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### “ Intellectual property and the best ways to protect it – certain issues ”

The term *intellectual property* (IP) has a broad meaning, and is defined as any products of human intellect, such as inventions, works, designs, and symbols or images, that the law protects against unauthorised use by others. IP protected by law enables the creators to use their products and benefit from them at their discretion and to the extent stipulated by law. There are many types of intellectual property rights, including copyright, patents, trademarks and trade secrets.



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**Copyright** – this is a right that the creator holds to their works, and covers works ranging from books, music, paintings, sculptures and films through to computer programs, databases, advertisements and logos.

Copyright can be protected, for instance, through Digital Rights Management (DRM). This approach includes the use of certain technologies that limit the copying and the use of works and proprietary software subject to copyright.

Any infringement of DRM can lead to claims for compensation. Furthermore, the World Intellectual Property Organization (WIPO) has launched a new online platform, WIPO PROOF, helping creators and also innovators to safeguard their work from the conceptual through to the development and commercialisation stages.

In Poland, there is no official platform (office) for the registration of copyright, although a certain kind of protection can be achieved through a notarial deed confirming that a work belongs to a certain creator. In addition, copyright can be registered with the US Copyright Office. Any misappropriation of copyright can be subject to legal action based on civil law and criminal law, seeking damages and an injunction.

Works protected by copyright cannot usually be kept confidential due to their nature and circulation in the public sphere. As a work protected by copyright can only originate from an individual, any businesses that make use of the copyright of creators should ensure that any proprietary rights related to copyright are contractually secured.

**Patent** – this is an exclusive right granted for an invention. A patent owner has the right to decide whether or how an invention protected by patent can be used by others. However, the patent owner is required to produce technical information about how the concept works, and other businesses cannot use that information for as long as the patent remains in effect (in general for twenty years).

In Poland, patents are granted by the Patent Office of the Republic of Poland. Protection of registered patents encompasses remedies such as injunctions, as well as lawsuits for the handover of benefits gained through unjust enrichment and for compensation. Inventions that are not patented, or are non-patentable, are naturally vulnerable to theft and other criminal activities.



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Thus, to prevent the risks associated with the stealing or misappropriation of data containing such inventions, undertakings try to stop infringement before it happens by monitoring data movement, increasing awareness of data breach issues among staff and contractors, and introducing policies on dealing with sensitive data relating in particular to inventions.

The most effective way to protect a business against invention misappropriation is to sign a non-disclosure agreement (NDA) prior to disclosure to third parties, which means that an invention is considered a trade secret. Protection in this way also saves on the high costs of patent protection.

**Trademark** – a trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. Trademarks are symbols that represent the brand of a business.

They can be visual, such as a logo or seal, but they can also be written expressions or phrases associated with a business. In Poland, trademarks are registered with the Patent Office of the Republic of Poland, and Community Trademarks are registered with the Office for Harmonization in the Internal Market (OHIM).

Finally, international trademarks are protected under the Madrid Agreement Concerning the International Registration of Trademarks via WIPO. Once a trademark is registered in Poland, remedies for infringement include injunctions, as well as lawsuits for the handover of benefits gained through unjust enrichment and for compensation.

Meanwhile, by nature a trademark is not confidential and it is used in the public sphere to promote the goods and services of an enterprise.

To protect a trademark against infringement and counterfeiting, businesses should make sure that their trademark is used regularly so that it is strong and difficult for competitors to steal. In other words, the greater the visibility given to a trademark, the better.

**Trade secrets** are intellectual property rights to confidential information of certain value which may be sold or licensed. The unauthorised acquisition, use or disclosure of such secret information in a manner contrary to honest commercial practices by others is regarded as an unfair practice and a violation of trade secret protection.

Trade secrets can include a large amount of information and know-how of a business that cannot be protected by other IP rights such as patents and trademarks, for instance early-stage inventions, a manufacturing process, customer lists, prices, bidding procedures and commercial relationships.

The protection of trade secrets is a challenging issue today due to the many attempts by hackers to steal them. These attacks include ransomware attacks, which may be damaging once confidential data is disclosed.

In situations of dishonest behaviour, the affected entity is entitled to damages and other remedies. For example, a court order in Poland can prohibit the use or further disclosure of a trade secret by a person who acquires, uses or discloses that trade secret unlawfully.

It is also crucial in addressing threats before they become active breaches.

Should you have any questions on this subject, please contact us at [office@drlewandowski.eu](mailto:office@drlewandowski.eu)