

Overview of Intellectual Property Rights

Introduction

- The emergence of the Internet has caused policymakers, legislators, rights holders, content creators, businesses, content users and others to rethink the way intellectual property should operate in a modern inter-connected society.
- The range of new technologies and the speed of innovation raises intellectual property issues: domain names are often inextricably linked with trademark issues; and the ease with which digital technologies allow for copying and distribution challenges copyright law enforcement.



introduction

- Intellectual property is currently at the center of an international debate in many different forums regarding how to reconcile the potential of the Internet with traditional intellectual property approaches, including how to stop unlawful transactions on the Internet.
- Two principal approaches have emerged: involving Internet intermediaries in enforcement and using Internet technical measures to prevent access to unauthorised content.



Home > About WIPO > About Intellectual Property

ABOUT INTELLECTUAL PROPERTY

Property?
Inventions (Patents)
Trademarks
Industrial Designs
Geographical Indications
Copyright and related rights
Emerging issues in IP
IP in everyday life

RELATED LINKS

World IP Day Women and IP

What is Intellectual Property?

Intellectual property (IP) refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce.

Intellectual property is divided into two categories: Industrial property, which includes inventions (patents), trademarks, industrial designs, and geographic indications of source; and Copyright, which includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and those of broadcasters in their radio and television programs. For an introduction to IP for non-specialists see:

- Understanding Copyright and Related Rights [PDF]
- Understanding Industrial Property

The WIPO Intellectual Property Handbook offers a comprehensive introduction to the policy, law and use of IP. A summary of intellectual property legislation in member States, as well as contact information, etc., is available in the WIPO Guide to Intellectual Property Worldwide.

The need for...

... Protecting Private property

Incentive to create:

■ The economic philosophy behind the legislations empowering States to grant IP rights is the conviction that encouragement of individual efforts by direct personal gains is the best way to advance public welfare through the talents of authors and inventors in Science and useful Art"¹.

¹US Supreme Court in Mazer v Stein (1954)



The need for...

... Protecting Private property

- Works against the 'lazy' in you!
 - It prevents <u>free riding</u> on works or reputation of others and
- Frees your creative mind
 - Prevents possible <u>holdout</u> of life enriching ideas from learned and ingenious minds.



- Why Protect your Intellectual Property?
 - Incentive to create
 - Prevent unjust enrichment
 - Prevent "hold out" of life enriching ideas



cont/. Legal basis of Protecting IP

- Domestic Obligations:
 - The Constitution of Kenya:
 - The fundamental rights in the Constitution provide every person with the right to property; which must be understood to also include intellectual property.
 - It provides: Sec.75. (1) No property of any description shall be compulsorily taken possession of, and no <u>interest in or right over</u> <u>property</u> of any description shall be compulsorily acquired, except where the following conditions are satisfied.....



Different aspects of IP

Type of IP

Inventions

works of Art and Authorship

Source identification/Brand names

Aesthetics/Ornamental features

Proprietary information

IP Rights

Patents

Copyright

Trademarks

Designs

Trade secrets



- What is a Patent?
 - A Patent is a legal document granted by a State that secures to the holder, for a limited period, the right to exclude others from making, using, selling, offering for sale, and importing the patented subject matter

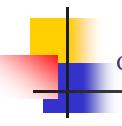


Patentable subject matter

- Any new and useful process, product, composition of matter, or any improvement thereof, may be patented, on condition that such invention is:
 - Novel
 - involves an inventive step i.e must not be obvious to a person of ordinary skills in that field of art, and
 - industrially applicable



- Discoveries or findings that are products or processes of nature, where mankind has not participated in their creations
- Scientific theories and mathematical methods
- Schemes, rules or methods of doing businesses or playing games or purely performing mental acts.



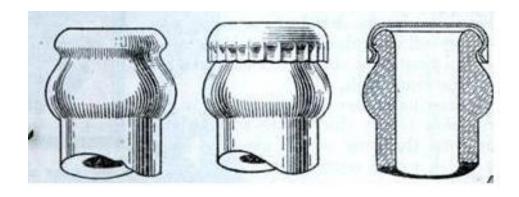
Cont/. What is not Patentable?

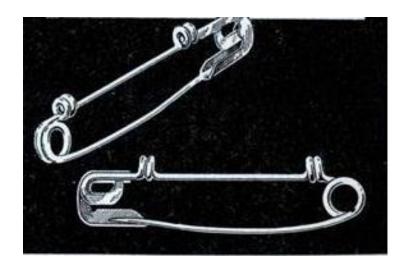
- Methods of treatments of both human and animals by surgery or therapy as well as diagnostic methods practice thereto, except products for use thereof.
- Inventions contrary to public order, morality, public health and safety, principles of humanity and environmental conservation

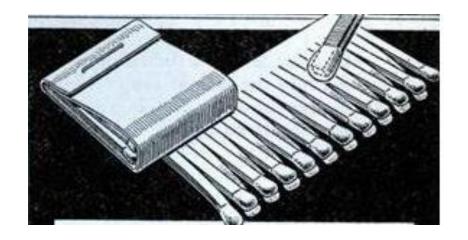
Examples



More Examples









COPYRIGHT

- What is Copyright?
 - Simply is "the right to make copies"
 - Copyright protection subsist in any original works of art and authorship once fixed in any tangible medium of expression, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device

A cautionary Note!

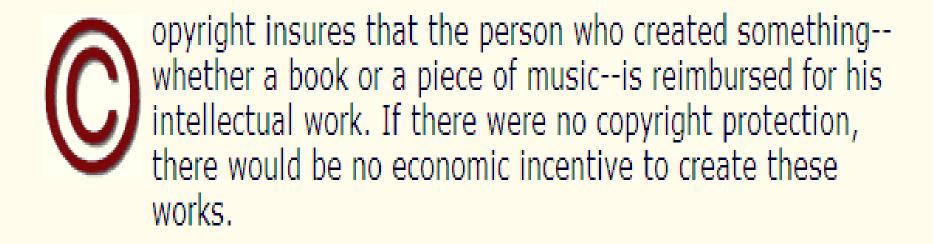
 Copyright only extent as much to the <u>expressions of</u> and NOT to the underlying ideas or facts.



Copyrights

"Copyright is a legal device that provides the creator of a work of art or literature, or a work that conveys information or ideas, the right to control how the work is used."

Copyrights



A copyright is a set of legal rights that an author has over his work for a limited period of time. Copyright covers everything from using images or sound files from the Web to photocopying.

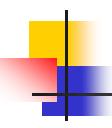


Why Protect your Copyright?

- Economic rights:
 - Incentive to create
 - Prevent unjust enrichment
 - Prevent "hold out" of life enriching ideas from learned and ingenious minds
- Moral rights:
 - The Rights to claim authorship
 - The Right to object to any distortion, mutilation nor other actions defacing the original work

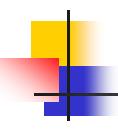
Subject matter of Copyright

- Literary works which include:
 - novels, stories and poetic works,
 - plays, stage directions, film sceneries and
 - broadcasting scripts,
 - textbooks, treatises, histories, biographies, essays and articles;
 - encyclopedias and dictionaries,



cont/. Subject matter of Copyright

- Artistic works, which include:-
 - paintings, drawings, etchings, lithographs, woodcuts, engravings and prints,
 - maps, plans and diagrams,
 - works of sculpture,



cont/. Subject matter of Copyright

- photographs not comprised in audio-visual works,
- works of architecture in the form of buildings or models, and
- work of artistic craftsmanship, pictorial woven tissues and articles of applied handcraft and industrial art;



cont/. Subject matter of Copyright

- Musical works which includes:-
 - Dramatic works, including any music
 - Pantomimes
 - choreographic
- Audio-visual works,
- Sound recordings, and
- Broadcasts.



What does copyright protect?

- Copyright law protect the author of work against wilful acts of:
 - Copying, reprinting, publishing and vending the copyrighted work
 - Displaying, delivering, reading or presenting copyrighted work in public
 - Performing publicly e.g drama, musical composition
 - Producing and distributing to the public
 - Adapting, compiling, arranging, dramatizing translating or any other version of copyrighted works in public



Exemptions (Fair use doctrine)

- Use of the works for educational and scientific purposes
- 2. Private use
- 3. Criticism or review
- 4. Reporting of current events subject to acknowledgement of the source

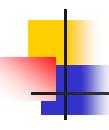


- Originality
 - Independent creation
 - modest quantum of creativity
- Fixation
 - Works of authorship(intangible)
 - Material object



What is a Trademark?

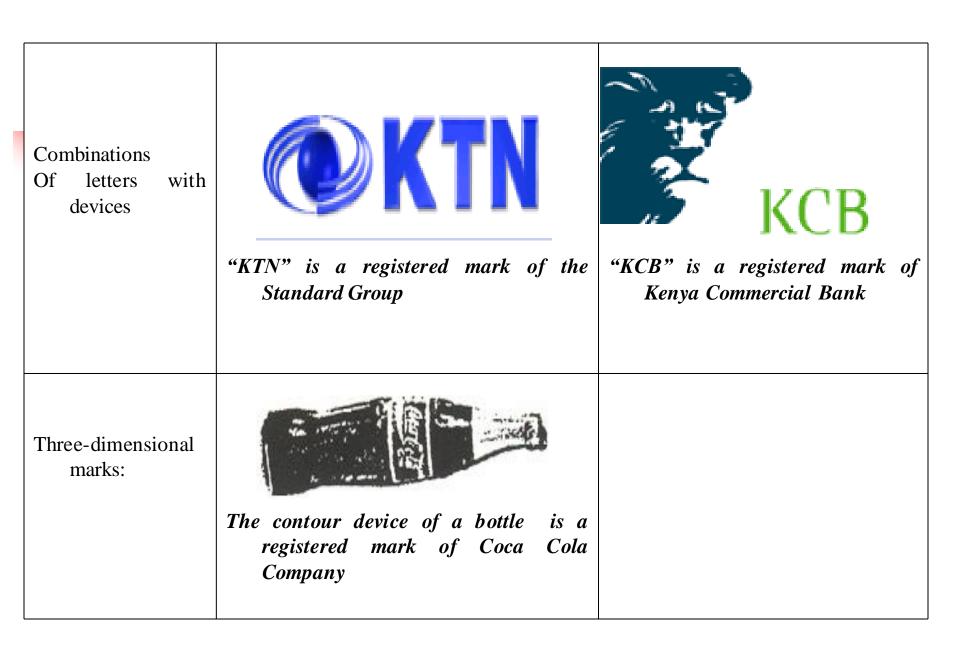
• is a <u>distinctive sign</u>, used by a merchant to **identify** its <u>goods or services</u> and to **distinguish** them from those <u>produced or provided</u> by others.



Cont/Subject matter of Trademark?

- It includes any distinctive sign: word, letter, slogan, device, brand-name, heading, label, ticket, name, signature or numeral or any combination thereof, whether in 2D or 3D form.
- some countries allow registration of: single colours, audible signs(sounds) or olfactory signs (smells), Holograms, Scent or even Motion signs.

| Words | "Yes" is a registered mark of Kencell Communications Limited. | "JOGOO" is a registered mark of Unga Limited |
|--------|---|---|
| Device | The device is a registered mark of Nation Media Group. | The wind mill device is a registered mark of Unga Limited |



| Slogan | Kenya Airways The Pride of Africa "the pride of Africa" is a mark of Kenya Airways. | MY COUNTRY MY BEER "MY COUNTRY MY BEER" is a mark of East Africa Breweries Limited. |
|----------|---|--|
| Numerals | 0722 is a registered mark of Safaricom limited | 504 "504" is a mark of Automobiles Peugeot of France |



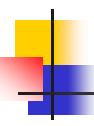
Why protect your trademark?

Registration gives your company the <u>right</u> to <u>exclude</u> others from <u>marketing identical</u> or <u>similar</u> **products** under an <u>identical</u> or a <u>confusingly similar</u> **mark**.



What are trademarks for?

- To the producers:
 - Enables companies to differentiate their products
 - Is a marketing tool and the basis for building brand image and reputation
 - Encourage companies to invest in maintaining product quality
 - a valuable business asset
 - May be licensed to provide a direct source of revenue through royalties
 - is a critical element in franchising agreements
 - Can be use as collateral for obtaining financing



Cont/ What are trademarks for?

- To the Consumers:
 - Ensure that consumers can identify the origin of products
 - Aid consumers in distinguishing between products from different manufacturers
 - Acts as an indication of quality
 - Acts as an assurance of genuineness
 - Source of information



INDUSTRIAL DESIGN

- What is an Industrial Design?
 - an industrial design refers to the ornamental or aesthetic features of a product. In other words, it refers only to the appearance of a product and NOT the technical or functional aspects.



Subject matter of Industrial Designs

 Any products of industry: fashions, handicrafts, technical and medical instruments, watches, jewellery, household products, toys, furniture, electrical appliances, cars; architectural structures; textile designs; sports equipment; packaging; containers and "get-up" of products









Examples of Industrial Designs









Examples of Industrial Designs





Importance of Industrial Designs in Business

- Customize products to appeal to specific market segments
- Create a new niche market.
- Strengthen their brands images.
- It adds value to a product.



Why protect an ID?

• the creator is granted the exclusive right to prevent others from unauthorized copying, imitating, making, selling, or importing any product in which the design is incorporated or to which it is applied



Requirements for ID registration

- New
- Original independently created
- Design must have "individual character" when overall impression is evaluated against others.



TRADE SECRETS

- What are trade Secrets?
 - Is any information that can be used in the operation of a business or other enterprise and that is sufficiently **valuable** and **secret** to afford an actual or potential economic advantage over others.



Subject matter of Trade Secrets

 It includes; formulae, pattern, compilation, data, devices, methods, techniques, or processes



Requirements for protecting Trade Secret

- Subject matter must not be generally known or available
- Affirmative measures must be in place to safeguard them
- Must be of sufficient economic value or competitive advantage
- But secrecy is the most important- a sin qua non



Problems from New Technologies That Affect Intellectual Property Owners

- High-quality copying.
- High-quantity distribution.
- Easier to use.
- Less expensive.

Technology, Markets and Management, and Regulations and Enforcement

Technological Solutions:

- Expiration date encoded.
- Hardware dongle required.
- Copy-protection schemes.
- "Activation" features.
- Encryption schemes; digital-rights management (DRM).



Technology, Markets and Management, and Regulations and Enforcement

- Markets and Management:
 - Subscribe to services.
 - Collect fees from users and large organizations.
 - Meter usage of intellectual property on a network.
 - Offer discounts to educational users.
 - Educate the public about the value of intellectual property belonging to creators and publishers.



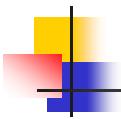
Technology, Markets and Management, and Regulations and Enforcement

- Regulations and Enforcement:
 - The Digital Millennium Copyright Act (DMCA) and other laws.
 - Identify abusers and shut them down in high-publicity raids.
 - Monitor abuses.
 - Enforce current laws and punish abusers.

Restrictions and Bans on Technology

In the past, lawsuits have delayed, restricted, or banned the release of new technologies, including:

- CD-recording devices.
- Digital Audio Tape (DAT) systems.
- DVD recorders.
- DVD players.
- MP3 players.
- In an attempt to reduce or prevent unauthorized copying and distribution of intellectual property, some governments have levied taxes on:
 - Audio tapes, CD recorders, Personal computers, Printers.
 - Scanners.



END