

# IPR and other legal considerations in designing and launching new **www-services**

Aalto University: Design of WWW Services  
16 October 2018



**Emilia Lasanen**

Attorney-at-Law

Properta Attorneys Ltd

*emilia.lasanen@properta.fi*

*+358 (0)44 750 5628*

*LinkedIn: Emilia Lasanen*

*Twitter: @emilialasanen*

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Managing IP “European firm to watch”, 2018  
Chambers Global, 2018  
Chambers Europe, 2018  
World Trademark Review 1000 - The World’s  
Leading Trademark Professionals, 2018  
Legal500, IP, 2018  
IP Stars, Trade mark stars, 2018  
Euromoney’s Expert Guide Trade Marks, 2018  
IAM Patent 1000, 2018  
TOP 250 Women in IP - Managing Intellectual  
Property, 2018

Chambers Global, 2017  
Chambers Europe, 2017  
Top 250 Women in IP, 2017  
Legal500, IP, 2017  
IAM Patent 1000, 2017  
Managing Intellectual Property –  
IP Stars, Trade mark stars, 2017  
World Trademark Review 1000 –  
The World’s Leading Trademark  
Professionals, 2017

Managing  
Intellectual  
Property **IPSTARS**



**World  
Trademark  
Review.**

# Legal considerations in designing and launching new www-services

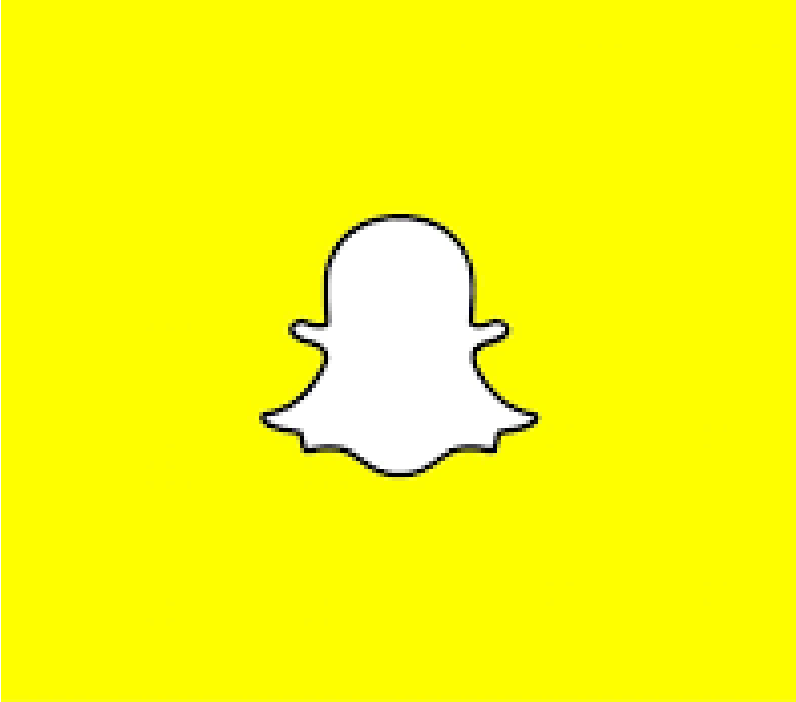
# Invention:

something invented, such  
as

**a device** or process  
originated after study and  
experiment

a product of the imagination

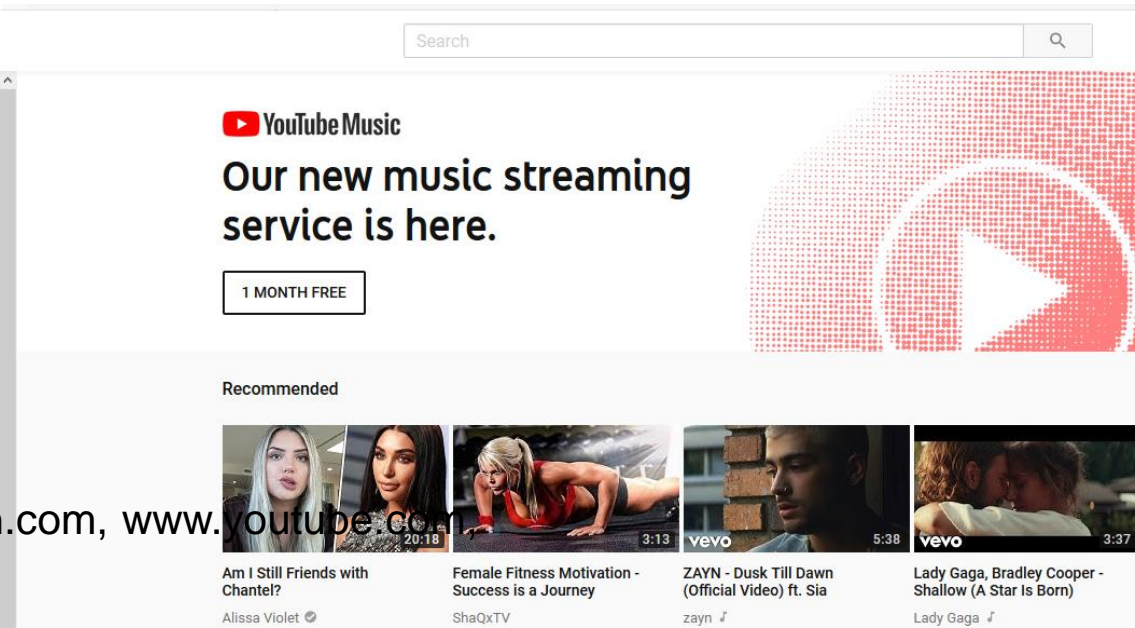
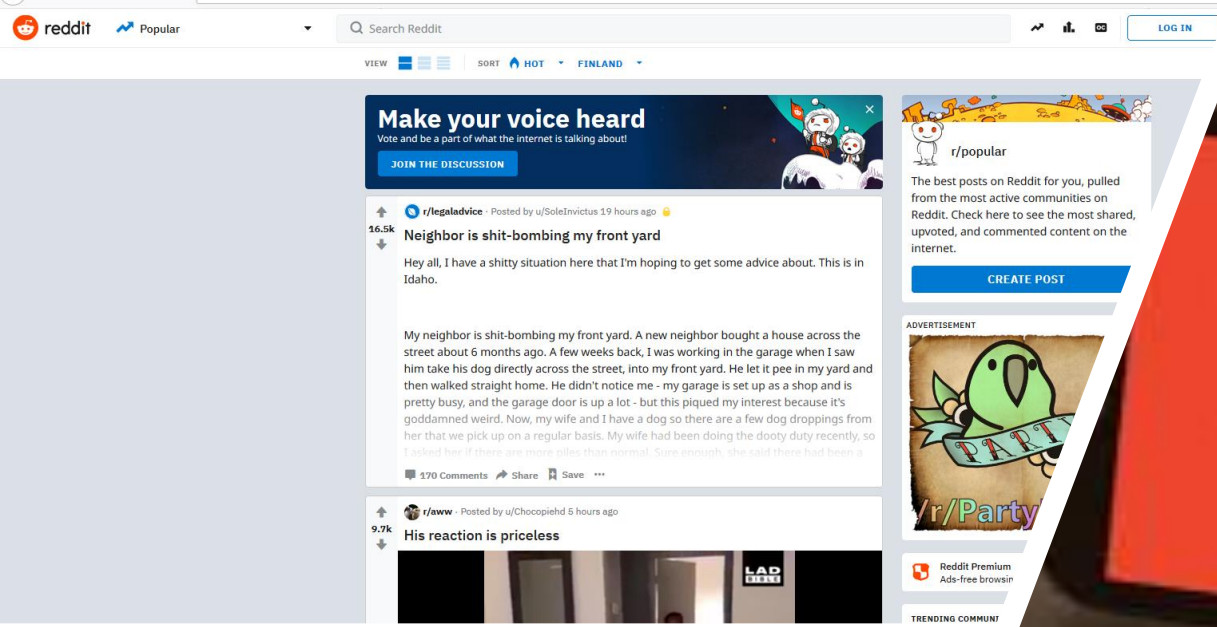
*usually technical in nature*





# Innovation:

the successful  
implementation  
and  
adoption  
of  
something  
new



Page quotation: www.reddit.com, www.amazon.com, www.youtube.com

www.netflix.com

Helsinki

Discovery



Add your address to show only places that deliver to you



Uber tarvitsee  
tietäisi  
teistyökumpp

kata autosi kuluja.  
an viikoittain, kun  
saamaan kyytejä  
Ole oma pomosi.  
iamalla silloin

ONKO SINULLA JO TILI?

Kokeile ajamista

Etunimi  
Sukunimi  
Sähköposti: nimi@esimerkki.fi  
Puhelin  
Salasana  
Kaupunki  
(valinnainen) kutsukoodi

Jatkamalla hyväksyt Uberin käyttöehdot ja vahvistat lukeneesi tietosuojakäytännön.

Late lunch near you



Legal considerations:  
"identifying your legal  
toolkit"

Disclaimer 1:  
*Finnish and EU-law perspective*

Disclaimer 2:  
*Examples are very general-level rules = many exceptions apply*

Disclaimer/suggestion 3:  
*In a specific case = consult a lawyer with a specific knowledge on the field of law*

# Intellectual Property (and more)

# Why?

**Within the most competitive fields of business it may be essential to prevent being copied by competitors or defend against claims by others.**

*Your idea can be copied. If it's a good idea, you can be certain that it will be copied.*

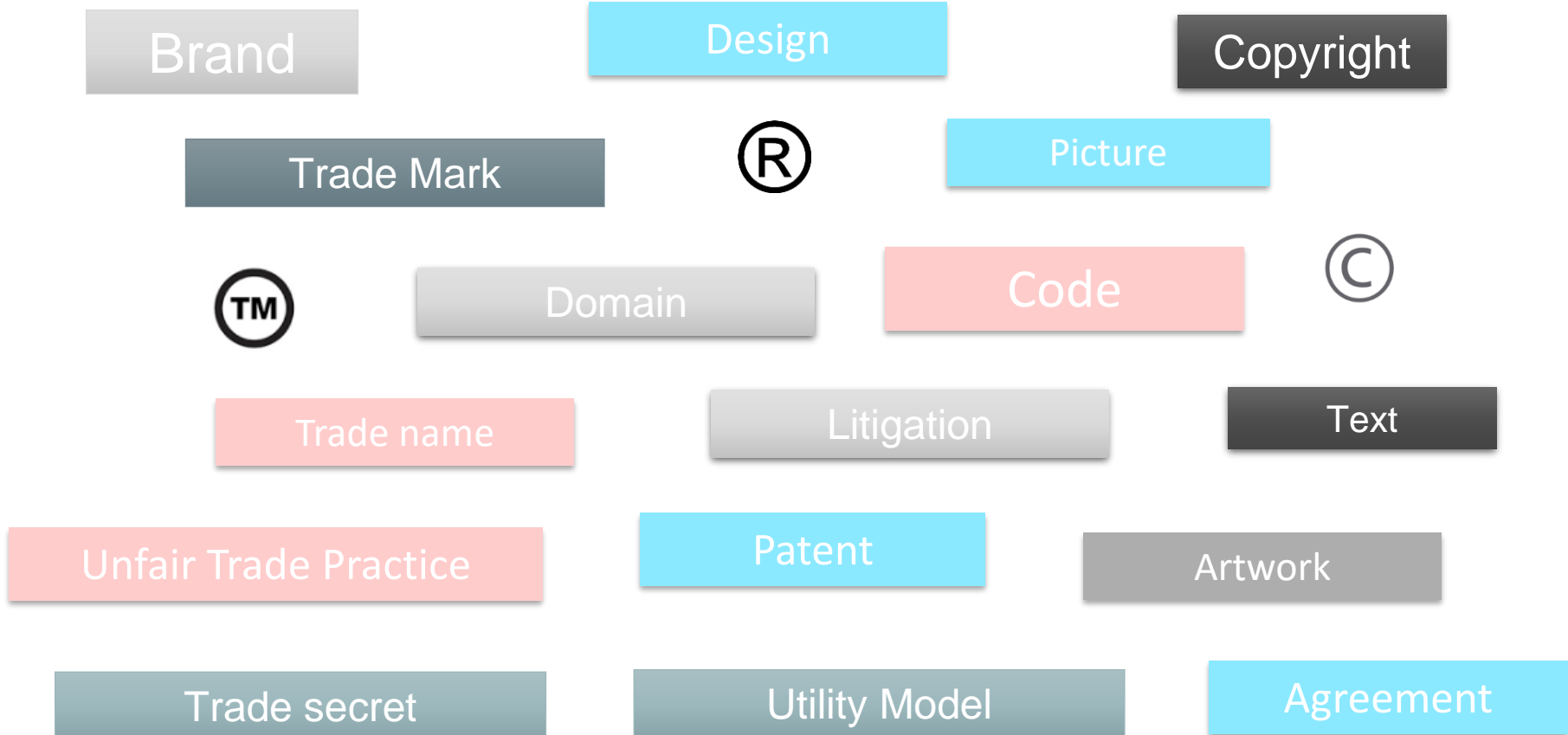
*How much can you copy? Or are you just inspired?*

**Trade marks and other legal IP rights are some of the most important assets for businesses.**

*IP has monetary value. It is a business asset, that can be sold, franchised, licensed, transferred. Companies which have registered IP have higher credit ratings and attract investments.*

*IP-strategy helps companies to manage risks and provides competitive advantage.*

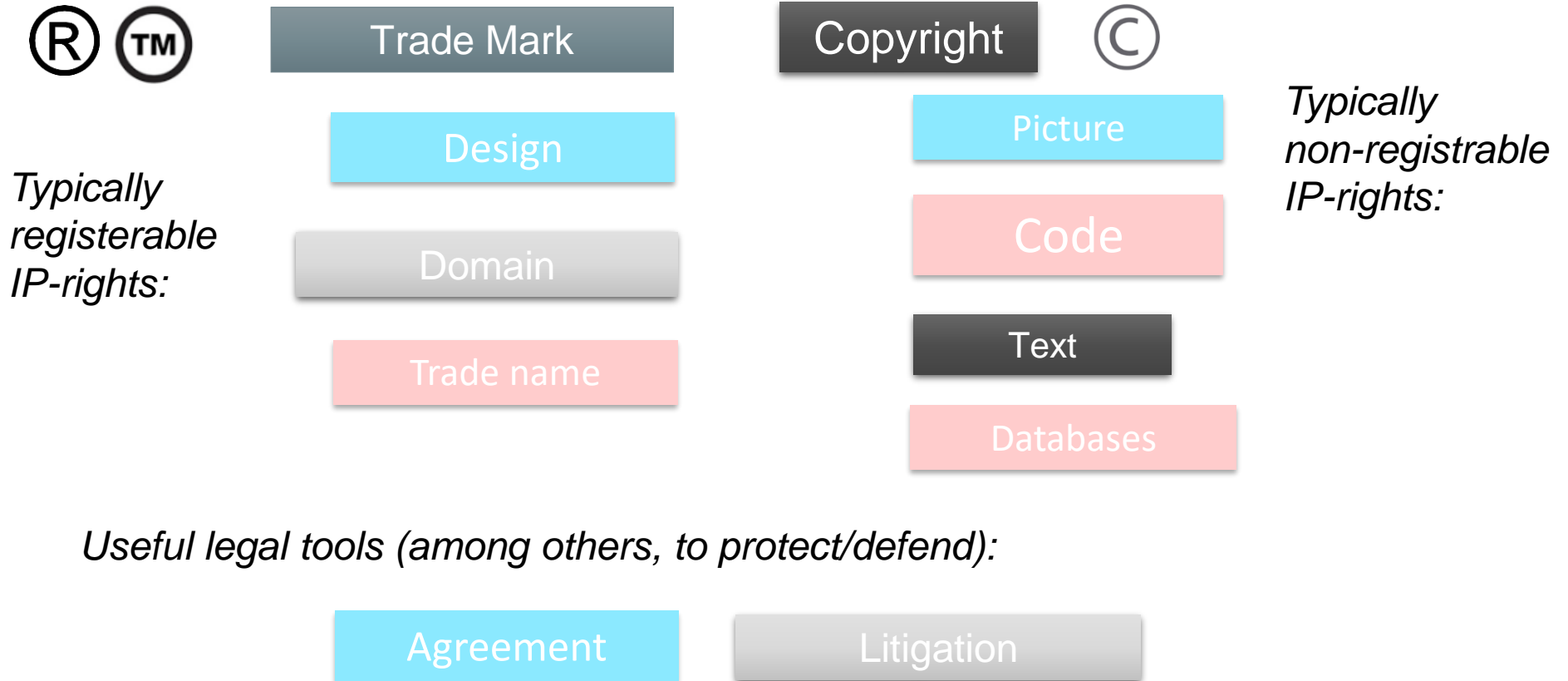
# IP (and more)





# IP (and more)

Most typically applicable in relation to www-services



**Closer look:**  
IP (and more)  
typically applicable in  
relation to www-  
services –  
registerable IP-rights

# Trade mark

- Trade mark identifies products and services of a particular source from those of others
- The trade mark owner can be an individual, business organisation or any legal entity
- Commercial sign: word, figure, combination mark or any other distinctive sign
- Protection may last "for ever"
  - If registration is renewed (every 10 years)
  - Distintiveness must remain
- Registered v. established trade mark
  - Established if it has become generally known in the appropriate business or consumer circles in a relevant geographical area as a symbol specific to its proprietor's goods
- Trade mark registration
  - Recommended in all relevant geographical areas
    - [www.prh.fi](http://www.prh.fi) (Finnish and International Trade mark Registrations in force in Finland)
    - [www.euipo.eu](http://www.euipo.eu) (European Union Trade Marks)
    - <http://www.wipo.int/madrid/monitor/en/index.jsp> (WIPO International Trade Mark Registrations)
- Trade mark use
  - In the form as it has been registered and for the registered goods / services (classification 1-45)
  - As a trademark ⇔ not to become a generic term (dilution)
  - Use of the ™ and ® signs may be useful

# Trade Mark: important take-aways when launching new www-services

Registered trade mark is usually a great and strong IP-asset

Plan your brand carefully = conduct preliminary searches before filing

Trade mark must not:

- Describe the product, its quality or intended use
- Be a generic term connected to the product
- Not too simple geometric figure

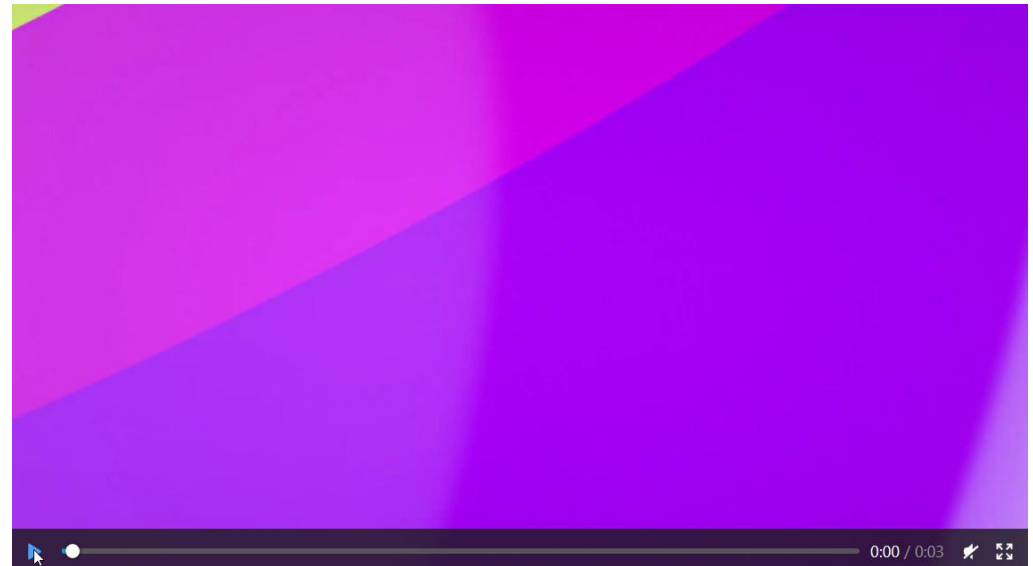
***The more distinctive the sign is, the stronger protection it enjoys!***

# SLUSH

**Startup-säätiö**  
EUTM (trade mark) no  
012460085



**Telia Company AB**  
EUTM no 017586521



**DNA**  
Color trade mark application in Finland no 2015002 (well-known  
trade marks)

The Amazon logo, featuring the word "amazon" in a bold, lowercase sans-serif font with a curved arrow underneath pointing from the letter 'a' to the letter 'z'.

**Amazon Europe Core S.à**  
EUTM (trade mark) no  
012183638

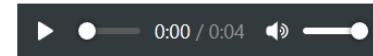


**Snapchat**  
EUTM (trade mark) no  
012144903

The Airbnb Plus logo, featuring a stylized 'A' icon followed by the word "Plus" in a handwritten-style script font.

**Airbnb, Inc.**  
EUTM (trade mark) no  
012183638

Sound



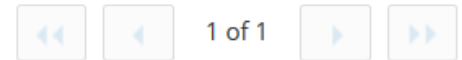
[Download sound file](#)

**Bayer**  
EUTM (trade mark) no 012728648



## EUTM file information

← Back to search results



# AIRBNB

## 011933611

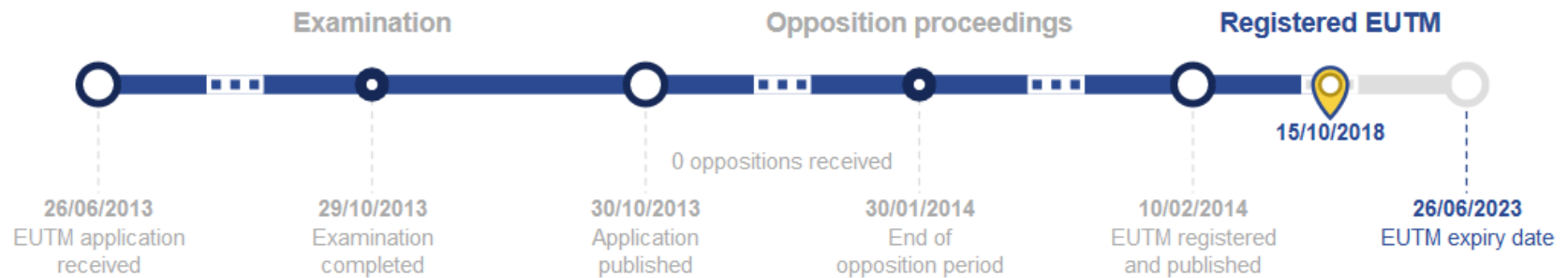
Certificate

Print

Log in to access advanced functionalities [Log in](#) [Sign up](#)



## Timeline



- 9** Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signaling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; compact discs, DVDs and other digital recording media; mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment, computers; computer hardware; computer peripherals; computer software; computer software for mobile devices; fire-extinguishing apparatus; downloadable connected software platform; software platform that facilitates the provision of information, peer-to-peer interaction and transactions, and the booking of temporary accommodations in the fields of travel, lodging, dining, and entertainment; application programming interface (API) software.
- 35** Business consulting and management services; business consulting and management services in the nature of arranging, organizing, advising about and providing various services, including photography services and cleaning services; advertising; business management; business administration; office functions; providing a web site featuring the ratings, reviews and recommendations for commercial purposes posted by users; Providing a web site featuring the ratings, reviews and recommendations of lodging, accommodations, travel, dining, and entertainment-related establishments for commercial purposes posted by users; providing online business directories; providing online business directories featuring temporary accommodations; consulting services for owners of rental properties, namely assisting property owners to better advertise their property over the internet and to create their rental listings in order to maximize interest.
- 36** Consulting services, namely, rental property consulting services.
- 37** Providing, organizing and arranging cleaning services; consulting services for owners of rental properties, namely cleaning services.
- 39** Online journals, namely, blogs and video logs in the fields of travel around the world; providing information in the fields of travel; social and collaborative travel.



- 41** Social club services; organizing and hosting meet-ups and events; online journals, namely blogs and video logs featuring multimedia content; online journals, namely, blogs and video logs in the fields of entertainment around the world; photography services; providing information in the fields of entertainment; education; providing of training; entertainment; sporting and cultural activities; providing, organizing and arranging photography; social and collaborative entertainment services; consulting services for owners of rental properties, namely facilitation of photography services.
- 42** Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software; providing temporary use of non-downloadable, web-based, and cloud-based software; software as a service (SAAS) services; platform as a service (PAAS) services; providing an online non downloadable, web-based and cloud-based software platform; providing an online non-downloadable, web-based, and cloud-based connected software platform that facilitates the provision of information, peer-to-peer interaction and transactions, and bookings in the fields of travel, lodging, dining, and entertainment; application service provider featuring application programming interface (API) software.
- 43** Online journals, namely, blogs and video logs in the fields of lodging and dining around the world; providing information in the fields of lodging and dining; social and collaborative lodging and dining.
- 45** Legal services; security services for the protection of property and individuals; personal and social services rendered by others to meet the needs of individuals; authentication services; travel and lodging-related authentication services; consulting services for owners of rental properties, namely security services; concierge services; real property security services, in the nature of remote property locking and security controls; providing online and offline social networking and introduction services; providing a social networking website.

# Think further: domain and trade name

*Important registrations in IP-strategy*  
*Protection may last "for ever" if renewed*  
*Rights connected to the registration*

## Domain

- Domain names are acquired from a registrar who provides assistance in all domain name issues. In Finland, FICORA supervises the domain name registrars' technical information security and maintains the fi-domain name register.
- Domain names may, in principle, be freely chosen but the domain name holder is responsible that the domain name registration is lawful. FICORA can afterwards intervene in unlawfully registered fi-domain names by, for example, removing them from the domain name register (for example, based on a previously registered trade name or trade mark).

## Trade name

- By registering a company name in Finland, you get an exclusive right to that name in Finland.
- A company name must differ from names that have already been registered. A company name that is identical with or similar to another registered name cannot be registered.

# Design

**In Finland**, registration can be obtained through national registration, EU design registration or designation under international design filing.

**Appearance** of a product, part of the product, packaging, logo or other sign can be registered with a design right

Granted to the creator or his successor. In force maximum 25 years (renewal every 5 years)

No product classes, no obligation to use in certain classes

**Design** means the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture or materials of the product itself or its ornamentation

Unregistered EU design (3 years from the publication – protection mainly only against direct imitation)

# Design: important take-aways when launching new www-services

Designs are intended to protect features of a product that have 'eye appeal'. Examples of product designs that may be registered include spectacle frames, lights, bottles, **fonts, website-layout, user interfaces and icons (also for apps)**.

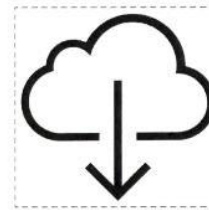
In most countries, to obtain a design **registration the design must be new at the time of filing the application to register and have an individual character**. It is important therefore, that the design remains confidential until an application has been filed: **do not launch before filing**.

A design is deemed to have been made available to the public if it has been exhibited or used in trade, or it has otherwise become known. The owner may delay applying for registration up to 12 months after publication and the design is still considered to be new.

**Parts of complex products qualify for protection. However, the whole computer program is not likely to be protected as designs.**

# Apple Inc.

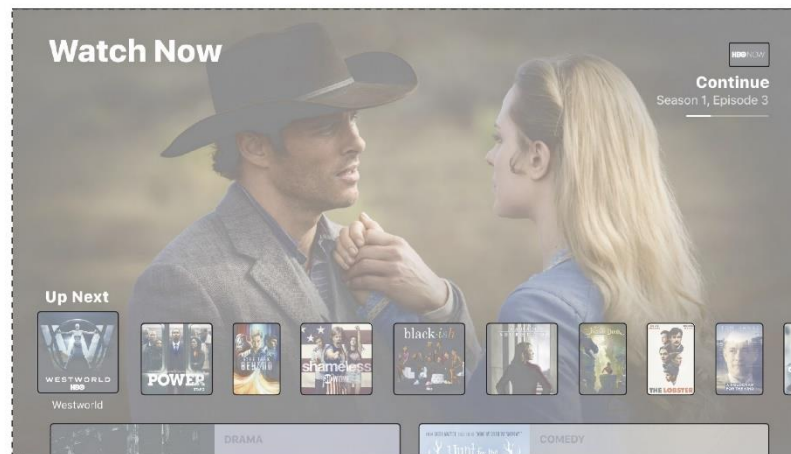
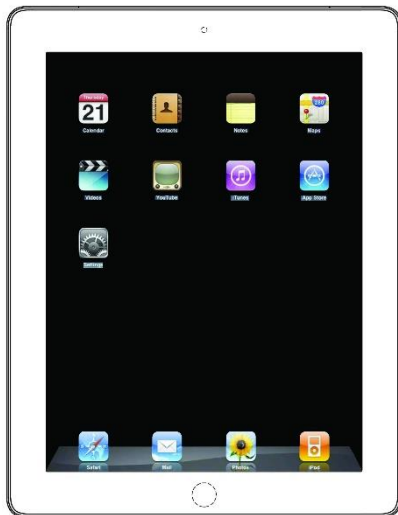
ID	839	Country	US - United States	Correspondence address
Organisation	Apple Inc.	State/country	California	Apple Inc.
Legal status	Legal entity	Town	Cupertino	One Apple Park Way
State, district or t...	California	Post code	95014	Cupertino, California 95014
		Address	One Apple Park Way	ESTADOS UNIDOS (DE AMÉRICA)

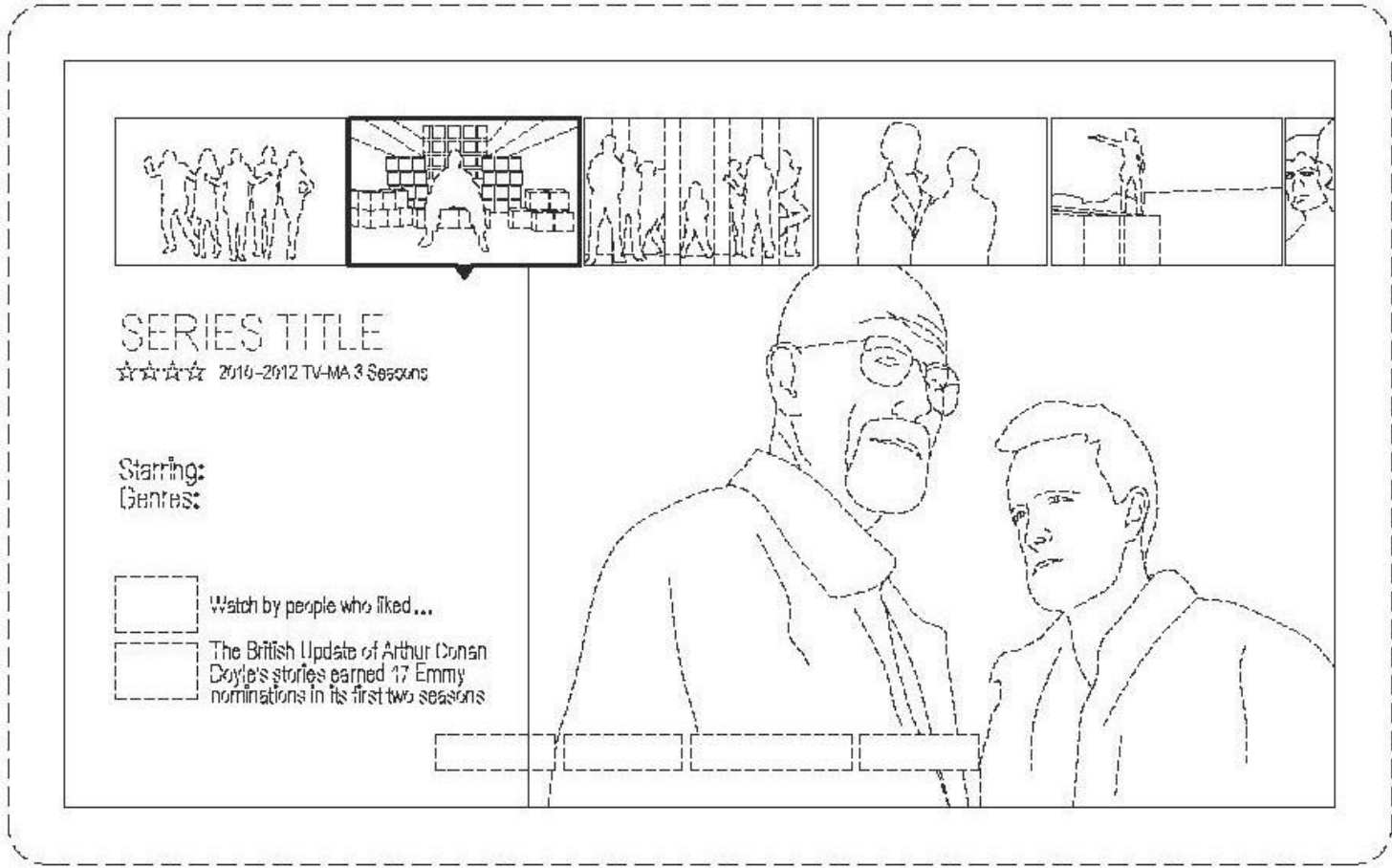


Trade marks (590)

Designs (3826)

3826 search result(s) in 39 page(s) in 1.461 seconds



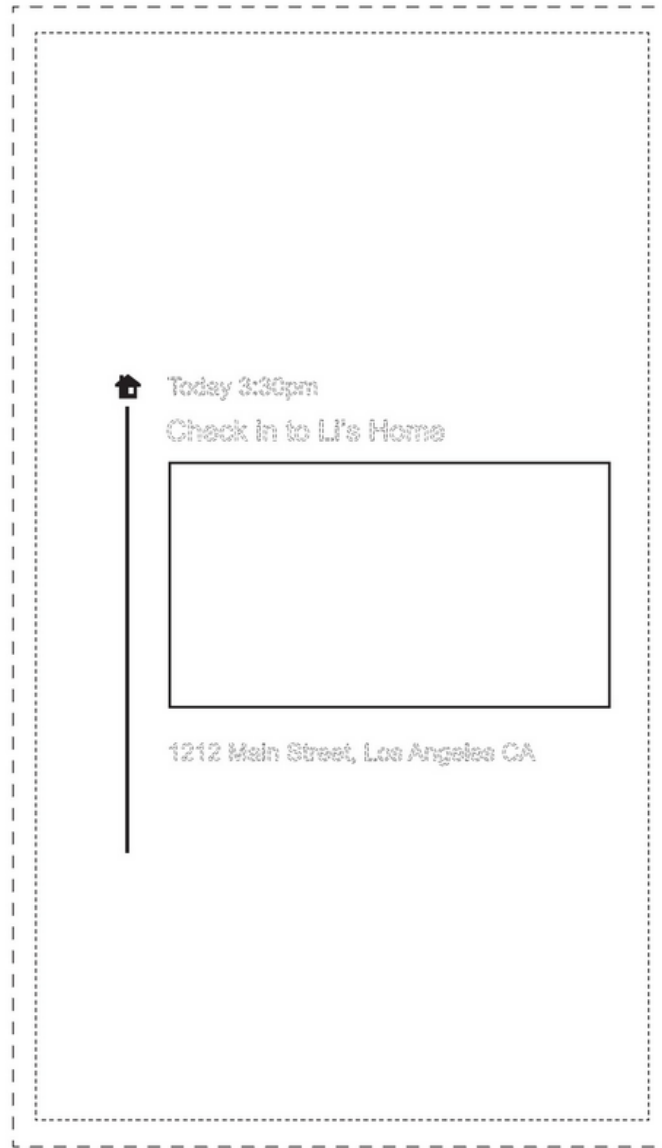


**Netflix Inc**

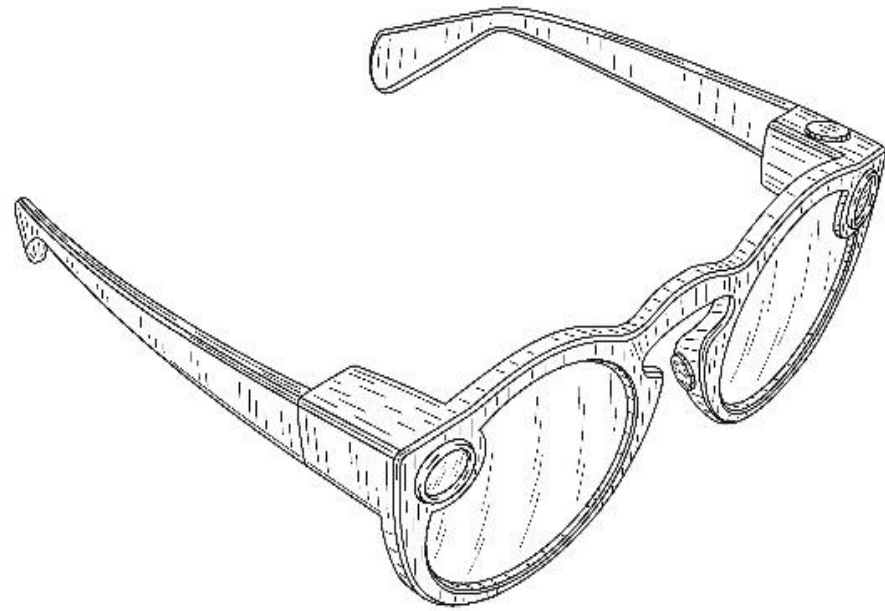
EU design no 004140630-0001

**AirBnB**

EU design no 004001915-0001



**Snap Inc**  
EU design no 012144903

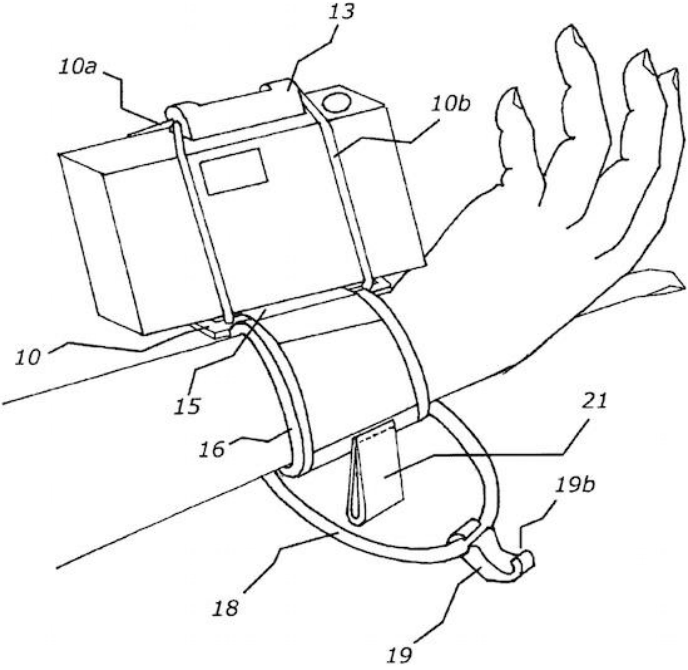




# Keep in mind also: patents and utility models

- Patent can be registered for an invention (but must be new in relation to what was known before the filing date of the patent application and also differ essentially therefrom).
- Commercially exploitable:
  - A concrete solution to a technical problem
  - Shall have technical effect
  - Solves the problem presented in the patent application in a trustworthy and secure way
  - Must be able to be used several times so that the meant effect can be achieved
- Usually in force for maximum 20 years. The inventor or the assignee can apply for protection.
- Utility models must be new in relation to what was known before the filing date of the utility model application. Not so highly inventional as patents. The Patent Office does not study whether the utility model is new, the application must only be formally correct. In force  $4 + 4 + 2 = 10$  years.

**GoPro**  
Patent  
Harness system for  
attaching camera to  
user



# IP-registrations: important take-aways when launching new www-services

- Registrations create legal certainty = better position among competitors. *However, typically possibilities to challenge the validity of the registration*
- Defining rights & priority
- Indicator of credibility
- Monetary value / IP = assets

**Closer look:**  
IP (and more)  
typically applicable in  
relation to www-services

—

non-registrable IP-rights

# Copyright

Copyright applies to original works including “**literary**, dramatic, musical, artistic, and certain other intellectual works”. **Literary works** can include, for example, fictional representations, articles, maps or computer programs. Many limitations apply.

Copyright protection is divided into economic and moral rights.

Copyright is based on national law and international treaties. In Finland, copyright usually remains in force for 70 years after the year of the author’s death. The Copyright Council issues statements on how the Copyright Act is applied = certain threshold of originality is required.

According to a generally used definition, the work can usually be protected by copyright if no other person would have achieved a similar end result when given the same task. Evaluation must always be made on a case-by-case basis, and in the end, this issue is decided by the courts.

Copyright registration is not possible in Finland.

# Copyright

Although there is no requirement of copyright notice in Finland, the © sign is generally used.

Copyright is afforded automatically to the author of a work, if certain conditions are met. In the case of a joint/collaborative work, where the work has two or more authors whose contributions do not constitute independent works, copyright belongs to the authors jointly.

When works are created in the framework of an employment contract, the starting point is the same: copyright belongs to the creator, that is, the employee in question. In case of computer programs or databases, the copyright, however, passes automatically to the employer.

**The Finnish Copyright Act does not contain any provisions on the form of the agreement to transfer copyright.**

# Copyright

Copyright can be transferred entirely or partially.

When copyright is transferred entirely, it is typically not limited in any way as to length in time or range of usage (sale). It is, however, as a starting point, only possible to transfer the economic rights. The moral rights can only be waived in regard of use limited in character and extent.

When copyright is partially transferred, the term license can be used (the right to use the protected object in question is limited in different ways). Copyright is typically transferred, among others, employment contracts, agreements, research and development contracts, distribution and technology transfers.

*Most sites now are built on top of a platform (WordPress, Joomla or other software). However, many of these have strict licensing requirements. Study these carefully before taking into use.*

# Copyright

## Photos

Copyright expires for such photographs as are not considered "works of art" 50 years after the photograph was made. Photographs considered to be "works of art" are protected normally for 70 years after the death of the works creator.

The difference between a photograph and a photographic work of art is not precisely defined. To qualify as a work of art, the photograph must express personal vision such that no other person can be expected to have produced a similar image.



# Copyright

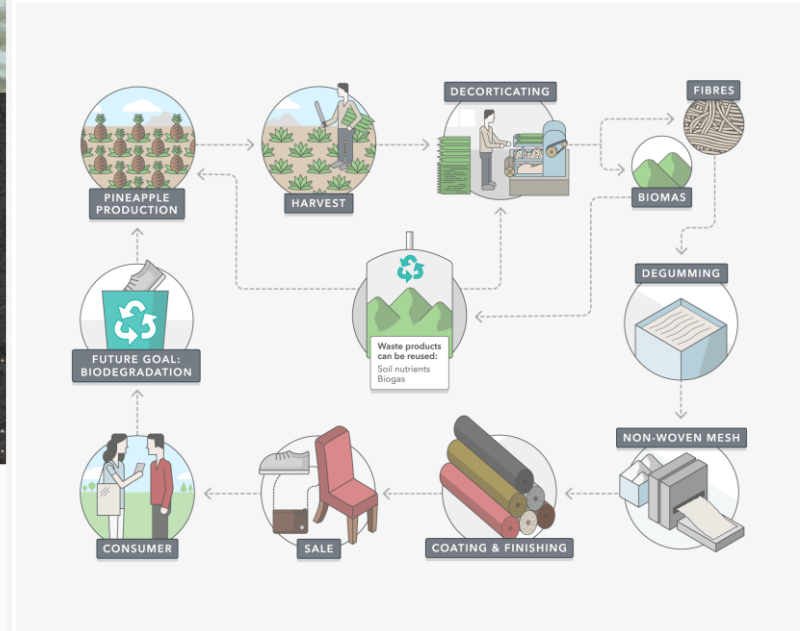
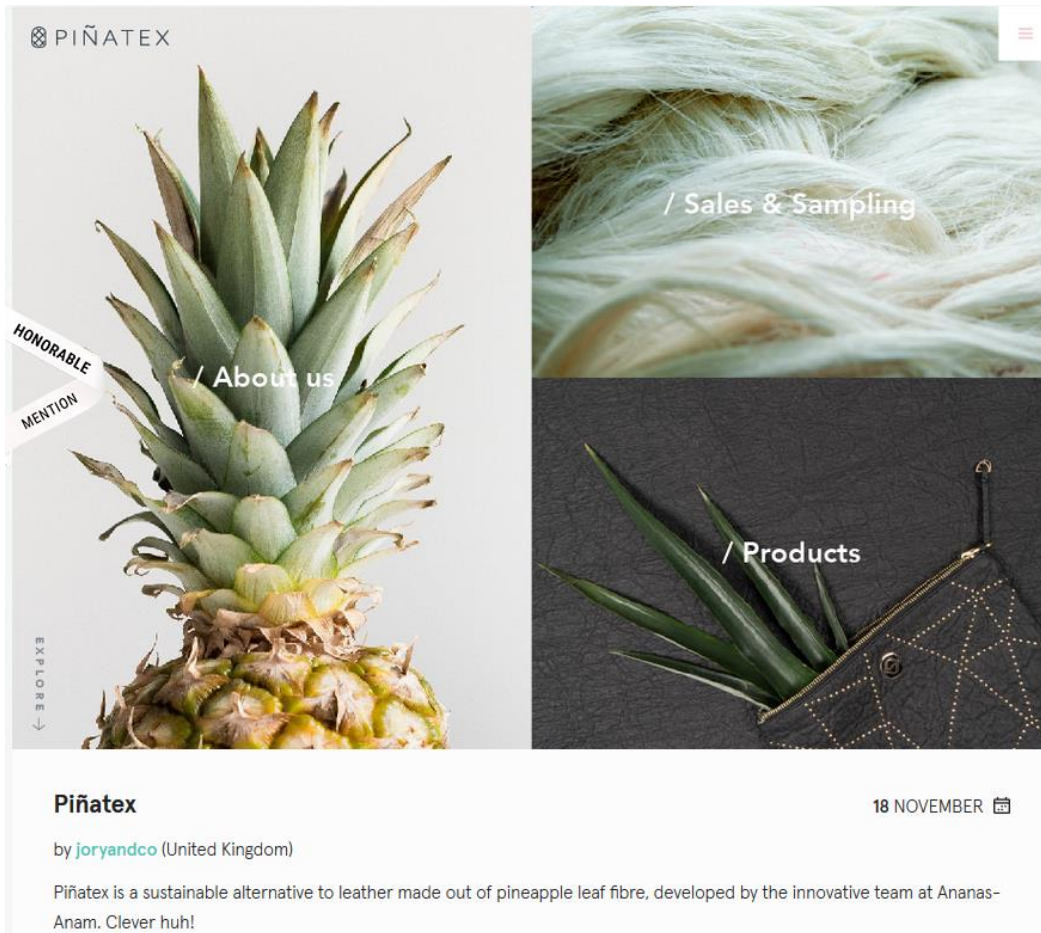
## Code/"website"/software and databases

Code, much like computer software, is covered by the general stipulations on copyright and a number of software specific stipulations. In order to benefit of the protection, this work needs to be original in the sense that it is the author's own intellectual creation. The Finnish case-law on computer programs and eligibility for copyright protection is scarce. Sometimes protection is awarded; sometimes not (see, for example [2011:10](#) and [2013:1](#)).

For databases, the protection lasts 15 years from the completion or dissemination of the database. Typically a compilation of works, data or other materials (i.e. collection of facts) arranged in a systematic or methodical way.

# Important take-aways when launching new www-services

*Identity of the services may consist of various elements, each of which can be protected with varying IPRs.*



## Piñatex

Brand (trade marks, designs)

Copyright (pictures, text, potentially code)

Patent and trade secrets (knowhow)

Key: case-by-case  
analysis & strategy

# Key Takeaways for an IP-Healthy Business

Make sure that:

1. You have identified *e.g. your* brand, trade mark(s), domain(s) and registered them.
2. When the process begins with an invention, it should be evaluated by a professional. Some applications should be filed as soon as possible and prior to any public disclosure.
3. You are aware who is the inventor/creator of all IP in relation to your business. If you have other people working with/for you, you have signed agreements with them or are aware of commercial risks.
4. If you are disclosing your innovation with any third parties (among others manufacturers, licensees, co-operation prospects or possible partners) you have a signed NDA in place. When you start business relationship, you will enter into an agreement.
5. You monitor other businesses within the same industry and do not intentionally copy third parties protected features.
6. You have archived your advertisements, brochures, catalogues etc. You are aware how use of innovation effects on your rights.
7. You have managed to adopt an IP-strategy and “risk based” approach on IP.

# Key Takeaways for an IP-Healthy Business: images used in www-services

It is important that you always make sure you have the rights to use an image in your layout, even if it is just a decorative element.

Use of an image containing a regular person usually requires a consent from that person.

Photos of “regular people” in public places may be published without their consent if the person is clearly not the main subject of the image and the picture does not cause damage, suffering or despise to the person in the picture.

If the person can be identified, the image may not be used (commercially or non-commercially) without consent. Even when a person is not clearly identifiable, using a picture with the person as the main subject may require their consent.

If you need to locate free images that you can use legally, search for Creative Commons-licensed work - as long as you are sure to follow the terms of the licenses carefully.

# Key Takeaways: personal data used in www-services

As of May 2018, with the entry into application of the General Data Protection Regulation, there is one set of data protection rules for all companies operating in the EU, wherever they are based.

*A company with an establishment in the EU provides travel services to customers based in the EU countries and in that context processes personal data of natural persons.*

The GDPR contains a range of obligations for documentation and proof (accountabilities). Among others,

- companies are obliged to keep a documentation of data processing activities.
- need for technical solutions, such as a data protection management system, that help to collect store, process, and analyse data securely.
- a contract needs to be made with the service provider regarding the extent of contracted activities.
- before certain data processing operations, the potential risks for people's rights and freedoms need to be assessed
- process in place to reply to the questions/requests from the individuals/authorities

Legal considerations in  
designing and launching  
www-services: IP in action



# IP (and more) in Action

<https://www.bbc.co.uk/news/uk-england-kent-37308729>

## Littergram 'gets deadline' from Instagram to change name

8 September 2016

[f](#) [m](#) [t](#) [e](#) [Share](#)



The littergram website invites people to share photos of rubbish

The owner of an anti-litter app says he has been told he has until Friday to confirm with solicitors for Instagram and Facebook he will change its name.

# IP (and more) in Action

https://www.markkinaoikeus.fi/fi/index/paatokset/teollisjatekijanoikeudellisetasiat/teollisjatekijanoikeudellisetasiat/1539172359113 120 %

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Etusivu » Ratkaisut » Teollis- ja tekijänoikeudelliset asiat » MAO:486/18

## MAO:486/18

AALTO Ympäristökehitys Oy ja Aalto Group Oy > Viestintävirasto

verkkotunnuksen merkitseminen oikeudenhaltijalle - hyväksyttävä peruste

Diaarinumero: 2017/605  
Antopäivä: 2.10.2018

### PÄÄTÖS, JOSTA VALITETAAN

Viestintäviraston päätös 18.8.2017 asiassa dnro 630/522/2017 (liitteet 1-3)

### ASIAN KÄSITTELY MARKKINAOIKEUDESSA

#### Valitus

#### Vaatimukset


AALTO Ympäristökehitys Oy on vaatinut, että markkinaoikeus kumoaa päätöksen.

#### Perusteet

Viestintävirastolla ei ole ollut edellytyksiä Aalto Group aaltogroup.fi merkitsemiselle mainitun yhtiön käyttöön. Viestintävirasto on ollut hyväksyttävä peruste kyseisen verkkotunnuksen m...

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# IP (and more) in Action

https://en.wikipedia.org/wiki/Apple\_Inc.\_v.\_Samsung\_Electronics\_Co.#German\_courts



## *Apple Inc. v. Samsung Electronics Co.*

From Wikipedia, the free encyclopedia

***Apple Inc. v. Samsung Electronics Co., Ltd.*** was the first of a series of ongoing [lawsuits](#) between [Apple Inc.](#) and [Samsung Electronics](#) regarding the design of [smartphones](#) and [tablet computers](#); between them, the companies made more than half of [smartphones](#) sold worldwide as of July 2012.<sup>[1]</sup> In the spring of 2011, Apple began litigating against Samsung in [patent infringement](#) suits, while Apple and [Motorola Mobility](#) were already engaged in a [patent war](#) on several fronts.<sup>[2]</sup> Apple's multinational litigation over technology [patents](#) became known as part of the [mobile device "smartphone patent wars"](#): extensive litigation in fierce competition in the global market for consumer mobile communications.<sup>[3]</sup> By August 2011, Apple and Samsung were litigating 19 ongoing cases in nine countries; by October, the legal disputes expanded to ten countries.<sup>[4][5]</sup> By July 2012, the two companies were still embroiled in more than 50 lawsuits around the globe, with billions of dollars in damages claimed between them.<sup>[6]</sup> While Apple won a ruling in its favor in the U.S., Samsung won rulings in South Korea, Japan, and the UK. On June 4, 2013, Samsung won a limited ban from the U.S. International Trade Commission on sales of certain Apple products after the commission found Apple had violated a Samsung patent,<sup>[7]</sup> but this was vetoed by [U.S. Trade Representative Michael Froman](#).<sup>[8]</sup>

On December 6, 2016, the [United States Supreme Court](#) decided 8-0 to reverse the decision from the first trial that awarded nearly \$400 million to Apple and returned the case to Federal Circuit court to define the appropriate legal standard "article of manufacture" because it is not the smartphone itself but could be just the case and screen to which the design patents relate.<sup>[9]</sup>

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- [German courts](#)
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fortune.com/2017/09/20/stranger-things-bar/

## Netflix Cease-and-Desist to 'Stranger Things' Bar Is an Internet Hit



By [JEFF JOHN ROBERTS](#) September 20, 2017

# NETFLIX

August 23, 2017

Emporium Arcade Bar  
% Danny and Doug Marks  
2363 N. Milwaukee Ave  
Chicago, IL 60647

Via email

Danny and Doug,

My walkie talkie is busted so I had to write this note instead. I heard you launched a *Stranger Things* pop-up bar at your Logan Square location. Look, I don't want you to think I'm a total wastoid, and I love how much you guys love the show. (Just wait until you see Season 2!) But unless I'm living in the Upside Down, I don't think we did a deal with you for this pop-up. You're obviously creative types, so I'm sure you can appreciate that it's important to us to have a say in how our fans encounter the worlds we build.

We're not going to go full Dr. Brenner on you, but we ask that you please (1) not extend the pop-up beyond its 6 week run ending in September, and (2) reach out to us for permission if you plan to do something like this again. Let me know as soon as possible that you agree to these requests.

We love our fans more than anything, but you should know that the demogorgon is not always as forgiving. So please don't make us call your mom.

Thanks,

Director/Senior Counsel - Content & Brand IP

# IP (and more) in Action

<https://blog.myheritage.com/2018/06/myheritage-statement-about-a-cybersecurity-incident/>

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## MyHeritage Statement About a Cybersecurity Incident

By Admin · June 4, 2018

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Today, June 4, 2018 at approximately 1pm EST, MyHeritage's Chief Information Security Officer received a message from a security researcher that he had found a file named myheritage containing email addresses and hashed passwords, on a private server outside of MyHeritage. Our Information Security Team received the file from the security researcher, reviewed it, and confirmed that its contents originated from MyHeritage and included all the email addresses of users who signed up to MyHeritage up to October 26, 2017, and their hashed passwords.

Immediately upon receipt of the file, MyHeritage's Information Security Team analyzed the file and began an investigation to determine how its contents were obtained and to identify any potential exploitation of the MyHeritage system. We determined that the file was legitimate and included the

Thank you!