Content

1. Copyright
2. Trademark
3. Industrial Design
COPYRIGHT
What is copyright?

Copyright refers to the rights granted to authors, artists and other creators in their literary or artistic "works"
The Legal Framework

**International**
- The Berne Convention for the Protection of Literary and Artistic Works (Party since 1988);
- Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations - Rome Convention (Party since 1988)
- WIPO Copyright Treaty (Party since 2008)
- WIPO Performances and Phonograms Treaty (Party since 2008)

**National**
- Copyright Act 1997 (with amendments in 2000 and 2008)
Who has rights?

- Songwriters
- Authors
- Playwrights
- Poets
- Artists
- Computer Programmers
- Photographers, etc.
Works Protected

CRA (Art 5(1))

- (a) books, pamphlets, articles, computer programs and other writings;…
- (e) musical works, with or without accompanying words;…
- (h) works of drawing, painting, sculpture...tapestry and other works of fine art; etc.

Photo by: David Stanley (Mas Factory)
Some rights reserved
Protection

- Extends only to original fixed expressions –

- Art. 7(1) NOT TO:
  - (a) any idea, procedure, system, method of operation, concept, principle, mathematical formulas, etc.
  - (b) legislative, or administrative its official translations.
What do you need to do?

A work does not need to be published (entered into the stream of commerce) to be protected
Two types of rights

- **Economic Rights**
  - Compensation for work
  - Authorize or prohibit use

- **Moral Rights (Art. 18)**
  - To object to uses of his/her work
  - Right to be named as the creator

Drawing by P. De Chavez
Economic Rights

Can be
- Transferred
- Licensed
- Sold
Right to Prevent or Allow

- CRA Art. 8(1)
  - Reproduction
  - Public performance
  - Recordings
  - Broadcasting
  - Translation or adaptation
  - Rental
Duration of protection (Economic and Moral Rights)

- Art. 19
  - Life + 50 years
Registration

- Not Required - Berne
  - No Formalities
- Nationals can have different requirements
  - (US example)
Who Owns What?

You own it, if
- You created it.
- You were commissioned to create it

You don’t own it, if
- It was created in the course of employment…

(Text from Presentation by: Silvia Baumgart)
Proving it’s Yours

- Keep records showing progression of your work
- Mark sketches with date created and your name
- Keep a record of who you shared your work with
- Use confidentiality/non-disclosure agreements before sharing work with others

(From Presentation by: Silvia Baumgart)
Required Balance

- Exceptions and Limitations
  Use without compensation

- National Law
  - Governments can introduce E&L for “public good”
    - ex: access for the visually impaired
Exceptions

CRA Arts. 9-17 and Art. 25

- personal purposes;
- for reporting current events;
- face-to-face teaching activities or for scientific research

Three step test reflected in (Art 9(2)(e))

- Special case ‘Special’ justification based on public policy or other exceptional circumstance;
- No conflict with normal exploitation of the work; and
- No unreasonable prejudice to owner of work
INDUSTRIAL DESIGN
Legal Framework

- National Legislation
  - Industrial Designs Act of 1996
What is an Industrial Design?

Art 3 (1) - any composition of lines or colours, any three-dimensional form or any material whether or not associated with lines or colours, is deemed to be an industrial design where such composition, form or material gives a special appearance to a product of industry or handicraft, can serve as a pattern for a product of industry or handicraft and appeals to and is judged by the eye.
Registration and Duration

- **IDA Art 4**
  - Design must be new
  - Disclosure voids right to register where in the market more than 12 months

- **IDA Art 10**
  - 5 years and renewable for 2 addition five years periods

Stock Image – Registration
http://www.fotosearch.com/CSP390/k3903493/
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TRADEMARKS
Legal Framework

- National Law
  - Trade Marks Act* (Act No. 11 of 1955, amended by Act No. 31 of 1997)
What is a trademark?

- Any sign, or combination of signs, capable of distinguishing the goods or services of one undertaking from another
- Sign must be capable of being represented graphically

- See TMA Arts 10 and 11
Distinguish Yourself ®

- Advertises function;
- Guarantee of quality;
- Source or Origin.

Types of trademarks

- Devices or logos.
- Names: Meiling
- Words: Seven for all Mankind
- Letters: LV
- Numerals: 4711
- Configurations, patterns, ornamentations, color or containers for goods.
Shapes

- A product or container shape can also serve a source identifying function and can be an enforceable trademark.
- Might also be eligible for an industrial design registration, (protection limited in time)

http://www.tntisland.com/images/chubby02.jpg
Logos

- A logo is a design which becomes a mark when used in close association with the goods or services being marketed.
- It does not need to be elaborate, only to distinguish.
- Pictures, drawings or symbols are often used as trademarks or service marks.
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(Text from Presentation by: Silvia Baumgart)
Registration -

- TMA Art 4
  - Registration required proceeding to prevent, or to recover damages for, the infringement

- Unregistered mark
  - Action for passing off

Stock Image – Registration
http://www.fotosearch.com/CSP390/k3903493/
Duration of protection

- 10 years of protection (Art 25)

- Renewable in 10 year increments forever (Art 25A)
WIPO Publications:

1. **Making a Mark**
   - An Introduction to Trademarks for Small and Medium-sized Enterprises

2. **Looking Good**
   - An Introduction to Industrial Designs for Small and Medium-sized Enterprises

3. **Creative Expression**
   - An Introduction to Copyright and Related Rights for Small and Medium-sized Enterprises

4. **Inventing the Future**
   - An Introduction to Patents for Small and Medium-sized Enterprises

5. **A Stitch in Time**
   - Smart Use of Intellectual Property by Textile Companies
Thank you!!!!

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