

IP IN EDUCATION

INTELLECTUAL PROPERTY

IP Basics for Teachers



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Introduction

Your school asks you to prepare a project for a national education competition. You are motivated. You find a great idea. You put a lot into preparing a detailed project to win the prize for your school. Then, an ex-colleague whom you trusted and had shown your work to presents a similar project for their new school which gets first prize. How do you feel?

Intellectual property (IP) protects the creations of the human intellect or the human mind and the purpose of IP rights is precisely to protect you from a similar scenario.

IP is not something new:

The idea of IP is not new. Some say it dates back to 500 BC when people started creating tools to ensure their survival and upgrade their quality of life. The first intellectual property right came about when the Greek State of Sybaris allowed its citizens to obtain a patent for 'any new refinement in luxury'.

The State wanted to reward the creation of original recipes and cooking products. Since then, many refinements have been made and laws written regarding intellectual property. However, the intent of IP law has always remained the same over time - to boost creativity. In order to do so, some kind of exclusive privilege to use the creation is given to the creator.

Nowadays, the objects that form part of our daily lives are getting more and more complex. For example, a smart phone is protected by hundreds of thousands of IP rights. The same goes for most objects and services that form part of our modern lives.



Trade marks are distinctive signs which serve to differentiate the products & services of a company from its competitors. Behind a brand there are people working, investing, researching & developing products and services that enhance different aspects of our lives.

Trade marks

- Name of the phone
- Start-up tone
- Instagram logo

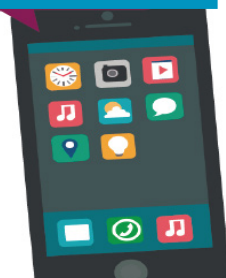


Some people dedicate years or even decades to an invention that could change the world. Some people strike upon a genius idea in a "eureka" moment. The idea behind **patents** is that those inventors deserve to be rewarded for their hard work as well as for their insight. In exchange for sharing their invention with the world, patent holders get the exclusive rights to make and sell or otherwise distribute their invention.

Patents

- Data-processing methods
- Operating system
- Operation of user interface

Did you know that there are more than **250,000 active patents** relevant to today's smartphones?



Design encompasses the appearance of any product (or even part of a product) - the shape and colour, the materials used, the packaging, so pretty much any item made can be registered as a design. But design is even broader than that! It includes logos, maps, fonts, and more. The design does not have to be beautiful, attractive or artistic; it simply has to be different.

Designs

- Shape of overall phone
- Arrangement and shape of buttons
- Position and shape of screen



Copyright

- Software
- User manuals
- Ringtones
- Facebook
- Images

Copyright is a set of rules that protect artistic and literary works. Think movies, music, poems, paintings, comics, etc. It's basically the right to be the only one who decides who can use your work. For example, say you write a song. Unless you give permission, no-one else can copy it or say it's their song. It's your song. Of course if you want, you could give someone else permission to perform it or record it.



A **trade secret** is confidential business information with commercial or economic value, which provides an enterprise with a competitive edge because of its secrecy. Trade secrets are protected without registration or formalities. Thus a trade secret can be protected for an unlimited period of time. There are some conditions for the information in order to get protection. The information has to be secret, to have commercial value and the rights holder must have taken reasonable steps in order to keep it secret. However, this varies from country to country. An example would be the famous Coca-Cola formula.

Copyright

What is copyright?

Copyright is one of the most widely-known intellectual property rights and the one that most affects teachers. It protects any tangible production of the human mind, provided that this production is not a mere idea.

Everyone is a copyright owner: big artists, small artists, recognised authors and unrecognised authors (who may be teachers or students). A PowerPoint presentation is probably subject to copyright. This factsheet is definitely subject to copyright.

To obtain protection by copyright the production must be original.

In the Caribbean, copyright laws reflect different interpretations of originality. One interpretation proposes that a work is original when it originates from the author (not copied from elsewhere) and the work is a result of the author's skill, judgment and mental labour. The other interpretation of originality proposes that a work is original when it reflects the author's personality and expresses his or her free creative choices.



The classic example is two painters sitting at the same moment in front of a model: while the subject is the same, the work of each painter will be different.

Original works include novels, plays, poetry, music, songs, drawings, paintings, sculptures, photos, film scripts, films and videos, textile designs, architectural plans, databases and computer programmes.

Most of you have copied a copyrighted photo from the internet for a lesson. All of you have downloaded a movie or a song. These actions fall under copyright law.

Copyright law grants the creator exclusive rights to determine whether, and under what conditions, his or her original work may be used by others. It gives the owner two types of rights:

Economic rights

- to the exploitation of the work.
- to control the reproduction of the work, the communication of the work to the public, its translation, adaptation and distribution."It grants the creator long-lasting protection to reward him or her and at the same time, to make sure that his or her family can enjoy the economic benefits from the work and its success.

Moral rights

- to be recognised as the author of your original work. Moral rights are rights generally recognised in the Caribbean, though their level of protection differs from country to country.

They include the right to:

- have the name of the creator indicated;
- have a work published anonymously or pseudonymously;
- the integrity of the work bars the work from alteration, distortion, or mutilation.

How is a work protected by copyright?

No registration requirement exists for copyright protection. The protection exists from the very moment a work is created. In some countries, optional registration processes are available. Registration can be useful for the purposes of providing evidence, as it can help to prove that the work existed at a certain date.

The protection period of copyright is very long. In the Caribbean, protection lasts for the lifetime of the author plus a number of years after the author's death ranging from 50 to 95 years, depending on the specific country.

Copyright is territorial. In other words, protection is granted on a country-by-country basis. However, international instruments, such as international conventions containing rules applicable to countries all over the world, set some minimum standards for copyright protection.

What are the exceptions to the creator's rights?

Works can be used without the consent of the author or the rights holder mainly for these purposes, but other exceptions exist:

the reproduction of a work for private use;

the use of short quotations from a work for the purposes of criticism or review;

the use of extracts for the purpose of illustration for teaching or scientific research.

The Intellectual Property Office of your country provides useful information about the rights of owners and users of copyright, you can find more information here:

<https://internationalipcooperation.eu/en/caripi/ip-information>



Trade Marks

What is a trade mark?

A trade mark is a distinctive sign which identifies goods and services as coming from a particular company and distinguishes them from those of its competitors. It can be a word, a picture, a symbol or a shape, a figurative element, a slogan, a colour or even a sound.

A trade mark in itself is not protected. It is protected in relation to specific products and/or services. So, Nike, as a name, is not protected. However, the name 'Nike' in relation to sportswear is protected. In theory, it means that someone could also use the name 'Nike' to sell other, unrelated products such as fruits and vegetables. However, higher protection can be granted to well-known trade marks (such as Nike) meaning that it is not permitted to use Nike in relation to other goods and services than shoes.

A trade mark is the IP right that enables businesses:

- to make a connection between their products and services and their customers;
- to build customer loyalty and brand recognition;
- to distinguish their products and services from those of rival companies.

Trade marks:

- are an essential element of success in terms of business competition;
- represent the investment of a company in its image and brand;
- are most companies' preferred IP right;
- are often the most valuable asset of a company.

A good trade mark should have no connection with the products and services it covers. To protect 'Sports shoes' to cover sports shoes is not possible as it would prevent anyone else from using the words 'sports shoes' to sell their sports shoes. 'Nike', on the other hand, has no direct, obvious link to the products it covers and anyone can sell sports shoes under any other name. Trade marks do not affect the creativity or innovation of businesses. They are distinctive signs which can be protected endlessly, provided they meet the following requirements. They must:

be clear and precise.;

have a distinctive character;

not deceive the public;

be available;

cover a list of products and/or services.



Trade mark number
1533540



How is a trade mark protected?

Trade marks need to be registered in order to be protected. Depending on where applicants intend to do trade, they can apply:

- country per country through the national IP offices;
- through the [World Intellectual Property Organization](#) (WIPO) Madrid International Trademark System for protection in multiple countries via one application that is then dispatched and processed in each of the selected countries.

Trade mark registration confers protection for a period of several years, usually ten, from the date of filing, and can be renewed for unlimited additional periods of ten years.

What are the advantages of trade marks?

Economic value

They are one of the most popular and valuable assets of a company. They can have enormous economic value and great importance for businesses.

Registration process

The registration process is usually smooth and speedy. To have a trade mark protected within a few months is possible.

Protection

They offer a wide range of legal protection. The owner is entitled to prevent third parties from using a trade mark in the course of trade. It concerns not only any identical sign for identical goods and services but also any similar sign for similar goods and services, provided there is a likelihood of confusion by the public.

What are the disadvantages of trade marks?

Cost

The trade mark owner needs to pay in order to register and re-new trade marks (but it is much less than for patents).

Obligation to use

The obligation to use the trade mark for the products and services for which it has been registered – in the absence of such use after a certain period (normally 5 years) the trade mark may be cancelled.

Generic use of name

Trade mark owners have to make sure that their registered sign does not become a generic name, that is, the name commonly used to describe the products or services in question.

For more information about Trade Marks, see the following:
<https://internationalipcooperation.eu/en/caripi/ip-information>

Designs

What is a design?

A design is the IP right that covers the appearance of a product. In its legal definition, it is the outward or visible appearance of the whole or part of product resulting from its features. These features can be lines, colours, shapes, textures, contours, materials or ornamentation. This very broad definition covers almost any creation with visible aspects.

The following can be protected as designs:

- any industrial or handicraft item or product;
- packaging;
- graphic symbols;
- parts assembled into a complex product;
- drawings and art work.

A product does not have to be produced on an industrial scale or have artistic value in order for it to be a design.

The success and importance of a design is in its appeal to the product's users. Users are often attracted by highly creative designs. New shapes or colours can give a strong boost to the sale of ordinary products and therefore, the design of the product can become a key element in a company's effort to make its products more attractive to users. Consequently, industrial designs can have a very high commercial value, and a manufacturer may obtain a decisive advantage in the market by creating a new look for its product.

In order for the appearance of the product to be eligible for protection as a design in the Caribbean, it has to fulfil two requirements:

Novelty: A design is considered to be new if no identical design has been made available to the public before the date of filing the application.

Individual character: The design must give a different overall impression to an 'informed user' from any other design disclosed earlier. The 'informed user' is an intermediate character who is neither a designer nor a technical expert.¹

These products are excluded from design protection:

- features of the appearance of the product solely dictated by a technical function;
- those contrary to public policy or morality, for example, obscene, racist or immoral images of messages.

In some jurisdictions, the following products are also excluded from design protection:

- representations of the Coat of Arms, national flag official signs or hallmarks of a country
- country names or abbreviations of country names, the map of a country or national colours which are likely to mislead the public as to the existence of a connection between the origin of the products and the country;
- emblems, abbreviations and names of an international organization, unless consent is obtained from the relevant organization;
- registered trade marks unless consent is obtained from the trade mark owner;
- a copyright work unless consent is obtained from the copyright owner;
- the image or likeness of an individual, unless consent is obtained from the individual; and
- traditional knowledge or traditional cultural expressions of indigenous or local communities, unless authorization is obtained from the relevant community or where it is not practical to obtain such authorization the Registrar is satisfied that such use is not likely to mislead the public as to the existence of a connection between the products to which the design is to be applied and the relevant community.

¹This requirement is included in the Patents and Designs Act, 2020 (No.1 of 2020) Jamaica, but not in the Industrial Designs Act, 2003 (No.19 of 2003) Antigua and Barbuda or the Industrial Designs Act, Chap.82:77, Trinidad and Tobago.

How is a design protected?

A design needs to be registered in order to get full protection. Designs may be registered:

- country per country through national IP offices;
- through an international application managed by the [World Intellectual Property Organization](http://www.wipo.int) (WIPO)¹.

The protection of a design is limited in time. In the Caribbean, the initial period of protection is five years. Protection can be renewed for additional periods of five years each, up to a maximum of 15 years.

What are the advantages of registered designs?

Official title

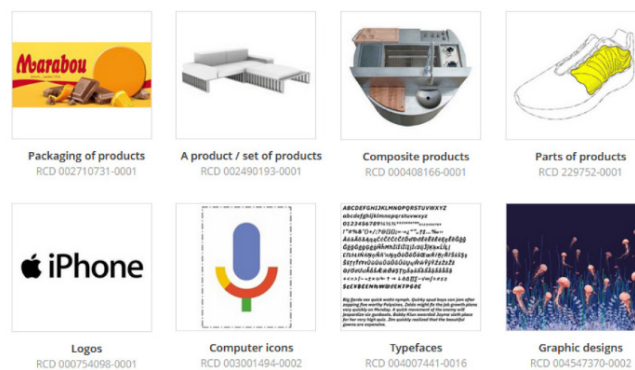
To prove the existence and ownership of the design.

Exclusivity

The protection offered by registered rights gives the owner of the design the exclusive right to use it.

Protection

The owner of a registered design may prevent third parties from using the protected design in different forms, including: making, offering or putting the protected design on the market, importing, exporting or using a product in which the design is incorporated and stocking such a product for those purposes.²



Examples of registered designs

For more information about Registered Designs, see the following:

<https://internationalipcooperation.eu/en/caripi/ip-information>

¹This option is available in Jamaica. However, Antigua and Barbuda and Trinidad and Tobago are not yet contracting parties to the Hague System for the International Registration of Industrial Designs

²Protection from stocking products by third parties which incorporates the design is provided by the law in Jamaica, but not in Antigua and Barbuda and Trinidad and Tobago

Geographical indications

What is a geographical indication?

A geographical indication (GI) is a sign used on products having a specific geographical origin and whose qualities and/or reputation are attributable to that origin. GIs are typically used for agricultural products, foodstuffs, wine and spirit drinks, handicrafts, and industrial products, and refer to place names. However, nongeographical names can also be protected if they are linked to a particular place. For example, Feta cheese is not named after a place, but after the Italian word "fetta", meaning "slice", which was incorporated into the Greek language in the 17th century. However, several factors such as the fact that 85% of EU consumption of feta cheese per capita and per year takes place in Greece or the fact that feta is usually marketed with labels referring to Greek cultural traditions and civilisation, make EU consumers perceive feta as an inherently Greek product.

In order to function as a GI:

- it must identify a product as originating in a given place (e.g. Chianti identifying a wine originating in the Italian region of Chianti or Roquefort cheese originating in the Roquefort-sur-Soulzon region in France);
- the qualities, characteristics or reputation of the product should be due to the place of origin (e.g. the qualities of Chianti are due to the grapes grown in the soil of that specific Italian region, while the qualities of Roquefort result from the characteristics of the milk obtained from indigenous breeds of sheep fed according to the tradition and the characteristics of the caves in which the cheese is aged).

GIs in the Caribbean

In the Caribbean, some countries have laws to protect geographical indications. Some products are protected by GIs, for example, Jamaica Rum, and Jamaica Jerk. Other products have the potential to be protected by geographical indications such as Blue Mountain Coffee from Jamaica and Cocoa from Trinidad and Tobago. Trinitario Cocoa has an international reputation for being a fine-flavoured cocoa which is attributable to the special growing conditions in areas such as Gran Couva, La Pastora, Santa Cruz and Cumuto in Trinidad.



For more information about Geographical Indications, see the following:
<https://internationalipcooperation.eu/en/caripi/ip-information>

Trade Secrets

What is a trade secret?

The term 'trade secret' may sound old-fashioned. In an age of instant internet searches, very little seems to be unknown or unknowable. But trade secrets still have — and probably always will have — an important role to play in giving businesses a competitive edge. Together with trade marks, trade secrets are key elements of many franchise networks such as fast food restaurants, hairdressers, clothes shops, etc.

Trade secrets, sometimes referred to as know-how, involve the confidential business information that provides an enterprise with their competitive edge. A trade secret is information that is not known to anyone other than the companies that own the products and their employees.

Trade secrets encompass manufacturing/industrial secrets and commercial secrets. They include, among other things, sales methods, distribution methods, consumer profiles, advertising strategies, lists of suppliers and clients, price lists and, of course, manufacturing processes.

They can be positive information (good practices) as well as negative information (errors not to be made).

What are the criteria for a trade secret?

A trade secret can only be a trade secret as long as it remains a secret. The information in a trade secret:

must have business, commercial or economic value;

must not be known;

must not be easily discoverable.

Reasonable efforts to maintain secrecy must be demon-



TOP SECRET

Is a trade secret an intellectual property right?

The answer is no. Trade secrets are not an intellectual property right as such. The holder of a trade secret does not have an exclusive right over his or her creation. He or she cannot prevent competitors from discovering the secret or coming up with the same solutions.

Trade secrets can be independent or complementary to patents. They are heavily used in the creative process leading to innovation. Until an invention is filed for protection, the inventor must take great care to maintain the confidentiality of the invention in order to secure the novelty requirement.

In franchise agreements, the franchisor supplies the franchisees with the relevant know-how that is regularly upgraded in order to maintain the competitive advantage of the franchise network.

Trade secrets are only legally protected in instances where someone has obtained the confidential information by illegitimate means (e.g. through spying, theft or bribery).

For more information about Trade Secrets, see the following:

<https://internationalipcooperation.eu/en/caripi/ip-information>

Patents

What is a patent?

A patent grants innovators protection for an invention. An invention is a solution to a specific technological problem in the form of a product or a process that makes our life easier or better. When a new solution is successful, it becomes a powerful tool in the hands of the innovator and an important competitive advantage for a company in the market.

Therefore, it is very likely that competitors will want to make similar or identical products. To protect the innovator and encourage further creativity, a patent allows the innovator to prevent others from remaking, using, selling or importing a product that copies their invention.

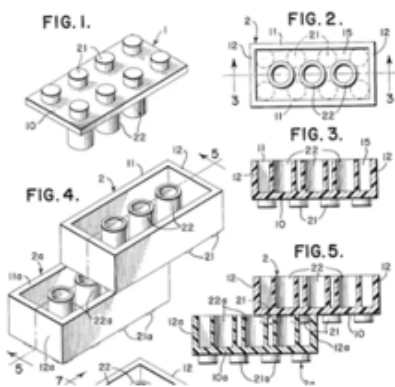
A patent blocks a particular technology and improvements, which is why patent validity is limited in time. The maximum term of protection for patents in the Caribbean is 20 years from its filing date depending on the country in which the application is made.

Inventions can be something as simple as a toy to something as complicated as a nuclear weapon. The United States Supreme Court once considered that patentable subject matter included 'anything under the sun that is made by man'. In the Caribbean, to be patentable, an invention must fulfil three requirements:

Novelty: It was not previously known to the public in any form, anywhere at anytime.

Inventive step: It must go one step beyond what was already known. It can't be a simple 'continuity' or 'variation' of what already existed.

Industrially applicable: It can be manufactured or used on an industrial scale.



INVENTOR Godtfred Kirk Christiansen
BRINGING CONSTRUCTION TILE, Biilund, Denmark.
Submitted on 28 July 1958, No. Ser. 751 387
Priority claim, filed in Denmark Jan. 28, 1958.

This invention relates to toy building elements and, more particularly, to toy building bricks or blocks adapted to connect with each other by means of protuberances on the faces of the elements arranged so as to surround the protruding parts of an adjacent element when two such elements are assembled.

How is a patent registered?

A business or innovator can apply for a patent:

- in a specific country via the national Patent Office;
- at global level via the [World Intellectual Property Organization](https://www.wipo.int) (WIPO).

For more information about Patents, see the following:

<https://internationalipcooperation.eu/en/caripi/ip-information>

What are the disadvantages of patents?

Time

The processing time of applications can take years.

Publication

The application process involves the publication of the technical details (the secret of the invention).

Costs

A patent needs to be renewed on an annual basis. Bearing in mind that inventions are often protected by multiple patents, expenses

Getting a patent does not guarantee business success. The innovator needs to make sure that the benefit of a patent will outweigh the time, effort and money it takes to get and maintain one. When registering a patent, companies have to describe their invention in detail and reveal its secrets. A patent does not protect products as such, it protects the different steps of the innovation in what are called claims. Drafting proper patent claims is an art form in itself and must be done by patent attorneys.

Many big companies use other IP rights to protect products that could have been registered as patents without revealing their secrets. Coca Cola, for example, never patented the formula of its products, preferring to keep it secret. This strategic choice has helped the company make sure that 'Coca Cola' remains famous without risking the exposure of its recipe.

In this instance, the decision to register a patent also depends on the mystery and the technicality of the patent. If an invention can easily be reverse engineered by dismantling, for example, a motor, a secret protection will not work. In the case of Coca Cola, it was appropriate, as it was very difficult to reverse engineer.

The IP Quiz

1 Intellectual property ...

- A has existed for a long time
- B consists of a suite of rights
- C protects creations
- D all of the above

2 Intellectual property can ...

- A protect inventions
- B protect written work and presentations
- C add value to a business
- D do all of the above

3 To get a patent, an invention must ...

- A be novel
- B go one step further than what already exists
- C be industrially applicable
- D fulfil all of the above requirements

4 A trade mark ...

- A protects an invention
- B protects confidential information
- C distinguishes products and services
- D protects the appearance of products

5 A design ...

- A is the outward appearance of a whole or part of a product
- B doesn't need to be registered to be fully protected
- C has to have artistic value
- D doesn't usually have a high commercial value

6 Copyright takes effect ...

- A when a creation is published or exhibited
- B automatically with the creation of a work
- C when a creation is registered
- D when a creation is valuable

7 Which of these are protected by copyright?

- A computer programmes and databases
- B photos and videoclips
- C musical scores and song lyrics
- D all of the above

8 If a student has a great innovative idea, she or he should ...

- A be careful when telling people about it
- B get advice about how to protect it
- C publicise it on social media to make it well known
- D answers A and B are correct

9 An average smartphone has ... patents.

- A 250
- B 2,500
- C 25,000
- D 250,000

10 A car is protected by ...

- A patents
- B a trade mark and registered design
- C copyright
- D all of the above

Answers: 1D 2D 3D 4C 5A 6B 7D 8D 9D 10D

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