

Table of Contents

Model Law on Intellectual Property

Introduction

I.	Subject matter of the Code	15
II.	Objects of the Code of Intellectual Property	15
1.	Overcoming legal fragmentation	15
a)	National level	15
b)	Foreign examples and projects on a Community law level	17
c)	Project evaluation	18
2.	A framework for legal transactions concerning intellectual property rights	19
3.	Alignment of the regulatory technique for similar regulatory tasks	20
4.	Implementation of a concept of graded protection and remedy of gaps	20
5.	Relationship of IP law and general private law	21
6.	Consolidation of Private International Law and International Procedural Law	22
7.	Employees' inventions and creations	22
8.	General administrative and procedural law rules	23
9.	Specific procedural law rules	24
10.	Summary	24
III.	Criteria for the content of rules	25
1.	Amendment and continuity of the current law	25
2.	Clarity of the procedural law rules	27
IV.	Dovetailing the separate IP statutes	27
V.	Areas covered by the rules and structure of the CIP	28
1.	Book 1 (general part)	28
a)	Chapter 1	28
b)	Chapter 2	29
c)	Chapter 3	30

Table of Contents

d)	Chapter 4	30
2.	Book 2 (general procedural law)	31
a)	Chapter 1	31
b)	Chapter 2	31
c)	Chapter 3	32
d)	Chapter 4	32
e)	Chapter 5	32
f)	Chapter 6	32
3.	Books 3 to 9 (the existing statutes on specific intellectual property rights)	33
4.	Employees' inventions and creations	33
VI.	Technical remarks on cross-references within the model law	34

Book 1:

General part

Chapter 1: Accrual of rights, limitations of protection

Title 1: Intellectual property rights

§ 1	Intellectual property	35
§ 2	<i>Numerus clausus</i> and freedom of imitation	36
§ 3	Accrual of protection	36
§ 4	Ideal and asset-related protection	36
§ 5	Rightholdership	37
§ 6	Transferability and contractual exploitation	37
§ 7	Intellectual property and proprietorship in objects	38

Title 2: Relative intellectual property positions

§ 8	Economic protection of the personality	38
§ 9	Protection against imitation	39
§ 10	Business and trade secrets	39
§ 11	Protection of the organiser against recordings	40

Title 3: Limitations regarding content and time

Subtitle 1: Limitations regarding content for the benefit of third parties and the general public

§ 12	Exhaustion	40
§ 13	Protection of <i>bona fide</i> users of third party intellectual property rights	41
§ 14	Private use	42
§ 15	Limitation by another's personality traits	42
§ 16	Anti-competitive exercise	42
§ 17	Other limitations	42

Subtitle 2: Limitations regarding time

§ 18	Term of protection	43
§ 19	Limitation of action	43
§ 20	Forfeiture	43

Chapter 2: Applicable law and jurisdiction

Title 1: Relation of different legal sources

§ 21	Community law and national law	43
§ 22	Community and national intellectual property rights ...	44
§ 23	Cumulation of intellectual property rights under national law	44

Title 2: Applicable law

§ 24	<i>Lex loci protectionis</i>	45
§ 25	Contracts relating to intellectual property rights	45
§ 26	Mandatory rules for the protection of the author	46
§ 27	Employees' creations	46
§ 28	Infringement of intellectual property rights	47

Title 3: International jurisdiction

§ 29	Contracts relating to intellectual property rights	48
§ 30	Unauthorised use of intellectual property rights	48
§ 31	Claims concerning the validity of registrations	50
§ 32	Further heads of jurisdiction	50

Title 4: Competence of courts *ratione materiae* and *ratione loci*

Subtitle 1: Proceedings relating to national intellectual property rights

- § 33 Competence of courts *ratione materiae* and *ratione loci* 51
- § 34 Annex competence for claims under the Act
Against Unfair Competition 51
- § 35 Powers of concentration 51

Subtitle 2: Proceedings relating to Community intellectual property rights

- § 36 Competence of Community intellectual property
courts *ratione materiae* 52
- § 37 Competence of Community intellectual property
courts *ratione loci* 52
- § 38 Powers of concentration 52

Title 5: *Lis pendens* and related actions

- § 39 *Lis pendens* in case of same cause of action 53
- § 40 *Lis pendens* in case of proceedings relating
to legal validity of a Community intellectual
property right 53
- § 41 Stay of proceedings due to proceedings
relating to legal validity of a national
intellectual property right 54
- § 42 *Lis pendens* in case of multiple protection 54
- § 43 Concentration of proceedings in case of multiple
national intellectual property rights 55
- § 44 Interim measures 55

Chapter 3: Infringement, enforcement

Title 1: Consequences of infringements under private law

Subtitle 1: Infringement

§ 45	Infringement of intellectual property rights	55
§ 46	Infringement of other relative intellectual property positions	56
§ 47	Claims arising from other statutory provisions	57

Subtitle 2: Activities prior to grant

§ 48	Trade mark registered in the name of an agent	57
§ 49	Acts prior to the grant of a patent, right of compensation	57
§ 50	Enforcement of the rights conferred by a patent application	58
§ 51	Acts prior to the grant of a plant variety right, right of compensation	59

Subtitle 3: Protection by rights of defence, compensation

§ 52	Forbearance, abatement	59
§ 53	Right to compensation	60
§ 54	Moral damages	60
§ 55	Destruction, recall	60
§ 56	Substitute pecuniary compensation	61
§ 57	Publication of the judgement	61
§ 58	Contributory infringement	62
§ 59	Liability of several infringers	62
§ 60	Liability of the owner of a business undertaking	62

Subtitle 4: Right to information, collection of evidence and measures safeguarding evidence

§ 61	Right to information	62
§ 62	Presentation and inspection	65
§ 63	Safeguarding claims for damages	66

Subtitle 5: Procedural law enforcement

§ 64	Warning letter	66
§ 65	Interim measures	67
§ 66	Privilege of reduced value in dispute	67

Title 2: Punishable acts, administrative offences

Subtitle 1: Criminal infringement of intellectual property rights

§ 67	Punishable infringement of copyrights and related rights	68
§ 68	Unlawful attachment of an author's designation	69
§ 69	Unlawful encroachment upon technical measures of protection and information necessary for safeguarding rights	70
§ 70	Punishable infringement of signs	70
§ 71	Punishable preparation of infringement of signs	72
§ 72	Punishable use of geographical indications	72
§ 73	Punishable use of the term of traditional specialities guaranteed	73
§ 74	Punishable patent and utility model infringement	74
§ 75	Punishable infringement of designs	74
§ 76	Punishable infringement of plant variety rights	75
§ 77	Punishable infringement of semiconductor protection	75
§ 78	Aggravated infringements of intellectual property rights	75
§ 79	Punishable attempt	75
§ 80	Seizure, forfeiture	76
§ 81	Enhanced legal consequences	76
§ 82	Legal persons	77
§ 83	Demand for criminal sanctions	77
§ 84	Publication of the judgement	77
§ 85	Access to files, inspection of evidence	78

Subtitle 2: Punishable disclosure of business secrets

§ 86	Disclosure of business and trade secrets	78
------	--	----

§ 87	Exploitation of models	79
§ 88	Punishable attempt	79
§ 89	Inducing and offering disclosure	79
§ 90	Demand for criminal sanctions, acts committed abroad	80

Subtitle 3: Administrative offences

§ 91	Violation of supplementary protective measures of book 3 (Copyright Act)	80
§ 92	Violation of supplementary protective measures of book 4 (Trademark Act)	81
§ 93	Disorderly use of the term traditional specialities guaranteed	82
§ 94	Violation of supplementary protective measures of book 8 (Plant Variety Protection Act)	82

Title 3: Measures of the customs authorities

§ 95	Seizure	83
§ 96	Forfeiture, opposition, lifting of seizure	83
§ 97	Competence, remedies	84
§ 98	Compensation for unjustified seizure	84
§ 99	Border measures pursuant to Council Regulation (EC) No 1383/2003	85
§ 100	Border measures in case of infringement of geographical indications	86

Chapter 4: Intellectual property rights as objects of property

Title 1: Transfer of intellectual property rights

§ 101	Transfer of absolute intellectual property rights	86
§ 102	Formal requirements of contractual transfer	87
§ 103	Relation between the act of obligation and the act of disposition	88
§ 104	Warranty	88
§ 105	Duties of the transferee	88
§ 106	Registrability	89

Title 2: Rights *in rem*, compulsory enforcement and insolvency

§ 107 Rights <i>in rem</i>	89
§ 108 Compulsory enforcement	89
§ 109 Insolvency proceedings	90

Title 3: Licensing of intellectual property rights

Subtitle 1: Licences on industrial property rights

§ 110 Principle of freedom to grant a licence	91
§ 111 Essence of licence agreements	92
§ 112 Written form, registrability, succession protection	92
§ 113 Remuneration	93
§ 114 Duration, extraordinary termination	93
§ 115 Other duties of the licensor	93
§ 116 Other duties of the licensee	94
§ 117 Warranty	94
§ 118 Sub-licences	95
§ 119 Transfer of a licence	95
§ 120 No-challenge clause	96
§ 121 Right to sue in the case of exploitation in excess of the contract	96
§ 122 Licensee's right to sue in case of infringement	96

Subtitle 2: Licences on rights protected under book 3 (Copyright Act)

§ 123 Licences on copyrights, computer programmes and related rights	97
§ 124 Additional rules on the conclusion of a licence agreement	97
§ 125 Additional rules on the scope of usage rights	98
§ 126 Additional rules on the scope of usage rights concerning collections	98
§ 127 Additional rules on the scope of usage rights concerning cinematographic works	99
§ 128 Author's right to appropriate remuneration	100

§ 129 Prohibition of unauthorised alterations	101
§ 130 Limitation of the author's duty of legal defence	101
§ 131 Additional rules on the grant of sub-licences	101
§ 132 Additional rules on the transfer of licences	102
§ 133 Additional rights of revocation and termination with regard to contracts on future works	102
§ 134 Author's right of recall by reason of non-exercise	103
§ 135 Author's right of recall by reason of changed attitude or unreasonableness	105
§ 136 Authors in employment or service contracts	106

Title 4: Licence of right and compulsory licence

§ 137 Licence of right on patents and utility models	106
§ 138 Compulsory licences on technical intellectual property rights	107
§ 139 Compulsory licences on plant variety rights	109
§ 140 Compulsory licences on copyrights	110

Title 5: Presumption of rightholdership, effect vis-à-vis third parties

§ 141 Presumption of rightholdership	112
§ 142 Effect of registration	112
§ 143 Effect vis-à-vis third parties	113

Title 6: Rights to the grant of an intellectual property right and rights arising from application

§ 144 Rights to the grant of an intellectual property right, rights arising from application, other relative intellectual property positions	113
--	-----

Book 10 B:

**Possible further development of the
German law on employees' inventions towards
common rules for employees' creations**

Chapter 1: Scope of application and definitions

§ 1	Scope of application	115
§ 2	Technical creative achievements, proposals for technical improvements	115
§ 3	Employees' creations	115
§ 4	Bound employees' creations	116
§ 5	Other employees' creations	116
§ 6	Mandatory law	116

Chapter 2: Employees in the private sector

**Subchapter 1: Notification and utilisation of
employees' creations**

Title 1: Technical creations

§ 7	Duty to notify bound technical creations	117
§ 8	Duty to notify and duty to offer free technical creations	117
§ 9	Claiming technical creations	118
§ 10	Effect of claiming technical creations	119
§ 11	Released technical bound creations	119

Title 2: Non-technical creations

§ 12	Notification requirement	119
§ 13	Claiming bound non-technical creations	119
§ 14	Effect of claiming transferable non-technical creations	119
§ 15	Effect of claiming non-transferable bound creations	120
§ 16	Free non-technical creations	120

Title 3: **Unalienable moral rights**

§ 17 Moral rights of the employee	121
---	-----

Subchapter 2: **Application for intellectual property rights**

§ 18 Application for domestic or Community intellectual property rights	121
§ 19 Application for foreign intellectual property rights	122
§ 20 Mutual rights and obligations with regard to acquiring technical intellectual property rights	123
§ 21 Waiver of application or of an intellectual property right	123
§ 22 Business secrets	123
§ 23 Registration of bound non-technical creations	124

Subchapter 3: **Remuneration, insolvency**

Title 1: **Separate remuneration**

§ 24 Right to remuneration regarding bound non-technical creations	124
§ 25 Remuneration in case of claiming bound technical creations	125
§ 26 Remuneration guidelines	126
§ 27 Determination or assessment of the remuneration	126

Title 2: **Suggestion schemes**

§ 28 Proposals for technical improvements	127
---	-----

Title 3: **Insolvency of the employer**

§ 29 Bound transferable creations in the event of the employer's insolvency	127
§ 30 Bound creations protected under copyright law in the event of the employer's insolvency	128

Subchapter 4: **Other rules**

§ 31 Inequity	129
§ 32 Obligation of non-disclosure	129

Table of Contents

§ 33 Obligations resulting from an employment relationship 130

§ 34 Termination of the employment relationship 130

Subchapter 5: Arbitration, judicial proceedings

§ 35 Preconditions for issuing a claim 130

§ 36 Action for reasonable remuneration 130

§ 37 Jurisdiction 130

Chapter 3: Creations and proposals for improvement made by employees in the public sector, by civil servants and by members of the armed forces

§ 38 Employees in the public sector 131

§ 39 Civil servants, members of the armed forces 132