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Guide for the workshop to support entrepreneurs in the protection of intellectual property rights: Protection of trademarks and patents from the perspective of micro, small and medium-sized enterprises (MSMEs)

Preliminary Version

Economic and Technical Cooperation

Workshop to support entrepreneurs in the protection of intellectual property rights: Protection of trademarks and patents from the perspective of micro, small and medium-sized enterprises (MSMEs)
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I. INTRODUCTION TO INTELLECTUAL PROPERTY

1. What is intellectual property?

Intellectual Property is a constant element in the life of human beings. Every product or service that surrounds us has been the result of human creativity that contributes to our lives facilitating our daily activities or complementing them with beauty, art, or ornament.

Intellectual Property protects the creations of human intelligence, the product of its invention and creativity. The main objectives of Intellectual Property are: (i) to stimulate creativity in society by providing an economic motivation to create; and, (ii) to disseminate information and knowledge to society.

Intellectual Property protects the rights of creators allowing them to exercise control over their intellectual creations, so that they can exploit them. It also assures the public access to knowledge and dissemination of information fostering fair trade practices.

2. Division of Intellectual Property

Intellectual Property is divided into two categories: (i) Industrial Property; and (ii) Copyright and related rights. Industrial Property includes trademarks, trade names, advertising signs, patents, industrial designs, geographical indications, and appellations of origin. While copyright protects the rights of creators, related rights include persons and legal entities that are related to copyright, such as performers, producers of phonograms and broadcasting organizations.

3. Importance of Intellectual Property for MSMEs

In general, companies, regardless of their size, possess a series of intellectual property assets, no matter the turn of their business; usually have a trade name, one or more brands, a way to sell their products or provide their services, a list of customers, formulas, recipes, product designs, sales tactics, marketing, advertising of their products or services, and other ways by which an entrepreneur differentiates its products or services from other competitors. All of these are intellectual property assets that must be adequately protected in order to achieve their own economic exploitation and profit and to prevent unfair competition or unfair exploitation by third parties.

Any entrepreneur must learn to manage his intellectual property assets for his own benefit, and also learn how to use third parties intellectual property assets to avoid infringements.

4. How can intellectual property be used to increase the value of MSMEs?

Usually MSMEs do not give the right value to their intellectual property assets, neglecting their protection, and limiting their chances of obtaining future benefits. However, intellectual property is a valuable asset that can increase MSMEs economic growth, especially when the products or services have a market demand.

That is how an MSME can generate income by selling its products protecting them through trademarks or industrial designs, benefiting from licensing or franchising for others by marketing its products or services. A protected intellectual property asset can awaken the interest of an investor or a financier increasing the value of its products or services. In cases of mergers or acquisitions,

intellectual property assets often play an important role, because if they are properly protected, they will increase the acquisition value of the company. In many cases, the main asset of an MSME is the intangible asset, which may generate potential growth for an investor. Therefore, the strategy used by an MSME of its Intellectual Property should increase economic growth, making it more competitive.

5. What value do intellectual property assets have?

Generally, the company's assets fall into two categories: tangible assets that include, but are not limited to buildings, machinery, and infrastructure; and intangible assets that include human capital and know-how, ideas, brands, designs, and other intangible products from the creative and innovative capacity of the company. Presently, with the emergence of information technology and the growth of the service sector economy, intangible assets have become more valuable than tangible assets, significantly varying the value they bring to a company.

Companies often pay more attention to software and innovative ideas as the main source of income to be more competitive in both national and international markets. That is why MSMEs must use different forms of intellectual property to protect their intangible assets.

6. Why is Intellectual Property Important for MSMEs?

The protection of intangible assets through the various forms of intellectual property results in an exclusive property for the company. Thanks to this, a company can claim ownership over its intangible assets and exploit them to the maximum, making it more competitive.

If a company does not protect its innovative ideas, new designs, brands, processes, methods, practices, and knowledge, any other company can use them without cost or limitation. On the contrary, if they are protected by intellectual property rights, these assets acquire a specific value for the company and become property rights that cannot be marketed or used by any other entrepreneur.

II. INDUSTRIAL PROPERTY

1. Trademarks:

- **What are trademarks?**

A brand is a sign that allows you to differentiate the products or services of one company from others. Trademarks may consist of words, letters, numbers, drawings, photos, shapes, colors, logos, labels, or combinations of these elements, as well as sounds and smells in the form, presentation or packaging of products, in the environment that are used to differentiate products or services.

The main purpose of the brand is to allow consumers to identify the product of a company, whether it is a product or a service, in order to distinguish it from identical or similar products of the competition. Because brands help to differentiate one company from another and products from competitors, they play a key role in developing and marketing strategies that contribute to project the image and reputation of the company's products to consumers. The image and reputation of a company inspire confidence, which in turn build a loyal customer base and enhance the value of the company.

That is why registering a brand provides the company the exclusive right to prevent third parties from marketing identical or similar products with the same brand or using one so similar that it might create confusion. Therefore, trademarks: (i) Ensure that consumers distinguish products; (ii) Allow companies to differentiate their products; (iii) Are a marketing tool; (iv) Allow projecting the image and the reputation of a company; (v) Can be licensed and provide a direct source of revenue through royalties; (vi) Are a determining factor in franchise agreements; (vii) Can be important commercial assets; (viii) Encourage companies to invest in maintaining or better quality of products; (ix) Can be useful for obtaining funds.

Brand protection is obtained through registration and in some countries by its use. However, it is always advisable to request their protection through registration. Registration of a brand will result in greater protection, especially in case of conflict with an identical or similar brand that can cause confusion.

In general, any person, whether physical or legal, who intends to use a brand or authorize its use by third parties may request its registration.

There are different types of trademarks: (i) Trade name or mark: indicates that a product has been manufactured by a particular person; (ii) Service Mark: indicates that a service is provided by a particular company; (iii) Collective Mark: indicates that the product or service has been manufactured or is supplied by members of an association; (iv) Certification mark: indicates that the products or services meet a set of standards and have been certified by a certification authority; (v) Well-known marks: are considered to be well-known in the market and therefore enjoy greater protection.

- **How to choose a trademark?**

Trademarks allow you customers to distinguish your products and services from those of your competitors, thus allowing a more appropriate commercialization of your products or services. Trademarks are not only used as identifiers, but also a guarantee of consistent quality. That is why you must take great care in choosing and designing an appropriate trademark, protecting it, using it with care in advertising, and monitoring its misleading or improper use by third parties.

The choice or creation of an appropriate trademark is a determining factor, since it constitutes an important element in the marketing strategy of the company. Therefore, how should you choose a trademark that is appropriate for a product? There are no universal rules, but there are five points to keep in mind: (i) That it complies with the legal requirements, i.e., avoid: Generic terms: words that in everyday, technical, or scientific language, or in the commercial use of the country, are a common or usual designation of the product or service in question; Descriptive terms: words that are commonly used in commercial environments to describe the product in question; Marks which can induce to error: marks susceptible to mislead or confuse consumers as to the nature, quality, or geographical origin of the product; Contrary to public or moral order: Words or illustrations considered contrary to commonly accepted norms of morality and religion cannot be registered as trademarks; Flags, coat of arms, official stamps, and emblems of international state or organizations. (ii) Conduct a trademark search to ensure that the brand is not identical or similar to another that may lead to confusion. (iii) Choose a brand that is easy to read, write, spell, and remember, and adequate to all types of advertising media. (iv) Do not include negative connotations in either its own language or in any of the languages of potential export markets. (v) Check the possibility to register the domain name.

Therefore, in choosing the brand, the following must be taken into account, so that the trademark chosen contains the distinctive ability necessary to be protected as such and the probability of success in the registration process is high, which will decrease the risk of rejection, objection, or possible cause of confusion: (i) Coined or fanciful words: They are words with no intrinsic or real meaning. These words have the advantage of being easier to register, since they are more likely to be considered distinctive. Otherwise, the consumer will have a hard time remembering, and advertising of the product will require more imagination; (ii) Arbitrary marks: Words whose meaning is not related to the product; (iii) Suggestive marks: They are marks, which hint at one or some of the attributes of the product. These marks act as a form of advertising.

- **Trademark Search**

When selecting a brand, you should find out whether the chosen mark or similar marks have already been registered by another company for the category of products or services and markets in which you are interested. This type of information is obtained by conducting a trademark search. Prior to submitting the application for brand registration, a trademark search must be conducted to ensure that the mark has not been registered by another company for identical or similar products.

Most countries require that the application form indicates the goods or services, or both, for which you wish to register the brand and group them according to classes. Classes are those included in the system of classification of brands, which allows to orderly store information about trademarks according to the types of products or services.

The most commonly used classification system is the international trademark classification system (the Nice system governing the classification of marks formed by words), consisting of 34 classes for products and 11 classes for services.

At the moment of obtaining the result of the required search, it will be possible to observe all those marks that are previously requested and/or registered and determine if there are similar signs or major similarities that should be considered to decide on the probabilities of success in the administrative procedure of registration, as well as to avoid potential or future controversies. Although previous searches for trademarks are not mandatory for the registration process, they play a key role in the success of our registration, as well as preventing future contingencies.

- **Why do brands allow you to export your products?**

As intellectual property rights are territorial, i.e. they only are available in the country or region in which they have been applied for and granted, in order to enjoy exclusive intellectual property rights in foreign markets. That is why it is important to take into account the following factors as to the protection of intellectual property in export markets.

They give rise to new export and marketing opportunities. They contribute to provide the company an advantageous market position in export markets. Increase opportunities to develop a loyal clientele for products and services in export markets.

The reasons to protect trademarks in the national market are fully applicable to external markets. Registration of the brand allows the maximum use of distinction, advertising, and marketing of the product, thus promoting recognition of your product or service in international markets, establishing a direct link with consumers in other countries.

If a company does not have an identifying mark of products or services, it can face disadvantages at the time of export as it will have lower revenues, since lower prices are demanded for unbranded products or services. In addition, it will lack consumer loyalty, since consumers will not be able to identify the product and distinguish it from the competition, and the company will find difficulties in marketing.

2. Geographical Indications, Collective Marks, and Certification Marks

- **What are collective marks?**

A collective mark is a mark whose owner is a legal person that groups people authorized by the owner to use the mark. It can be used by more than one person, as long as it complies with the regulation of use established by the owner. The regulation may require that the mark be used only in relation to products having a geographical origin or specific characteristics.

Collective marks may be used by any member of the association owner of the mark, provided that it complies with the regulations of use. Collective marks are registered with the Intellectual Property Registry. The term of protection depends on each country, but generally is 10 years, renewable for equal periods. Registration of collective marks grants the right of exclusive use and the right to object unauthorized use by third parties.

Example of a collective mark strategy: Implementation project of intellectual property rights in the emblematic handicrafts of Colombia, of the company Artesanías de Colombia S.A.[1] Through this project, eight collective marks were registered in Colombia to benefit artisans of that country. The registered collective marks are: Palma Estera del César, Minajoya, Palo Sangre, Playa Mandela, Artesanías de Colosó, Coco Viejo Atuma, Manos de Oro and Asoimola.

- **What are certification marks?**

A certification mark is a mark that applies to products or services whose characteristics or quality have been controlled and certified by the owner of the mark. It can be used by more than one person, as long as it complies with the regulation of use established by the holder. The regulation may require that the mark be used only in relation to products having a geographical origin or specific characteristics.

Certification marks may be used by anyone who complies with the regulation of use. Certification marks are registered with the Intellectual Property Registry. The term of protection depends on each country, but generally is 10 years, renewable for equal periods. Registration of a certification mark grants the right of exclusive use and the right to object unauthorized use by third parties.

[1] Implementation project of intellectual property rights in the emblematic handicrafts of Colombia, of the company Artesanías de Colombia S.A. http://www.larepublica.co/asuntos-legales/sic-concedi%C3%B3-ocho-marcas-collectivas-differentes-artart organizations_36978.

Examples of certification marks:

- **What are geographical indications?**

Geographical indications are names associated with products of a certain nature and quality, known for their geographical origin and for having characteristics related to that origin, such as: Champagne (sparkling wine), Roquefort (blue cheese), Café de Colombia (coffee), Antigua Coffee (coffee), Ron of Guatemala (rums), etc.

The term geographical indication is a more general concept. The term appellation of origin is often used to refer to a special type of geographical indication. Consequently, it is sometimes argued that products with a certain reputation, but without any other quality attributable to the place of origin, cannot be regarded as appellation of origin, but as geographical indication.

Although geographical indications were traditionally limited to agricultural products, now they can also be used for other products, such as: Swiss Clock.

Geographical indications and appellations of origin are generally registered with the Intellectual Property Registry or in a specialized institution for that purpose. The term of protection is usually indefinite, as long as the circumstances fulfilled to obtain the protection remain.

- **How can an MSME use these distinctive signs to differentiate its products or services?**

Geographical indications are an instrument of differentiation in the marketing strategies of a product. In some cases, the place of origin suggests that the product will have a quality or characteristics that customers may value, even if they have a higher economic value.

Geographical indications convey information on the characteristics of a product linked to its origin, but developing the brand remains an essential aspect of marketing.

Geographical indications are registered with the Registry of Intellectual Property and it is important to do it, because they reflect the reputation of a geographical area and therefore improper use should be avoided to prevent the name from becoming generic.

A geographical indication implies: (i) To identify the characteristics of the product; (ii) To strengthen the cohesion of the group of producers and other actors involved. (iii) To establish standards to unify production practices, traceability control mechanisms, and the process to attribute the right to use

the geographical indication. (iv) To develop innovative marketing strategies. (v) To obtain legal protection.

It is important to note that the use of marks and geographical indications does not exclude one from the other; therefore marks with a geographical indication can be used simultaneously in the same product.

3. Industrial Designs and Patents

- **Industrial Designs**

What are industrial designs?

For the purposes of Industrial Property, we can define an industrial design as the physical or aesthetic aspect of an article, i.e. the shape of the article as such, which gives it a particular and/or personal aspect over the rest of products of the same nature.

An industrial design "*involves only the aesthetic or ornamental aspects of a product*".[2] The foregoing implies that an industrial design comprises only the physical or aesthetic appearance, leaving aside any technical or functional aspect of the product in question. Therefore, it is very important to emphasize the fact that when a product acquires a technical functionality as a result of a design, it will no longer be considered an industrial design, as it is no longer purely aesthetic.

In exemplary terms, we can speak of the design of a cup for drinking tea that given its particular design makes it easier to hold the cup preventing it from falling; consequently it fulfills a technical function, and therefore cannot be a design, and however it should be protected by other means.

Industrial designs can be found in any type of product, including industrial products, fashion, clothing and shoes, furniture, ornaments, utensils, home appliances, textiles, vehicles, among others.

They can be divided into industrial models and industrial drawings:

i. Industrial Model: Refers to the three-dimensional characteristics, i.e. the product shape;
ii. Industrial Drawing: Refers to the two-dimensional characteristics, such as the combination of figures, lines, or colors incorporated into a product.

How can an MSME benefit from industrial designs?

The creation and protection of industrial designs can greatly benefit an MSME, since an industrial design can become the main differentiator of that company compared to other competitors. It makes consumers prefer to buy a certain product instead of another that does not have that particular aspect. A design can be one of the pillars of a company's business strategy.

Among the main benefits we can mention: (i) Adapt the products to specific market segments: When developing a particular design of a product, it is possible to reach a specific market segment that will be interested in that product because of its physical appearance, such as a design focused exclusively on teen-agers or children. (ii) Create a new niche market: A particular design will create

[2] The appeal is in the form. Introduction to industrial designs aimed at small and medium-sized enterprises. World Intellectual Property Organization (WIPO). 2006. Page 3.

a market that without such design it would not have been possible to reach it. (iii) Strengthen a brand: A design can become the biggest differentiator of competitors, which implies that products identified with a brand can better position themselves using creative and particular designs.

This implies that in order to enjoy all the benefits indicated above, it is essential to protect the design through registration with the Industrial Property Registry, as it is later explained.

To protect a design means that the owner will be the only one that will have exclusive rights over the same, thus preventing reproduction or imitation by third parties not authorized by him. Having industrial designs and protecting those means that a company has an added value, and consequently can increase the commercial value of the company and the products involved.

How to protect an industrial design?

In Guatemala, the protection of a design is acquired through its first disclosure (publication) or by registration. The most recommended at the time of creating a design is its registration, as this is the only way the owner may ensure its full protection.

The creator himself can register a design; however, the right over said design can be sold to a third party, and who will become its owner.

In Guatemala, industrial designs are registered with the Industrial Property Registry and this demands that the design meets certain requirements. Although the law expressly provides what is indicated in literal a) below, it is also important to take into consideration the other items: (i) Novel: In order to be protected, the design must be new, which means it should not be similar to previously known designs or combinations of characteristics thereof. It will be considered new if, prior to its date of disclosure or application for registration, an identical design or with the same characteristics, has not been made available to the public in any part of the world and by any means. (ii) Original: A design is original if its creator has designed it independently and is not a copy of an existing one. (iii) Individual character: A design has an individual character if the overall (general) impression it produces on an informed potential consumer differs from the overall impression produced by other designs, meaning that this particular design does not bring to his mind other existing design.

- **Patents**

What is a patent?

"A technical solution to a technical problem". It is the certificate granted by the State recognizing the exclusive right of an inventor or holder over a product or procedure that offers a new way of doing something or a new solution to a problem.[3]

An exclusive right prevents third parties from marketing the protected invention. Patents must meet three patentability requirements: novelty, industrial application, and inventive level.

[3] Inventing the Future, Introduction to patents aimed at small and medium enterprises. World Intellectual Property Organization (WIPO). 2006. Page 3.

What is a utility model?

It is a "small patent", an improvement, or innovation of an existing product or procedure that has a technical effect.

The granting of the small patent demands fewer requirements than patents; it is protected for less time and the acquisition and maintenance fees are lower than those of patents.

What do patents or utility models do for MSMEs?

Patents are used by MSMEs to prevent others from manufacturing, using, offering for sale, selling or importing a product or process based on their invention, unless they have authorization o permission.

Utility models help MSMEs to make "minor" improvements to existing products or adapt products.

What does an MSME need to protect a patent or utility model?

First of all, conduct a documentary search to be able to verify the novelty of the invention (patentability requirement). Subsequently, by means of an attorney, submit the patent application to the national patent office. In the case of Guatemala, it is the Intellectual Property Registry.

Reasons to patent an invention

Reasons to protect an invention are: (i) It can allow you to develop a solid position in the market; (ii) You can earn additional income by licensing; (iii) You may be able to exclude other competitors from the manufacture of a product or procedure; (iv) You may be able to prevent importation of products that violate your patent rights.

What happens if inventions are not patented?

If inventions are not patented, they will no longer be patented in the future, because they will lose the novelty (requirement to be able to patent an invention) becoming part of the documentary search of the invention. This includes all the expertise available to the public anywhere in the world.

How to use patent information?

Patent information is information contained in patent documents, which are published by different patent offices throughout the world. They contain relevant information on a patent application, in particular the description of the invention as well as the scope of protection thereof through the claims. Moreover, it can be determined who the applicant or holder of a patent is, the date it was granted and expiration date, among others.

Patent information can be very useful for MSMEs, since it is possible to determine several aspects, such as whether an invention is patentable or not, that is, if it can be found in the documentary search, ensuring the potential protection prior to submitting the application and incurring in unnecessary expenses.

In addition, patent information is crucial to a company's business strategy, as it allows the company access to current research and development, which will be useful for the creation and development of new creations by that company.

Patent databases allow a company to know what is the competition focusing on regarding research and development, what are the trends in a particular field of technology or in the market, potential suppliers or trading partners, market niches, ensure that Its products do not infringe third parties' rights, as well as technologies and patents that are part of the public domain and that can be used for the development of new inventions.

When should an MSME decide if it protects an invention or an innovation?

An invention should be protected at the time that a new product or procedure is created, before the invention is disclosed. Any disclosure before filing the patent application with the Intellectual Property Registry must be made only if you have signed a confidentiality or non-disclosure agreement. If it is disclosed, it will lose the novelty and it will not be able to be patented.

4. Trade Secrets

- **What is a trade secret?**

According to Article 174 of the Intellectual Property Law, a trade secret is information that has a commercial value and its owner wishes to keep it concealed. In addition, the following requirements must be met: (i) That such information, its collection or components, should not be generally known, nor easily accessible to persons in environments in which is normally used; (ii) That it has been the subject of reasonable measures taken by its lawful owner to keep it secret.

In general, an trade secret is information that gives its holder a competitive advantage, covering manufacturing processes, product composition formulas, sales methods, advertising, customer information, to mention a few. Unauthorized use of such information by third parties is considered an act of unfair competition.

- **What are the benefits of trade secrets for MSMEs?**

In order for MSMEs to be able to capture market shares that allow profitability of their operations, they must develop differentiated products or services that are attractive to consumers. If this is successfully achieved, a competitive advantage will have been achieved towards its rivals, whose information should be kept out of reach. The trade secret represents certain level of legal protection of said information over its unauthorized use by third parties. Some of the advantages are: (i) It is protected for an indefinite period, as long as it is not disclosed to the public. (ii) It does not entail registration costs, although the cost of defending secrets in judicial or arbitration proceedings could be high. (iii) No disclosure of information to any government authority is required. (iv) Its effects are immediate.

- **How to protect the trade secrets of your MSME?**

Trade secrets are protected without need of any registration process and their effects are immediate. Some companies implement confidentiality clauses in their employees' labor contracts, or professional services contracts of their contractors, or promote the signing of non-disclosure commitments with any person who may eventually have access to some portion of data considered

as industrial or business secret. In this regard, Article 174 of the Industrial Property Law provides the requirements for the information to be considered as business secrets.

- **Patent of invention or trade secret?**

The trade secret can be of two types: (i) secret information, not susceptible of patentability, such as customer lists, methods, etc. (ii) secret information that even if it meets the patentability requirements, for some reason, the MSME decides not to begin a patent registration process. Such reasons can be diverse, such as financial motives, time of process, or just because the MSME does not want the information to be in the public domain - once the term of protection of the patent of invention has expired.

- **What precautionary or preventive measures can be taken to protect business secrets?**

As preventive measures, MSMEs can implement - as previously mentioned - the adoption of arbitration clauses in their employees' labor contracts, service contracts of their contractors, and of all those persons who may eventually have access to information considered as business secret. These clauses should clearly include the possible consequences of the violation of confidentiality, such as fines, reparations, among others.

Likewise, the Industrial Property Law provides for the possibility of requesting the execution of precautionary measures for MSMEs that wish to initiate legal action against any alleged infringer of the corresponding rights, due to the commission of acts of unfair competition. Article 187 of these regulations provides a list of measures that can be requested to the competent judge.

III. COPYRIGHT

1. What is copyright?

Copyright is the branch of Intellectual Property law that regulates the principles and laws that protect Artistic Works. Within the rights contained in copyright are property (exploitation) rights and moral rights, the latter inherent of human beings and cannot be waived. In addition, copyright is divided into copyright (which corresponds to the authors of the works), and related rights (which correspond to artists, performers, producers of phonograms and broadcasting organizations) who collaborate to transmit their works universally.

2. How to use copyright if you are a user?

Users are compelled to respect authors' rights and related rights; therefore they can only obtain original copies of the pieces for their use, and in case they want to disclose or "cite" a piece, to produce a new work, they should ask permission from the author.

3. How to use copyright if you are a holder?

As a copyright holder, you can enjoy both property and moral rights. Within the property rights are those that authorize the exploitation of works under the modalities they deem convenient, and within the moral rights are the right of attribution and the right of integrity, which means to object any modification of the work, among others.

4. What do I need to protect a copyright?

Registration is not necessary for copyright protection since the law expressly states that copyright exists from the moment the "work is created", therefore, it is very important to keep a record of the date of creation and evidence of authorship. In addition, it is advisable to register the work with the Intellectual Property Registry for which an affidavit must be submitted attaching a copy of the work. All of the above will serve in case you need to protect your rights against third parties.

IV. RELATED RIGHTS AND COLLECTIVE MANAGEMENT ORGANIZATIONS

1. What are related rights?

The Guatemalan Intellectual Property Registry has emphasized that: "Intellectual property is the form by which the State protects the results of the creative effort of human intellect and some of the activities aimed at their dissemination. Article 2 of the Convention establishing the World Intellectual Property Organization (WIPO), in its definition, states that intellectual property includes the rights related to the creations and activities listed in that article, and all other rights related to intellectual activity in the industrial, scientific, literary and artistic fields."[4]

Wilson Ríos explains that "...the General Assembly of the United Nations, in the universal declaration of the human rights of 1948, raised Copyright to the category of human rights..."; regarding related rights, he says: "These are the rights of artists, performers, and producers of phonograms over a musical work protected by Copyright. Related Rights also include broadcasting organizations that hold the exclusive right to perform authorize or prohibit them."[5]

"Related rights" are closely related to copyright and cover rights similar or identical to those, albeit sometimes more limited and shorter in duration. Beneficiaries of related rights are: performers (i.e. actors and musicians), who have rights over their performances; producers of phonograms (e.g. CDs), who have rights over their sound recordings; and broadcasting organizations, who have rights over their radio and television programs."[6]

2. What categories are included in related rights?

Related rights are: Performers, producer's phonograms and broadcasting organizations.

Related rights are reflected not only in musical works, but also in dramatic and printed works, and in the field of visual arts. Related rights are included in International Conventions as: The Rome Convention, adopted in 1961, Trade Related Aspects of Intellectual Property Rights (TRIPS 1994), Performances and Phonograms Treaty (WPPT 1996).

Guatemala Legislation is within the framework of Decree 33-98 of the Congress of the Republic, the Copyright and Related Rights Law.

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[4] Registry of Intellectual Property in Guatemala, https://www.rpi.gob.gt/descargas/QU%C3%89%20ES%20LA%20PROPIEDAD%20INTELECTUAL.pdf, consulted on 26 March 2017.

[5] LA PROTECCION INTERNACIONAL DEL DERECHO DE AUTOR, LOS DERECHOS CONEXOS, by. Delia Lipszyc. Ecuador. https://www.propiedadintelectual.gob.ec/que-son-.

[6] Registry of Intellectual Property in Ecuador, http://www.wipo.int/edocs/pubdocs/es /intproperty/ 450/wipo_pub_450.pdf, consulted on 26 March 2017.

3. What are Collective Management Organizations?

Delia Lipszyc explains: *"Collective management of copyright was born and developed through private, non-profit entities, formed by authors (with the participation of publishers of musical works in many societies of performance rights) with the purpose of defending personal interests (moral rights) and managing property rights of authors of creative work..".*[7] *In this regard Wilson Ríos indicates that: "Collective management emerges as an honest and effective response to a practical problem that authors and owners of copyright and related rights were having with regard to the control and disposition of rights as a result of the continuous use of their works. It was not easy for an author to supervise and oversee the countless sites and people who could access his creations through the phonograph or cinematographer. Today is more difficult to have this control because of the numerous technological advances that provide us with the opportunity of having a work in our hands thanks to the network services, or having the opportunity to combine a series of works in a single medium through multimedia, digital media, and interactivity."*[8]

It is then understood that Collective Management Organizations are non-profit associations, subject to the supervision and control of the Registry of Intellectual Property, and also to its registration in the Registry of Persons of the Ministry of the Interior, which are aimed at the defense of copyright or related rights, which must be duly authorized by the Intellectual Property Registry, prior to operate.

V. CONTRACTS

There are several ways in which a company can develop a new business, expand an existing one, acquire a specific technology, or improve the quality of goods or services. For these cases, license agreements on intellectual property rights are an effective tool for achieving the business objectives of expansion and growth.

It is advisable to consult an expert to make any license agreement on intellectual property rights as they must comply with certain legal guidelines, and in some cases, must be registered to be valid.

A license agreement is a partnership between an intellectual property rights holder (licensor) and another person authorized to use such rights (licensee) in exchange for a pre-agreed payment (fee or royalty). There are different types of licenses, namely:

1. Trademark and franchise license agreements

Trademark or franchise license agreements usually occur when a company wishes to market a good or service that belongs to a third party, or when it needs to expand the existing market for a product or service of which an MSME is the owner of the trademark rights and decides to authorize a third party.

Through a trademark license agreement, the holder authorizes a third party to use his trademark under specific guidelines that ensure the reputation and prestige of the trademark. These types of agreements guarantee that the quality standards of the goods or services licensed will be maintained and avoid misleading the consumer.

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[7] Lipszyc, 2007, page 416 and 417.
[8] Instituto Ecuatoriano de Propiedad Intelectual https://www.propiedadintelectual.gob.ec/sociedades-de-gestion/ Ríos 2011, page 165.

On the other hand, through a franchise agreement the holder transmits the techniques and specialized knowledge he has attained for his goods and services, and has earned a reputation in his business. In this way, the company that acquires the franchise can provide goods or services directly to the consumer.

2. Patent License agreements

The patent license agreement authorizes a third party to use the patented invention for mutually agreed purposes. In these cases, a license agreement is usually signed between the parties, specifying the terms and scope of the agreement.

By authorizing others to market the patented invention, the company can obtain an additional source of income, and is a usual means of exploiting a company's exclusive rights over an invention. Patent licensing is very useful for MSMEs, especially in cases in which the company is not capable of industrially producing the invention.

3. Copyright license agreements

Copyright license agreements are usually granted when a company is interested in making, distributing, or marketing literary or artistic works of creators, or introducing such works in a new market, or expand the existing market for them.

It is important to know that many rights holders find it difficult to manage their own rights and have formed collective management organizations that represent and manage their rights on their behalf. Therefore, in most cases, if someone is interested in acquiring rights to reproduce or market a work, he should address to the collective management organization authorized to grant licenses regarding the various rights of its members.

4. Technology transfer

Transfer of technology is the process by which skills, knowledge, practices, technologies, manufacturing methods, manufacturing samples and installations are transferred between different companies. This transfer of technology contributes to improve the quality of MSMEs products, or allows them to manufacture a new product using the rights that belong to third parties, which could be protected by a patent, utility model or business secret.

Through technology license agreements, the licensor authorizes the licensee to use its technology in accordance with certain previously agreed terms and conditions. It is, therefore, a voluntary contract between two parties.

VI. PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

1. Trademark Registration

The administrative procedure through which the exclusive right over a trademark is obtained. This process takes place in the Intellectual Property Registry and consists of the stages described below: (i) Initial application; (ii) Examination of form; (iii) Substantial Exam; (iv) Publication notice; (v) 2 months for third parties to present oppositions; (vi) Registration fee; (vii) Issuing of registration certificate

2. Patent and Industrial Designs Registry

The administrative procedure through which a patent is obtained or the exclusive right of said process that takes place in the Intellectual Property Registry and consists of the following stages: (i) Initial application; (ii) Examination of form; (iii) Publication notice; (iv) 3 months for third parties to opposition; (v) Patentability Examination; (vi) Registration fee; (vii) Issuing of registration certificate.

3. Copyright Registration

Copyright registration is of a declarative character as the right is acquired from the moment of its creation. However, a copyright registration can be obtained through administrative procedures in the Registry of Intellectual Property.

4. Registration Abroad

Because most intellectual property rights have territorial protection, they have exclusivity in the country in which they are protected. To obtain protection abroad, it is necessary to apply for registration in the country or countries that will need protection. For this, they must fulfill certain requirements similar to those in Guatemala.

5. Territoriality Principle

The principle of territoriality refers to the fact that intellectual property rights, for the most part, only acquire protection in the country in which they are registered. Therefore, the right to use them exclusively is only acquired in the territory in which they are protected.

6. Exhaustion of Rights and Parallel Importation

The exhaustion of intellectual property rights is a limitation when once a product protected by an intellectual property right has been marketed by an entrepreneur or others, with his consent, the entrepreneur is no longer entitled to exercise the intellectual property rights for marketing this product, since the rights have been exhausted.

This limitation is also known as the "first sale doctrine", since commercial exploitation rights on a given product end with the first sale of the product. Unless specifically provided otherwise by law, an entrepreneur may not control or object subsequent acts of resale, rental, loan or other forms of commercial use by third parties.

Exhaustion of right is important at the time of marketing and exporting a product, especially concerning the so-called parallel imports. Parallel importation means importation of products outside the distribution channels contractually negotiated by the manufacturer. As a result of the exhaustion of the intellectual property right, the right holder will no longer be able to control subsequent sales or parallel imports within a territory, even if they take place outside the circuit controlled by the holder, since the product is legitimate and has been placed in the market with the authorization of the holder.

The exhaustion of the right will depend on the regulation each country adopts, because some countries do it in nationally, regionally or internationally.

VII. INTELLECTUAL PROPERTY STRATEGY FOR MSMEs

1. What should an Intellectual Property strategy contain?

The Intellectual Property Strategy must be based on the needs of each company, including all intangible assets held, whether registrable or not. Among the registrable assets in intellectual property are marks, patents, industrial designs, trade names, advertising signs, domain names, copyright, and any others that can be registered.

Moreover, it is necessary to establish what type of intellectual property is not registrable to establish the means by which they will be protected. These assets may be formulas, business secrets, know-how, recipes, and other types of assets that make each company different.

2. How to develop an Intellectual Property strategy?

Any company that wants to develop its intellectual property strategy must do it with a global approach and thinking in the future of its business. Export markets should be prioritized focused on territories where legal protection will take place. Control and monitoring practices should be established with respect to intellectual property rights in different territories. In addition, it should be considered whether the strategy would be national, regional, or international, depending on the markets to be accessed. If they want to be present on the internet and the risks involved in each market.

3. Administration of intellectual property rights

In establishing an intellectual property strategy, it is necessary to consider how rights will be managed. This means, how the brand portfolio will be handled, what registrations are necessary, how brands will be used in the markets to avoid brand generalization or dilution problems. What brand renewal policy will be in place in case offenders should be prosecuted and what type of actions should be taken (offensive, defensive, preventive).

4. Why do I need an Intellectual Property strategy?

- **Financing**

Having an intellectual property strategy contributes to creating and maintaining the most valuable intangible assets, saves money and allows access to global markets more easily. Facilitates financing and attracts investors interested in investing in the business. Markets will value a company based on its assets, its current business operations, and its profit expectations. Having intellectual property assets such as patents, trademarks, or copyright will give a company better financial value, greatly increasing the expectations of SMEs.

- **Investment**

In order to increase the commercial value of an SME, it is essential to make the appropriate investment. Investing in tools, land, product development, marketing and research can greatly improve the company's financial situation, expanding its asset base and increasing productivity in the future. Investing in creating an adequate portfolio of intellectual property rights is much more than an act of defense against potential competitors. In fact, it is a way to increase the value of a business and improve its profitability in the future.

- **Business plan**

"A business plan is a mechanism to ensure that the resources or assets of a business are applied profitably across all its activities for developing and retaining a competitive edge in the market place. For a new business it provides a blueprint for success, while for an ongoing business it provides an overview of where a business is at present, how the business is positioning itself, and how it seeks to achieve its objectives to become and/or remain successful. "[9]

The business plan helps determine the feasibility of the idea in mind, clearly establishing the potential that products or services will have when launched to the market. The business plan also helps gain access to financing plans and gets investors interested in the business model. It allows establishing the strategic guidelines that the company will follow, within specific deadlines and measurable goals that can be evaluated over time.

Including intellectual property in a business plan allows your company to be on a more competitive level. The interest of an investor will depend on the intellectual property rights you hold. A trade name, brands, and domain names can be the fundamental elements that differentiate a product or service from those of the competition. It is therefore vital that they are carefully chosen and included in a business plan, describing the measures taken for their registration and protection.

Additionally, aid providers and initial investors will want to make sure that the product being offered does not harm third-party rights or protected material over which there is no authorization to use, as this could lead to the ruin of a business.

VIII DEFENCE OF INTELLECTUAL PROPERTY RIGHTS

1. How to enforce MSMEs Intellectual Property rights?

Obtaining and maintaining an intellectual property right does not make sense if it cannot be enforced in the market and against third parties.

The main objective of obtaining protection through intellectual property is to allow the company to benefit from the fruits of inventions and creations of its employees, which translate into MSMEs intellectual property rights.

It is important for MSMEs to enforce their intellectual property rights in order to preserve the legal validity of their intellectual property rights before the relevant public authority, avoiding market violations or ending those that are already occurring to avoid damages such as loss of clientele or reputation, and obtain compensation for damages suffered, among others.

2. Who should defend Intellectual Property rights?

The owner of the intellectual property right should keep a close supervision of its rights and defend them against imminent risks. It is the responsibility of an MSME to observe and identify infringements or counterfeiting of its intellectual property rights so as to decide which measures to take.

[9] (Http://www.wipo.int/sme/es).

Any MSME may choose any procedure to maintain its intellectual property rights. These can be preventive measures to apply against infringers or take the actions allowed by the legislation of a country. However, it is important not to waste the financial and human resources of an MSME; therefore in case of infringement of intellectual property rights, it is suggested to seek advice from experts.

Different mechanisms can be used prior to initiate judicial proceedings, such as a letter requesting the cessation of infringement of intellectual property rights, or administrative procedures such as trademark oppositions, or analyze the coexistence agreements between trademarks.

3. Frequent situations MSMEs face in the area of Intellectual Property protection. Unfair competition, counterfeiting, and piracy

MSMEs often have to face situations in which their intellectual property rights are violated. When the infringement consists of counterfeiting or piracy, it is advisable to request the assistance of a legal expert and the authorities responsible for enforcing intellectual property rights. There are civil or criminal actions that can bring an infringement to an end, and prevent the offender from continuing with the practice of unfair competition or abuse.

It is important to take into account that immediate action must be taken to surprise the offender in his premises and prevent the violation, preserving relevant evidence in relation to the alleged infringement. In addition, the competent judicial authorities may compel the infringer to disclose the identity of third parties involved in the production and distribution of infringing goods or services, and their distribution networks.

There are many dissuasive measures that can be used against the offender to prevent him from continuing violating MSMEs rights.

4. What procedures can be used?

If, for any reason, MSMEs wish to avoid legal proceedings, dispute resolution mechanisms such as arbitration or mediation may be considered, which a good alternative to court proceedings are. However, these dispute resolution methods can only be used when they have been agreed between the parties in a contract or when both agree to adopt them. That is why in the license, distribution, franchise, or any other contract related to intellectual property, resolution of conflicts through conciliation or arbitration is included.

Mediation and arbitration are often an excellent substitute for dispute resolution, in addition to being faster and less burdensome than litigation.