THE BUSINESS OF ART: INTELLECTUAL PROPERTY

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DISCLAIMER

I am not your attorney. The information provided in, and as a part of, this presentation is for informational purposes only and should not be construed to be formal legal advice nor information of an attorney-client relationship.
TOPICS:

- Trade Marks
- Design Rights
- Patents
- Copyright
  - How do I protect my works
  - The right of communication to the public
  - Exceptions to copyright protection
  - What is fair dealing
  - Infringement
“A man paints with his brains and not with his hands.”

- MICHELANGELO
“Intellectual property (IP) refers to all creations of the human mind.”

- WIPO
Every product or service we use is as a result of innovation such as a new design, process, invention, logo, or in the case of copyright, new music, art, architecture etc

IP can be found in every product
INTELLECTUAL PROPERTY

- **trademark** protects the name and logo of the manufacturer.

- The parts and processes that keep the food cold may be **patented** inventions.

- The design of the refrigerator (style and appearance) can be protected by **industrial designs**.

- The refrigerator’s manual would be protected by **copyright**.
**Intellectual Property**

- The creators of IP acquire exclusive rights as a result of their work — *Intellectual Property Rights (IPRs)*

- IP rights are treated as *PERSONAL PROPERTY*

- IP rights may be *ASSIGNED* or *LICENSED* to others
Four main areas of IP:
- Trade Marks
- Patents
- Industrial Designs
- Copyright
**PATENT**

- “patent” is title granted to protect an invention

- “invention” is an idea of an inventor which permits in practice the solution to a specific problem in the field of technology

- **New**
  - Not existing prior to the application being filed

- **Inventive**
  - Must be non-obvious to persons skilled in the area

- **Industrially applicable**
  - Can be made or used in some kind of industry

- literary, dramatic, musical or artistic works
- a way of doing business, playing a game or thinking
- a method of medical treatment or diagnosis
- a discovery, scientific theory or mathematical method
- the way information is presented
- some computer programs or mobile apps
- ‘essentially biological’ processes like crossing-breeding plants, and plant or animal varieties

https://www.gov.uk/patent-your-invention/what-you-can-patent
PATENT

- Registered by extension of a U.K. patent right
- Registered Intellectual Property Agent (IPA) must file a copy of patent as granted by U.K.
- Twenty years from the date of filing of the application
Industrial Designs or Design Rights

- refers to the ornamental or aesthetic aspects of a product

- may consist of three-dimensional features such as the shape or surface of a product

- may consist of two-dimensional features such as patterns, lines or colour
DESIGN RIGHTS

- can be applied to a wide variety of industrial products such as:
  - technical and medical instruments
  - watches
  - jewellery and other luxury items
  - house wares and electrical appliances
Design Rights

- Vehicles
- Architectural structures
- Textile designs
- Leisure goods
DESIGN RIGHTS

- Registered for a period of five years from the date of registration

- Registration may be renewed for four further periods of five years

- Registered for a total of twenty five years
**Design Rights: What You Can and Can’t Register**

- New

- Not be offensive

- Must be yours

- Should not include the use of protected emblems or flags

- Must not be an invention or how a product works

[https://www.gov.uk/register-a-design](https://www.gov.uk/register-a-design)
**Trade Marks**

- A sign used to distinguish the goods and services of one undertaking from other undertakings

- Can consist of
  - Words, including personal names
  - Designs
  - Letters
  - Numerals
  - Shape of goods or their packaging
Trade Marks: Examples

Pepper Patch
Pepper Jelly

Cayman Airways
TRADE MARKS

- A trade mark is registered for a period of ten years from the date of application.
- Registration may be renewed for further periods of ten years.
- A registered trademark is personal property.
- August 1st - registered locally.
Trade Marks: Why register

- Provides protection to the owner
- Exclusive rights to use the mark
- Can authorise others to use in return for payment
- Promotes enterprise by hindering unfair competitors
Copyright: What is Protected

Protection is automatic when you create:

- original literary, dramatic, musical and artistic work, including illustration and photography

- original non-literary written work, e.g., software, web content and databases

- sound and music recordings

- film and television recordings

- broadcasts

- the layout of published editions of written, dramatic and musical works
Copyright: What is Not Protected

- Titles
- Names
- Short phrases
- Slogans
- Principles
- Ideas
- Concepts
- Discoveries
- Processes
- Methods
COPYRIGHT

- The Cayman Islands recognises the copyright of 183 countries.
- The Cayman Islands only recognises copyright protection for up to 70 years, even if the country of origin provides protection for longer periods.
- “Comparison of terms” – work is protected in another country only for a term which does not exceed the term fixed in the country of origin of the work.
COPYRIGHT: OWNER

- general rule: a person who creates an original work is the first owner of copyright in the work

- also applies to commissioned work

- *Exception:* work created by an employee in the normal course of employment- employer is copyright owner
## Copyright: Duration of Protection

<table>
<thead>
<tr>
<th>Type of work</th>
<th>How long copyright usually lasts</th>
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<tbody>
<tr>
<td>Written, dramatic, musical and artistic work</td>
<td>70 years after the author’s death</td>
</tr>
<tr>
<td>Sound and music recording</td>
<td>70 years from when it’s first published</td>
</tr>
<tr>
<td>Films</td>
<td>70 years after the death of the director, screenplay author and composer</td>
</tr>
<tr>
<td>Broadcasts</td>
<td>50 years from when it’s first broadcast</td>
</tr>
<tr>
<td>Layout of published editions of written, dramatic or musical works</td>
<td>25 years from when it’s first published</td>
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</tbody>
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COPYRIGHT: REGISTRATION

- You get copyright protection automatically
- You do not have to file an application or pay a fee
- You can mark your work with the copyright symbol, your name and the year of creation
- Marking your work does not affect protection

Copyright protection is automatic!
COPYRIGHT: ECONOMIC RIGHTS

- right of reproduction (tape recording, copying, CD etc)
- right of public performance
- right of broadcasting
- right of communication to the public
- right of translation and adaption
Copyright: Economic Rights

You can prevent others from:

- **copying** your work
- **distributing** copies of it, whether free of charge or for sale
- **renting** or **lending** copies of your work
- **performing**, **showing** or **playing** your work in public
- making an **adaptation** of your work
- **putting** it on the internet

https://www.gov.uk/copyright
COPYRIGHT: MORAL RIGHTS

- right to be identified as the author
- right to object to derogatory treatment of the work
- right to object to false attribution of work
COPYRIGHT: RIGHT TO PRIVACY

- When you commission photographs or a film for private or domestic purposes, you have the right not to have
  - copies of the work issued to the public
  - the work exhibited or shown in public
  - the work communicated to the public

- A person who does this without authorisation infringes your right to privacy
COPYRIGHT: RIGHT OF COMMUNICATION TO THE PUBLIC

Includes:
- uploading works to the internet
- copying material to USB sticks, CDs or hard drives
- printing downloaded materials

Can only be performed by third parties once authorisation of rights holder has been obtained
COPYRIGHT: RIGHT OF PUBLIC PERFORMANCE

- ‘Performance’ means any acoustic or visual presentation of a work for those who are present at a place of performance.

- ‘Public’ means a large number of people who do not qualify as family or closest social acquaintance.

- They don’t need to be present while the work is performed.

- Suffices that they have access to the work.
COPYRIGHT: PRIMARY INFRINGEMENT

- Copying
- Issuing copies to the public (including electronic copies)
- Lending or renting
- Performing, showing or playing work
- Communicating to the public
- Making an adaption
COPYRIGHT: SECONDARY INFRINGEMENT

- Importing infringing copies
- Possessing or dealing with infringing copies
- Providing the means to make infringing copies
- Permitting the use of your premises for an infringing performance
- Providing the apparatus for an infringing performance
COPYRIGHT: FAIR DEALING

- Personal copying for private use
- Non-commercial research and private study
- Text and data mining for non-commercial research
- Criticising, reviewing and reporting current events
- Educational use by schools, universities or other educational establishments
COPYRIGHT: FAIR DEALING

- Helping disabled people by making a braille copy
- Time shifting by recording TV to view later (privately)
- Use for parody, caricature and pastiche
- Use by libraries and archives
- Public administration
COPYRIGHT: FAIR DEALING

- Making backup copies, decompilation, observing, testing and studying, and correcting errors of computer programs
- Any acts necessary to access the use of the contents of a database
- Using a design to make a product
- Creating backup copies of eBooks when originals are no longer usable
- Making notes or recordings for the purpose of recording current events
COPYRIGHT: FAIR DEALING

- Publicly reciting a reasonable extract from a published literary or dramatic work

- Using abstracts of scientific and technical articles

- When it’s difficult to identify the authors or to ascertain if copyright has expired
COPYRIGHT: FAIR DEALING

- Broadcasts:
  - Recording for purposes of supervision
  - Incidental recording for the purposed of broadcasting by an authorised broadcaster
  - Time-shifting
  - Private use of photograph of an image of a broadcast
  - Retransmission by cable
FAIR DEALING

The following factors must be taken into account:

- nature of the work (published or unpublished)
- extent and substantiality of that part of the work affected by the act in relation to the whole of the work
- the effect of the act upon the commercial value of the work
- the purpose and character of the use
How Does Copyright Support Local Commerce

- Protects your work
- Legitimate access
- Attracts investment
- Enhances Cayman’s reputation
This presentation is intended for educational purposes only and does not replace independent professional judgement. All information herein should service as a guideline and general information on Intellectual Property in the Cayman Islands.
THANK YOU!

ANY QUESTIONS?

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