



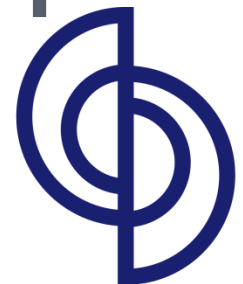
THE BUSINESS OF ART: INTELLECTUAL PROPERTY

Candace Westby Fisher

Trade Marks Examiner

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National Gallery of the Cayman Islands



CIPO
CAYMAN ISLANDS
INTELLECTUAL PROPERTY OFFICE

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.”

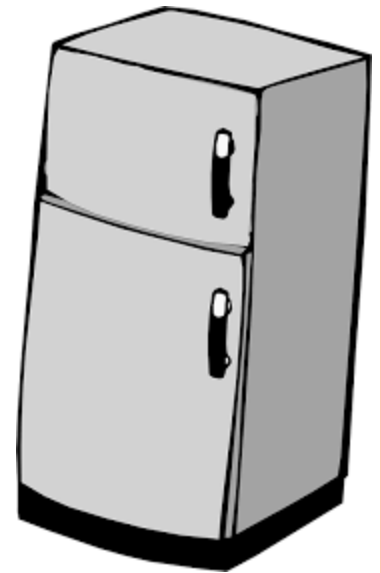
- WIPO

INTELLECTUAL PROPERTY

- 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



INTELLECTUAL PROPERTY

○ 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

PATENT: WHAT YOU CAN PATENT

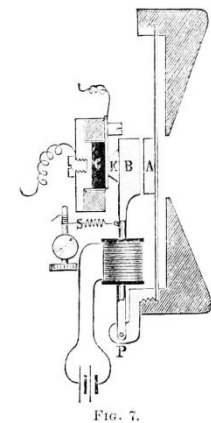
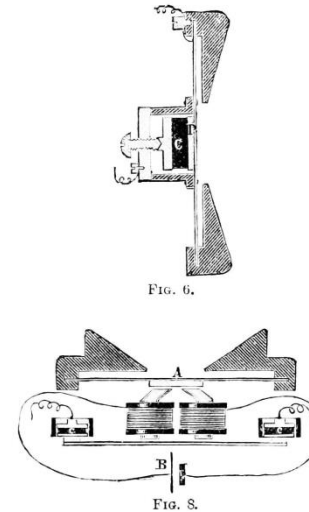
- New
 - Not existing prior to the application being filed
- Inventive
 - Must be non-obvious to persons skilled in the area
- Industrially applicable
 - Can be made or used in some kind of industry

PATENT: WHAT YOU CAN'T PATENT

- 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

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

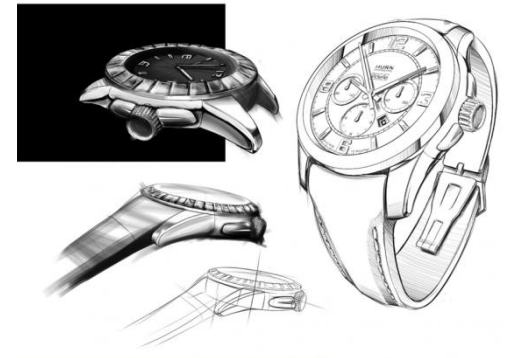


INDUSTRIAL DESIGNS OR DESIGN RIGHTS

- 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



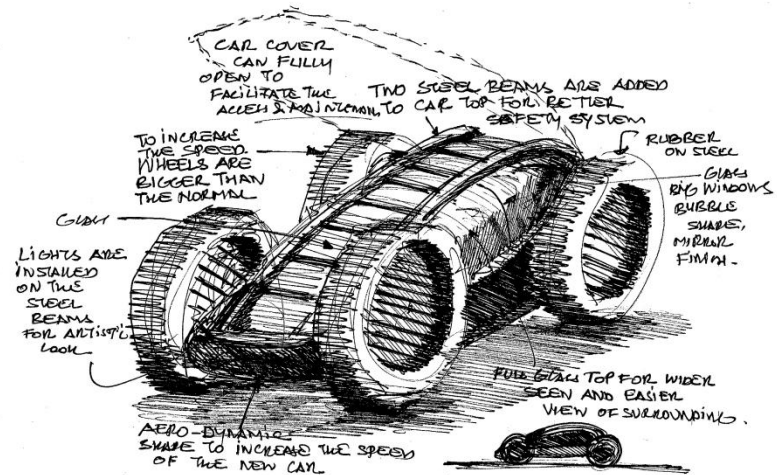
- Vehicles
- Architectural structures
- Textile designs
- Leisure goods

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



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



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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, eg 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

Type of work

How long copyright usually lasts

Written, dramatic, musical and artistic work

70 years after the author's death

Sound and music recording

70 years from when it's first published

Films

70 years after the death of the director, screenplay author and composer

Broadcasts

50 years from when it's first broadcast

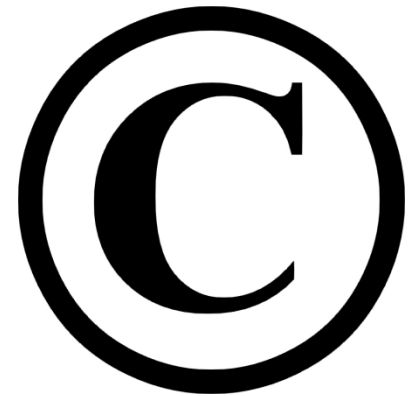
Layout of published editions of written, dramatic or musical works

25 years from when it's first published



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

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 adaptation

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

IS THIS COPYRIGHT
SAFE?

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

IS THIS COPYRIGHT
SAFE?

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

IS THIS COPYRIGHT
SAFE?

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

IS THIS COPYRIGHT
SAFE?

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

IS THIS COPYRIGHT
SAFE?

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

PRESENTATION DISCLAIMER

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?

INFO@CIIPO.GOV.KY

WWW.CIIPO.GOV.KY

946-7922

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