



Copyright and Other Areas of IP

Sonia Cruickshank
Program Officer

July 2014

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.

Photos by: IZATRINI.com

[Some rights reserved](#)



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)



Stock Image – Registration

<http://www.fotosearch.com/CSP390/k3903493/>

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?



[Photo by: Jean-Marc /Jo BeLo/Jhon-John](#)
[Creative Commons Attribution 2.0 Generic](#)



- 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 Art10

- 5 years and renewable for 2 addition five years periods



Stock Image – Registration
<http://www.fotosearch.com/CSP390/k3903493/>

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)

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 ®



<http://www.vectorsland.com/vector/women-in-dresses-47189.html>

- 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.



http://cdn.fashionbi.com/uploads/article_image/file/405/images.jpeg

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.

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)

Registration -

- TMA Art 4
 - Registration required proceeding to prevent, or to recover damages for, the infringement
 - Unregistered mark
 - Action for passing off



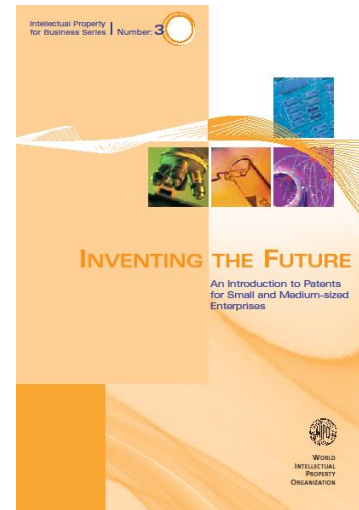
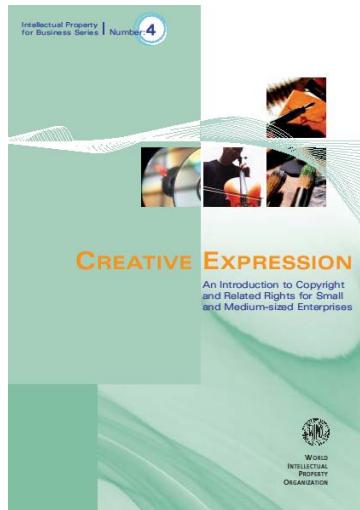
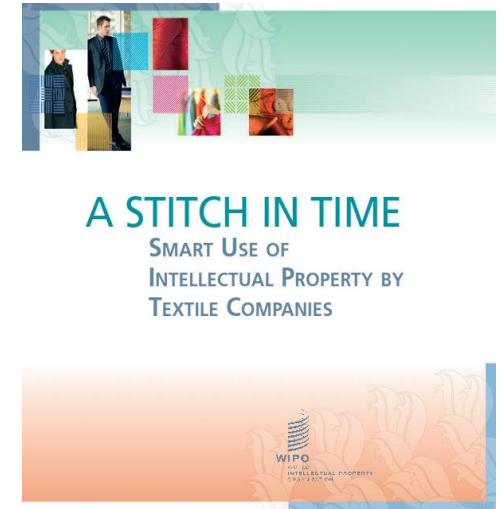
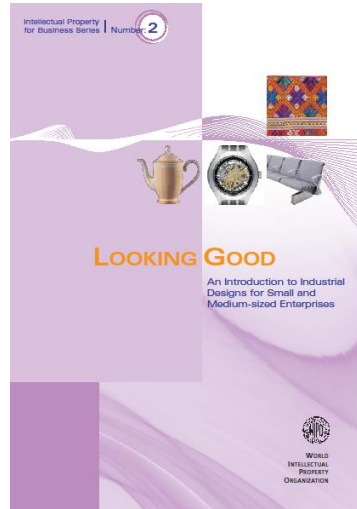
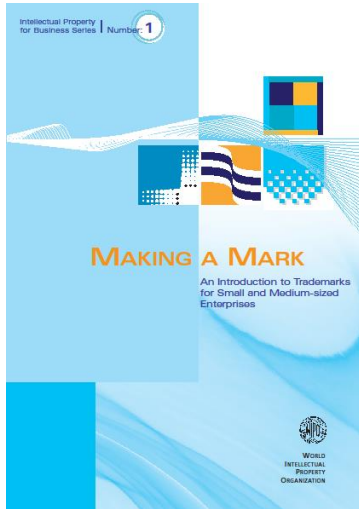
Stock Image – Registration
<http://www.fotosearch.com/CSP390/k3903493/>

Duration of protection



- 10 years of protection (Art 25)
- Renewable in 10 year increments forever (Art 25A)

WIPO Publications:



Thank you!!!!

For more information, please visit www.wipo.int

sonia.cruickshank@wipo.int

41223389931