

An intellectual property is a product of the human intellect having certain characteristics being useful, unique, novel, unobvious and claiming some commercial value.

Intellectual property is an ownership interest in useful information or knowledge: Ray August

Intellectual property means the legal rights which result from intellectual activity in certain areas that include the industrial, scientific, literary and artistic fields: WIPO

Intellectual property refers to a set of legal rights that provide protection to creative and intellectual efforts of human beings.

Classification of IP

Artistic Property

- Artistic works
- Literary works
- Musical works

In most countries - protected by copyrights and neighbouring rights

Industrial Property

Inventions

- Products
- Manufacturing Processes

Protected by patents

Trademarks

- Trademarks
- Trade Names
- Service Marks
- Collective Marks
- Certification Marks

Protected by trademark laws

IP- Legal Frameworks

Municipal Law

- To create Intellectual Property (IP) rights
- To establish rules for protecting and transferring IP rights

International Law

- Does not create the rights
- But to set rules and guidelines for consistent and uniform definition of IP
- To provide guidelines for transfer and protection of IP in different countries

Rights in original intellectual works in the areas of art, literature, music or science, whatever the form of expression, provided such works are fixed in a tangible or material form for the purpose of communication.

Originality of work: Proving something that the author has infused with creativity

Copyrightable works

- Dramatic, musical, artistic
- Sound recording, motion pictures, computer programs etc

Moral rights

- Preventing others from tampering and modification
- Conflict - *Common law v IL*

Pecuniary Rights

- The right of reproduction
- The right of distribution (first time)
- The right of exhibition
(communication/performance –nonmaterial from)

Patents

Right/privilege granted to inventors by respective governments for a limited period of time.

Scope of Rights

- The owner may not prevent the use of idea or the knowledge
- But can only restrict the use of the work itself
- The form of expression is copyrighted, not idea

For inventing (TRIPs Art 27)

New, non-obvious and useful machines, articles of manufacture, or manufacturing process

Basic Kinds of Patents

Design, Plant and Utility

- **Formalities** – nothing since 1989
- **Duration** – Berne Convention - Author's life time + at least 50 years
- **Practice** - Most countries follow including Australia (+70 yrs)

Exclusive Privilege

TRIPs minimum for 20 yrs

- To manufacture, use, or sell a patented product, or
- To use or utilise a patented method or process

Scope - National Character

- only valid within the state granting it
- States may prevent the importation where infringed

Some common uses not constituting infringement of copyright

- Use in a court or administrative proceeding
- Use for instructional purposes in schools
- Use for purely private purpose
- Use in brief quotations in scholarly works
- Use in extended quotation of speeches (poli)

Any word, name, symbol, or device used in trade with goods to identify the source of certain products and distinguish them from those of others.

Trademarks	Trade Names	Service Marks	Collective Marks	Certification Marks
Product name/ <i>Pepsi-Cola</i>	<i>PepsiCo</i> – of PepsiCo, Inc	<i>KFC, Pizza Hut</i> to identify their services	Boy Scouts, Girl Scouts- used to identify	<i>Australian owned, Grown in Idaho-</i> indicating place of origin (by licensee & franchisee)

Acquiring Trademarks

- By use
- By registration

Registration not available in few countries/ *UAE*

Use essential before rego- *Canada and the Philippines*

Registration Criteria

- Distinctiveness
- No infringement – unique sign to distinguish similar products

*Case 9-4: domain name <jimihendrix.com> had been **revoked** by the WIPO Panel because it was identical to domain name and trademark <jimi-hendrix.com>*

Registration may be refused-varied amongst countries- but reasonably similar – see for the *US examination manual* at 480-81. For example:

- Not sufficient to identify – merely ornamental
- Immoral, deceptive or scandalous
- Falsely suggesting connection with persons, institutions, belief or national symbols or bring them into contempt or disrepute

Registration procedure

Once preliminarily decided by the official

- To **publish** in the official gazette
- To **remain** open for objection with a specified time (30-90 days)
- To deal with the **objections**
- To make final **decision**

Term – TRIPs- for a period of **at least 7 yrs** and indefinitely **renewable** subject to usage

Protection of ‘Know How’ – Trade Secret

- **What** - Practical expertise acquired from study, training, experience
- **Complaints** normally against assignee, licensee, employee
- **Criteria**- secret, commercial value, protected from disclosure
- **Protected** by contract and tort

International Protection of IP

Organisations

Two main organisations

- WIPO
- WTO/TRIPs Council

- WIPO- 1967 *succeeded* the Int'l Bureau of Paris and the Int'l Bureau of Berne
- Specialised agency of the UN

WIPO

- *Administers* int'l IP laws
- *Hosts* conferences for further development
- *Promotes* modernisation of IP laws
- *Facilitates* transfer of technology (especially to and from DC)
- *Helps* develop national IP laws
- *Provides* dispute settlement forum (WIPO Arbitration and Mediation Centre, Geneva)

Council for TRIPs –1995- an organ of the WTO

- *Administers* the Agreement on Trade Related Aspects of Intellectual Property Rights (annex to the WTO Agreement)
- *Monitors* members compliance with the TRIPs
- *Provides* dispute settlement mechanism through GATT and WTO
- *Consults* with WIPO and cooperates with WIPO's constituent bodies (permanent committees for *Development Cooperation Related to Industrial Property*, and *Development Cooperation Related to Copyrights and Neighbouring Rights*)

Laws

- *Berne Convention for the Protection of Literary and Artistic Works* 1886
- *Paris Convention- International Convention for the Protection of Industrial Property* 1883
- *Rome Convention- International Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organisation* 1961
- *Madrid Agreement Concerning the International Registration of Marks* 1891
- *Hague Agreement Concerning the International Deposit of Industrial Designs* 1925
- *WIPO Copyright Treaty* 1996
- *WIPO Performance and Phonograms Treaty* 1996

All laws aim to:

- *facilitate* transfer of protected IP, and at the same time,
- *ensure protection* of lawful owners of the property *beyond national boundaries*

Transfer Internationally

- *Voluntary licenses* and franchises, assignments by owners
- *Compulsory licence* to a third party by the **government** without the consent of the owner

Australian IP Laws

- *Copyright Act 1968* (Cth)
- *Copyright Amendment (Moral Rights) Act 2000*
- *Copyrights Amendment (Digital Agenda) Act 2000*
- *Circuits Layout Act 1989* (Cth)
- *Designs Act 2003* (Cth)
- *Patents Act 1990* (Cth) –
- *Trade Marks Act 1995* (Cth)
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- Relevant cases
- Q 3. *Frank M. Winstone (Merchants), Ltd. v. Plix Products, Ltd.*, [1985] 1 N.Z. L.Rep. 377 (New Zealand Ct. of Appeal 1985)
- Q 4. Case 9-3, *Monsanto Co. v. Coramandal Indag Products (P), Ltd.*
- Q 5. *In re Coca-Cola Co.'s Application*, in *All England Law Reports*, vol. 2, p. 274 (1986).
- Q 7. The facts in the question are **taken from** *Frank & Hirsch (Pty), Ltd. v. Roopanand Brothers*, in *South African Law Reports* vol.3, p, 165 (Durban and Coast Local Division, 1987).