



**Draft Training Manual**  
**For**  
**General Entrepreneurship Courses in Universities**

**Course 1: Entrepreneurship and Innovation**

**MODULE 3:**

**MODULE 3: CREATIVITY AND INTELLECTUAL RIGHTS**

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## **DRAFT MODULE 3: CREATIVITY AND INTELLECTUAL RIGHTS**

### **Learning outcomes:**

Upon completion of this module, participants would have been able to:

- i. Explain creativity and creative thinking.
- ii. Define what intellectual property is and how it is protected.
- iii. Discuss the Nigerian copyrights laws.
- iv. Explore how to protect original ideas, concepts, and products as well as your enterprise from piracy.
- v. Discuss the strategies for protection of intellectual property.

### **Content:**

- i. Discuss creativity and creative thinking
- ii. Meaning, scope and dimensions of intellectual property
- iii. Copyrights laws in Nigeria
- iv. How to protect intellectual property rights (original ideas, concepts, products, etc.)
- v. Strategies for Protection of Intellectual Property

**TIME: 3 Hours**

### **RATIONALE**

Creativity involves the ability to bring into existence new things, ideas, products and processes through imaginative skills. Most entrepreneurs that are creative are very passionate about their work, willing to take risks, and they trust their intuition. Creative thinking can be defined as the art of generating solution to problem by the force of imagination and reasoning. It is an activity of the mind seeking to find answers to some of life's problems. Thus, there are legal provisions and processes that entrepreneurs can utilize to safeguard their new ideas/knowledge, innovations and inventions.

Intellectual Property Right is the fancy name for product accountability and the protection of human creativity. It is the legal mechanism - through copyright, patents and trademark - that ensures that the products we buy are genuine, and that someone else does not take credit for our ideas. Understanding the dimensions of intellectual property rights is a relevant step to take in dealing with intellectual property rights. The knowledge of how to protect our intellectual property rights is essential in achieving that. Copyright Laws in Nigeria examines types of copyright laws and how they are implemented in Nigeria. Strategies for protection of Intellectual Property explain the techniques and measures you can take to ensure that your intellectual property is adequately protected.

## **ACTIVITIES**

- A. Explain to the students the meaning of creativity and creative thinking.
  - i. What is creativity?
  - ii. What is creative thinking?
- B. Explain to the students the meaning, origin and forms of Intellectual Property. Have the students read handout 1 and discuss of the following questions:
  - i. What is intellectual property?
  - ii. What are the forms of intellectual property?
  - iii. Discuss the origin of intellectual property.
- C. Have the students read handout 2 and discuss the following questions:
  - i. What are the dimensions of Intellectual property rights?
  - ii. Discuss technological dimension of intellectual property rights.
  - iii. Discuss legal dimension of intellectual property rights.
- D. Have the students read handout 3 and discuss the following questions:
  - i. How can an individual protect his intellectual property rights?
  - ii. What is a copyright?
  - iii. What is a patent?
  - iv. What is a trademark?
- E. Have the students read handout 4 and discuss the following questions:
  - i. What are the two main set ups by which intellectual property is administered in Nigeria.
  - ii. What will be entitled to copyright protection in Nigeria?
  - iii. What is the duration of copyright in Nigeria?
- F. Have the students read handout 5 and discuss the following questions:
  - i. What strategies can an individual use to protect his intellectual property rights?

## **HANDOUT 1: CREATIVITY AND CREATIVE THINKING**

### **CREATIVITY**

Creativity is a process by which a symbolic domain in the culture is changed. New products, services, ideas, and machines are what creativity is all about. Creativity is the ability to make or otherwise bring into existence something new, whether a new solution to a problem, a new method or device. All innovation begins with creative ideas. Creativity is the starting point for innovation. Creativity is however necessary but not a sufficient condition for innovation. Creativity is also an attitude and the ability to accept change, and to look for new ideas and possibilities. In short, Creativity is a process. The entrepreneurs, who are creative, work hard to improve ideas and find solutions to problems by making gradual alterations and refinement to their works (Okpara, 2005).

**Creativity** refers to the invention or origination of any new thing that has value. Creativity is the bringing into being of something which did not exist before, either as a product, a process or a thought. Creativity can be used to make products, processes and services better and it can be used to create them in the first place. It is expected that increasing creativity will help the entrepreneur, his organization and his customers become happier through improvements in quality and quantity of an output, e.g. new OMO, new Maggi, new Close up. Three reasons why people are motivated to be creative include: (i) need for novel, varied, and complex stimulation (ii) need to communicate ideas and values and (iii) need to solve problems.

Creativity comes in different forms. A number of different theorists have suggested models of the creative person. One model suggests that there are kinds of creativity that produce growth, innovation, speed, etc. These are referred to as the four "Creativity Profiles" that can help achieve such goals.

- (i) Incubate (Long-term Development)
- (ii) Imagine (Breakthrough Ideas)
- (iii) Improve (Incremental Adjustments)
- (iii) Invest (Short-term Goals) (Naiman, 2012).

### **Aspects of Creativity**

Theories of creativity (particularly investigation of why some people are more creative than others) have focused on a variety of aspects. The dominant factors are usually identified as "the four Ps" - Process, Product, Person and Place.

- i. A focus on *Process* is shown in cognitive approaches that try to describe thought mechanisms and techniques for creative thinking

- ii. A focus on creative *Product* usually appears in attempts to measure creativity and the ability to produce more.
- iii. A focus on the nature of the creative *Person* considers more general intellectual habits, such as openness, autonomy, expertise, exploratory behavior and so on.
- iv. A focus on *Place* considers the circumstances in which creativity flourishes, such as degrees of autonomy, access to resources and the nature of gatekeepers. Creative lifestyles are characterized by nonconforming attitudes and behaviors as well as flexibility.

### **Seven Types of Creative Contributions**

- i. Replication - confirming that the given field is in the correct place
- ii. Redefinition - the attempt to redefine where the field is and how it is viewed - forward
- iii. Incrementation - a creative contribution that moves the field forward in the direction in which it is already moving
- iv. Advance forward movement - which advances the field past the point where others are ready for it to go
- v. Redirection - which moves field in a new or different direction
- vi. Starting over/ re-initiation - moving the field to a different starting point and
- vii. Integration - combining two or more diverse ways of thinking about the field into a single way of thinking.

### **Characteristics of the Creative Personality**

Csikszentmihalyi, (2012) provided 10 features of creative individuals. They are:

- 1. Creative individuals have a great deal of energy, but they are also often quiet and at rest.
- 2. Creative individuals tend to be smart, yet also naive at the same time.
- 3. Creative individuals have a combination of playfulness and discipline, or responsibility and irresponsibility.
- 4. Creative individuals alternate between imagination and fantasy on the one end, and rooted sense of reality at the other.
- 5. Creative people seem to harbor opposite tendencies on the continuum between extroversion and introversion.
- 6. Creative individuals are also remarkable humble and proud at the same time.
- 7. Creative individuals to a certain extent escape rigid gender role stereotyping and have a tendency toward androgyny.
- 8. Generally, creative people are thought to be rebellious and independent.
- 9. Most creative persons are very passionate about their work, yet they can be extremely objective about it as well.
- 10. The openness and sensitivity of creative individuals often exposes them to suffering and pains yet, also display a great deal of enjoyment.

## CREATIVE THINKING

Creative thinking can be defined as the art of generating solution to problem by the force of imagination and reasoning. It is an activity of the mind seeking to find answers to some of life's questions. In a dynamic and changing world, the challenges of entrepreneurs are not static. They take on new forms and require a deep creative thinking approach. Creative entrepreneurs engage their minds in resourceful thinking to generate ideas and products, which stand the test of time.

Entrepreneurs become more creative when they feel motivated primarily by their interest, satisfaction, and the challenges they face. Generally, creativity is a function of three components: expertise, creative thinking skills and motivation. Expertise encompasses everything that a person knows and can do in the broad domain of his or her work-knowledge and technical ability. The entrepreneur is primarily concerned with developing new products, processes or finding new markets. The entrepreneur primarily indulges in original thinking more than any other person and he is able to produce solution that fly in the face of established knowledge. Entrepreneurs take bold creative steps but situations encourage creativity. Creativity is, however, enhanced when people have some freedom, high commitment to the task and high proportion of intense rewards (Thompson, 1969; Opkara, 2005).

**Creative thinking** is the process which we use when we come up with a new idea. It is the merging of ideas which have not been merged before. Brainstorming is one form of creative thinking: it works by merging someone else's ideas with your own to create a new one. You are using the ideas of others as a stimulus for your own. This creative thinking process can be accidental or deliberate. Using special techniques, deliberate creative thinking can be used to develop new ideas. Brainstorming is one of these special techniques. With practice, **ongoing** creative thinking (the continuous investigation, questioning and analysis that develops through education, training and self-awareness) occurs all the time. Ongoing creativity maximizes both accidental and deliberate creative thinking. Creative thinking involves the following:

- i. **Ability** - A simple definition is that creativity is the ability to imagine or invent something new.
- ii. **An Attitude** - Creativity is also an attitude: the ability to accept change and newness, a willingness to play with ideas and possibilities, a flexibility of outlook, the habit of enjoying the good, while looking for ways to improve it.
- iii. **A Process** - Creative people work hard and continually to improve ideas and solutions, by making gradual alterations and refinements to their works. The creative person knows that there is always room for improvement (Harris, 2012).

### Differences between Critical Thinking and Creative Thinking

- i. Critical thinking is much of the thinking done in formal education. It emphasizes the skills of analysis--teaching students how to understand claims, follow or create a logical

argument, figure out the answer, eliminate the incorrect paths and focus on the correct one.

- ii. Creative thinking focuses on exploring ideas, generating possibilities, looking for many right answers rather than just one. Both of these kinds of thinking are vital to a successful working life of an entrepreneur. These two kinds of thinking are differentiated as follows:

**Table1: Differences between Critical and Creative Thinking**

<b>Critical Thinking</b>	<b>Creative Thinking</b>
Analytic	Generative
Convergent	Divergent
Vertical	Lateral
Probability	Possibility
Judgment	suspended judgment
Focused	Diffuse
Objective	Subjective
Answer	an answer
left brain	right brain
Verbal	Visual
Linear	Associative
Reasoning	Richness, novelty
Yes but	Yes and

Source: Harris (2012)

### **Creative Methods**

Several methods have been identified for producing creative results. Here are the five classic ones:

1. **Evolution** - This is the method of incremental improvement. New ideas stem from other ideas, new solutions from previous ones, the new ones slightly improved over the old ones. Many of the very sophisticated things we enjoy today developed through a long period of constant incrementation.
2. **Synthesis** - With this method, two or more existing ideas are combined into a third, new idea.
3. **Revolution** - Sometimes the best new idea is a completely different one, a marked change from the previous ones.
4. **Reapplication** - Look at something old in a new way. Go beyond labels. To remove prejudices, expectations and assumptions and discover how something can be reapplied.
5. **Changing Direction** - Many creative breakthroughs occur when attention is shifted from one angle of a problem to another. This is sometimes called creative insight (Harris, 2012).

## Negative Attitudes that Block Creativity

1. **Oh no, a problem!** The reaction to a problem is often a bigger problem than the problem itself. Many people avoid or deny problems until it is too late, largely because these people have never learned the appropriate emotional, psychological, and practical responses to situations and problems.
2. **It can't be done.** This attitude is, in effect, surrendering before the battle. By assuming that something cannot be done or a problem cannot be solved, a person gives the problem a power or strength it didn't have before.
3. **I can't do it. Or there's nothing I can do.** Some people think, well may be the problem can be solved by some expert, but not by me because I'm not (a) smart enough. Who were the Wright brothers that they could invent an airplane? Aviation engineers? No, they were bicycle mechanics. The ball point pen was invented by a printer's proofreader, Ladislao Biro, not a mechanical engineer. Major advances in submarine design were made by English clergyman G. W. Garrett and by Irish schoolmaster John P. Holland. The cotton gin was invented by that well known attorney and tutor, Eli Whitney. The fire extinguisher was invented by a captain of militia, George Manby.
4. **But I'm not creative.** Everyone is creative to some extent. Most people are capable of very high levels of creativity; just look at young children when they play and imagine. The problem is that this creativity has been suppressed by education.
5. **That's childish.** In our effort to appear always mature and sophisticated, we often ridicule the creative, playful attitudes that marked our younger years.
6. **What will people think?** There is strong social pressure to conform and to be ordinary and not creative.
7. **I might fail.** Thomas Edison, in his search for the perfect filament for the incandescent lamp, tried anything he could think of, including whiskers from a friend's beard. In all, he tried about 1800 things. After about 1000 attempts, someone asked him if he was frustrated at his lack of success. He said something like, "I have gained a lot of knowledge" (Harris, 2012).

## Myths about Creative Thinking and Problem Solving

1. **Every problem has only one solution (or one right answer).** The goal of problem solving is to solve the problem, and most problems can be solved in any number of ways.



**2. The best answer/solution/method has already been found.** Look at the history of any solution set and you will see that improvements, new solutions, new right answers, are always being found.

**3. Creative answers are complex technologically.** Only a few problems require complex technological solutions. Most problems you will meet with require only a thoughtful solution requiring personal action and perhaps a few simple tools.

**4. Ideas either come or they don't. Nothing will help.** There are many successful techniques for stimulating idea generation (Harris, 2012).

### Questions

- a. Explain various aspects and types of creativity?
- b. What are the characteristics of a creative entrepreneur?
- c. What is creativity? Differentiate between critical and creative thinking?
- d. What are the negative attitudes that block creativity and the myths about creative thinking?

## **HANDOUT 2**

### **INTELLECTUAL PROPERTY: SCOPE AND DIMENSIONS**

Intellectual Property: (IP) refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce. IP 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 (WIPO, 2011).

Intellectual Property can also be defined as a creative works that have economic value and are protected by law. According to John Campbell 2007, an Intellectual property right is a fancy name for product accountability and the protection of human creativity. It is the legal mechanism - through copyright, patents and trademark - that ensures that the products we buy are genuine, and that someone else does not take credit for our ideas. Intellectual property rights do not just protect inventors; they protect everyone whose safety depends on product reliability in every country in the world, including Nigeria. Intellectual property laws reward the creators of most types of intellectual property by preventing others from copying, performing, or distributing those works without permission. The main purpose of this protection is to provide incentives for people to produce scientific and creative works that benefit society at large. Some types of intellectual property are automatically protected by law from the moment of their creation. Other types require the creator to request a specific grant of rights from a government agency before they can be protected by law. Nearly all nations have laws protecting intellectual property. However, some nations do not vigorously enforce intellectual property laws, making illegal copying, or piracy, a major problem in these areas.

### **The Origin of Intellectual Property**

Some forms of intellectual property, such as trademarks, date to ancient times. But comprehensive legal protection for intellectual property did not become common until the 18th century. The American colonies had laws granting patents long before the outbreak of the American Revolution in 1775. Soon after the revolution, all but one of the 13 original colonies adopted copyright laws. When the Constitution of the United States was ratified in 1789, it granted the U.S. Congress the authority to “promote the progress of science and useful arts, by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries.” Under this power, Congress adopted both patent and copyright laws in 1790, one of its first acts.

Protection for trademarks was originally left to the states but eventually, in 1870, Congress adopted the first Federal trademark law. Congress has amended the intellectual property statutes frequently since then in response to changes in technology and economics. There are committees in both houses of Congress that have the responsibility of keeping intellectual property laws up to date (Schechter, Roger E. 2006).

International protection of intellectual property rights was first addressed in treaties beginning in the late 19th century. For example, the Paris Convention of 1883 dealt with patents and trademarks, and the Berne Convention of 1886 protected artistic and literary works among member countries. Since then, many additional international treaties have addressed intellectual property rights. The World Intellectual Property Organization (WIPO), based in Geneva, Switzerland, administers some of these treaties ([www.wipo.int/directory/en/urls.jsp](http://www.wipo.int/directory/en/urls.jsp)).

## **The Origin of Intellectual Property in Nigeria**

Intellectual Property (IP) in Nigeria can be traced back to the colonial era when the English Trademark Ordinance was introduced into the colonies even before the amalgamation of the then British Northern Nigeria and Southern Nigeria Protectorates to form what is today called Nigeria in 1914. Intellectual Property is administered in Nigeria under two main set ups- industrial property, which deals with trademarks, patents and industrial designs as well as copyright. The system of Trademark registration is governed by the Trademarks Act 1965 found in Cap 436 Laws of the Federation of Nigeria (LFN) 1990. Patents and Designs registration on the other hand are governed by the Patents and Designs Act 1970, to be found in Cap 344, Laws of the Federation of Nigeria 1990.

The Trademarks, Patents and Designs Laws are currently administered by the Commercial Law Department, Trademarks, Patents and Designs Registry, of the Federal Ministry of Commerce and Industry. Copyright on the other hand is protected in Nigeria by the Copyright Act and the Nigerian Copyright Commission (NCC), an agency under the supervision of the Federal Ministry of Justice; NCC is charged with the primary responsibility for all copyright matters. National and International developments have necessitated reforms in the intellectual property system of different countries of the world.

The World Trade Organization's Trade Related Aspect of Intellectual Property Rights (TRIPS) Agreement of 1994, obliges members to provide intellectual property protection in its laws. TRIPS established minimum standards for the availability, scope, and use of seven forms of intellectual property: copyright, trademarks, geographical indications, industrial designs, patents including (Plant Variety Protection, PVP), layout designs for integrated circuits and undisclosed information (trade secrets). On living organisms, WTO allows countries to patent microorganisms but requires countries to use a sui generis( ie other, different) system to protect new plant and animal varieties or by the application of the two types of protection. As a WTO member, Nigeria is under obligation to reform its intellectual property laws in this direction though in line with AU Model Law which disapproves the patent of any life form. The mandatory requirement for amending the laws was January 1, 2000 while the time frame set for implementation was 2005 subject to extension (Victor M.I. and Christopher U.O. 2009).

## **Forms of Intellectual Property**

The principal types of intellectual property are patents, copyrights, and trademarks. Patent law protects inventions that demonstrate technological progress. Copyright law protects a variety of literary and artistic works, including paintings, sculpture, prose, poetry, plays, musical compositions, dances, photographs, motion pictures, radio and television programs, sound

recordings, and computer software programs. Trademark law protects words, slogans, and symbols that serve to identify different brands of goods and services in the marketplace.

Intellectual property also includes certain related fields of law, such as trade secrets and the right of publicity. Trade secret law protects confidential information that belongs to a business and gives that business a competitive advantage. For example, the formula for making the soft drink Coca-Cola is a trade secret protected by intellectual property laws. Right of publicity law protects the right to use one's own name or likeness for commercial purposes. For example, a famous athlete may profit by using his or her name to endorse a given product. Using a person's name to endorse a product without their permission is a violation of right of publicity law.

Intellectual property differs from other forms of property because it is intangible—that is, it is a product of the human imagination. Because intellectual property is intangible, many people may use it simultaneously without conflict. For example, only one person can drive a car at a time, but if an author publishes a book, many people can read the work at the same time. Intellectual property is also much easier to copy than it is to create. It may take many months of work to write a novel or computer program, but with a photocopy machine or a computer others could copy the work in a matter of seconds. Without intellectual property laws, it would be easy to duplicate original works and sell them for very low prices, leaving the original creators without any chance to secure economic rewards for their efforts. The legal system avoids this problem by making it against the law to reproduce various forms of intellectual property without the permission of the creator.

Most intellectual property rights expire after a specified period. This permits the rest of society to benefit from the work after the creator has had an opportunity to earn a fair reward. For example, after the inventor of a patented telecommunications device has profited from the work for a specified period, anyone may manufacture that same device without paying the inventor royalties, thereby encouraging competition that allows others to benefit from the invention as well. The one exception to limited periods of intellectual property rights is in the field of trademark law. Trademark rights never expire, so long as a merchant continues to use the trademark to identify a given product.

## **INTELLECTUAL PROPERTY RIGHTS DIMENSIONS**

An intellectual property rights dimensions have to do with different areas of human life which intellectual property rights affect. These areas include: Socio-economic, technological, legal, and cultural.

### **Socio-economic Dimension**

The protection of intellectual property rights enhances countries' development, and promotes their business and artistic environments. Such protections stimulate advances that benefit the entire world - in the form of technology, medicine and other processes. Protecting intellectual property is crucial to protecting businesses, public health, and safety in Nigeria and countries across the globe.

In a world where ideas form the common currency, intellectual property piracy erodes a country's economy and its cultural identity. The Nigerian film industry, "Nollywood", has suffered from the action of pirates. Soon after Nigerian films are released - they are released on video, not celluloid - pirates copy the films. The marketers earn money back from their initial outlay to have the movie made, but there is no further trickle down money to the producers, creators and actors.

### **Technology-Dimension**

It is necessary we care about protecting intellectual property. At the dawn of the 21st Century, 70 per cent of global economic output is generated by services, many of which depend on new and evolving technologies. Global GDP grew twenty-fold in the last Century - from \$2 trillion to \$41 trillion and most of this increase was due to innovation. In 2004, the World Economic Forum reported that the 20 countries perceived as having the most stringent intellectual property protection were among the top 27 countries in terms of economic growth competitiveness. In contrast, the 20 countries perceived as having the weakest intellectual property protection were among the bottom 36 countries.

Information and communications technologies, safe medicines and the other innovations that form the backbone of today's economy are only possible because of intellectual property rights. The hopes we all have for a better future depend on those inventors and innovators who will make the world more bountiful - if their creative efforts and hard work are protected (John Campbell, 2007).

### **Legal Dimension**

Intellectual property was not always recognized as a single field of law. Historically, the fields of patent, copyright, and trademark developed independently. In the late 20th century, however, legal experts began to recognize that these various fields of law had a great deal in common because they all pertained to intangible products of the mind. Nevertheless, an attorney will often specialize in only one area of intellectual property, such as patent law, and the legal rules for the different branches of intellectual property law vary greatly.

In all branches of intellectual property, the legal system seeks to balance two competing concerns. On the one hand, protection must be strong enough to encourage authors and inventors to invest the necessary effort in innovation. On the other hand, the law must also allow people some freedom to use the intellectual property of others. This is because artistic, technological, and commercial progress always requires building on the work of others. To strike this balance, all branches of intellectual property law confer general rights on creators but also limit those rights with a variety of exceptions. For example, in patent law, a scientist may use someone else's invention to conduct experiments. Similarly, copyright law allows a literary critic to quote passages of a novel in a review. Under trademark law, a company may use a competitor's brand name in a comparative advertisement. In all these ways, intellectual property law tries to be flexible enough to protect the property rights of the creator while also allowing the public to benefit from the protected work.

In the United States and other countries, intellectual property has gained increased protection with advances in technology and international trade. However, some countries still tolerate the

widespread sale of counterfeit versions of intellectual property products, such as software, movies on videotape, brand-name athletic goods, and even patented medicines. Violations of intellectual property rights cost the owners of the rights billions of dollars each year. These costs stem from lost royalties and sales in markets dominated by counterfeit products. In an attempt to reverse this situation, most nations of the world signed the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) in 1994. Administered by the World Trade Organization (WTO), TRIPS strengthened legal protection for intellectual property around the world. The United States has also attempted to negotiate direct agreements with countries such as China, where counterfeiting has been particularly extensive.

In the last years of the 20th century, the growth of the Internet and related digital technologies began to pose new problems for intellectual property owners. Unauthorized parties began using trademarks as domain names for Web sites, which made it difficult for consumers to find the trademark owner's official Web site. Copyright owners found that their works, particularly music and movies, could be perfectly duplicated by parties using file-sharing software. New devices were sold that made it possible to defeat copy-control features, such as those designed to prevent duplication of digital video discs (DVDs). The U.S. government attempted to respond to these developments by adopting several complex new laws protecting intellectual property. These laws became controversial. On the one hand, intellectual property owners claimed that the laws failed to provide full protection against unauthorized use of their property. On the other hand, various consumer groups argued that the laws interfered with the public's rights to engage in free speech and may also invade privacy (Microsoft Encarta 2007).

### **Cultural Dimension**

Copyright laws encourage the creation of literary works, computer programmes, artistic works and expressions of national culture. Patent laws encourage the discovery of new and improved products and processes, while ensuring the freest possible public access to information regarding those new products and processes. Trademark laws encourage the development and maintenance of high-quality products and services, and help companies promote customer loyalty. To promote the cultural identity of a nation, intellectual property rights must be given adequate attention.

### **Questions:**

- a. What is intellectual property?
- b. What are the forms of intellectual property?
- c. Discuss the origin of intellectual property.
- d. What are the dimensions of Intellectual property rights?
- e. Discuss technological dimension of intellectual property rights.
- f. Discuss legal dimension of intellectual property rights.

### **HANDOUT 3**

#### **COPYRIGHT LAWS IN NIGERIA**

Intellectual property protection in Nigeria can be traced back to the colonial era, when the English trademarks ordinance was introduced into the colonies, even before the amalgamation of northern and southern protectorates to form what is now called Nigeria, in 1914. Intellectual Property is administered in Nigeria under two main set ups.

##### **Industrial Property; the Nigerian perspective**

This deals with trademarks, patents and industrial designs. The system of Trademark registration is governed by the Trademarks Act 1965 found in Cap 436 Laws of the Federation of Nigeria 1990. Patents and Designs registration on the other hand are governed by the Patents and Designs Act 1970, to be found in Cap 344, Laws of the Federation of Nigeria (LFN) 1990. The Trademarks, Patents and Designs Laws are currently administered by the Commercial Law Department, Trademarks, Patents and Designs Registry, of the Federal Ministry of Commerce and Industry. The country has no legislation for Geographical Indications (GI). GI is administered as part of Trademarks under Section 43(1) of the Trademarks Act CAP 436(Certification Trademarks), Laws of the Federation of Nigeria (LFN) 1990 (<http://www.nigerianlaws.com>).

A major drawback in the registry is inadequate funding which has not enabled it to re-tool sufficiently to meet international standard especially in the area of database management. This calls for a review of the status of the registry with a view to giving it some degree of autonomy.

##### **Copyright; the Nigerian Perspective**

Copyright on the other hand is protected in Nigeria by the Copyright Act. Nigeria is a member of the Berne Union. Consequently, Nigeria is bound by the formality-free principle of copyright protection. Copyright protection in Nigeria is thus granted by the law automatically. Under the Nigerian Copyright law, beyond satisfying the basic requirement of originality and fixation in tangible medium from which it could be perceived or communicated, every copyright work is protected upon their creation with the import that copyright protection is automatic. There is no requirement of copyright registration under the Copyright Act. However, owing to the need to satisfy the constant yearning of right owners for a framework for establishing evidence of existence of works, especially unpublished materials, and pursuant to its statutory mandate to maintain a data bank of all authors and their works, the Nigerian Copyright Commission has introduced the Copyright Notification scheme, which allows authors of copyright works to notify the Commission of the creation and or existence of works, and all other information relating to the work.

One of the most statutory provisions of the Act is the establishment of a body charged with the responsibility of implementing and enforcing the law. Section 30 of the Act established the Nigerian Copyright Commission (NCC). An agency of the Federal Ministry of Justice (earlier created under the Federal Ministry of Information), NCC is charged with the primary responsibility for all copyright matters. With the 1992 and 1999 amendments, the powers of the

Commission have been expanded to cover enforcement of the law. Consequently, the Commission can appoint copyright inspectors who are empowered to conduct investigation and prosecute copyright infringement cases. The inspectors have powers analogous to the powers of a police officer. The Commission is also empowered to make regulations prescribing conditions necessary for engaging in business involving the production, distribution or public exhibition of copyright works. This power has served as a powerful tool in initiating some important rights management schemes, which are aimed at creating a favorable environment for the exercise of rights by authors and right owners (Victor M.I. and Christopher U.O. 2009).

### **What will be entitled to copyright protection in Nigeria?**

Section 1 of the Copyright Act states very categorically that the following will be eligible for copyright protection in Nigeria:

- A. Literary works irrespective of literary quality which fall under the under listed categories:
  - i. Novels. Stories and poetic works;
  - ii. Plays, stage directions, film scenarios and broadcasting scripts;
  - iii. Choreographic works;
  - iv. Computer programmes;
  - v. Text-Books, treatises, histories, biographies, essays and articles.
  - vi. Encyclopedias, dictionaries, directories and anthologies;
  - vii. Letters, reports and memoranda;
  - viii. Lectures, addresses and sermons;
  - ix. Law reports, excluding decisions of courts;
  - x. Written tables or compilations.
  - xi. Any musical work irrespective of musical quality and includes works composed for musical accompaniment.
- B. Artistic works which irrespective of quality fall under any of the following categories:
  - i. Paintings, drawings, etchings, lithographs, woodcuts, engraving and prints;
  - ii. Maps, plans and diagram's;
  - iii. Works of sculpture;
  - iv. Photographs not comprised in a cinematograph film;
  - v. Works of architecture in the form of buildings and models;
  - vi. Works of artistic craftsmanship and also pictorial woven tissues and articles of applied handicraft and industrial art.
- C. Cinematograph Film: This includes the first fixation of a sequence of visual images capable of being shown as a moving picture and of being the subject of reproduction and Includes the recording of a sound track associated with the cinematograph film.
- D. Sound Recordings: This is defined as the first fixation of a sequence of sound capable of being perceived aurally and of being reproduced but does not include a sound track associated with a cinematograph film.
- E. Broadcast: This is a sound or television broadcast by wireless telegraphy or wire or both or by satellite or cable programmes and includes re-broadcast (Olusola Adun, NgEX.com Reports).



## **Limitations on Rights**

The first limitation is the exclusion from copyright protection of certain categories of works. In some countries, works are excluded from protection if they are not fixed in tangible form. For example, a work of choreography would only be protected once the movements were written down in dance notation or recorded on videotape. In certain countries, the texts of laws, court and administrative decisions are excluded from copyright protection (WIPO 2011).

The second category of limitations concerns particular acts of exploitation, normally requiring the authorization of the rights owner, which may, under circumstances specified in the law, be carried out without authorization. There are two basic types of limitations in this category: (a) free use, which carries no obligation to compensate the rights owner for the use of his work without authorization; and (b) non-voluntary licenses, which do require that compensation be paid to the rights owner for non-authorized exploitation.

Examples of free use include:

- quoting from a protected work, provided that the source of the quotation and the name of the author is mentioned, and that the extent of the quotation is compatible with fair practice;
- use of works by way of illustration for teaching purposes; and
- Use of works for the purpose of news reporting.

## **Duration of Copyright**

Copyright does not continue indefinitely. The law provides for a period of time during which the rights of the copyright owner exist. The period or duration of copyright begins from the moment when the work has been created, or, under some national laws, when it has been expressed in a tangible form. It continues, in general, until sometime after the death of the author. The purpose of this provision in the law is to enable the author's successors to benefit economically from exploitation of the work after the author's death.

In countries party to the Berne Convention, and in many other countries, the duration of copyright provided for by national law is as a general rule the life of the author plus not less than 50 years after his death. The Berne Convention also establishes periods of protection for works such as anonymous, posthumous and cinematographic works, where it is not possible to base duration on the life of an individual author. There is a trend in a number of countries toward lengthening the duration of copyright. The European Union, the United States of America and several others have extended the term of copyright to 70 years after the death of the author (WIPO 2011).

In Nigeria, the duration of copyright depends on the nature of work involved:

- i. For Literary, musical or artistic works other than photographs, copyright in the work will expire seventy years after the end of the year in which the author dies. If the Author is a corporate body or Government copyright will expire seventy years after the end of the year in which the work was first published.
- ii. For Cinematograph films and photographs the copyright will expire fifty years after the end of the year in which the recording was first made.
- iii. With respect to broadcast, copyright will expire 50 years after the end of the year in which the broadcast first took place.

### **Ownership, Exercise and Transfer of Copyright**

The owner of copyright in a work is generally, at least in the first instance, the person who created the work, i.e. the author of the work. But this is not always the case. The Berne Convention (Article 14bis) contains rules for determining initial ownership of rights in cinematographic works. Certain national laws also provide that, when a work is created by an author who is employed for the purpose of creating that work, then the employer, not the author, is the owner of the copyright in the work. As noted above, however, moral rights always belong to the individual author of the work, whoever the owner of economic rights may be.

The laws of many countries provide that the initial rights owner in a work may transfer all economic rights to a third party. (Moral rights, being personal to the author, can never be transferred). Authors may sell the rights to their works to individuals or companies best able to market the works, in return for payment. These payments are often made dependent on the actual use of the work, and are then referred to as royalties. Transfers of copyright may take one of two forms: assignments and licenses.

Under an assignment, the rights owner transfers the right to authorize or prohibit certain acts covered by one, several, or all rights under copyright. An assignment is a transfer of a property right. So if all rights are assigned, the person to whom the rights were assigned becomes the new owner of copyright.

In some countries, an assignment of copyright is not legally possible, and only licensing is allowed. Licensing means that the owner of the copyright retains ownership but authorizes a third party to carry out certain acts covered by his economic rights, generally for a specific period of time and for a specific purpose. For example, the author of a novel may grant a license to a publisher to make and distribute copies of his work. At the same time, he may grant a license to a film producer to make a film based on the novel. Licenses may be exclusive, where the copyright owner agrees not to authorize any other party to carry out the licensed acts; or non-exclusive, which means that the copyright owner may authorize others to carry out the same acts. A license, unlike an assignment, does not generally convey the right to authorize others to carry out acts covered by economic rights (WIPO 2011).

Licensing may also take the form of collective administration of rights. Under collective administration, authors and other rights owners grant exclusive licenses to a single entity, which acts on their behalf to grant authorizations, to collect and distribute remuneration, to prevent and detect infringement of rights, and to seek remedies for infringement. An advantage for authors in

collective administration lies in the fact that, with multiple possibilities for unauthorized use of works resulting from new technologies, a single body can ensure that mass uses take place on the basis of authorizations which are easily obtainable from a central source.

A rights owner may also abandon the exercise of the rights, wholly or partially. The owner may, for example, post copyright protected material on the Internet and leave it free for anybody to use, or may restrict the abandonment to noncommercial use. Some very impressive cooperation projects have been organized on a model where contributors abandon certain rights as described in the licensing terms adopted for the project, such as the General Public License (GPL). They thereby leave their contributions free for others to use and to adapt, but with the condition that the subsequent users also adhere to the terms of the license. Such projects, including the open source movement, which specializes in creating computer programs, also build their business models on the existence of copyright protection, because otherwise they could not impose an obligation on subsequent users (WIPO 2011).

### **Enforcement of Rights**

The Berne Convention contains very few provisions concerning enforcement of rights, but the evolution of new national and international enforcement standards has been dramatic in recent years due to two principal factors. The first concerns advances in the technological means for creation and use (both authorized and unauthorized) of protected material. Digital technology in particular makes it easy to transmit and make perfect copies of any information existing in digital form, including copyright-protected works. The second factor is the increasing economic importance in the realm of international trade of the movement of goods and services protected by intellectual property rights. Simply put, trade in products embodying intellectual property rights is now a booming, worldwide business. This is acknowledged in the WIPO Copyright Treaty (WCT), which requires Contracting Parties to ensure that enforcement procedures are available under their law so as to permit effective action against any infringement of rights covered by the Treaty, including remedies to prevent or deter further infringements.

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which contains more detailed provisions on the enforcement of rights, is ample evidence of this new link between intellectual property and trade. The following paragraphs identify and summarize some of the enforcement provisions found in recent national legislation. They may be divided into the following categories: conservatory or provisional measures; civil remedies; criminal sanctions; measures to be taken at the border; and measures, remedies and sanctions against abuses in respect of technical devices (WIPO 2011).

#### Questions:

- i. What are the two main set ups by which intellectual property is administered in Nigeria.
- ii. What will be entitled to copyright protection in Nigeria?
- iii. What is the duration of copyright in Nigeria?

## **HANDOUT 4**

### **HOW TO PROTECT INTELLECTUAL PROPERTY RIGHTS**

There must be measures to ensure that individual ideas and works are protected from piracy and undue advantage. The available measures one can take to protect his individual intellectual property (original ideas, concepts, products, etc.) include the following:

- i. Copyright
- ii. Patent
- iii. Trademark
- iv. Royalty (Payment)

#### **I. Copyright:**

Copyright is a branch of law granting authors the exclusive privilege to reproduce, distribute, perform, or display their creative works. The goal of copyright law is to encourage authors to invest effort in creating new works of art and literature. Copyright is one branch of the larger legal field known as intellectual property, which also includes trademark and patent law. Copyright law is the legal foundation protecting the work of many major industries, including book publishing, motion-picture production, music recording, and computer software development. These industries account for considerable economic activity in the United States, making copyright law a field of enormous economic importance (Schechter, Roger E. 2006).

Not every work of authorship is eligible for copyright. To qualify for copyright protection, a work must be both fixed and original. The law considers a work to be fixed if it is recorded in some permanent format. Acceptable ways of fixing a work include writing it down, storing it on a computer floppy disk or compact disc (CD), recording it on videotape, or sculpting it in marble. If a poet thinks of a new poem and recites it to an audience without writing it down, copyright does not protect the poem because it is not fixed. To be original, the work must not be copied from previously existing material and must display at least a reasonable amount of creativity. For example, if an author writes the words “the sky is blue” on a piece of paper, copyright does not protect the words because they lack sufficient creativity. Consequently, short phrases and titles are usually not protected by copyright, but in some circumstances they may be protected by trademark law. Copyright only protects the words, notes, or images that the creator has used. It does not protect any ideas or concepts revealed by the work.

#### **Subject Matter**

Under the Nigeria Copyright Act of 1988, copyright extends to all “works of authorship fixed in a tangible medium of expression.” This broad definition includes literary works of all kinds, including fiction, nonfiction, prose, and poetry. It also includes visual arts, such as a painting or sculpture; audiovisual works, such as a television program or motion picture; musical compositions; dramatic works, such as a theater production or works of choreography and pantomime; and sound recordings (recordings of music, speech, or other sounds). Even computer

programs and works of architecture are within the scope of the statute. However, works prepared by federal government employees, such as court opinions, acts of Congress, and other government documents, are not protected by the copyright law. Anyone may reproduce these works without obtaining permission.

## **Notice and Registration**

A copyright notice informs the public that a given work is copyrighted. The notice is placed in each published copy of the protected work and consists of either the word copyright, the abbreviation copr. or the symbol ©, accompanied by the name of the copyright owner and the date of first publication. For sound recordings, the symbol ℗ is used instead of the symbol ©. Nigeria does not operate a centralized system of registration for copyright. What the law requires however is that publishers, printers, producers and manufacturers of works keep a register of all works produced by them showing the following: the name of the author; the title; the year of production; the quantity of the work produced and the Nigerian Copyright Commission however is empowered to maintain an effective data bank on authors and their works.

## **Rights of Copyright Owners and Licensing**

The Nigeria Copyright Act of 1988 specifies the copyrights of owners of intellectual works. These rights are (1) only the copyright owner may reproduce or make copies of the work; (2) only the copyright owner may prepare adaptations of the work, such as translating a novel into another language or adapting the novel into a screenplay; (3) only the copyright owner may distribute copies of the work to the public; (4) only the copyright owner may perform the work in public; and (5) only the copyright owner may display the work in public.

Not all of these rights are granted to every type of copyrighted work. This depends on the nature of the work involved. Copyright in Literary and Musical works for example guarantee the exclusive right to do any of the following acts in Nigeria:

- a) Reproduction of the work in any material form;
- b) Publication of the work;
- c) Performance in public;
- d) Production, reproduction, performance or publication of any translation of the work;
- e) Making of any cinematograph film or record in respect of the work;
- f) Distribution to the public, for commercial purposes, of copies of the work, by way of rental, lease, hire, loan or similar arrangement.
- g) Broadcasting or communication of the work to the public by loudspeaker or any other similar device;
- h) Making any adaptation of the work (NgEX.com Reports - Intellectual Property Protection in Nigeria, Page 8 of 11).

Copyright in Artistic works guarantees the exclusive right to authorize the:

- a) Reproduction of the artistic work in any material form;

- b) Publication of the artistic work;
- c) Inclusion of the artistic work in any cinematograph film;
- d) Making of any adaptation of the artistic work;

Copyright in Cinematograph films guarantees the exclusive right to:

- a) Make a copy of the film;
- b) Causing the film, in so far as it consists of visual images to be seen in public and in so far as it consists of sounds to be heard in public;
- c) Make any record embodying the recording in any part of the sound track associated with the film by utilizing such sound tracks;
- d) Distribute to the public for commercial purposed copies of the work by way of rental, lease, hire, loan or similar arrangement.

Copyright in sound recordings guarantees the exclusive right to control in Nigeria:

- a) The direct or indirect reproduction, broadcasting or communication to the public of the whole or substantial part of the sound recording either in its original form or in any form recognizably derived from the original;
- b) The distribution to the public for commercial purposes of copies of the work by way of rental, lease, hire, loan or similar arrangement;

Lastly, Copyright in Broadcast guarantees the exclusive right to control:

- a) Recording and re-broadcasting of the whole or substantial part of the broadcast;
- b) Communication to the public of the whole or a substantial part of a television broadcast either in its original form or in any form recognizably derived from the original.
- c) Distribution to the public for commercial purposes of copies of the work, by way of rental, lease, hire, loan or similar arrangement. In relation to a television broadcast, copyright shall include the right to control the taking of still photographs from the broadcast.

## **Infringement**

An infringement of a copyright is the reproduction, distribution, performance, or display of any copyrighted work without permission of the copyright owner or without a compulsory license. The rights of a copyright owner will be deemed to have been infringed upon where a person without the license or authorization of the owner of the copyright does any of the following:

- a) Does or causes any other person to an act, the doing of which is controlled by copyright;
- b) Imports into Nigeria, otherwise than for his private or domestic use, any article in respect of which copyright is infringed;
- c) Exhibits in public any article in respect of which copyright is infringed;
- d) Distributes by way of trade, offers for sale, hire or otherwise or for any purpose prejudicial to the owner of the copyright, any article in respect of which copyright is infringed;
- e) Makes or has in his possession, plates, master-tapes, machines, equipment or contrivances used for the purpose of making infringed copies of the work;

- f) Permits a place of public entertainment or a business to be used for a performance in the public of the work where the performance constitutes an infringement of the copyright in the work, unless the person permitting the place to be used was not aware and had no reasonable ground for suspecting that the performance would be infringement of the copyright;
- g) Performs or causes to be performed for the purposes of trade or business or as supporting facility to trade or business any work in which copyright subsists;

When your copyright has been infringed upon; what are your options?

Where do you go for redress?

- i. The law allows for both civil and criminal redress in cases of copyright infringement. There is however distinction in the way and manner this can be done.
- ii. The copyright owner may enforce his rights directly through civil proceedings;
- iii. However, criminal proceedings can only be initiated by the Nigerian Copyright Commission.

## **Fair Use**

A very important exception to the rule of copyright infringement is the concept known as fair use. Under this principle, the law permits the use of portions of copyrighted works for such purposes as criticism, comment, teaching, and research, even without permission of the copyright owner. In deciding whether a use is a fair use, courts consider such factors as the purpose of the use, the nature of the work, the amount of the work taken, and the effect it will have on the value of the original work. Some examples of fair use include quoting excerpts from a book in a review, scholarly article, or term paper; copying and distributing a newspaper article.

## **II. Patent**

Patent, a legal document granted by the government giving an inventor the right to exclude others from making, using, selling, offering to sell, or importing an invention for a specified number of years. In Nigeria, patents last for 20 years, starting from the date the application for the patent is first filed. The goal of the patent system is to encourage inventors to advance the state of technology by awarding them special rights to benefit from their inventions.

Patent law is one branch of the larger legal field known as intellectual property, which also includes trademark and copyright law. Patent protection has great economic importance to a number of industries that rely on technological innovation to remain competitive, such as the chemical, pharmaceutical, and computer industries.

Patents are granted for machines; compositions of matter, such as new chemical compounds to be used in industry; manufactured items; and industrial processes, provided they meet a number of strict legal tests. Patents are also available for significant improvements on previously invented items (Schechter, Roger E. 2006).

## **Applications**

To obtain patent protection in Nigeria, an inventor must file a patent application with the Nigeria Copyrights Commission (NCC). This application has three parts: (1) the specification, which gives a general description of the invention; (2) the claims, which provide more detailed statements explaining exactly how the invention works or is assembled; and (3) drawings that illustrate the invention. Most inventors need to hire a patent lawyer or a specially qualified professional called a patent agent to help them prepare the application.

An official at the NCC, called a patent examiner, reviews the application to determine if it qualifies for a patent. The applicant receives no patent rights until the NCC approves and issues the patent. During the patent examination process, the patent examiner may ask the applicant to answer various questions about the invention. The law requires the patent applicant to disclose all information in his or her possession that is relevant to whether the patent should be issued. Because this process often goes back and forth several times between the applicant and the examiner, obtaining a patent can be time-consuming and expensive.

## **Qualifications**

To qualify for a patent, the invention must meet three basic tests. First, it must be “novel,” meaning that the invention did not previously exist. If the patent examiner finds that the proposed invention has already been described in previous patents or written about in scientific magazines, the NCC will declare that the invention has been “anticipated.” In such a case, the patent will be denied. Second, the invention must be “non-obvious,” which means that the invention must be a significant improvement to existing technology. Simple changes to previously known devices do not comprise a patentable invention. Finally, the proposed invention must be “useful.” Legal experts commonly interpret this to mean that no patent will be granted for inventions that can only be used for an illegal or immoral purpose.

Some types of discoveries are not patentable. No one can obtain a patent on a law of nature or a scientific principle even if he or she is the first one to discover it. For example, Isaac Newton could not have obtained a patent on the laws of gravity, and Albert Einstein could not have patented his formula for relativity,  $E=mc^2$ .

It is permissible, however, to obtain a patent on an altered or purified form of a natural substance. Under this rule, if a mineral only occurs in nature with impurities, a person who invents a completely impurity-free version of the mineral can get a patent both on the pure mineral and on the method of purifying it. This rule also permits firms in the biotechnology industry to obtain patents on purified deoxyribonucleic acid (DNA) gene sequences. DNA is the basic unit of heredity and carries the information needed to direct the synthesis and replication of proteins. Scientists have learned that certain sequences of nucleic acids in strands of DNA could have specific medical benefits or applications. Purified DNA gene sequences are manufactured by a process known as recombinant DNA technology. See also Genetic Engineering.



## **Disputes**

Occasionally several people apply for a patent for the same invention. Under Nigeria law, the person who first invented the item is entitled to the patent. If it is unclear who invented the item first, the NCC decides who gets the patent in a proceeding known as interference. The losing party may then appeal the NCC's decision at the Appeal Court. Most other countries follow a different rule, granting the patent to the first person to file the patent application. In these countries, if the first inventor delays and the second inventor files the patent application first, the second inventor will obtain the patent.

## **Terms**

If the patent examiner finds that the invention involves proper subject matter and meets the three basic legal tests described above, the NCC will grant a patent. Under current Nigerian law, a patent is valid for 20 years from the date the patent application is filed. The patent is granted to the individual or individuals who made the invention. If that person is an employee who did the work as part of a job, however, the employer has a right to use the invention as well.

## **Infringement**

Anyone who makes, uses, offers to sell, sells, or imports a patented invention without the permission of the patent holder is guilty of infringement. A party can be guilty of infringement even if his or her device is not identical to the item described in the patent. Under a rule known as the doctrine of equivalents, a device infringes if it does the same work in the same way as the patented invention, even if there are minor differences between the two. However, the courts interpret this rule cautiously to avoid giving the patent holder more protection than it is properly entitled to.

## **III. Trademark**

Trademark, any word, phrase, or symbol used by manufacturers or sellers to identify their goods and distinguish them from the goods of others. Trademarks help consumers identify goods they have used and enjoyed in the past. Trademarks also allow consumers to avoid goods and services that they dislike. Examples of well-known trademarks include Coca-Cola for soft drinks, Kodak for film; and Nike for footwear. When trademarks are used to identify services, such as hotel chains or restaurants, they are sometimes called service marks. The overall appearance of a product's packaging is known as trade dress.

Most countries of the world legally protect trademarks, service marks, and trade dress. Trademark law is one branch of the larger legal field known as intellectual property, which also includes copyright and patent law. Because consumers often continue to buy products they trust, well-known trademarks can be extremely valuable. For example, experts in trademark law estimate that the value of the Coca-Cola trademark is more than \$40 billion (Schechter, Roger E. 2006).

#### **IV. Royalty (payment)**

Royalty (payment), in the law of property, term used to designate payment analogous to rent made for the use of the property of another. The owner of lands containing mineral resources, such as petroleum or coal, which permits another to extract these products generally, receives a royalty, or payment, consisting of a percentage of the production for petroleum or a fixed dollar amount per ton for coal. The owner of a patent or copyright may license others to use the patented item or to reproduce, change, distribute, perform, or display the copyrighted creative work. For example, royalties may be paid to a writer, composer, or inventor as a share of the proceeds resulting from the sale, performance, or other use of his or her work or invention (Redmond, 2006).

##### Questions:

- i. How can an individual protect his intellectual property rights?
- ii. What is a copyright?
- iii. What is a patent?
- iv. What is a trademark?

## **HANDOUT 5**

### **STRATEGIES FOR PROTECTION OF INTELLECTUAL PROPERTY**

Protecting your Intellectual Property (original ideas, concepts, products, etc) is as important as its inception. Once you have identified your intellectual property you should develop strategies to protect your rights so that you don't put your business at risk. Imagine if your competitor discovered your secret and started replicating it, or you told someone your idea and then discovered too late that you had lost the legal right to make it exclusively yours.

The key is not to talk about your idea or make your IP public knowledge before you have had a chance to protect it. Intellectual property (IP) can be bought, owned, sold, licensed out or bequeathed in much the same way as a building or a block of land. IP can be so valuable that many businesses list it among their assets on their balance sheet. It's important to develop effective strategies to protect you IP within your business, not only to protect valuable assets but also to safeguard the products, processes and creative inputs from which the profits of the business emanate.

#### **Step 1: Register Your IP**

The first step of any protection strategy is to register your IP. There are seven types of IP protection available: patents; trademarks; plant breeders' rights; registered designs; copyright; circuit layout rights; and confidentiality/trade secrets.

Different IP rights vary in the protection they provide and in many cases more than one type may be necessary to fully protect your creation. You can patent your IP through a patent attorney and/or an intellectual property lawyer, either of whom will take your current model and appropriately describe it in minute detail to distinguish it from any other similar products.

#### **Step 2: Act To Keep It Secret and Demonstrate Ownership**

The second step in a protection strategy is to take the necessary actions to keep your idea a secret and demonstrate your ownership of the idea. Consider some of the following steps to protect your idea:

##### **Keep your idea a secret**

Contact only those people who can assist you with planning your product development. Before you discuss your idea with anyone make sure you have a signed confidentiality agreement or a non-disclosure agreement in place, which describes the object/idea along with details about yourself and the person to whom you will disclose these details. The agreement must be signed in your presence and preferably witnessed and more importantly - it must be dated to establish the time, date and place of disclosure.

### **Demonstrate that the idea is yours.**

Write down in detail what your idea is; what it does and how it works. Draw a detailed picture of the object or take a photograph of the prototype. Make copies and put the original documents in a sealed, self addressed envelope and mail the envelope by registered mail. When you receive the envelope DO NOT open it. Put it in a safe place. This establishes evidence of the time date and place of original thought.

### **Make sure you are not infringing anyone else's IP.**

Search the IP Australia website to find out if there are products of the same type and application as yours. This will save you time and money in your application for IP protection. Many types of protection aren't available if your idea is similar to one that is already covered by a patent, trade mark or the like.

### **IP Case Studies**

IP Australia has an excellent selection of case studies of companies and individuals who have experienced the Australian IP system. The case studies cover topics from implementing successful protection strategies to protecting IP overseas and associated pitfalls (Small Business Development Corporation 2011).

Finally, make sure that you do your market research before commercializing your product. And hiring a patent or trade mark lawyer will put you on a better position in protecting your intellectual property.

### **Illustration Credits**

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The Peabody Garden in full bloom (Photograph by Ed White)

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Questions: What strategies can an individual use to protect his intellectual property rights?

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