

## IP law

Intellectual property (IP) law refers to the specific provisions by which IP principles and norms are given effect. Principles of IP law include the recognition of state-created property rights over intangible assets that are the result of human innovation and creativity. These differ across different types of IP. Adequate national IP legal frameworks are critical for striking the balance between the private interests of firms and the general public interest. In order to extract the maximum benefit from IP protection systems, it is essential to promote knowledge of IP laws among end-users and IP governing institutions.

### What is IP law?

Intellectual property law refers to the principles, norms and legal provisions that define the IP system. Principles of IP law include the recognition of state-created property rights over intangible assets that are the result of human innovation and creativity. Legal provisions contain the specific prescriptions and proscriptions by which principles and norms are implemented, such as the national treatment rule, minimum standards that creations have to meet for receiving IP protection, minimum standards of protection, specific exclusive rights, priority rules, among others.

Different types of IP—including patents, trademarks, utility models and others—are defined as the property created or recognized by the existing IP legal regimes (Hughes, 1988) (including patents -see [Substantive patent law](#) [1]-, trademarks -see [Trademark law](#) [2]- and utility models -see [Utility model law](#) [3]). They are based on various IP norms including the obligation for governments to grant legal monopolies in the form of exclusive rights that generate incentives for human innovation and creativity, or treating foreign IP applicants as nationals.

The principal dimensions of substantive IP law include the following:

- Subject matter of protection, which refers to the type of creations that can receive IP protection.
- Duration of protection or lifetime of IP rights.
- Scope of protection and limitations, which define the boundaries and conditions for infringement. It determines the degree of monopoly power conferred to IP rights' holders.
- Inventiveness/distinctiveness/originality, which is the degree of creativity that inventions and other types of creations need to show in order to be protected by the IP system.
- Disclosure requirements about the protected creations are shared to the benefit of society.

There is also an important international dimension to IP rights (see [International dimensions of IP systems](#) [4]).

### How does patent law relate to innovation?

The economic rationale for patent law is to promote creativity and the dissemination and application of innovations and to encourage fair trading in order to contribute to economic and social development (Besen and Raskind, 1991; WIPO, 2004; OECD, 2009). In essence, IP laws attempt to strike the balance between private rights sufficient to incentivize creative behaviour and third-party access to the results of that creativity so as to maximize its social value (Dinwoodie, 2006).

The reason to inscribe patent matter in law instead of keeping it discretionary as post patent policies

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is that for patents to work as an incentive the patent system must be reliable, hence stable. The inventor decides on research expenditures years in advance of any economic return from the possible invention he will have patented, then he needs to have a good view at the patent system years in advance. Law is better than discretionary policy for delivering such a property. In addition in the case of IP the rights of some are limits to the rights of others (exclusivity means an “excluding party” and one or more “excluded parties”). This contradictory setting is best managed by law.

### **What are the general implications of patent law for IP policy?**

A comprehensive and clear legal framework is critical for the IP system to generate incentives for innovation (OECD, 2009). It is critical they are in place as otherwise the IP system will not function in support of innovation. Moreover, disclosure requirements, research exemptions or compulsory licenses also serve the primary objective of IP systems: to promote innovation and access to creative knowledge.

It is important to promote knowledge of IP law among governments, companies and other stakeholders (including non-governmental organizations, industrial associations and civil society), so they can realize the maximum benefit from IP protection systems.

The pace of technological change during the last few decades has raised new questions for IP law, in particular in relation to the effects of information and communication technologies (ICTs). The variety of issues affected by IP laws has increased over the last two decades, now including biodiversity, plant genetic resources, healthcare and human rights (Helfer, 2004; Raustiala, 2007).

- Besen, S. M. and L. J. Raskind (1991), “An introduction to the law and economics of intellectual property”, *The Journal of Economic Perspectives*, Vol. 5/1, pp. 3-27.
- Dinwoodie, G. B. (2006), “The international intellectual property law system: New actors, new institutions, new sources”, *Intellectual Property Law Review*, Vol. 10, pp. 205-14.
- Helfer, L. R. (2004), “Regime shifting: The TRIPs Agreement and new dynamics of intellectual property lawmaking”, *The Yale Journal of International Law*, Vol. 29/1, pp. 1-83.
- Hughes, J. (1988), “The philosophy of intellectual property”, *Georgetown Law Journal*, Vol. 77, pp. 287-366.
- OECD (2013), *National Intellectual Property Systems and Economic Development: A Framework for Assessing Emerging Countries’ Policies*, OECD Publishing, Paris.
- OECD (2009), *Patent Statistics Manual*, OECD Publishing, Paris.
- OECD (2004), *Patents and Innovation: Trends and Policy Challenges*, OECD Publishing, Paris.
- Raustiala, K. (2007), “Density and conflict in international intellectual property law”, *University of California Davis Law Review*, Vol. 40, pp. 1021-38.
- WIPO (2004), *Intellectual Property Handbook: Policy, Law and Use*, WIPO Publication No. 489 (E), World Intellectual Property Organization, Geneva. <http://www.wipo.int/about-ip/en/iprm/>  
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