

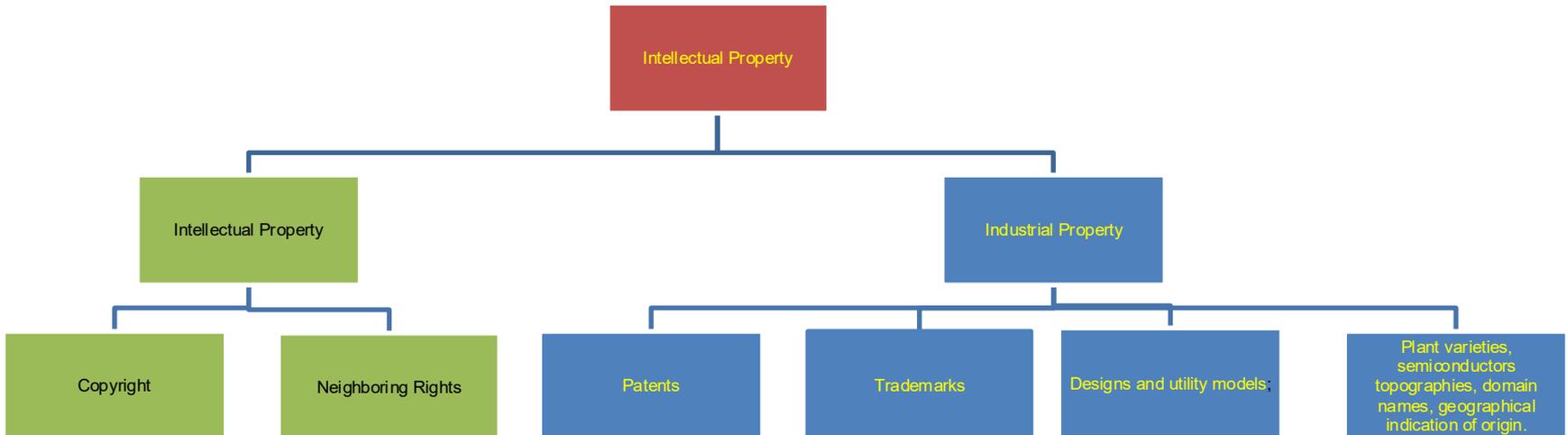


Introduction to IPRs

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IPRs' function and essence

FUNCTION: Broadly speaking, IPRs are tools to compete on the market.

- Patents 👉 foster technical innovation;
- Copyright 👉 spurs human creativity;
- Trademarks 👉 signal the entrepreneurial origin of products and services and protect firms' reputation.

ESSENCE: exclusive rights.

Different justifications for patents and copyright

Romantic vision (civil law countries):

Le Chapelier (1791) : « la plus sacrée, la plus légitime, la plus inattaquable, [...] la plus personnelle des propriétés, est l'ouvrage fruit de la pensée d'un écrivain »

Utilitarian vision (common law countries):

“To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries”. (American Constitution, art. 1, § 8)

IPRs as *public goods*:

- Information goods = copyright, software;
- Knowledge goods = patents.

- Information/knowledge goods share the same features of public goods:
 - Non-rivalrous in consumption;
 - Non- excludable;
- 👉 risk of market failure for *underproduction*.

Arrow's paradox and the function of patent law

- «without a property right, the inventor is in a pickle: if in trying to strike a deal she discloses her idea [...] she has nothing left to sell, but if she does not disclose anything the buyer has no idea what is for sale». K. Arrow.
- A patent is a certificate proving inventorship and ownership of the invention.
- Filing the patent solves the risk of market failure of inventive ideas by making an intangible good subject of property.

copyright's function



- Recognition of authorship;
- Rewarding authors for their intellectual efforts;
- Spurring and dissemination of knowledge and arts:
 - Inner contrasting needs: authors' need to control circulation of works vis-à-vis their wish for dissemination.
- ❖ Core principle in copyright law: expression/idea dichotomy:

Quote from **Mario Fabiani** (riferendosi alle opere di carattere scientifico) “[esse] non sono protette dal diritto d’autore per quel che di scientifico dicono, ma per *come* lo dicono e, quindi, per la loro *forma espressiva di rappresentazione all'esterno di un certo contenuto intellettuale*”..

Trademarks



- What is a trademark?
- What's trademark function(s)?
 - Distinctive function of the entrepreneurial origin of products and/or services;
 - Reputational function;
 interests of the firms vis-à-vis consumers'.

IPRs structure: what do they have in common?

As property rights, IPRs are

- Absolute rights to be asserted *erga omnes*.

Substantial differences with traditional
property rights:

- Time limit;
- Territorial limit;
- Internal limitations.