



# Protecting Your Intellectual Property

## 'IP Rights, Patents, Trade marks & Copyright'

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# PROTECTING YOUR INTELLECTUAL PROPERTY

## Understanding the Importance of Intellectual Property Rights

### What is Intellectual Property (IP)?

IP assets are creations of the mind that are recognised and protected by law as property (assets) in their own right. These assets result from intellectual activity in the scientific, industrial, literary, artistic, musical and dramatic fields, etc.

They are intangible assets which give the owner the legal rights to prevent unauthorised use or copying, as well as to monetize by being able to licence these IP rights to multiple licensees in different jurisdictions around the world.

### What is “Intellectual Property Rights”?

Intellectual Property (IP) rights are fundamentally important to any business. Knowing how and when to protect your original creations against unauthorised use or copying is critical to being able to protect your investments and creative assets.

### How does it help MSMEs?

MSMEs need to know that IP are assets that are valuable to any business and without registration or other legal protection of your IP rights, those intangible assets can be easily used without your consent, resulting in loss of goodwill and revenue.

MSMEs also need to know that if they use other people’s IP without consent or otherwise unlawfully, they expose themselves to litigation and to loss of goodwill, reputation and revenue.



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**Intellectual Property (IP) is divided into two categories:**

## **1. Industrial Property**

This includes inventions (patents), trademarks, industrial designs, and geographic indications of source.

## **2. Copyright**

This includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs.

Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and those of broadcasters in their radio and television programs.

Let's dive into the components of these two categories in more detail:

### **Industrial Property: Patents**

The longest standing, best known and possibly the economically most valuable form of protection of rights under intellectual property law comes in the form of patents.

### **Jamaican Patent Legislation**

The legislation governing patents is found in the Patents Act of 1857 which was amended in 1974 and 1975.

A patent is essentially the grant by the state of a monopoly to an inventor who has used his or her skill to invent something. The life of a patent is normally fourteen years from the date on which it is issued. The Act provides that the Governor General may, if it is considered expedient, extend the Patent for a further term of seven years.



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## Patents Cont'd

- Patents are frequently referred to as “monopolies”, because it prevents competitors from copying the invention.
- The owner is given a statutory right to prevent others from commercially exploiting his invention, which is frequently referred to as a right to exclude others from making, using or selling the invention.
- **What can be patented:**
  - The invention must be useful: Capable of some industrial use, can be applied for practical purposes, not purely theoretical.
  - Anything that speaks of: art, machine, manufacture, or composition of matter.
  - An invention that is new and “not known or used within the island”, according to the Act.

## How to Apply for a Patent (*Apply at JIPO: [www.jipo.gov.jm](http://www.jipo.gov.jm)*)

- Any inventor or anyone who has the inventor’s permission to apply for a Patent may obtain it by complying with the requirements of the Act.
- A company may not apply for a patent unless as a first inventor in Jamaica. If it is desired that the company be the ultimate owner of the patent, it is necessary for the application to be accompanied by an Assignment from the inventor, that is the company is an assignee of the inventor.
- More than one person may apply for the same patent. If each had a share in the ideas forming the invention, they are joint inventors and should file a joint application. The Patent will be issued to them jointly.



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## Industrial Property - Trade Marks

“Trade mark”, according to Section 2(1) of Trade Marks Act of 1999, means any sign that is capable of being graphically represented and capable of distinguishing the goods or services of one undertaking from those of another undertaking.”

The definition contains 3 elements.

1. A trade mark is described as any “sign”
2. It is capable of being represented graphically
3. It has to be distinctive

Logos, catch phrases and images all fall within the ambit of trademark and form a valuable part of the good will of a business.



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## Copyright

### Definition:

- Copyright which simply means the right to copy, is a collective term for a bundle of economic and moral rights granted by law to creators of original 'works of the mind' in literature, drama, art and music.

### Forms and Mediums:

- It is concerned with virtually all forms and methods of public communication: printed publications and matters as sound and television broadcasting, films for public exhibition in cinemas, books, etc. and even computerized systems for the storage and retrieval of information.

### What does Copyright protect?

Every production in the literary, scientific and artistic domain, whatever the mode or form of expression.

The Copyright Act of 1993 characterises copyright as a property right and states that it may subsist in original literary, dramatic, musical or artistic works:

- Sound recordings, films, broadcasts or cable programmes
- Typographical arrangements of published editions

### How does Copyright arise?

- Copyright springs into life immediately on creation of the work, therefore the work is protected as soon as it is recorded, in writing or otherwise on in some medium paper, canvas, tape disc or film or other recording medium from which it is capable of being reproduced.



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## How to assign Copyright:

The copyright notice, that is, the word 'Copyright ' and the international copyright symbol ,©, should be visible on the recorded medium along with the date of creation and the name of the author of the work.

## Is Registration needed for Copyright?

Unlike other intellectual property rights such as patents and trade marks, there are no formalities required for copyrights to exist and no system of registration of rights, it is an **unregistered right!**

- However, to secure proof of authorship in the work, creators can mail a copy of the work to themselves in a sealed self-addressed envelope by registered mail through the post-office.

## Works not protected by Copyright:

Copyright protection does not extend to an idea, concept, title by itself, process, principle, procedure, method, factual information, system or discovery or things of a similar nature.

## For residing Jamaicans of original works:

- It is a requirement under the Jamaican Legal Deposits Act, that any person residing in Jamaica who publishes any library matter (which includes any document, paper, record or tape) is to deposit copies of the publication with the National Library of Jamaica (which may also provide a publicly recorded link between the publisher and the work).
- (Contact: National Library of Jamaica (NLJ) - [nlj.org.jm](http://nlj.org.jm); 876-967-1526)



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## Who owns the Copyright?

- The author of a work is the initial owner of the Copyright in that work. All Jamaican nationals, citizens, habitual residents and corporate bodies established under Jamaican Law qualify.

## How do Jamaicans qualify?

- Jamaicans qualify for international Copyright protection in more than 160 countries who are all members of the principal international Treaty for Copyright protection known as the Berne Convention. (Including: United States, Canada, countries of the European Union, Asia, and Africa).

## Copyright lifespan:

- Copyright in literary, dramatic, musical and artistic works lasts for the lifetime of the author and a period of 95 years after the death of the author.
- In cable programmes and broadcasts, Copyright lasts for 95 years from the end of the year in which the programme was included in a cable programme service, or the year in which the broadcast was made.
- In typographical arrangement of a published edition lasts for 50 years from the year in which the edition is first published.

## Granting Copyright to others:

- The Copyright Owner may grant an assignment or license to another person, authorizing that person to perform any of the restricted acts in respect of the protected works(s).

## Restrictions of Copyright:

- You are able to restrict others from: Reproducing the work; issuing copies of the work to the public; making an adaptation of the work in public, or in the case of a sound recording, film, broadcast or cable programme, playing or showing the work in public.





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## APPENDIX

### Terms to note:

- **Intellectual Property (IP)** - Intangible assets which give the owner the legal rights to prevent unauthorised use or copying, as well as to monetize being able to licence these IP rights to multiple licensees in different jurisdictions around the world.
- Two types of IP are Industrial Property and Copyright.
- **Industrial Property** - A category of IP that includes inventions (patents), trademarks, industrial designs, and geographic indications of source.
- **Copyright** - A category of IP that consists of a bundle of different rights held by a creator of literary and artistic works such as novels, poems and plays, films, musical works, drawings, paintings, photographs and sculptures, and architectural designs.
- **Patents** - These prevent copying of inventions, which are the longest standing and most economically valuable form of protection.
- **Trade Marks** - Any sign that is capable of being graphically represented and capable of distinguishing the goods or services of one undertaking from those of another undertaking. Eg: Logos, catch phrases and images.



# RESOURCES

**Dr. Marcus Goffe** - Deputy Director/ Legal Counsel, Legal and Corporate Relations Branch, Jamaica Intellectual Property Office

- Email: [marcus.goffe@jipo.gov.jm](mailto:marcus.goffe@jipo.gov.jm)
- Website: [www.jipo.gov.jm](http://www.jipo.gov.jm)

**Andrea Chung** - Co-founder/ Executive Director, Kingston Creative

- Email: [andread@bookophilia.com](mailto:andread@bookophilia.com)
- Website: <https://kingstoncreative.org>

**Ronald Young** - Attorney-at-law and Managing Partner, Young Law

- Email: [ryoung@younglawja.com](mailto:ryoung@younglawja.com)
- Website: <https://www.younglawja.com>

***To apply for all Intellectual Property Protection and for assistance,***

Go to: Jamaica Intellectual Property Office (JIPO)

Website: [www.jipo.gov.jm](http://www.jipo.gov.jm)

Tel: 876-946-1300, 876-946-0789, 876-946-9216

Address: 18 Trafalgar Road, Kingston 10, Jamaica