

Protection of Intellectual Property Rights in Seychelles

Intellectual property (IP) refers to creations of the mind – everything from works of art to inventions, computer programs to trademarks and other commercial signs. Understanding your IP assets and how they can be protected by different IP rights can help your business become more competitive and manage IP related risks. The IP system has an important role to play in helping your business by:

- Protecting innovative products and services;
- Enhancing the visibility, attractiveness and value of your products on the market (e.g., software, digital apps);
- Distinguishing your business and its products from the competition;
- Enabling access to technical and business information and knowledge (trade secrets);
- Avoiding the risk of unknowingly using third party proprietary content or inadvertently losing your own valuable information, innovations or creative output.



Source: Shutterstock

This manual will help you recognise the intellectual property of your company and protect, manage and make use of your knowledge and the results of your work. With this manual you can go through the intellectual property of your company and consider suitable ways to protect it. Once you have protected your intellectual property well in advance before launching your product on the market, you will be safe from unpleasant surprises later.

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I. Understanding IP benefits

Defending your competitive space

Your innovative product/process or improved product/process can be protected by a patent right that can give your business a competitive edge. The right to exclude others provided through patent protection allows you to keep away competition, take up a lead and secure your market position.

Understanding how to protect trade secrets is also key to defending your competitive space. Specific product details, technological know-how and strategic business information are often key to the success of a business, allowing it to maintain its edge over the competition. Theft or accidental disclosure of trade secrets can deprive a business of these important advantages.

Market visibility

Trademarks allow customers to distinguish your products/services from those of your competitors and serve as a guarantee and signal of consistent quality. Great care should be taken in choosing and designing your trademark, protecting it, using it in advertising and monitoring its misleading/improper use by others.

The aesthetic aspect of your product, protected by an industrial design right, is another way of distinguishing your business from the competition and gaining market share. A visually good-looking design can attract a demanding and diversified clientele and could constitute your product's single most important distinguishing factor.

II. Identify, protect and manage your IP

Keep in mind that a single product can be protected by various forms of IP rights. Together, these IP rights protect your innovation and nurture your brand and goodwill. They are an important tool for maintaining and strengthening your competitive edge and expanding your market share.

Identifying and auditing your IP assets

An important first step in managing IP assets is to conduct an IP audit to understand what potential IP exists in the company. Your company may own valuable IP assets that it created, such as software, publications, music, digital apps, designs, etc. There are three main types of IP audit: general purpose, IP due diligence and limited purpose.



Source: Shutterstock

General-purpose IP audit

This is the broadest type of IP audit, used by new companies or those considering implementing new IP policies, standards or procedures. It is also suitable for companies implementing new marketing approaches, directions, or major reorganizations.

IP due diligence

IP due diligence" is used to assess the value and risk of a company's IP assets. The event-driven audit is often utilized:

- in the context of mergers/acquisitions and joint ventures;
- before entering into a financial transaction involving IP, such as an initial public offering;
- when launching a new product or service;
- when considering IP licensing; and
- in cases of bankruptcy and layoffs.

Limited-purpose IP audit

This is the IP audit with the narrowest scope. It is typically used to justify a legal position or the valuation of a particular IP asset. It can also be applied in the context of:

- personnel turnover;
- foreign IP filings;
- before engaging in e-commerce venture;
- changes in IP law and practice in Seychelles and other countries where your IP rights are registered;
- "clean room" procedures (seeking to avoid the infringement of third-party IP material); and
- preparing for litigation.

What is the value of an IP audit for my business?

Cost reduction efforts – A well-managed list of IP assets can help you identify obsolete assets (e.g., obsolete software, machinery for which you own IP rights). Decisions can then be made to stop paying maintenance costs for obsolete assets, resulting in significant cost reductions.






Licensing – An IP audit is vital to know which IP assets are core to your business and which are not. Licensing decisions can then be made accordingly. For instance, you may decide to license a non-core IP asset in order to create an additional revenue stream.

Mergers and acquisitions – IP assets will play an important role in a third party deciding whether to merge with or acquire your business.

Anti-infringement actions – Knowing the value of your IP assets makes it easier to take decisions on whether it is cost-effective to take action against infringement of a particular IP asset and in what way this could be done.

Protecting and managing your IP assets

IP assets are protected by different IP rights, such as patents, copyrights, trademarks, industrial designs and geographical indications (GIs). Different types of IP are presented below.

| Legal Rights | What for? | How? | |
|--------------------------|--|--|---|
| Patents | New inventions | Application, examination and registration |  |
| Copyright | Original creative or artistic forms | Exists automatically. Possibility for voluntary registration in Seychelles |  |
| Trademarks | Distinctive identification of products and/or services | Use and/or registration |  |
| Industrial designs | External appearance | Application and registration |  |
| Geographical indications | Distinctiveness related to geographical origin | Application and registration |  |

Source: Adapted from the EPO IP Teaching Kit

III. Patents

What is a patent?

A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem. To get a patent, technical information about the invention must be disclosed to the public in a patent application. Today, patented inventions permeate every aspect of life, from electric lighting (patents held by Edison) to the iPhone (patents held by Apple).

Patent rights are obtained through an application made at the national IP Office of Seychelles.



Source: Shutterstock

Protection offered by patent rights

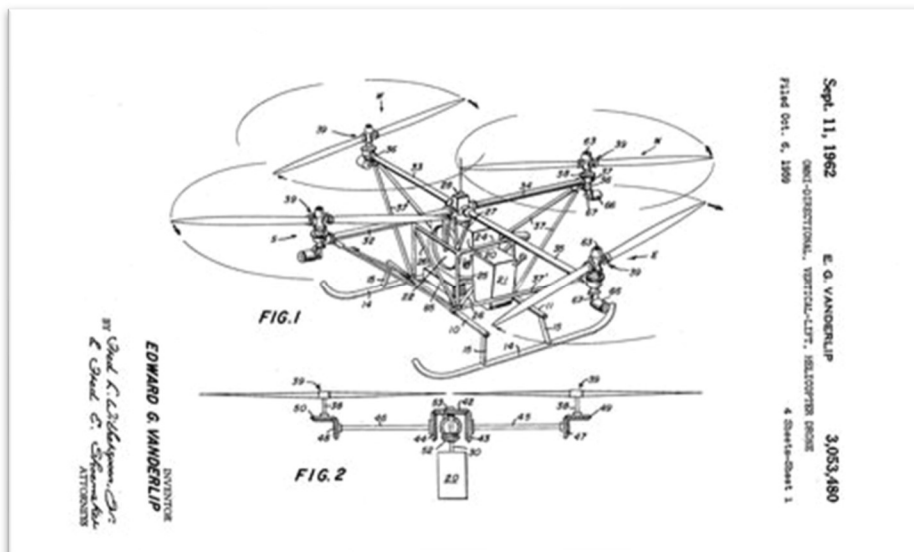
The patent owner has the exclusive right to prevent or stop others from commercially exploiting the patented invention. In other words, patent protection means that the invention cannot be commercially made, used, distributed, imported or sold by others without the patent owner's consent.

Where are my patent rights valid?

Patents are territorial rights. The exclusive rights conferred by patents are only applicable in Seychelles where a patent has been filed and granted, in accordance with the law of Seychelles.

How long does a patent last?

The protection is granted for a limited period, 20 years from the filing date of the application.



Quadcopter Drone

Patent Name: "Omni-directional, vertical-lift, helicopter drone"

The quadcopter drone, found today buzzing over parks, was first patented back in 1962. Edward G. Vanderlip, an engineer for Piasecki Aircraft Corporation, first designed a way to allow a helicopter's instruments to continue functioning in the event of a power failure.

Source

<https://patents.google.com/patent/US3053480A/en>

IV. Copyright

What is copyright?

Copyright is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture, and films, to computer programs, databases, advertisements, maps, and technical drawings.

What can be protected using copyright?

Exhaustive lists of works covered by copyright are usually not to be found in legislation. Nonetheless, broadly speaking, works commonly protected by copyright throughout the world include:

- literary works such as novels, poems, plays, reference works, newspaper articles;
- computer programs, databases;
- films, musical compositions, and choreography;
- artistic works such as paintings, drawings, photographs, and sculpture;
- architecture; and
- advertisements, maps, and technical drawings.

Remember that copyright protection extends only to expressions, and not to ideas, procedures, methods of operation or mathematical concepts as such. Copyright may or may not be available for a number of objects such as titles, slogans, or logos, depending on whether they contain sufficient authorship. Example of a work protected by copyright: Game of Thrones, TV series.

Protection offered by copyright

There are two types of rights under copyright:

- Economic rights: These allow the rights owner to derive financial reward from the use of their creative works by others; and
- Moral rights: These protect the non-economic interests of the author.

The rights owner has the economic right to authorise or prevent certain uses in relation to a work or, in some cases, to receive remuneration for the use of their work (such as through collective management). The holder of economic rights can prohibit or authorise:

- reproduction of a creative work in various forms, such as printed publication or sound recording;
- public performance of a creative work, (e.g., in a play or musical work);
- recording of a creative work, (e.g., as a DVD);
- broadcasting of a creative work, by radio, cable or satellite;
- translation of a creative work into other languages; and
- adaptation of a creative work, (e.g., a book into a film screenplay).

Examples of widely recognized moral rights include the right to claim authorship of a work and the right to oppose changes to a work that could harm the creator's reputation.

Can copyrights be registered?

In Seychelles, and according to the Berne Convention, copyright protection is obtained automatically without the need for registration or other formalities.

Seychelles has a system in place to allow for the voluntary registration of works. Such voluntary registration systems can help solve disputes over ownership or creation, as well as facilitate financial transactions, sales, and the assignment and/or transfer of rights.



Source: Shutterstock

How long does a copyright last?

In Seychelles, the economic and moral rights are protected during the life of the author and for 50 years after their death.

V. Trademarks

What is a trademark?

A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. Trademarks are protected by intellectual property rights.

How can I protect my trademark?

In Seychelles trademark protection can be obtained through registration, by filing an application for registration with the national IP office and paying the required fees. At the international level, you have two options: either you can file a trademark application with the trademark office of each country in which you are seeking protection, or you can use WIPO's Madrid System.



Source: Shutterstock

What rights does trademark registration provide?

Trademark registration will confer an exclusive right to the use of the registered trademark. This implies that the trademark can be exclusively used by its owner or licensed to another party for use in return for payment. Registration provides legal certainty and reinforces the position of the right holder, for example, in case of litigation.

How long does trademark protection last?

The term of trademark registration is ten years. It can be renewed indefinitely every 7 years on payment of additional fees. Trademark rights are private rights and protection is enforced through court orders.

What kinds of trademark can be registered?

A word or a combination of words, letters, and numerals can perfectly constitute a trademark. But trademarks may also consist of drawings, symbols, and three-dimensional features such as the shape and packaging of goods. In some jurisdictions non-visible signs such as sounds or fragrances, or colour shades used as distinguishing features can be registered, too.

Examples of shape mark containing word elements



Source : <https://euipo.europa.eu/ohimportal/en/trade-marks-examples>

VI. Industrial designs

What is an industrial design?

An industrial design constitutes the ornamental aspect of an article. It may consist of three-dimensional features, such as the shape of an article, or two-dimensional features, such as patterns, lines or colour. The visual appearance of a product is protected, but not the way it works (i.e., functional features).

In Seychelles, in order to be protected, industrial designs need to be independently created and new.

Protection offered by industrial designs

The owner of a registered industrial design has the right to prevent third parties from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.

What kind of products can benefit from industrial design protection?

Industrial designs are applied to a wide variety of products of industry and handicraft items: from packages and containers to furnishing and household goods, from lighting equipment to jewellery, and from electronic devices to textiles. Industrial designs may also be relevant to graphic symbols, graphical user interfaces (GUI), and logos.

How are industrial designs protected?

In Seychelles, an industrial design needs to be registered in order to be protected under industrial design law as a “registered design”.

Depending on the circumstances, industrial designs may also be protected as works of art under copyright law.

What is the difference between an industrial design right and a patent?

An industrial design right protects only the appearance or aesthetic features of a product, whereas a patent protects an invention that offers a new technical solution to a problem. In principle, an industrial design right does not protect the technical or functional features of a product. Such features could, however, potentially be protected by a patent.

Nessie Ladle by Jenny Pokryvailo



Source : <https://www.sessions.edu/notes-on-design/8-inspiring-examples-of-industrial-design/>

The Nessie Ladle exemplifies an industrial design where form meets function and aesthetics. Nessie's legs allow the ladle to stand upright on its own (great for preventing spills), and the handle gives aesthetically pleasing appearance of the Loch Ness monster – Nessie!

VII. Geographical indications

What is a geographical indication?

A geographical indication (GI) is a distinctive sign used to identify a product whose quality, reputation or other such characteristics relate to its geographical origin. GIs are place names (in some countries also words associated with a place) used to identify the origin and quality, reputation or other characteristics of products.

Well-known GIs include:



Type: Wine
Origin: Champagne, France



Type: Spirit
Origin: Tequila, Mexico



Type: Cheese
Origin: Roquefort

Source: <https://www.ipos.gov.sg/about-ip/geographical-indication>

The attributes of the goods may derive from either:

- the method of production;
- the ingredients used;
- the environmental or agricultural features of the region which give the product its distinctive qualities;
- a reputation developed in the region for producing a particular good of a certain quality over time.

Protection offered by GIs

Once a GI is registered, it is protected indefinitely as long as the specific characteristics, quality or reputation which have been the basis for the grant of the protection, exist.

Benefits offered by GIs

A GI gives assurance to consumers that the product they buy comes from a particular place and has the unique characteristics associated with this GI. It differentiates the product identified by the GI from other products that are not labelled with the GI.

Once a GI is registered in Seychelles, the producers or traders (or associations of such producers/traders) of the GI may take action against other persons who misuse the GI in Seychelles, such as using the GI in relation to products that did not originate in the place indicated by the GI in a way that misleads the public as to the geographical origin of the products.

Difference between a place name and a GI

While many businesses use location names to promote their goods, this does not mean these places become GIs. A GI is IP and provides its owner/s with exclusive rights over its use.

- A geographical place name simply describes the place a business is based in or where a good is sourced
- A GI must indicate goods which possess a special characteristic attributed to the geographic location where they are produced

There are also occasions where over time a region has developed a strong reputation for produce of a certain quality. For example, a coconut grower in Seychelles may wish to promote his fruit as Seychellois coconuts.

Even if these coconuts are actually grown in Seychelles, this alone does not make 'Seychelles' a GI. The coconuts would also need to have some special characteristic or reputation (such as sweeter, or larger, or thinner) that is attributable to the Seychelles area. The link between the special characteristics of the coconuts and the geography or reputation of the region is what creates a GI.

Difference between a standard trademark, certification trademark (CTM) and GI

- A standard trademark informs consumers about the commercial source of a good or service.
- CTMs and GIs indicate or distinguish the good itself.

Standard trademarks and CTMs/GIs are typically used in conjunction with each other.

Who can apply for a GI?

- a group of producers within a region that form an incorporated association in order to register and manage the GI;
- a local or state authority with the power to preserve the right of all producers in the GI region and protect against misuse of the GI.

If forming an incorporated association, the producers in the relevant region need to agree on standards and collaborate in order to develop, maintain and promote the GI. Before drafting the rules, producers should determine:

- the geographic boundaries for production;
- the techniques and standards that apply;
- how to promote the GI.



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