Introduction to Intellectual Property

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**Intellectual + Property**

- intangibles/products of the human mind: innovations, creations, brands, designs, trade secrets
- right to regulate if and how others may use

**Intellectual property ≠ real (tangible) property**

- ownership of physical book versus ownership of the copyright in the text of the book
- intangibles are non-rivalrous goods (i.e., they can be used by more than one person at the same time, with no loss of value)
- intangibles are easy and cheap to copy
- IP rights are not absolute: a delicate balance between owners and users
Public domain

• that what is not protected by IP: this space is important for use, innovation and creativity

Information economy

• yesterday’s economy: goods, factories and labour

• today’s economy: ideas, information and knowledge

Delicate balance

• IP rules regulate creation, access to and use of information and knowledge

• setting of the rules and adjudication of disputes is a complex puzzle fought over by users and owners (e.g., Apple vs. Samsung; “Stairway to Heaven”/”Taurus”)
10 key features of intellectual property systems

1. Established and enforced through national laws
2. IP rights are territorial: country by country
3. International treaties set basic standards and enable cross-border enforcement: no “one size fits all”
4. Rights are transferable – by contract
5. Rights are diverse in nature: “exclusive economic rights”, “moral rights”, “rights to compensation”
6. IP rights are subject to exceptions and limitations

IP-like rules well known in pre-existing customary laws

First national patent law: Venice, 1474
First national copyright law: England, 1709
First international patent and trademark treaty: Paris Convention, 1883
First international copyright treaty: Berne Convention, 1886

WIPO predecessor: 1893
WIPO: 1967
WIPO becomes a UN specialized agency: 1974
10 key features of intellectual property systems cont’d

7. IP rights provide owners with choices: to enforce or not; whom to allow to use and on what terms

8. Rights expire after a certain period (only trade mark rights can be extended indefinitely on certain conditions)

9. Most IP rights need first to applied for, examined and then registered – only copyright arises automatically

10. IP systems are in constant evolution – policymakers respond to new forms of intangibles, changing needs and owners and users
WIPO

The global forum for intellectual property

- International intergovernmental organization, UN specialized agency
- 192 member states
- 350 + accredited observers
- 1300 staff from 120 countries
- 26 treaties
What is intellectual property

- Creations of the human mind, the results of human creativity and innovation

- The IP system enables people to earn
  - recognition
  - financial benefit
  from what they invent or create

- Encourage inventiveness
  - Inventors and authors
  - Future inventors and authors
What can be protected?

- Intellectual property system
  - Inventions
  - Distinctive signs
  - Literary and artistic works
  - Designs
Overview of IP rights

- Patents
- Copyright
- Trade marks
- Trade secrets
- Industrial designs
- Geographical indications
- Unfair competition
Focus

- Patents
- Copyright
- Trademarks
- Geographical indications
- Industrial designs
- Trade secrets
- Unfair competition
Similarities between the IP rights

- Gives exclusive rights
  - Positive rights for authors/inventors

- Striving for balance

- Some procedures/rules for getting protection
  - Registration is needed *in general*

- Limits to protection
  - In time
  - To territory

- Most rights can be transferred or licensed
In what ways do IP rights differ?

- The subject that can be protected
- Requirements for gaining protection
- Conditions for protection
- Duration of protection
- The nature of protection, which exclusive rights are granted
Copyright

- Protects the *expression* of ideas not the idea or the knowledge per se

- Different types of works
Categories of works

- Literary
- Dramatic
- Musical
- Artistic
- Films
- Sound recordings
- Broadcasts
- Published editions
Exclusive rights, nature of protection

- **Economic rights**
  - Right to copy
  - Derivative works
  - Right to distribution
  - Public performance
  - Right to display
  - Broadcasting – digital audio transmission

- **Moral rights**
  - Attribution – right to recognition
  - Integrity
Copyright

- Conditions
  - Original
  - Material form

- Duration
  - 50 years after the death of the author in most countries

- Requirements
  - No, automatic protection (when turned into a tangible/material form)
Exceptions

- Inspiration allowed - not copy!
  - Encourage inventiveness and creativity

- Fair use
  - Private use or research purposes
  - Criticism or reviews
  - Reporting current events
  - Incidental inclusion of copyright protected work in another work (film recording, broadcast etc.)

- Facts cannot get copyright protection (but the way facts are presented is protectable)
■ Inventions – new and inventive products and processes.
  ■ A technical solution to a problem (a product) or
  ■ A new way of doing something (a process)
Requirements

- Novelty - no “prior art”

- Invention – a creation of the human mind
  - Naturally occurring processes and products are not patentable
  - Inventive, non-obvious

- Industrially applicable / useful

- Registration
  - Yes
Exclusive rights, nature of protection

- A right granted by a state to an inventor
  - to exclude others from making, using, selling or importing
    - in a limited territory
    - for the same sort of goods or services
Patent

- **Conditions**
  - You get protection in exchange for a **disclosure of specification** of the invention
  - Someone can reproduce/repeat
  - Best way for reproduction

- **Duration**
  - Limited period, 20 years in many countries

- Balance + Encourage inventiveness and creativity
Trademarks

- Right that protects distinctive signs

- Distinguishes goods and services provided by specific person or enterprise
  - Customers can identify the goods and services they need
  - Trademark indicates the nature and quality
  - Marketing strategy
What is a sign?

- Words
- Designs
- Letters
- Numerals
- The shape of goods or their packaging
- Slogans
- Colours
- Sounds
- Smells
- Gestures
- Taste
Requirements

- To gain protection, the trademark has to be
  - Used in trade
  - Must be distinctive
  - Should not be generic, descriptive or deceptive
  - Should not be identical or confusingly similar to another trademark
Trademarks

- **Duration**
  - 10 years duration; renewable

- **Conditions**
  - Usually required to be registered

- **Exclusive rights, nature of rights**
  - Only trademark owner can use the sign
Geographical Indications

- Sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin
  - Differentiates products for customers

- Geographical origin may be important because:
  - Natural factors – i.e., local soil, climate etc
  - Human factors – i.e., skills, knowledge, practices/traditions

- Exclusive rights, nature of protection
  - Prevents others from using a sign that could be misleading
  - Creates a niche market for the producers of the area
Geographical Indications

- Requirements
  - Registration
  - Book of requirements/specifications set

- Importance of educating consumers/raising awareness

- Duration
  - Once registered – lasts until registration is cancelled
Industrial Designs

- Protect the aesthetic or ornamental aspect of a product i.e., how it looks rather than functionality

- Only new designs are protected – must differ from existing designs

- Conditions
  - Usually need registration
Industrial Designs

- Duration
  - Generally 10 years

- Exclusive rights, nature of protection
  - making, selling or importing your design
Trade Secrets (or Confidential Information)

- Protects secret knowledge, such as manufacturing processes, secret ingredients etc.

- Duration
  - If kept secret – indefinite protection

- Conditions
  - No registration required
  - Measures needs to be taken to keep it secret

- Exceptions
  - Will not protect where there has been incidental / independent discoveries
Unfair Competition

- Subject, protects *against*
  - the false labelling of products
  - creating confusion discrediting other brands
  - *Passing off your product as if they were someone else’s*

- Can supplement the other IP regimes

- Conditions
  - No registration required

- Falsely using someone’s rights and/or reputation
<table>
<thead>
<tr>
<th></th>
<th>Patents</th>
<th>Copyright</th>
<th>Trademarks</th>
<th>Geographical indications</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duration</td>
<td>20 years</td>
<td>50 y. after death of creator</td>
<td>10 y. but renewable</td>
<td>Forever</td>
</tr>
<tr>
<td>Subject</td>
<td>Idea is protected</td>
<td>Expressions</td>
<td>Sign used in trade</td>
<td>Signs used to indicate place/area of origin</td>
</tr>
<tr>
<td></td>
<td>Yes</td>
<td>No</td>
<td>Yes (generally)</td>
<td>Yes</td>
</tr>
</tbody>
</table>
Gäjhtoe!
Thank you!
Introduction to IP, TK and TCEs

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Outline

- Recap – key features of IP rights
- Are TK and TCEs IP?
- What are IP rights useful for?
- Some examples
- Some tools and resources
Key features of IP rights

- Protect products of creative intellectual activity
- Criteria of protection
- Confer exclusive rights
- Limitations and exceptions
- Limited in time
IP

- Copyright
- Patents
- Designs
- GIs
- Trade marks
Why do we have intellectual property rights?

What is the public domain?
Are TK and TCEs intellectual property?

- TK/TCEs are creative expressions of indigenous peoples and local communities.
- They are *products of creative intellectual activity* so they are “intellectual property”
TK and TCEs: two sides of the same coin
Traditional cultural expressions

- Forms in which traditional knowledge and culture are expressed, communicated and manifested
  - Ex: songs, performances, crafts, names, symbols, art, narratives, designs, architecture and motifs

- May be tangible, intangible or mixed
Traditional knowledge

- Content or substance of knowledge which results from intellectual activity in a traditional context

- Includes know-how, skills, innovations, practices, and learning

- Not limited to a specific technical field and may include, traditional agricultural, environmental, medicinal knowledge, and any traditional knowledge associated with cultural expressions and genetic resources
Characteristics of TK and TCEs

- Are handed down from generation to generation, either orally or by imitation

- Reflect a community’s cultural and social identity

- Are often made by “authors unknown” and are regarded as “belonging” to a community under customary laws

- Are constantly evolving, developing and being recreated within a community
TK and TCEs are intellectual property

Traditional knowledge

Traditional cultural expressions

They cannot be fully protected by existing IP systems due to inadequacies of the system
Options for protecting TK/TCEs with IP

- Protection with *conventional/existing* IP systems
- Adaptation of *conventional/existing* IP systems
- *Sui generis* protection
What are IP rights useful for?

- Defensive protection
  - Prevent third party uses
  - Prevent third party gaining IP rights over TK/TCEs

- Positive protection
  - Proactive use of IP rights
Copyright

- Key features
- Idea/expression
- No protection for style
- Limitations
  - Originality
  - Authorship
  - Term of protection
  - Fixation
- Protection of contemporary TCEs
Trade marks

- Key features
- Registration system
- First come first served
- Use as a distinctive tool – marketing tool
- Preventing offensive and deceptive marks
- May be licensed
Collective and certification marks

- Distinctive signs
- Allow for collective use
- Can certify some characteristics of the goods
  - Geographical origin
  - Authenticity
- Possibility of joint marketing campaigns
- Need for education/awareness-raising
- Enable consumer recognition and customer loyalty
Geographical indications

- Indication used on products
  - specific geographical origin
  - qualities, characteristics or a reputation
- Collective use
- Can help preserve traditional ways
- TK as such not protected
- Premium price
- Heavier implementation
Designs

- Key features
- Protects aesthetic elements of a product
- “The look and feel”
- 2D or 3D
- Shape or designs
Patents

- Key elements
  - Novelty, inventive step, industrial application

- Defensive element – preventing the grant of erroneous patents

- Positive element – encouraging TK-based innovation
- Nutmeg used since ancient times in India for oral diseases
- Patent filed for “oral compositions containing extracts of nutmeg and related methods”
- Prior art search found references in Indian TK digital library
- Invention did not meet requirements of inventive step
- Rejected
N° 5
La Propiedad Intelectual y la Artesanía Tradicional

Introducción

La artesanía tradicional requiere técnicas, habilidades y conocimientos especializados y tradicionales que a menudo son de considerables antecedentes y se transmiten de generación en generación. Los productos artesanales pueden constituir expresiones culturales tradicionales (ECT) por medio de su diseño, apariencia y estilo, y también pueden prestar conocimientos tradicionales (CCTT) mediante las capacidades y los conocimientos especializados utilizados para producirlos.

Los CCTT y las ECT incluyen los productos artesanales, como guayaberas, tapetes o colchas, que son producidos por los artesanos y que mantienen la cultura tradicional. Además, los productos artesanales también pueden ser utilizados en el desarrollo económico. Sin embargo, por desgracia, las técnicas tradicionales y el estilo de la artesanía son expuestos a la imitación y a la apropiación indebidamente. Diversas fuentes han identificado la falta de regulación en el reconocimiento y protección de la artesanía tradicional y la composición de la calidad de los productos genuinos.

Se están planteando propuestas y soluciones para la protección jurídica de los CCTT y las ECT a fin de impedir su uso o apropiación indebida. Además, es posible utilizar estas soluciones para la protección de la artesanía tradicional. Actualmente, el Comité Intergubernamental de la OMP sobre Propiedad Intelectual y Recursos Genéticos, Conocimientos Tradicionales y Tradiciones (GTC) tienen lugar las negociaciones sobre un instrumento jurídico internacional para proteger los CCTT y las ECT.

Glosas negociaciones tienen por fin examinar los vínculos existentes entre el sistema de propiedad intelectual (PI) y las preocupaciones de los poseedores de CCTT y ECT. Varios países y regiones han desarrollado sistemas para proteger los CCTT y las ECT.

Mientras tanto, los artesanos y las organizaciones de artesanos también pueden utilizar los derechos de PI, como las marcas, las indicaciones geográficas, el derecho de autor, los dibujos y modelos industriales o las patentes, para proteger sus artesanías. Consciente de esto, el WIPO también puede utilizar estos derechos para proteger la artesanía tradicional contra la reproducción y la adaptación no autorizadas, y contra el uso engañoso de su estilo y reputación.

En el presente documento se resaltan medidas prácticas, acuerdos y estrategias basados en la comunidad para utilizar el sistema de PI, en favor del reconocimiento, la protección, la gestión, la mercadotecnia y la comercialización de la artesanía tradicional en tanto que activo cultural y económico.

¿Qué es la “Artesanía”? 

A veces, la artesanía se refiere a los productos artesanales, los productos artesanales, las obras creativas tradicionales o los objetos de arte tradicional. No hay una definición de artesanía aceptada universalmente, pero cabe señalar las siguientes características comunes:
Copyright

Collective marks

Geographical indications

Trade secrets

Industrial designs
Thank you!

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