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10 November 2021

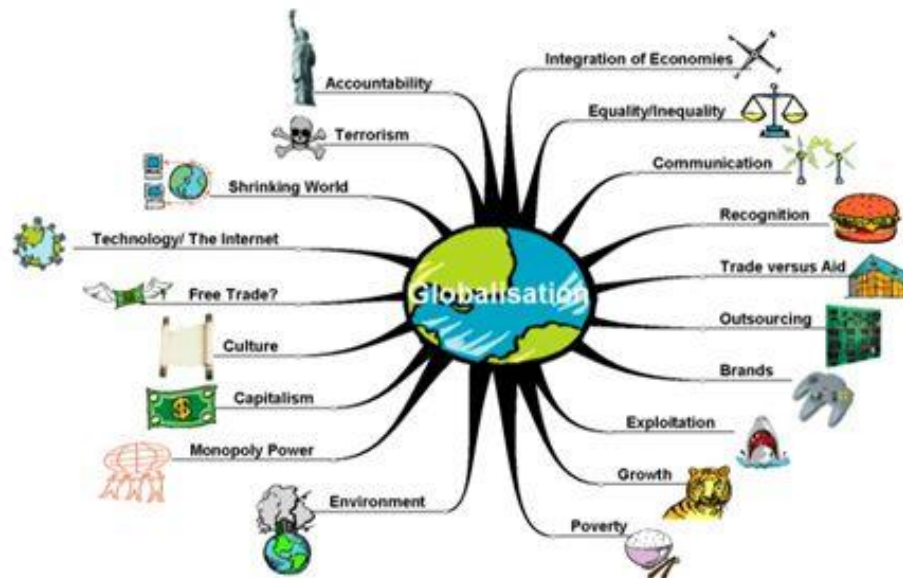
8.45 - 11.45 am

# IT LAWS AND ETHICS

# INTELLECTUAL PROPERTY

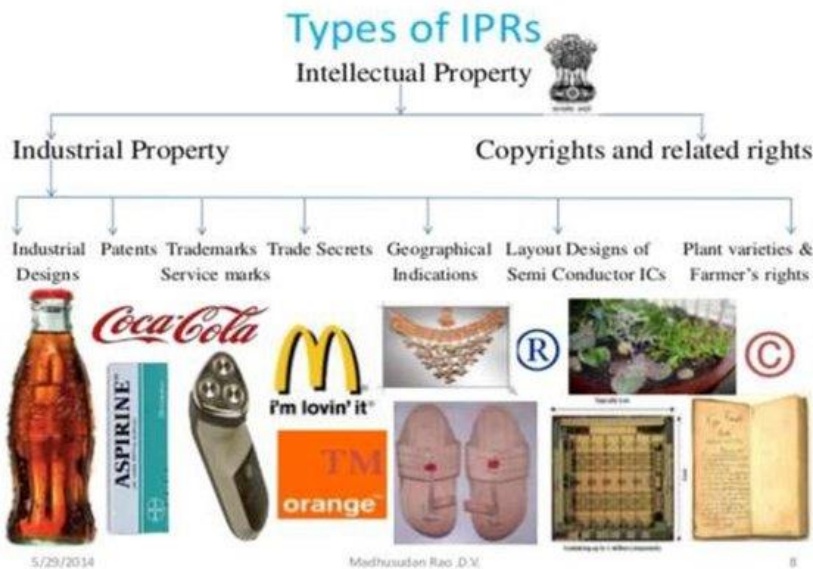
# WTO-WIPO

## Issues in Global Strategy: WTO, TRIPs/IPRs and WIPO



# INTELLECTUAL PROPERTY

Intellectual property  
is divided into two categories:



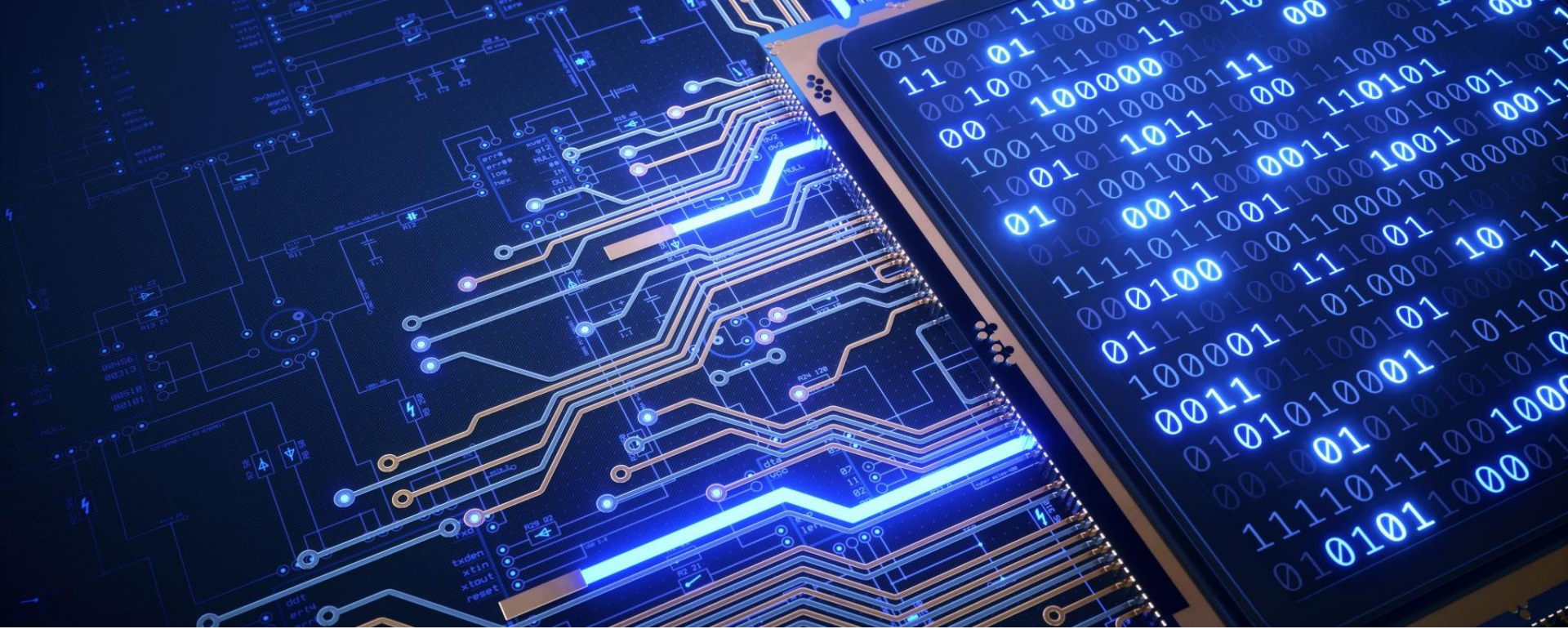
- \* **Industrial Property** includes
- \* patents for inventions, trademarks, industrial designs
- \* geographical indications.

- \* **Copyright** covers
- \* literary works (such as novels, poems and plays), films, music, artistic works (e.g., drawings, paintings, photographs and sculptures), architectural design.
- \* Rights related to copyright include those: of performing artists in their performances, producers of phonograms in their recordings, and broadcasters in their radio and television program



# INTELLECTUAL PROPERTY

**COPYRIGHT**



# COPYRIGHT VS. DIGITAL TECHNOLOGY

# WHY?



As early as January 2008, users on social networking sites like MySpace began incorporating the photo of Sammy into their profiles, either as their avatar or as part of the page's layout. It was often paired with the phrases "Ima Fuck you up" or "I Hate Sandcastles"

The original image was taken by photographer Laney Griner of her then 11-month-old son Sammy on August 26th, 2007. She posted it to both her personal Flickr account and put it up on Getty Images, which has since been removed.





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[3]



[2]

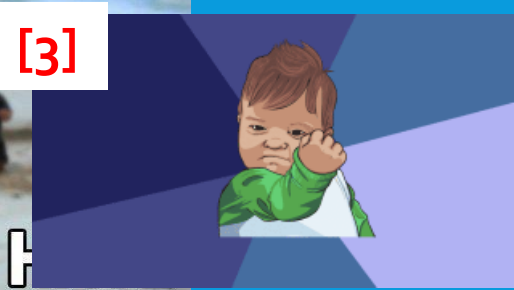


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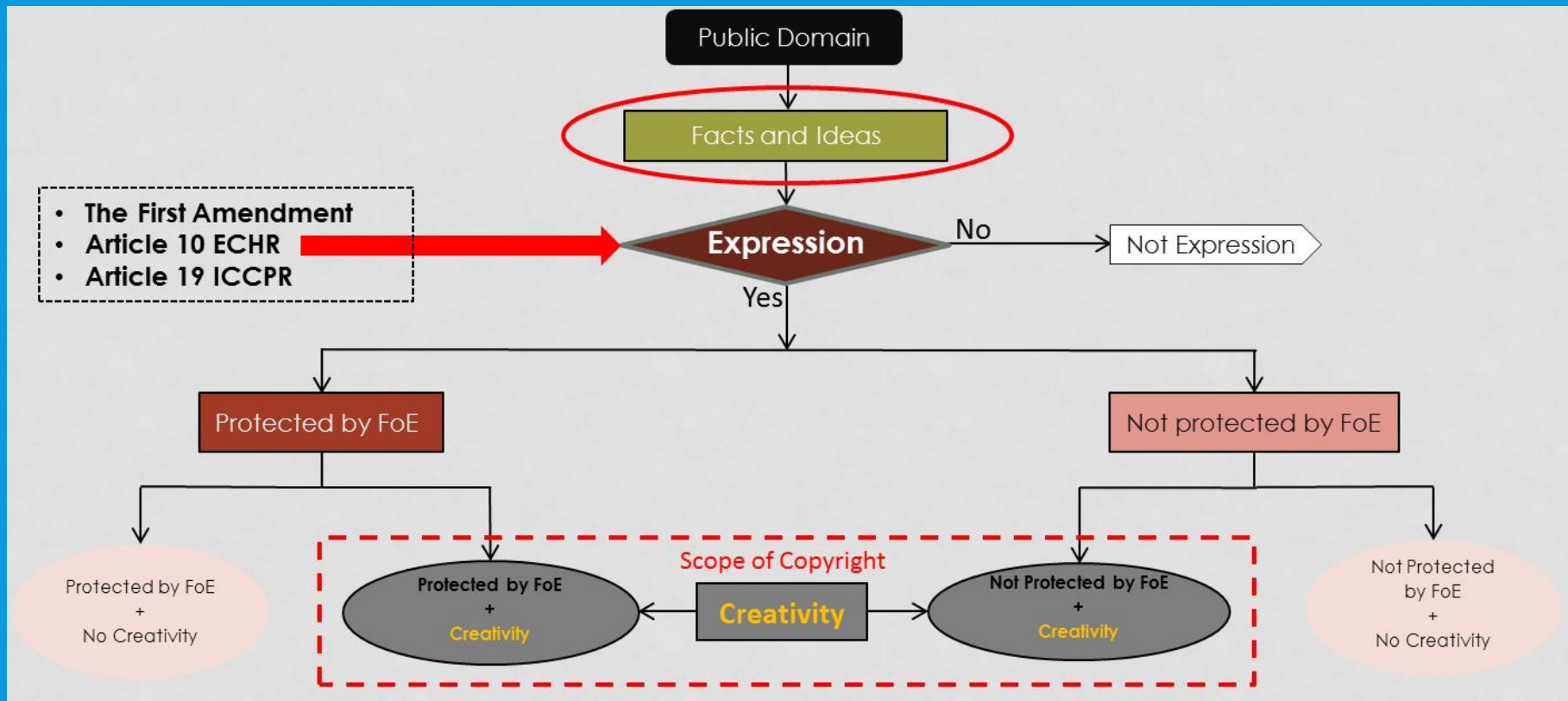
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**Infringement?**

**I H SANDCASTLES**

# AREA OF COPYRIGHT PROTECTION



\* Wiputhanupong Chongnang., *Copyright is an engine of free expression' or 'free expression is an engine of copyright? in Susy Frankel (ed.), **Is Intellectual Property Pluralism Functional?** (ATRIP Intellectual Property series 2019)*

# **MAKING DERIVATIVE WORKS:**

**ALWAYS NEED AUTHORISATION FROM COPYRIGHT OWNER**



# LICENSING AGREEMENT

- (1) **Non-exclusive** copyright licensing agreement
- (2) **Sole** copyright licensing agreement
- (3) **Exclusive** copyright licensing agreement

# ADAPTATION: DERIVATIVE WORK

Adaptation” means a **reproduction** by conversion, modification or emulation **of an original work for a substantial part**, not creating a new work **whether in whole or in part**, which

- (1) with regard to literary works, includes a translation, a transformation or a collection by means of selection and arrangement,
- (2) with regard to computer programs, includes a reproduction by means of transformation, modification of the program for a substantial part, not creating a new work,
- (3) with regard to dramatic works, includes the transformation of a non-dramatic work to a dramatic work or a dramatic work to a non-dramatic work, whether in the original language or a different language,
- (4) with regard to artistic works, it includes the transformation of a two-dimensional work or a three-dimensional work to a three-dimensional work or a two-dimensional work or the making of a model from an original work,
- (5) with regard to musical works, includes an arrangement of tunes or an alteration of lyrics or rhythm.

## MAKING DERIVATIVE WORK WITHOUT AUTHORISATION

Any of the following acts against a copyright work under this Act performed without permission in accordance with Section 15 (5) shall be deemed an infringement of copyright:

- (1) reproduction or adaptation;
- (2) communication to the public.

Any person who infringes copyright or performers' rights under Section 27, 29, 30 or 52 shall be liable to a fine of between 20,000 baht and 200,000 baht.

# TRADEMARKS



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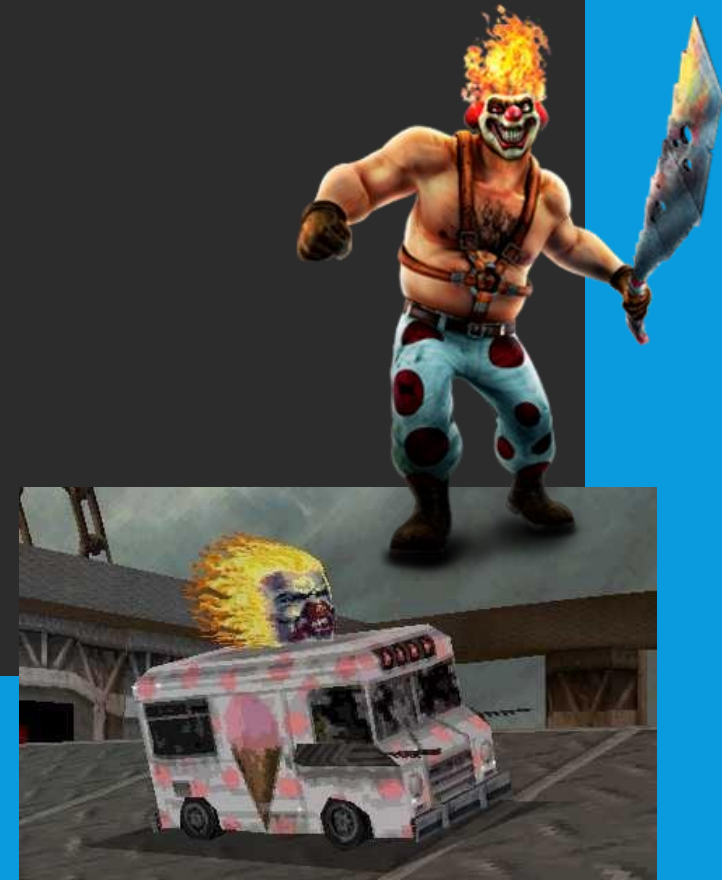
- A domain name is an internet address. Domain names let an internet user visit a specific website.
- As a part of a branding strategy, it is very common for a domain name to be the same, or similar to a trademark, a business name, or a company name, but these different registrations are to achieve different objectives:

# TRADEMARKS

- **A domain name**  
is registered so that there is an internet address.
- **A trademark;**  
is registered to identify a product or service.
- **A business name;**  
is registered to identify a business that wishes to trade other than with its own name.
- **A company name;**  
is the name of a specific type of legal entity

# TRADEMARK CASES

- Frosty Treats, Inc. v. Sony Computer Entertainment America, Inc., 426 F.3d 1001 (8th Cir. 2005)





PATENT

## THREE -TEST OF PATENTABILITY



# SECTION 5

- Subject to Section 9, a patent may be granted only for an invention in respect of which the following conditions are satisfied:
  - (1) the invention is new;
  - (2) it involves an inventive step; and
  - (3) it is capable of industrial application.

# SECTION 9

The following inventions are not protected under this Act:

- (1) naturally occurring microorganisms and their components, animals, plants or extracts from animals or plants;
- (2) scientific or mathematical rules or theories;
- (3) **computer programs**;
- (4) methods of diagnosis, treatment or cure of human and animal diseases;
- (5) inventions contrary to public order, morality, health or welfare.

# PATENTABILITY OF ALGORITHM

- In re Alappat, 33 F.3d 1526 (Fed. Cir. 1994)
- Mayo Collaborative Services v. Prometheus Labs, Inc. 132 S. Ct. 1289 (2012)
- **Alice Corp. Pty. Ltd. v. CLS Bank Int'l, 134 S.Ct. 2347 (2014)**
- **Enfish v. Microsoft Corp., 2015-1244 (Fed. Cir. May 12, 2016)**
- BASCOM Global Internet Services, Inc. v. AT&T Mobility LLC, No. 15-1763 (Fed. Cir. June 27, 2016)

# PATENTABILITY OF ALGORITHM

- Alice Corp. Pty. Ltd. v. CLS Bank Int'l, 134 S.Ct. 2347 (2014)

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- In the first step, the court must determine whether the patent claim under examination **contains an abstract idea**, such as an algorithm, method of computation, or other general principle. If not, the claim is potentially patentable, subject to the other requirements of the patent code. If the answer is affirmative, the court must proceed to the next step.

- In the second step of analysis, the court must determine whether the patent **adds to the idea "something extra"** that embodies an "inventive concept"



# PATENTABILITY OF ALGORITHM

- **Enfish v. Microsoft Corp., 2015-1244 (Fed. Cir. May 12, 2016)**

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- **“...Rather, the claims are directed to a specific implementation of a solution to a problem in the software arts.**

**Accordingly, we find the claims at issue are not directed to an abstract idea. ... We conclude that the claims are patent-eligible.”**



Q & A