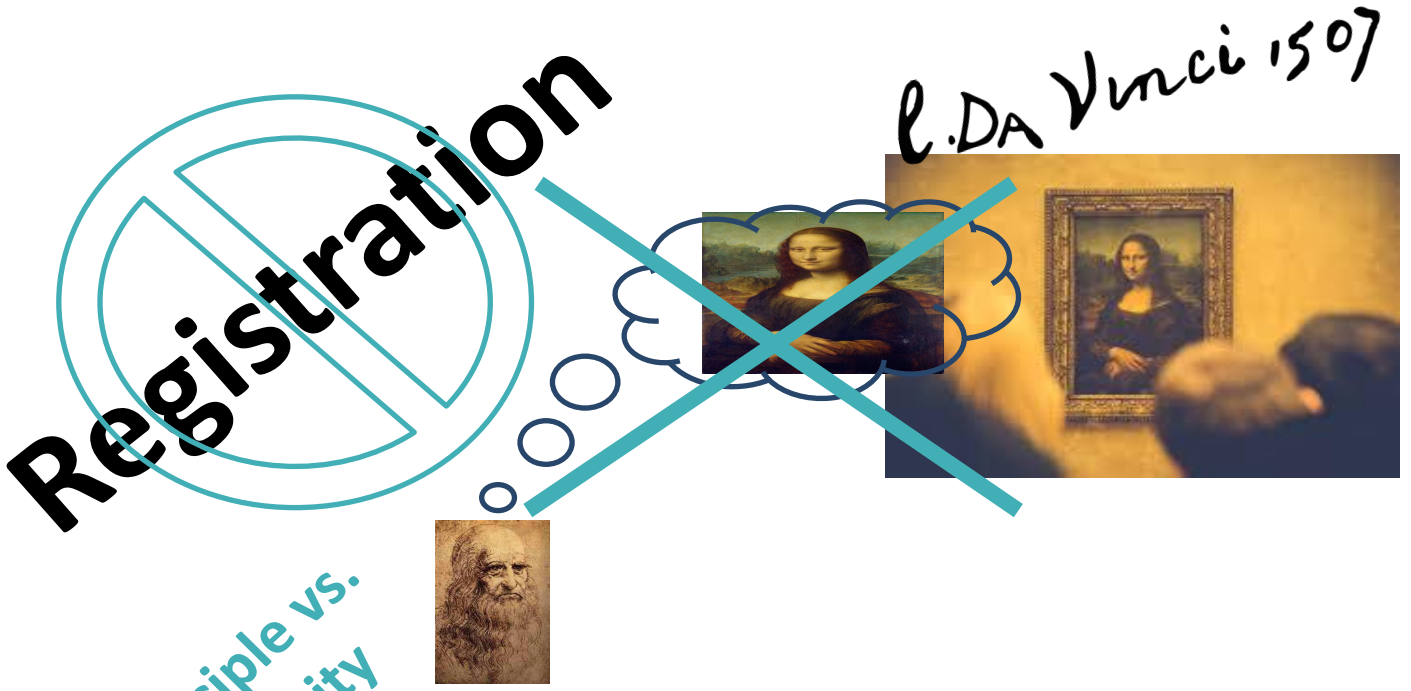
COPYRIGHT

- **What is a copyright?**

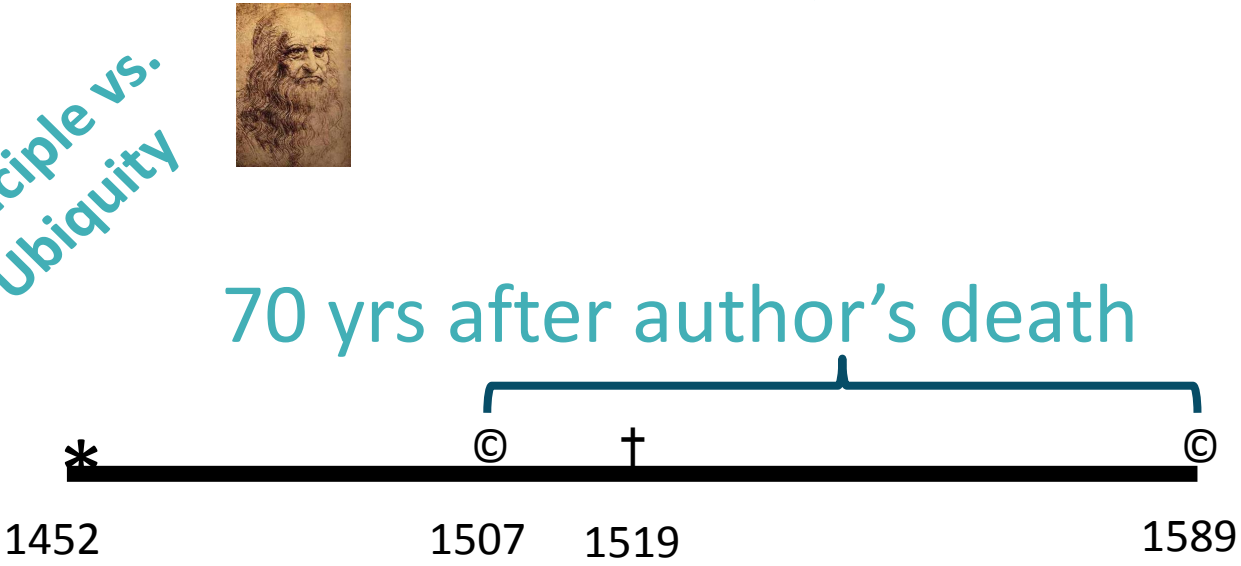
  The **immediate rights** the creator of literary, scientific or artistic work has over the **tangible** expression of her/his **original idea**.

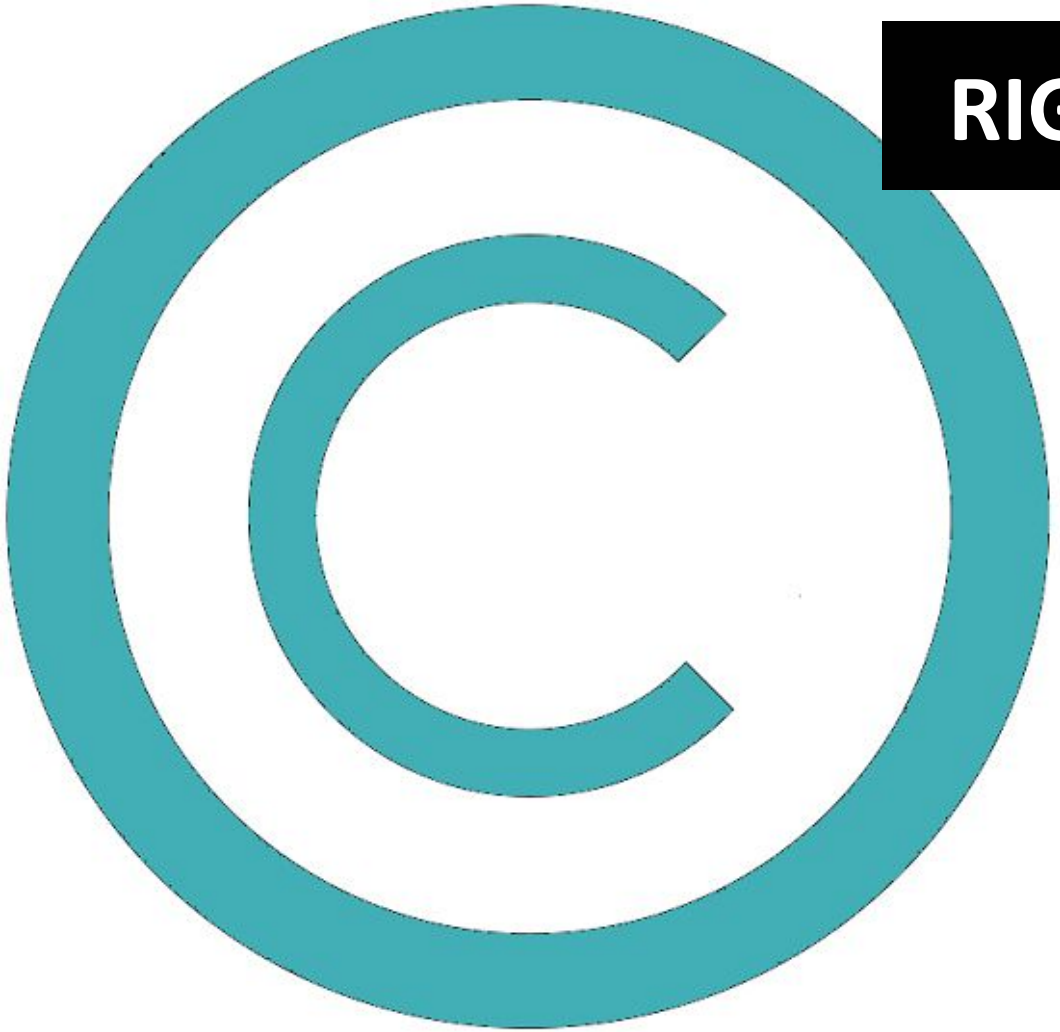
- **What is the object of protection?**
  - literary works (e.g. novels, poems, plays, newspaper articles);
  - computer software, databases;
  - films, musical compositions, and choreographies;
  - paintings, drawings, photographs, and sculptures;
  - architecture, maps, plans, technical drawings;
  - sketches & 3-D works relative to geography, topography, architecture or science;
  - advertisements, flyers, commercial material, slogans, brochures and user manuals.

REQUIREMENTS AND CHARACTERISTICS

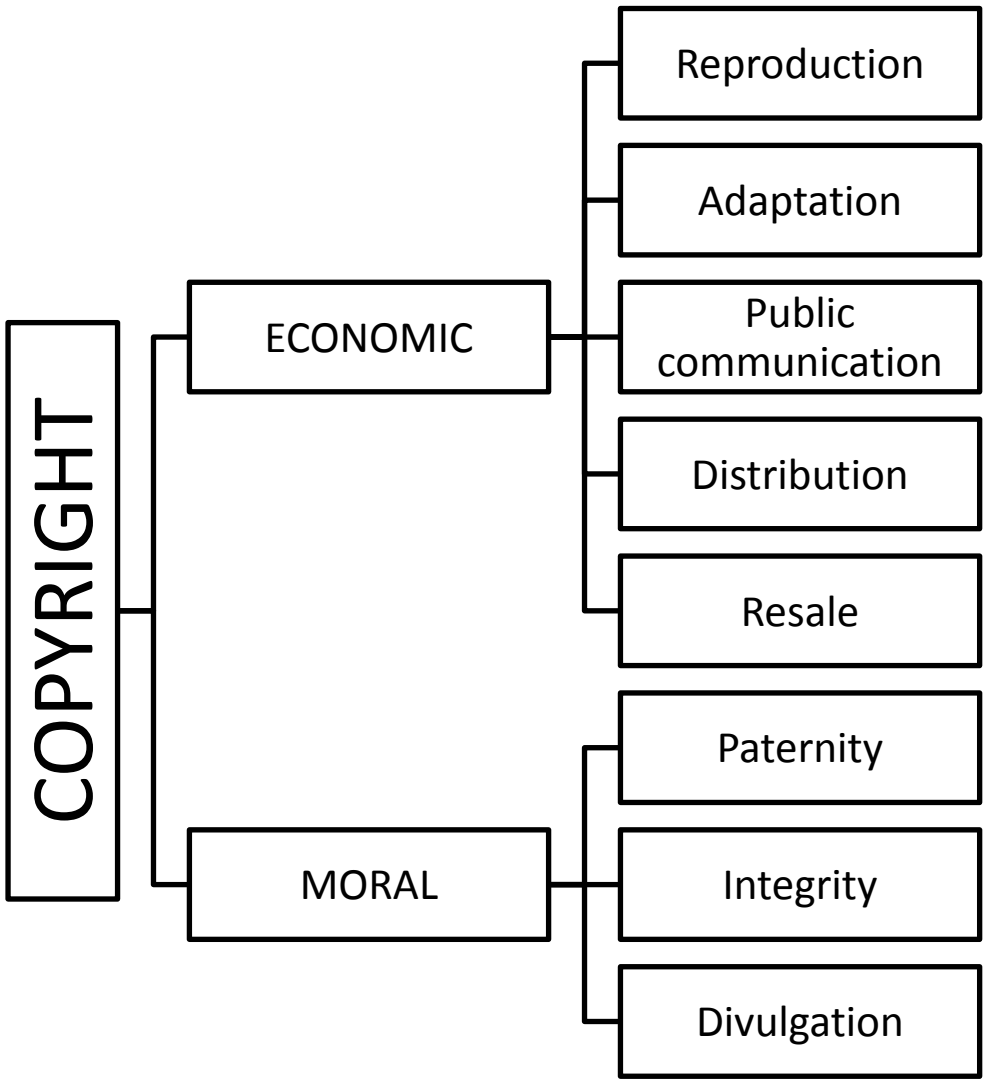


Territorial Principle vs.
Principle of Ubiquity





RIGHTS CONFERRED



Rights

PLEA NOTICE

The employer is the owner of software, database or industrial designs the employee has created while performing her/his duties.

Public administrations and universities are owners of work published in their name and produced by regularly employed personnel (2 yrs).

What about scientific papers?

AUTHOR
vs.
OWNER

CULTURAL HERITAGE 2.0

	Subscription Agreement	Hybrid Agreement	Open Access
Publisher 	Copyright transfer Pays all cost and risks Exclusive right to publish, reproduce, license to others Exclusive enforcement even against author	Copyright license	Not involved
Author 	Retain moral rights, (personal & institutional use only) Retain IP rights on object of the paper.	Retain moral & some economic rights Bares all or most of cost and risks of publishing Choose end-user license Can share article	Retain economic & moral rights Choose how to publish Can share article
End User 	License to use Digital copies for personal/institutional use NO commercial use	Allowed to read, print, download and translate Not allowed: redistribute/republish (in repository); reuse portions w/o authorization	End user has free access to peer reviewed article and, when possible, to research data

DIRECTIVE (EU) 2019/790 ON COPYRIGHT IN THE DIGITAL SINGLE MARKET

Controversial rules more discussed by supporters of the "free web" and "freedom of expression"

Article 15: Protection of journalistic publications when used online.

It recognizes the reproduction and communication rights of newspaper publishers with regard to the online use of journalistic publications by providers of online content sharing services (this right lasts 2 years; the original text provided for 20 years). The authors of the works will in turn be entitled to an "adequate share" of the income received by the publishers

In other words: Google News to be able to publish a news will have to remunerate the publisher, which in turn will have to compensate the author of the article

Article 17: Use of protected content by online content sharing service providers.

In the absence of authorization from the rights holder, service providers will be responsible for what is uploaded by users, unless
prove to:
(a) "have made every effort to obtain authorization"
(b) "have made every effort to ensure that materials for which they have received the relevant and necessary information from the rightholder are not available"; and in any case
c) "have acted promptly, after receiving a sufficiently substantiated report from the rights holders"

SOFTWARE

COPYRIGHT

Pure expression of programmer's creativity
Protection on tangible expression of an idea

Immediacy

Territoriality

Transferability

PATENT

Innovative solution to a technical problem. Protection of the idea
Software cannot be patented as such, but methods described by a software and implemented with a computer or a processor **MAY BE PATENTABLE**

Must have further technical effect

SOFTWARE LICENSING

Copyright

User license

(e.g. Microsoft - $$$)

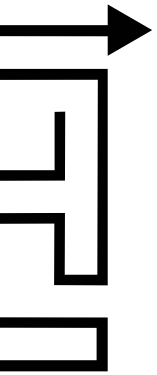
- No copying, modifying or distribute
- No source code

Copyleft

User license

(Open source, Free software)

- Allow copying, modifying, distribute
- Provide source code



Even if OS/FS, software **MUST** have written license.
Do not release a software (FREE or OPEN) w/o license.
ALWAYS *inserted window, "Readme File" or note in code source*

Pay attention to:

COPYLEFT clause

(distribution and modification only under same rights)

NO WARRANTY CLAUSE
(software as is)

RECIPROCITY CLAUSE
(conditions on subsequent developments)

WEBSITE PROTECTION

Copyright protection on individual parts
of website, independently on the type of website

Protection of a website as a whole:

- Copyright: on software to create site
- Design application: on structure (novelty & individual character)
- Patent application: as Computer Implemented Invention (es. interactive interface)

NOTE:

If you choose a third party to construct your website, copyright on website is theirs.

In the case of posting of creative material onto social networks or other public platforms, carefully read user terms and conditions.

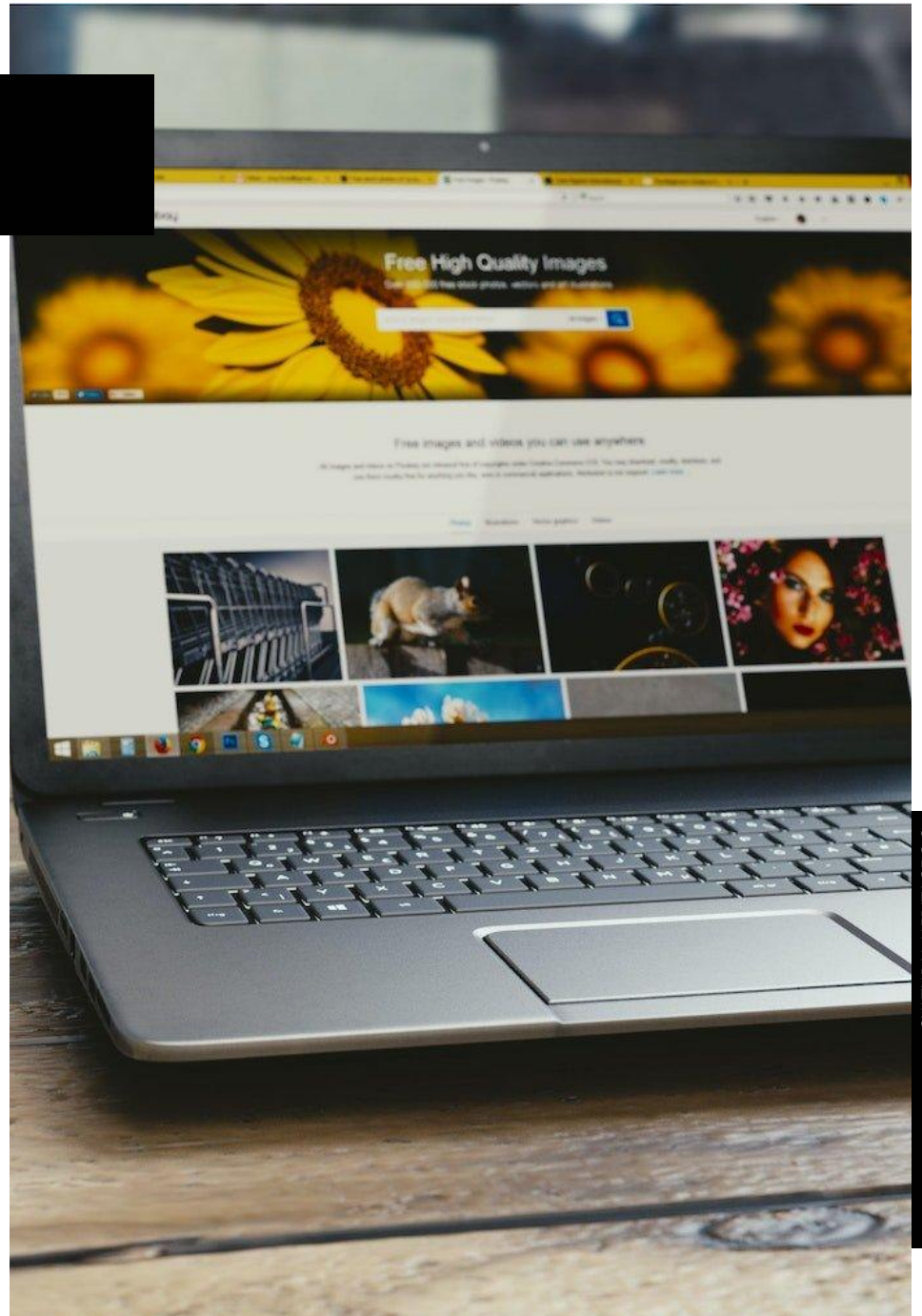


IMAGE PROTECTION

Copyright on images of people, situations and daily life activities if expression of creativity of author.

Artistic Pictures VS Simple Picture

Ownership

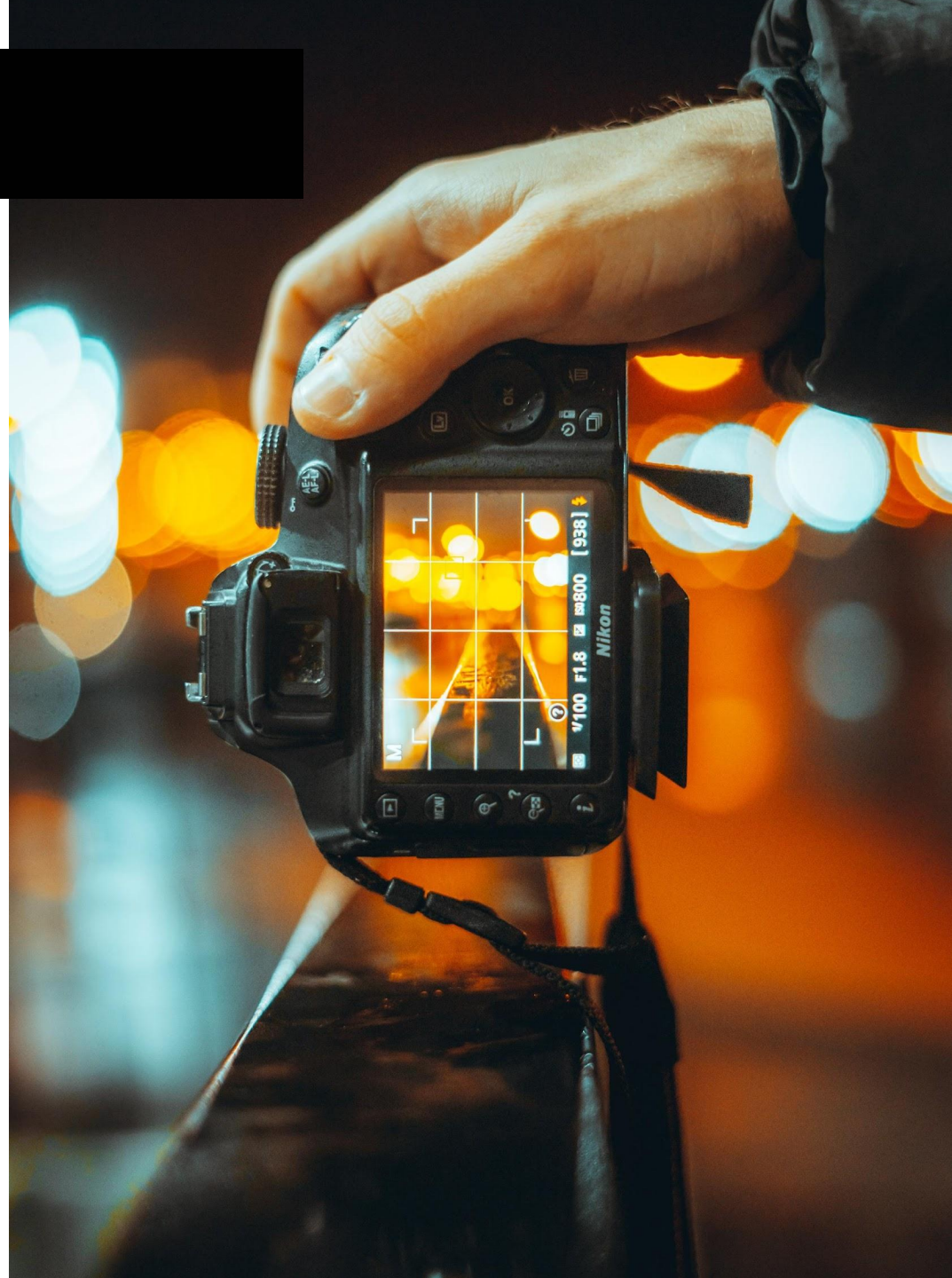
- Who made or who commissioned the photo
- Transferring of negative = transferring of ownership (unless otherwise stipulated)

Requirements for citation

- Name of rightful owner, date, name of photographer must follow the picture

Reproduction

- Allowed for research/educational purposes or for picture taken from media
- Against proper compensation
- Must indicate name of photographer/owner and date

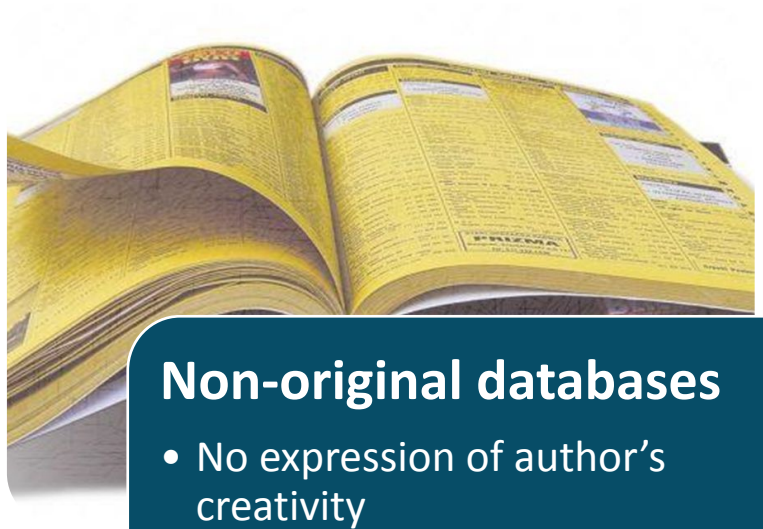


DATABASES PROTECTION

Database = collection of independent works, data or other material arranged in a systematic way and individually accessible.

Original databases

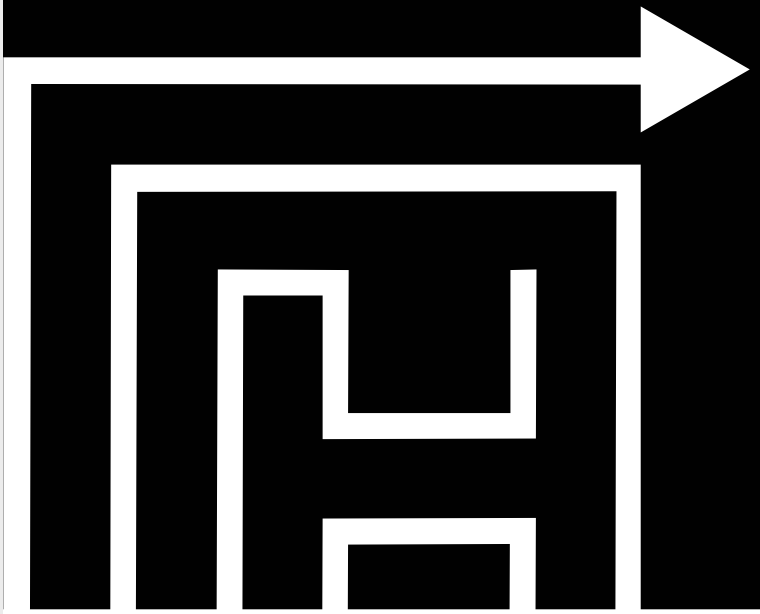
- Expression of author's creativity
- ***Copyright*** on single work separate from protection on collection
- Protection: particular arrangement
- Requirement = originality
- Duration= 70 yrs



Non-original databases

- No expression of author's creativity
- W/in EU ***Sui Generis DB*** protection
- Protection: content of collection
- Requirement = substantial financial or professional investment
- Duration= 15 yrs

06



IP IN COLLABORATIVE PROJECT

WHY IS IT IMPORTANT TO CONSIDER IP IN COLLABORATIVE R&D PROJECTS?

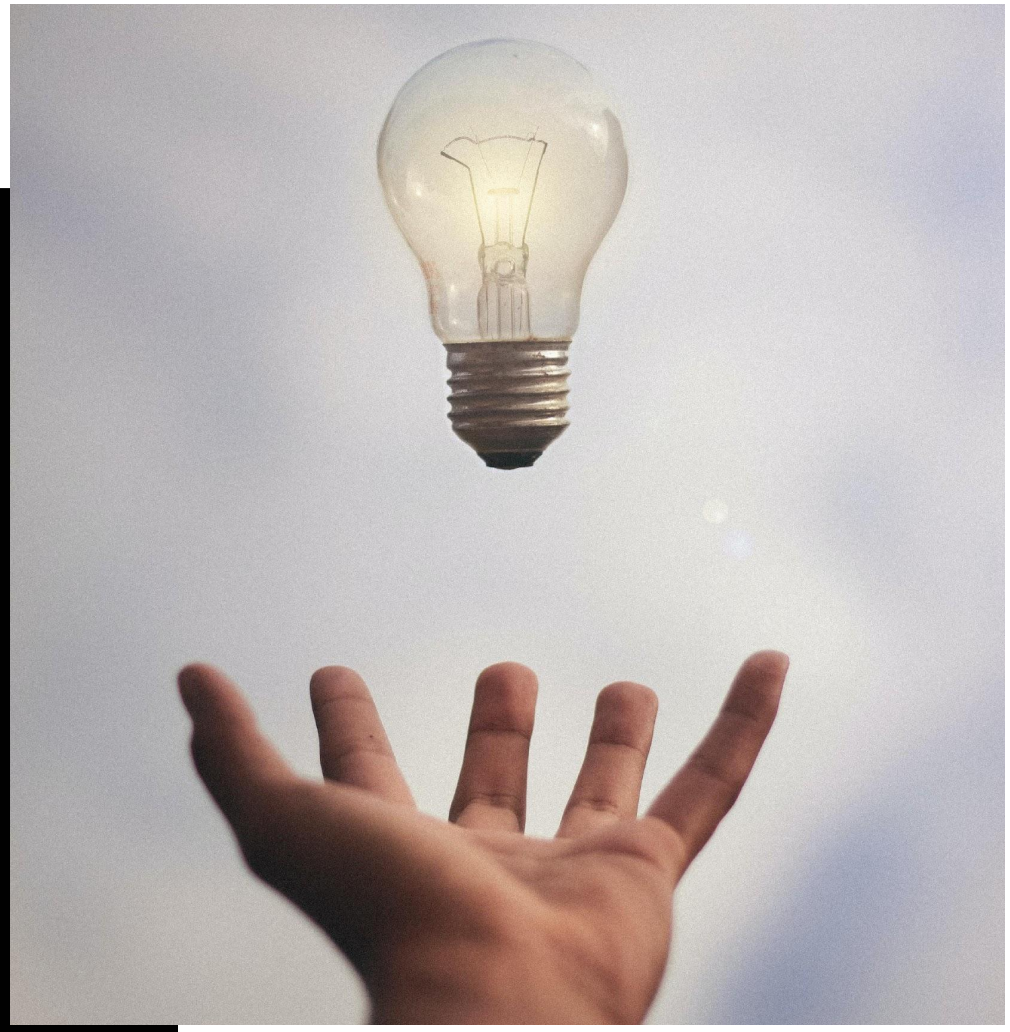
Different partners with different mindset and interests share assets tangible and intangible to achieve results that would not be able to generate independently in the same way or at the same time

Efficient and strategic management of knowledge, including its protection through IPR and confidentiality, is the basis for effective exploitation of project results

01 WHAT

03 WHERE

02 WHY



CULTURAL HERITAGE 2.0

Definitions

Background: tangible or intangible input (data, knowhow, information) which is held by the project partners prior to their accession to the partnership agreement. Includes IP (e.g. patents patent applications)

Foreground: all results which are generated under the project – whether or not protectable. Such results may include copyrights, design or patent rights, trademarks or others, and belong to the partners who have generated them

Access right: user rights (incl. licenses) to results or background of project partners

Sideground: knowledge/IP that is relevant to the project, but produced outside the project by any of the partners during the project's tenure..

PROJECT NAME — TRADEMARK ISSUES

Giving a convincing name and acronym to your project is an important task during the conceptualisation and proposal writing process of your project.

Avoid any trade mark infringement: It must not be one that can be confused with existing names which are registered or applied for identical or similar goods and/or services.

Search in trademark databases: to make sure that it is free to use. Free databases:

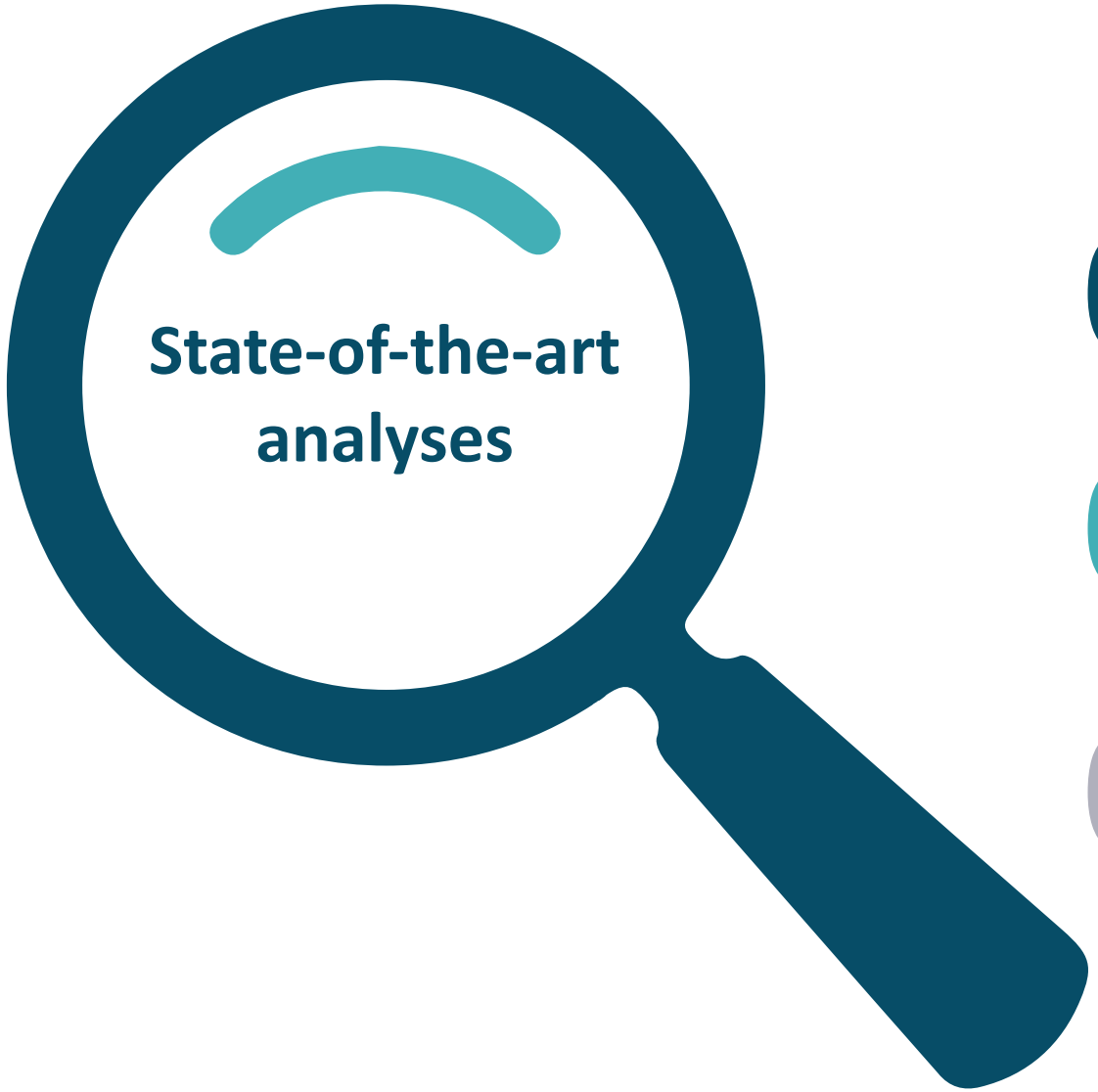
- TMview and eSearch plus
- Global brand database
- Italian trademarks database

EUIPO
EUROPEAN UNION
INTELLECTUAL PROPERTY OFFICE

WIPO

Ministero dello
Sviluppo Economico

STATE-OF-THE-ART ANALYSES IN FUNDED PROJECTS

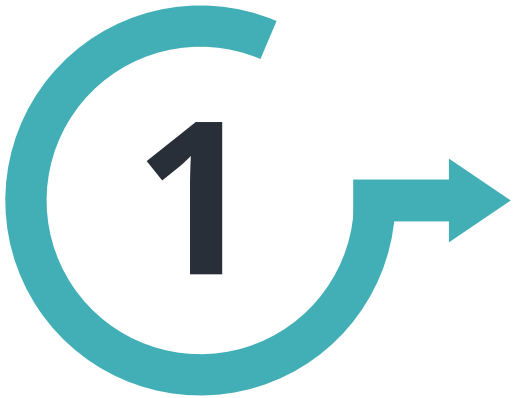


01 Database of financed projects (e.g. Cordis)

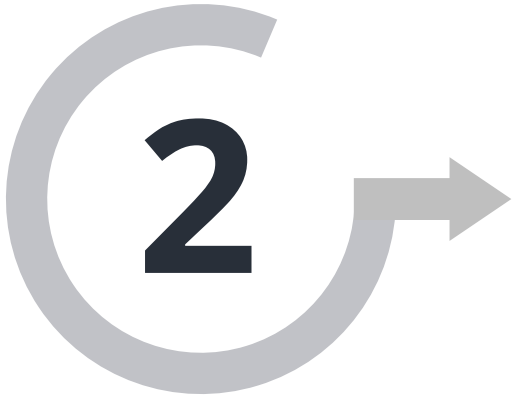
02 Scientific literature

03 Patent databases:
- Prior art searches
- Freedom to operate (FTO) searches

IP THROUGHOUT THE LIFECYCLE OF THE PROJECT



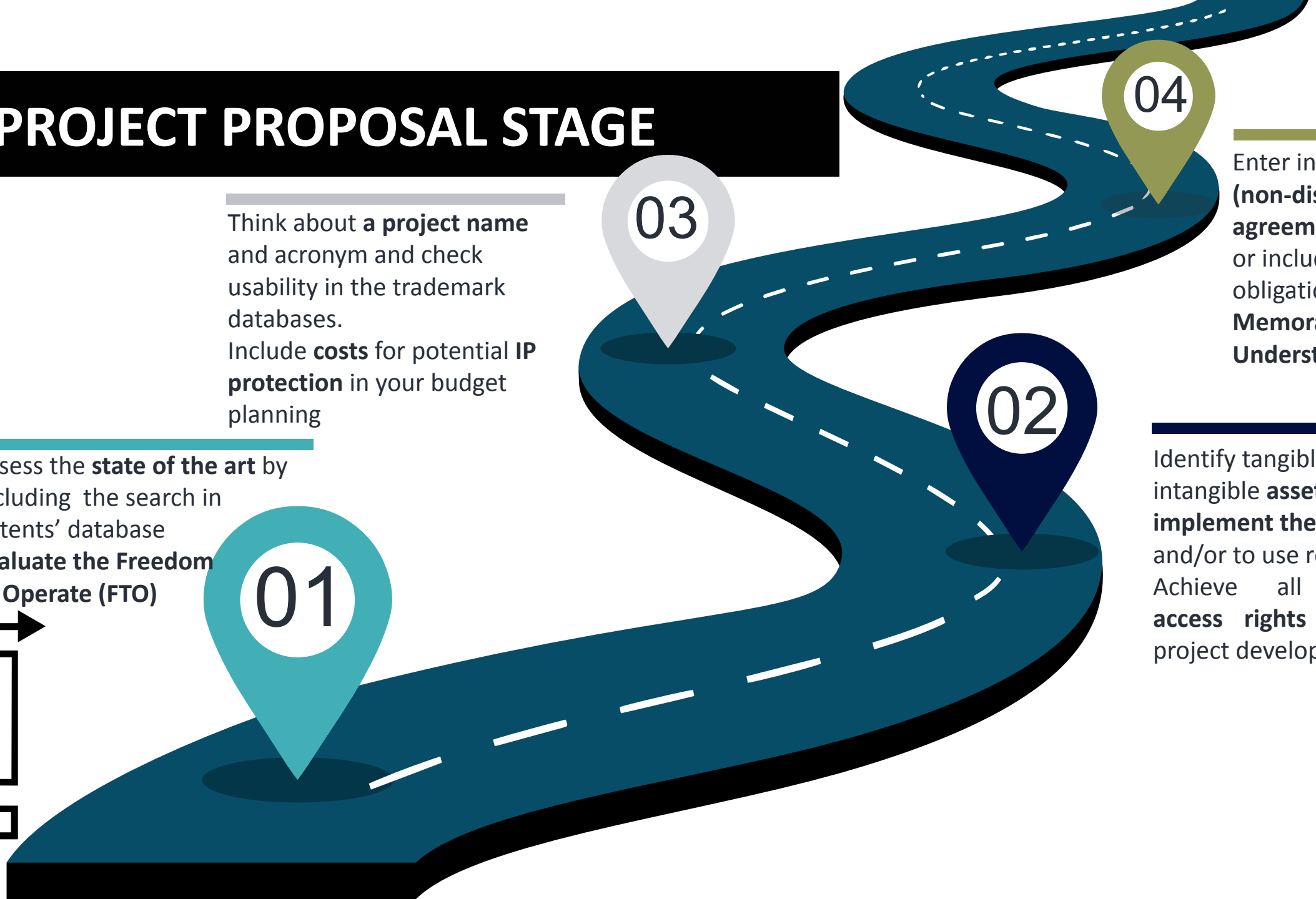
Non Disclosure Agreement (NDA) Memorandum of Understanding (MoU)



Background identification, Foreground ownership, Access rights, Partnership Agreement

Protection decisions, Exploitation agreements, licensing, assignment

PROJECT PROPOSAL STAGE



Assess the **state of the art** by including the search in patents' database
Evaluate the Freedom to Operate (FTO)

Think about **a project name** and acronym and check usability in the trademark databases.
Include **costs** for potential **IP protection** in your budget planning

Identify tangible and intangible **assets needed to implement the project** and/or to use results
Achieve all background **access rights** needed for project development

Enter into a **NDA (non-disclosure agreement**) or include confidentiality obligations in a **Memorandum of Understanding (MoU)**

PLAN THE EXPLOITATION AND THE DISSEMINATION OF RESULTS

Draft in the project proposal

Periodic review during the project implementation

Final report

To helps project partners establish the basis for their intellectual property strategy, dissemination and exploitation activities

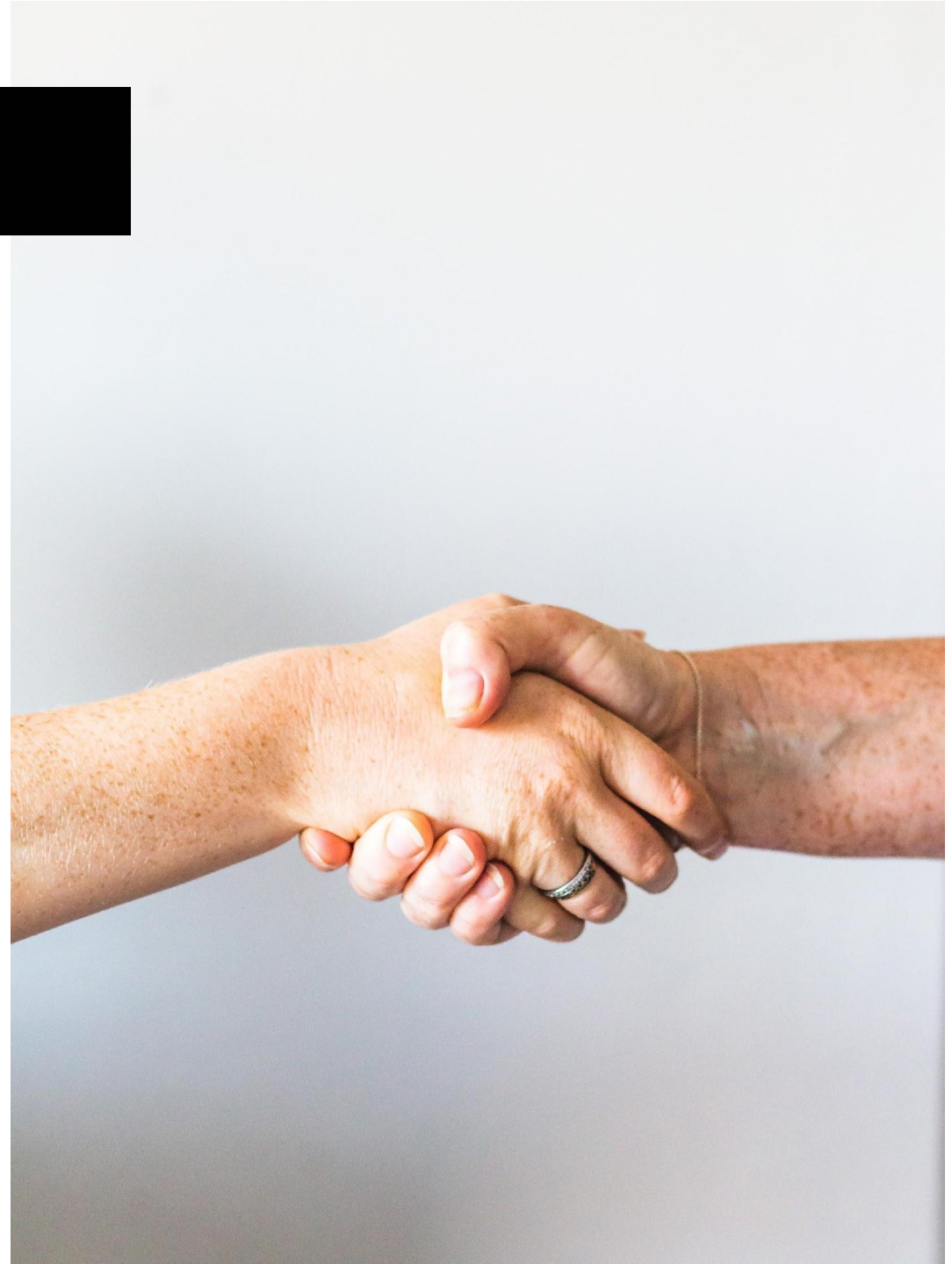
PARTNERSHIP AGREEMENT

The partnership agreement regulates the relationship between consortium partners and should include provisions on IPR which should encourage protection, exploitation and dissemination.

The partners should:

- define how the background will be listed - positive or negative list or both
- mention possible restrictions linked to the grant of access rights over specific background
- identify a procedure for the amendment of the background list

Where research is funded by an external body, attention should be paid to any protection, exploitation and dissemination efforts required by the funder.



IP OWNERSHIP

Results are generally owned by the partner that generates them

Partners could make this provision more precise

Frequently they set up a procedure to inform all partners upon the creation of new results and allow them to claim/confirm ownership

JOINT OWNERSHIP

1. Joint ownership arises when a results is jointly developed by several partners and their respective contribution to the final work cannot be ascertained, or the results is by nature indivisible

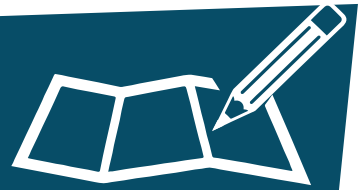
2. Joint ownership may arise with regard to all the forms of IP (patents, copyright, trade marks

3. It may be necessary to be able to prove the ownership of a result. Keep update lab book, timesheets, etc.

4. Partners should deal with joint ownership taking into account:
   - allocation of the shares between joint owners;
   - conditions of use and exploitation of the joint results (IP);
   - management of the jointly owned results (IP).

FUNDED PROJECT

Obligations concerning protection of results



Obligations concerning dissemination

Obligations concerning exploitation

IP CHECK

- Who owns the IP?
- How will relative contributions to the invention be agreed?
- Who will pay for protection?
- How will protection and management costs be shared?
- Who will manage the process, the IP and IPRs, and their exploitation?
- How will revenues be shared?

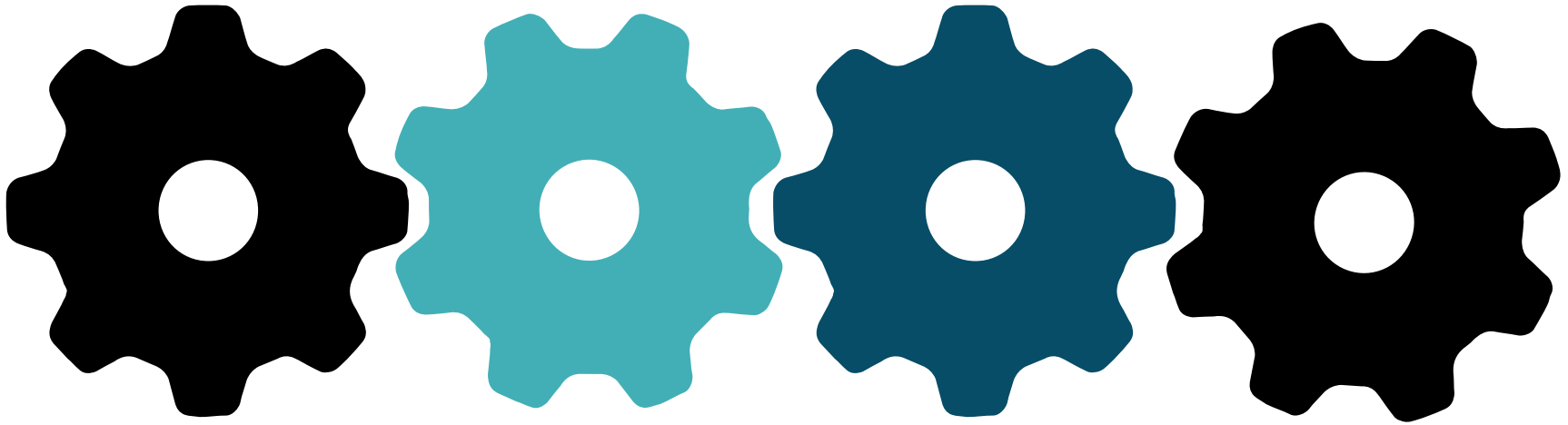
AFTER PROJECT CONCLUSION

Be aware that **obligations concerning IPR management** and certain provisions in the agreements such as:

- confidentiality obligations,
- provisions concerning the transfer of results
- notification to the funding body when deciding to stop protection or not to seek extension
- right of participants to request access rights

may remain in force after the project conclusion

TO SUMMARIZE



IP used by the project (background and 3rd party): access and usage rights for IP before, during, AND after the project

IP generated by the project (results) Capture, ownership, management, pre-publication reviews for technical inventions, etc

IP assessment and protection prior art, market opportunities, value of IP protection, IP audit, Basic FTO analysis Type of IP protection.

IP dissemination and exploitation (telling and use!) Targets, messages, measures, etc

THANKS!

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