

Intellectual Property Right

DIT Lecturing Materials



Intellectual property

- Intellectual property (IP) is a number of distinct types of legal monopolies over creations of the mind,
- Both artistic and commercial, and the corresponding fields of law.^[1]
- Under intellectual property law, owners are granted certain exclusive rights to a variety of intangible assets,
- Such as musical, literary, and artistic works; discoveries and inventions; and words, phrases, symbols, and designs

IPRs

⌘ INTELLECTUAL PROPERTY RIGHTS (IPRs)

Divided into two categories:

Ø Industrial Property :- Patents (to protect inventions), trademarks, industrial designs, and geographic indications of source.

IPRs

- Copyright:- literary and artistic works such as books, novels, poems and plays, Films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs.

PROTECTED RIGHTS

- There are Two types of Protected Rights
 - Ø Economic Rights
 - Ø Moral Rights



PROTECTED RIGHTS

- Economic Rights Section 9 (1) (a)-(j) of the 1999 Act

The creator/author of a work has the exclusive right,
to prohibit
or authorize
others to:

- reproduce the work
- distribute the work (bequest or sale by the owner)
- public rental of original/copy of audio-visual, computer program, database or a musical work publicly exhibit the work

PROTECTED RIGHTS CONT...

- translate the work
- adapt the work
- broadcast the work
- other communication of the work to the public
- import the work



MORAL RIGHTS

- Rights to claim authorship of the work
- A right to oppose changes to the work that could harm the creator's/ author's reputation.
- The creator (owner) of the copyright can enforce rights both administratively and in the courts



A patent

- A patent is a set of exclusive rights granted by a state or national government to an inventor or his/her assignee for a limited period of time in exchange for a public disclosure of an invention
 - The procedure for granting patents,
 - the requirements placed on the patentee,
 - and the extent of the exclusive rights vary widely between countries according to national laws and international agreements.



patent application

- Typically, however, a patent application must include one or more claim defining the invention which must be new, inventive, and useful or industrially applicable.
- The procedure for granting patents,
- the requirements placed on the patentee,
- and the extent of the exclusive rights vary widely between countries according to national laws and international agreements.



patent application cont..

- In many countries, certain subject areas are excluded from patents, such as business methods and mental acts.
- The exclusive right granted to a patentee in most countries is the right to prevent others from making, using, selling, or distributing the patented invention without permissions

Common types of intellectual property

- include copyrights, trademarks, patents, industrial design rights and trade secrets in some jurisdictions.
- Although many of the legal principles governing intellectual property have evolved over centuries, it was not until the 19th century that the term *intellectual property* began to be used,
- and not until the late 20th century that it became commonplace in the United States. [\[2\]](#)



Financial incentive

- These exclusive rights allow owners of intellectual property to reap monopoly profits.
- These monopoly profits provide a financial incentive for the creation of intellectual property, and pay associated research and development costs.
- Economists estimate that two-thirds of the value of large businesses in the U.S. can be traced to intangible assets
- IP-intensive industries" are estimated to produce 72 percent more value added per employee than "non-IP-intensive industries".

Copyright

- Copyright is a form of intellectual property that gives the author of an original work exclusive right
- For a certain time period in relation to that work, including its publication, distribution and adaptation,
- after which time the work is said to enter the public domain
- Copyright applies to any expressible form of an idea or information that is substantive and discrete and fixed in a medium
- Copyright has been internationally standardized, lasting between fifty to a hundred years from the author's death, or a shorter period for anonymous or corporate authorship



Berne Convention for the Protection of Literary and Artistic Works

- The 1886 Berne Convention first established recognition of copyrights among sovereign nations
- there is no requirement for an author to "register" or "apply for" a copyright, or to mark his or her works with a copyright symbol
- As soon as a work is "fixed", that is, written or recorded on some physical medium, its author is automatically entitled to all copyrights in the work
- The Berne Convention also resulted in foreign authors being treated equivalently to domestic authors, in any country signed onto the Convention

Universal Copyright Convention

- The Universal Copyright Convention was drafted by UNESCO in 1952
- as another less demanding alternative to the Berne Convention,
- and ratified by nations such as the Soviet Union and developing nations



Anti-Counterfeiting Trade Agreement (ACTA)

- is a proposed plurilateral trade agreement which is claimed by its proponents to be in response
 - "to the increase in global trade of counterfeit goods
 - and pirated copyright protected works."^[5]
- The scope of ACTA is broad, including counterfeit physical goods, as well as "internet distribution and information technology".^[6]



Exclusive rights

- to produce copies or reproductions of the work and to sell those copies (mechanical rights; including, sometimes, electronic copies: distribution rights)
- to import or export the work
- to create derivative works (works that adapt the original work)
- to perform or display the work publicly (performance rights)
- to sell or assign these rights to others
- to transmit or display by radio or video (broadcasting rights)



Trademark

- A trademark or trade mark^[1] is a distinctive sign or indicator used by an individual, business organization, or other legal entity to identify that the products
- or services to consumers with which the trademark appears originate from a unique source,
- and to distinguish its products or services from those of other entities.

A trademark symbols

- TM (for an unregistered trademark, that is, a mark used to promote or brand goods)
- SM (for an unregistered service mark, that is, a mark used to promote or brand services)
- [®] (for a registered trademark)



A trademark symbols cont...

- A trademark is a type of intellectual property,
- and typically a name, word, phrase, logo, symbol, design, image, or a combination of these elements. [\[2\]](#)
- There is also a range of non-conventional trademarks comprising marks which do not fall into these standard categories.



legal proceedings for trademark infringement

- The owner of a registered trademark may commence legal proceedings for trademark infringement
 - to prevent unauthorized use of that trademark.
- However, registration is not required. The owner of a common law trademark may also file suit,
 - but an unregistered mark may be protectable only within the geographical area within which it has been used
 - or in geographical areas into which it may be reasonably expected to expand



Establishing trademark rights

- The law considers a trademark to be a form of property.
- Proprietary rights in relation to a trademark may be established through actual use in the marketplace,
- or through registration of the mark with the trademarks office (or "trademarks registry") of a particular jurisdiction

More info on Trademark

Basics, Benefits and Registration in Tanzania.



Meaning

- Trade= Service (why?)
 - Trade is the activity of buying and selling, or exchanging, goods and/or services between people or countries; business activity (Cambridge Dictionaries Online)
- Mark= Sign
 - A typical feature or one which allows you to recognize someone or something (Cambridge Dictionaries Online)
- Trademark or Service mark
 - A name or a symbol which is put on a product to show that it is made by a particular producer and which cannot be legally used by any other producer (Cambridge Dictionaries Online)
 - A trademark is a sign that distinguishes goods or services of one trader from those of another

Trademarks

- Part of or a branch of Intellectual Property (IP)
- Other names 'Logos' or 'Brand names'
- Trademark are found or used in every sector, including:
 - Airline Logos, Car Logos, Drinks Logos, Sport Logos, Political Logos, Hotel Logos, Clothing Logos, Technology Logos
 - Famous trademark includes:
 - Coca-Cola; - Pepsi
 - Toyota; - Mercedes Benz
 - Disney etc

Trademark Legal System in Tanzania- I

- IP is a non-union matter in Tanzania
- Tanzania Mainland
 - Trade and Service Marks Act, 1986 I.E CAP 326 (2002 RE) and Trade and Service Marks Regulations, 2000
- Tanzania Zanzibar
 - The Zanzibar Industrial Property Act, 2008
- Foreign Affairs is a union matter
 - Thus, international treaties that have been ratified by the United Republic of Tanzania e.g. Paris Convention and International Classification of Goods and Services apply to both Tanzania mainland and Zanzibar.



II

- Trademark Offices in Tanzania
- The Business Registration And Licensing Authority(BRELA)- Tanzania Mainland
- The Registrar Of Trademarks- Tanzania Zanzibar
- Few Trademarks recognized under the Tanzania Law
- Collective mark; Slogan mark; Trade name; Associated mark; Famous mark; Color mark etc



Criteria for registration

- To be registered, a trademark must
 - Be capable of distinguishing goods or services of one trader from those of another
 - Be a visible sign
 - Be distinctive (not be descriptive) a mark/sign/word likely to be used in conjunction with similar goods and services, common names/ acronyms e.g. CAR, SOAP.



Criteria for registration cont.

- Not be likely to deceive or cause confusion (e.g. trade marks which imply a false geographical origin or quality of the goods or services).
- Not be used in conflicts with public order or public morality
- Not be substantially identical with or deceptively similar to a prior trade mark application or registration in relation to the same, similar or closely related goods and services.



Criteria for registration cont.

- Not be a geographical name.
- Not be identical with, or imitate the armorial bearings, flags and other emblems, initials, names or abbreviations or initials of name or official sign or hallmark of any state or organization.
- Failure to meet these criteria, there may be a refusal of registration of the mark.

Choosing a Mark

- Few things to consider:-
 - Should be easy to remember
 - Should be not difficult to pronounce or/and spell
 - Easy to reproduce verbally or in writing
 - Easy to distinguish from trade marks used by competitors.
 - Able to be used worldwide without different or controversial meanings in other languages

Requirements to register a trademark in Tanzania

- The Power of Attorney- signed.
- Applicant's full name and address
- Prints of the proposed trademark-
- Priority Document (if applicable) with verified English translation



Requirements to register a trademark in Tanzania cont..

- If the proposed trademark is in a language other than English, the Trademark Office normally requires the application to be accompanied with verified English translation Company registration (when an applicant is not a natural person)
- Statement and declaration
- Payment of filing fee.

Duration of Protection

– Tanzania- Mainland

- Seven (7) years
- Renewed for further ten (10) years after expiry of original registration or of the last renewal of registration.

Duration of Protection cont..

- Tanzania – Zanzibar
- Fourteen (14) years
- Renewed for further fourteen (14) years after expiry of original registration or of the last renewal of registration.



Why Trademark Registration/Protection?

(Rights and Benefits)- PART 1

- Owner of Registered trademark has the Exclusive rights:
- To the use of the trademark in relation to goods and services to which it is registered for,
- Sale and importation of the respective goods and services
- Prevent others to use the registered mark for their businesses without his authorization

Why Trademark Registration/Protection? (Rights and Benefits)- PART 1 CONT..

- May obtain legal relief to stop an infringement and claim damages or an account of profits
- To license or/and assign, transfer his rights.
- When Licensing, owner and user must enter into a written license agreement.



PART II

- Registration of Trademark= Not compulsory
- A registered trademark = personal property
- Trademark registration provides:
 - A defense against trademark infringement proceedings.
 - An easier and more cost efficient way to enforce the rights conferred by a trademark
 - Prevent other traders from using the mark on the same or related goods or services



PART II CONT...

- Protects the marketing idea i.e. consumer not to confuse with other brand/product/organization
- Protects the organization's image or reputation
- Registration of business or company name conveys limited rights in a name. Thus, it is worthwhile applying for trademark registration.



Publication, Opposition and Removal

- After registration, trademark is advertised in the Patents, Trade and Service Marks Journal
- Third parties can oppose the registration of the trademark
 - within sixty days , Tanzania- Mainland
 - ninety days (for Zanzibar) from the date of advertisement/ publication.
- No opposition, a certificate of registration issued



Publication, Opposition and Removal cont..

- A trademark may be removed from the register
 - Not being used on the registered goods and services for a continuous period of three years.
- Trademark is cancelled if it becomes generic, i.e., it is generally recognized as the name of the goods or services, e.g. trademark like computer, internet and escalator.



COPYRIGHT LAW AND REGULATIONS IN TANZANIA

- The Copyright and Neighboring Rights Act (No. 7 OF 1999) with Copyright Regulations:-
- The Copyright and Neighboring Rights (Registration of Members and their works) Regulations, 2006 GNN. 6 of 20th January, 2006.
- The Copyright and Neighboring Rights (Production and Distribution of Audio and Audio
-

COPYRIGHT LAW AND REGULATIONS IN TANZANIA

- Visual Recordings)
Regulations, 2006 GNN.18 of
10th February, 2006.

COPYRIGHT LAW CONT...

- The Copyright (Licensing of Public Performances and Broadcasting) Regulations 2003, GNN 328, Published on 10th October, 2003.



COPYRIGHT SOCIETY OF TANZANIA (COSOTA)

- A multidisciplinary society; both a Copyright Office and a collective Management organization.
- Established under Section 46 of the Copyright and Neighboring Rights Act, 1999 (No. 7 of 1999 RE 218 of 2002)
- Came into operation on 24th October, 2001

COPYRIGHT SOCIETY OF TANZANIA (COSOTA)

- What COSOTA Does?
- Main function: to protect, defend and promote the interests of authors creators, composers, publishers, performers, and producers' e.t.c.
- Thus, administers musical, literary, dramatic and artistic works.



COSOTA

- As a Copyright Office:
 - ü examines all applications and deposits presented for registration (administering the copyright law)
 - ü grants and issues copyright certificates
 - ü provides public information and reference services concerning copyrights

COSOTA

– As a Collective Management:

- ü acts as a bridge between the creator of the work and the end user
- ü to monitor the use of the works concerned
- ü negotiate with prospective users

COPYRIGHT REGISTRATION

- ⌘ Copyright is an automatic right
- ⌘ Recommended: Do registration
(creator/author/publisher etc)
- ⌘ Copyright sign ‘©’-
protected/registered works
- Protects expressions of an idea Not an
idea itself.

REGISTRATION CONT..

- Expressions of an idea must be reduced in material form such as a book, compact disc, cassette, manuscript, magazine, painting, choreography, film, phonogram etc.
- To be protected work must be
 - Original in that it originated with the author/creator
 - Fixed in a tangible medium of expression
 - Must be a creative work



ASSIGNMENT OF RIGHTS & COPYRIGHT LICENCES

- } Economic rights can be assigned (sell) in whole or in part.
- } Assignment of author's rights must be in writing signed by the assignee.
- } Owner of the copyright may grant licence to others to carry out, or to authorize the carrying out of certain specified acts under his economic rights.



ASSIGNMENT OF RIGHTS & COPYRIGHT LICENCES

- A grant of permission
 - Contractual terms depend on what can reasonably be negotiated
 - A promise not to sue a party for actions that would otherwise constitute infringement.
- } Types of Copyright Licences : Non-exclusive, Exclusive and sole licences

COPYRIGHT LICENCES

- Non – Exclusive: A licensee carries out the act permitted simultaneously with the copyright owner(author) and at the same time with any other possible licensees.
- Can be limited by fields of use, time, amount of use, type of use (commercial, academic)

COPYRIGHT LICENCES

- An Exclusive Licence: entitles the licensee to carry out the act concerned to exclusion of all others, including author/copyright owner.
- A promise that, copyright owner will not make use of his/her protected work.

COPYRIGHT LICENCES

- Sole Licence: similar with exclusive licence but, copyright owner entitled to make use of the work.

LIMITATIONS, DURATION & OWNERSHIP OF PROTECTION

- } Fair use/Fair Dealing i.e. ‘Permitted acts’ (S 17 of the Act 1999)
 - For quotation
 - For education/instructions/non-profit research/non-commercial
 - For personal use
 - Reporting a current event (photograph, communication to the public)

LIMITATIONS, DURATION & OWNERSHIP OF PROTECTION

- Reproduction (the press) of reports that are already available in the public domain (already communicated to the public)
- Public license
- } Duration of protection: Rights are protected during the life of the author and for fifty (50) years after his death.
- Joint Ownership: protection during the life of the last surviving author and (50) years after his death

LIMITATIONS, DURATION & OWNERSHIP OF PROTECTION

–Territorial: Many national laws, there is territorial copyright. However, It can be international protected-international registered.

WHY COPYRIGHT REGISTRATION AND PROTECTION- 1

- RESEARCHER/SCIENTIST = AUTHOR/ARTIST/EDITOR/PUBLISHER etc.
- Protection of Copyright and Related rights lead to the promotion of literary, musical and artistic creativity etc. They are essential to human creativity.



WHY COPYRIGHT REGISTRATION AND PROTECTION- 1

- Copyright protection offers the vital incentives for the creation of valuable works. Recognition and fair economic rewards.
- By registering your work gives assurance to author's copyright making it easier for a potential infringer to track you down and legitimately obtain a license to use your work, avoiding the hassle of litigation.



COPYRIGHT REGISTRATION AND PROTECTION- 2

- By registering your work gives assurance to author's copyright making it easier for a potential infringer to track you down and legitimately obtain a license to use your work, avoiding the hassle of litigation.



REMEDIES

- Remedies for infringement of copyright include:-
 - Damages
 - Account for profit
 - Interlocutory injunction (order to stop such an activity)
 - Delivery up of infringing articles.
 - Destruction of infringing articles.



REMEDIES

- Civil Procedure Code and Criminal Procedure Act on search and seizure apply to copyright infringement.
- The Copyright and Neighboring Rights Act, 1999 sets out several offences relating to making or dealing with infringed articles.

FINITO

Thank You for Listening