



Intellectual property tools: A Canadian overview

WIPO Arctic Workshop
May 14 to 16, 2019



TODAY'S DISCUSSION

AGENDA

- Canadian Intellectual Property Office (CIPO)
- What is intellectual property (IP)?
- Traditional knowledge (TK) and traditional cultural expressions (TCEs)
- Possible routes for protecting TK and TCEs through IP tools
- IP strategy and commercialization
- CIPO resources

CANADIAN INTELLECTUAL PROPERTY OFFICE

WHO WE ARE

- CIPO is part of **Innovation, Science and Economic Development Canada**.
- It is a special operating agency responsible for the **administration and processing** of the greater part of IP in Canada.



Examine and grant IP rights



Provide a quasi-judicial function for trademarks and patents



Raise awareness for the effective use of IP



Share IP information to support innovation



Represent CIPO internationally to support businesses operating globally

Focus on the needs of high-growth small and medium-sized enterprises (SMEs), key sectors and markets, and underrepresented groups, such as Indigenous and women entrepreneurs

Building and street
Ottawa Convention Centre, Ottawa, Ontario
(Source: Brand Canada)



WHAT IS IP?

Intellectual property (IP) is a **creation** of the mind.

TRADEMARK



A “sign” used to differentiate your products and services from those of others

PATENT



For new, useful inventions that are not obvious

INDUSTRIAL DESIGN



Unique appearance of a product—its shape, configuration, pattern, ornament or any combination of these features

COPYRIGHT



For original works

TRADE SECRET



Confidential and valuable business information



TRADITIONAL KNOWLEDGE AND TRADITIONAL CULTURAL EXPRESSIONS

Traditional knowledge (TK)

TK generally refers to know-how, skills, innovations and practices developed by Indigenous peoples related to biodiversity, agriculture, health and craftsmanship.

Traditional cultural expressions (TCEs)

TCEs generally refer to tangible and intangible forms in which TK and culture are expressed and may include oral stories, artwork, handicrafts, dances, fabric, songs or ceremonies.



Totems room
Canadian Museum of History, Gatineau, Quebec
(Source: Brand Canada)

WHY IP MATTERS



WHY SHOULD YOU CARE ABOUT IP?

It is a valuable business asset to:

- give you an **edge over the competition**
- help build a **reputation and goodwill** with your partners and clients

You can use IP to:

- attract **financing**
- strategically **achieve business goals**
- secure your **markets**

INTELLECTUAL PROPERTY STATISTICS

IP DATA: DO YOU KNOW WHAT IS HAPPENING IN THE MARKET, THE REGION OR THE WORLD?

Benefits

- Gather competitive intelligence
- Determine freedom to operate in your market
- Position yourself among competitors
- Prepare for IP risks
- Form potential joint ventures

Bird view of the Hotel (parliament in the background)
Fairmont Chateau Laurier, Ottawa, Ontario
(Source: Brand Canada)



HOW CAN I BENEFIT FROM KNOWLEDGE OF TK, TCEs AND IP?

Having knowledge of TK, TCEs and the IP system can provide **greater options to preserve and promote** Indigenous knowledge and culture.

Preservation

- Preserve TK and TCEs.
- Protect yourself from the risk of cultural misappropriation and misuse.
- Help protect and access your TK.

Commercialization opportunities

- Take advantage of the increased demand in the marketplace for more natural and authentic products.
- Benefit from the increasing popularity of Indigenous traditions, practices, symbols, designs and textiles.
- License your traditional knowledge to others to create new products (i.e. pharmaceutical products, sporting equipment, clothing designs, etc.).



POSSIBLE ROUTES FOR PROTECTING TK AND TCEs THROUGH IP

There are two main approaches:

- **Defensive protection:** It is not about gaining IP rights but rather preventing others outside the Indigenous community from acquiring IP rights over TK and TCEs. Common solutions include monitoring the market for use of TK and TCEs by non-Indigenous businesses.
- **Offensive protection:** The granting of rights can empower communities to promote their TK and TCEs, control their uses and benefit from their commercial utility (e.g. trademarks, patents, copyright or other unique options).



TRADEMARKS



A trademark is a “sign” that differentiates your products and services from others.



A trademark automatically provides rights if it is being used, but it can also be registered.



It gives you the right to exclude others from using your trademark.



Protection lasts 15 years and is renewable every 15 years.



As of June 17, 2019, protection for a registered trademark will last 10 years from the registration date and will be renewable every 10 years.

Manitobah Mukluks

- Métis entrepreneur Sean McCormick grew his company from a small trading post to a fast-growing footwear brand.
- The company has filed registered trademarks and generates more than \$25 million in annual sales.

MANITOBAH
MUKLUKS



TRADEMARKS: EXAMPLES



TMA676131

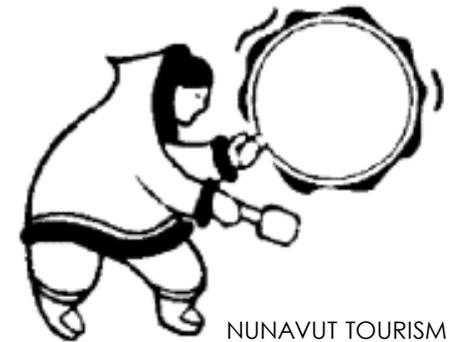


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Inuit and sun
Kativik Regional Government
TMA848525



NUNAVIK NICKEL & DESIGN
Canadian Royalties Inc.
TMA889342



NUNAVUT TOURISM
DRUMMER Design
TMA791103



FANCIFUL BIRD Design
Nunavut Arctic College
TMA601556



Official mark - 0919725



GEOGRAPHICAL INDICATIONS



A geographical indication (GI) is used on a product that has a **specific geographical origin** and possesses qualities, a reputation or other characteristics attributable to that origin.



A request must be submitted to CIPO to have a GI entered on the list of protected GIs in Canada.



GIs can identify wines, spirits, agricultural products or food of a category set out in the schedule (not all are included).



A GI has to be applied for by a responsible authority.

Mais sucré de Neuville

- Neuville is a village on the north shore of the Saint Lawrence River, just west of Quebec City.
- Particular geographical factors influence the ability to produce this quality sweet corn.





CERTIFICATION MARKS



A certification mark is used to distinguish goods and services based on:

- the character or quality
- the working conditions under which the goods or services are produced or performed
- the class of persons producing or performing the goods or services
- the area where the goods are produced or the services performed



Registration can be done only by an entity not engaged in the manufacture, sale, leasing or hiring of services.



The registered owner controls the licensing and “use” of the mark.

Inuit Art Foundation

- The Igloo Tag Trademark was established to help protect Inuit artists from **copycats** by certifying items as being authentic.
- It was officially transferred to the **Inuit Art Foundation** in 2017.





PATENTS



A patent protects a **new, useful** invention that is **not obvious**.



It gives you the right to exclude others from making, using or selling the invention.



It is valid for up to 20 years from the filing date.



The application process includes full disclosure and an examination before the patent is granted.



There is a 12-month grace period.

Asham Curling Supplies

- Métis entrepreneur Arnold Asham built his namesake company on innovations in the curling industry.
- The company has filed numerous applications to protect its innovative curling shoes and brooms.



Arnold Asham
CA2326254 C
granted 2002/04/14

i If an invention simply replicates traditional knowledge, it does not meet the requirement of novelty.



PLANT BREEDERS' RIGHTS



Plant breeders' rights protect the propagating materials of **new plant varieties**.



They give you the right to exclude others from using a protected plant variety.



Registration is with the Canadian Food Inspection Agency, not CIPO.



Protection lasts up to 25 years for trees and vines and up to 20 years for other plant varieties.



There is a 12-month grace period for selling the variety.

White Flint Corn

- In the 1990s, the Indian Agriculture Program of Ontario (IAPO) researched White Flint corn, renowned for its flour and high protein content.
- The IAPO's goals were to develop new varieties of corn that could be registered in Canada and other countries, and to market them in North America and Europe.





COPYRIGHT



Copyright protects creative, **original works** in various forms: literary, dramatic, musical and artistic (e.g. book, play, music composition).



It gives you the exclusive rights to reproduce the work and to publish it, translate it, perform it, etc.



Related rights, such as the rights of music performers, are also protected.



Protection is automatic at creation.



In Canada, protection generally lasts for the life of creator + 50 years.

Protections under the *Copyright Act*

They have been widely used by Indigenous artists, performers, composers and writers:

- Pacific coast wood carvings, including masks and totem poles
- Haida silver jewelry
- songs and sound recordings
- Inuit sculptures

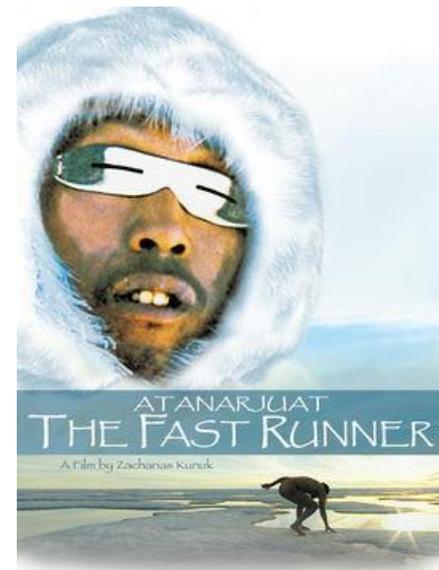
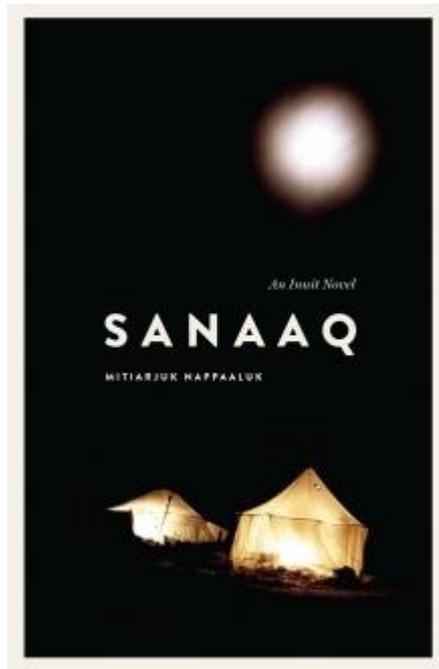


Indigenous singer

Dawson City Music Festival, Dawson City, Yukon
(Source: Brand Canada)



COPYRIGHT: EXAMPLES





INDUSTRIAL DESIGNS

- 🛡️ An industrial design is a product with a **unique appearance**—its shape, configuration, pattern or ornament, or any combination of these features.
- 📄 It gives you the right to exclude others from making, using or selling the product.
- 🕒 Protection lasts 5 to 15 years (renewable).
- 📁 The design must be registered.
- 🕒 There is a 12-month grace period.

West Baffin Eskimo Cooperative Ltd.

- The company filed more than 50 industrial designs in the late 1960s.
- These covered fabrics using traditional images of animals and Inuit people.



The West Baffin Eskimo
Cooperative Ltd.
Registered: 1965/09/27



INDUSTRIAL DESIGN: EXAMPLES

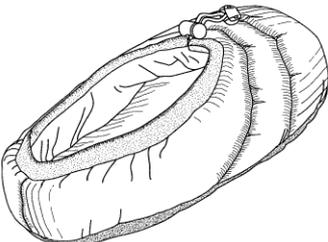


FIG.1



FIG.2

BAFFIN Inc.
121156



FIG.1

BAFFIN inc.
148710



FIG 1



TRADE SECRETS



A trade secret is confidential and valuable business information.



Its value is tied to your ability to keep it secret and the inability of others to replicate it.



No registration or formal rights exist.



Protection lasts as long as confidentiality is maintained.



Never disclose the information without patenting or a non-disclosure agreement!
(Consider costs and benefits)

Unaaq Fisheries

- It is owned by the Inuit people of Northern Quebec and Baffin Island.
- It regularly transfers proprietary technologies to other communities using its own experience in the commercial fishing industry.
- The techniques it develops are protected as trade secrets.

Information icon **Laws on confidential information can be used by Indigenous peoples and local communities to protect their confidential TK and TCEs.**



SUMMARY: PROTECTION UNDER CANADA'S IP REGIME

- **Trademarks** are the most relevant where **names, signs and symbols** are concerned.
- **Certification marks** are relevant to distinguish products and services based on the **character or quality**, the **working conditions** under which the goods and services are produced or performed, the **class of persons** producing or performing the goods or services, or the **area** where the goods are made or the services performed.
- **Geographical indications** are relevant to protect **food products** from traditional territories and associated know-how.
- **Copyright** and related rights are relevant for the protection of **original creations** and **traditional cultural expressions**.
- **Trade secrets**, commonly protected by confidentiality agreements, are relevant when **sharing traditional knowledge**.
- Under certain circumstances, **patents, industrial designs and plant breeders' rights** could be used to protect new **innovations, designs or plant varieties**.



WHAT IS AN IP STRATEGY?

It is a set of **plans** and **actions** designed to maximize the value of IP to **achieving business objectives**:



Take **inventory** of intangible assets and identify your commercial strengths.



Know the **IP holdings and strategy of your competitors**.



Implement an IP strategy to maximize the positive impacts of IP on revenue, competitiveness and reputation.



Monitor and enforce your IP rights.



IP AWARENESS AND EDUCATION PROGRAM

Focus on inclusive growth by targeting efforts to reach high-growth sectors, technology clusters, high-potential SMEs, key markets, women entrepreneurs and Indigenous people

IP For Business



Access IP resources

Tools and information to better acquire, manage and leverage your IP assets

- IP Toolkit
- IP roadmaps
- IP strategy assessment tool
- Doing business abroad guides
- Tech transfer toolkit (coming soon)

IP Academy



Attend IP learning events

Suite of seminars and training services for businesses

- Seminars and webinars
- E-learning modules
- IP boot camps
- Search-a-thons
- Case studies
- Success stories
- Custom training programs

IP Hub



Talk with an IP expert

Connect with IP experts to answer your questions

- **Contact the Client Service Centre** for general IP information and guidance on the application process
- **Connect with an IP advisor** to receive help with understanding the value of your IP and guidance as you develop your IP strategy



SPEAK WITH AN IP ADVISOR

Connect with IP experts to answer your questions





IP AWARENESS AND EDUCATION INITIATIVES FOR INDIGENOUS PEOPLES AND BUSINESSES

- CIPO is working to expand its presence and partnerships in Indigenous-focused networks and communities.
- CIPO is working with two main organizations:
 - **Canadian Council for Aboriginal Business (CCAB)**

The CCAB builds bridges between Aboriginal and non-Aboriginal peoples, businesses and communities through diverse programming, tools, training, network building, major business awards and national events.
 - **National Aboriginal Capital Corporations Association (NACCA)**

The NACCA is a network of over 50 Aboriginal Financial Institutions (AFIs) dedicated to stimulating economic growth for Aboriginal people in Canada. The AFI network has provided over 45,000 loans, totaling over \$2.5 billion, to businesses owned by First Nations, Métis and Inuit people.



IP AWARENESS AND EDUCATION INITIATIVES FOR INDIGENOUS PEOPLES AND BUSINESSES

CCAB partnership activities

- **Interactive IP symposium** hosted by CIPO for Aboriginal businesses that discussed why IP matters and reviewed CIPO's program, tools and resources as well as shared Aboriginal business success stories
- Effort to embed CIPO's IP tools and resources into the **CCAB's service offering**

NACCA partnership activities

- **IP webinar** delivered to employees of 16 different AFIs
- **IP and CIPO tools and resources presentation** delivered to AFI general managers at the NACCA General Managers' Meeting
- **Kiosk** at NACCA's Indigenous Economic Prosperity Forum



IP AWARENESS AND EDUCATION INITIATIVES FOR INDIGENOUS PEOPLES AND BUSINESSES

Content development

- CIPO has collaborated with the Centre for International Governance Innovation on the development of a two-pager on an introduction to traditional knowledge, traditional cultural expressions and IP rights.
- Presentation materials have been broadly shared with partners and relevant government departments for their review and comments.
- CIPO continues to work with partners to identify Indigenous IP success stories.

IP success stories

- **National Indigenous Peoples Day** IP stories
- **Inuit Art Foundation** success story

Contact CIPO



Canada.ca/IP-for-Business



Client Service Centre

Phone: 1-866-997-1936



In-person meetings by appointment

Canadian Intellectual Property Office

Place du Portage I

50 Victoria St., room C229

Gatineau, QC K1A 0C9



Director, Services to Business

Jeffrey Orser – jeffrey.orser@canada.ca



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Other CIPO events: Search “CIPO calendar of events”



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