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Q&A

Practical Guide about Intellectual Property

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*“Intellectual Property has the shelf life of a
banana”*

Bill Gates



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TM





- ✓ Usually, trademark = brand / brand name
- ✓ As a rule, protected by registration
- ✓ Used by businesses as an identification sign to distinguish their goods or services from those of their competitors
- ✓ Defined as "any sign capable of being represented graphically and distinguishing the goods of one person from those of another..."
- ✓ Can be a name, picture, signature, color, word, shape, sound, smell or any combination of these so long as it is distinctive



Are Trademarks Important to Your Business?

- ✓ Trademarks are effective communication tools
- ✓ Trademarks makes it easy for customers to find you and your products
- ✓ Trademarks are a valuable asset, that can appreciate in value over time
- ✓ Trademarks last forever
- ✓ Trademarks allow businesses to effectively utilize the Internet and social media
- ✓ Trademarks are relatively inexpensive to protect



What to Do?

- ✓ Search
- ✓ Protect
- ✓ Use
- ✓ Monitor
- ✓ Enforce
- ✓ Don't breach!



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copyright

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Is Copyright Important to Your Business?

- ✓ Are you creator of original work?
- ✓ Do you work in a creative industry?
- ✓ Do you have a website?
- ✓ Do you use social media?
- ✓ Do you, in any way and on any media, use copyrightable works in order to promote your business?

Then, the answer is YES. Because copyright can make you earn money. Or lose money. Or both 😊



www.nndkp.ro – What Could Go Wrong?

- ✓ Cybersquatting / domain squatting = registering, trafficking in, or using a domain name with bad faith intent to profit from the goodwill of a trademark belonging to someone else
- ✓ Domain name hijacking = the act of changing the registration of a domain without the permission of its original registrant
- ✓ Typosquatting = a form of cyberquatting / brandjacking which relies on mistakes such as typographical errors made by Internet users when inputting a website address into a browser
- ✓ Renewal snatching = strategy to purchase domain name after they expire, if the legitimate owner of a domain name doesn't re-register the name
- ✓ “Sucks” cases = a domain name consisting of a trademark and a negative term confusingly similar to the trademark



Domain Name Protection

- ✓ Currently there are over 240 ccTLDs, each administered by a national body empowered for this purpose
- ✓ Domain name .ro is administered by The National Institute for Research & Development in Informatics Institutului, which manages the ROTLD register (www.rotld.ro).
- ✓ The protection of the domain names is performed by registration with the body/authorized organization for this purpose ("registrar" - register). The registration of a domain name does not grant to the holder of an ownership right over the name in question and any similar exclusive intellectual property right, but merely a right of use.



Domain Name vs. Trademarks

Conflicts domain name vs. trademark may be settled, among others:

- ✓ By the Approved Dispute-Resolution Service Providers), according to UDRP:
 - Uniform Domain Name Dispute Resolution Policy (UDRP - <http://www.icann.org/en/udrp/udrp-policy-24oct99.htm>) was approved by ICANN (Internet Corporation for Assigned Names and Numbers) at August 26, 1999;
 - As a rule, the records that agreed upon UDRP policy, should incorporate it by reference within the registration agreement of the domain name.
- ✓ By the competent courts of law, according to the applicable law
- ✓ By negotiations



The Right to Be Forgotten vs. Freedom of Expression and the Media (I)

- ✓ Judgment in Case C131/12 Google Spain SL, Google Inc. v Agencia Española de Protección de Datos
- ✓ What the court said:
 - ✓ **On the territoriality of EU rules:** Even if the physical server of a company processing data is located outside Europe, EU rules apply to search engine operators if they have a branch or a subsidiary in a Member State which promotes the selling of advertising space offered by the search engine



The Right to Be Forgotten vs. Freedom of Expression and the Media (II)

- ✓ **On the applicability of EU data protection rules to a search engine:** Search engines are controllers of personal data. Google can therefore not escape its responsibilities before European law when handling personal data by saying it is a search engine. EU data protection law applies and so does the right to be forgotten
- ✓ **On the “Right to be Forgotten”:** Individuals have the right - under certain conditions - to ask search engines to remove links with personal information about them. This applies where the information is inaccurate, inadequate, irrelevant or excessive for the purposes of the data processing. The right to be forgotten is not absolute but will always need to be balanced against other fundamental rights, such as the freedom of expression and of the media.



What Do We Do? (I)

- ✓ In practice, a search engine will have to delete information when it receives a specific request from a person affected. This would mean that a citizen, whose personal data appears in search results linking to other webpages when a search is done with that person's name, requests the removal of those links. For example, John Smith will be allowed to request Google to delete all search links to webpages containing his data, when one enters the search query 'John Smith' in the Google search box.
- ✓ Google will then have to assess the deletion request on a case-by-case basis and to apply the criteria mentioned in EU law and the European Court's judgment. These criteria relate to the accuracy, adequacy, relevance - including time passed - and proportionality of the links, in relation to the purposes of the data processing



What Do We Do? (II)

- ✓ The request may for example be turned down where the search engine operator concludes that for particular reasons, such as for example the public role played by John Smith, the interest of the general public to have access to the information in question justifies showing the links in Google search results.
- ✓ In such cases, John Smith still has the option to complain to national data protection supervisory authorities or to national courts. Public authorities will be the ultimate arbiters of the application of the Right to be Forgotten.
- ✓ The Right to be Forgotten is a right which is given to all citizens in the EU, no matter what their nationality, subject to the conditions outlined above



Google's Turn (I)

- ✓ **Yes:** Google will tell you that your request was granted and your URLs will be taken out of the index in the next few hours (36%)
- ✓ **No:** Google will tell you it has refused to take your URLs out of the index. The search engine has 11 different criteria for a refusal. The most frequent is 'Related to your professional life, which concerns 26% of the URLs (59%)
- ✓ **Question:** Google will ask you for more information to be able to start dealing with your request (5%)



Google's Turn (II)

- ✓ It is important to note that of the 15,061 URLs studied, 7,085 URLs received a response, whereas 7,976 did not, meaning 56% have not yet been dealt with by Google
- ✓ **Does Google often say yes?** Google granted many more requests in the beginning: 57% in the 26th week, whereas in the 36th week only 28% of replies were positive
- ✓ **How long might you have to wait for a reply from Google?** The time taken to deal with a request progressively shortens over time; we can see it decline from 44 days in week 26 to just 4 days in week 36
- ✓ Details and source: <http://www.reputationvip.com/blog/infographic-how-google-treat-right-to-be-forgotten-requests>



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Thank you!

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