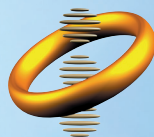
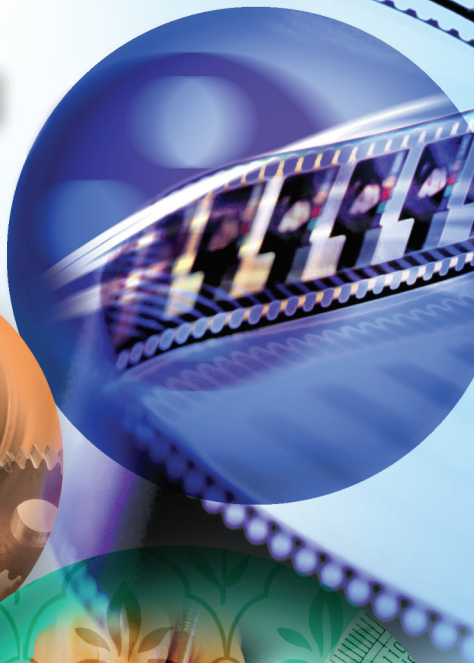


Intellectual Property in Hong Kong



Intellectual Property Department
The Government of the Hong Kong
Special Administrative Region

Disclaimer

This publication is intended only for general information and shall not be construed as a substitute for formal legal advice. Please seek independent professional advice for protection of your Intellectual Property.

Intellectual Property in Hong Kong

Contents

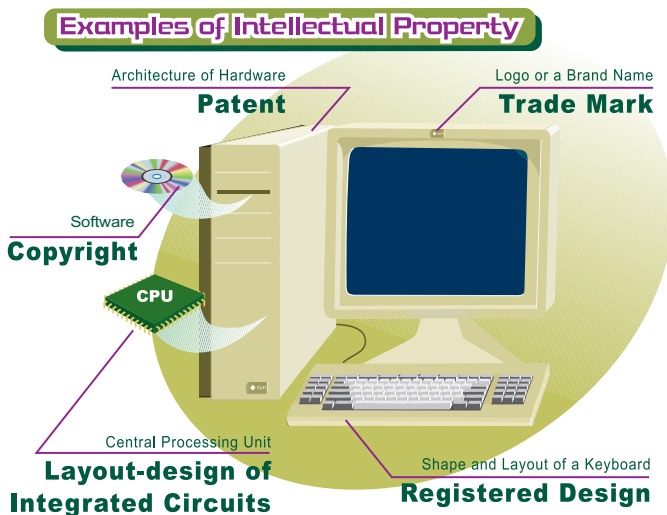


Introduction	2
Intellectual Property Protection in Hong Kong	6
Intellectual Property Law	8
Trade Marks	12
Patents	17
Copyright	21
Registered Designs	26
Layout-design (Topography) of Integrated Circuits	28
Plant Varieties Protection	29
Trade Secrets	30
Intellectual Property Department	32

Introduction

What is Intellectual Property?

Intellectual property is the name commonly given to a group of separate intangible property rights. These include trade marks, patents, copyright, designs, plant varieties and the layout-design of integrated circuits. Intellectual property is important to our daily lives: different kinds of intellectual property underlie consumer products, such as brand-names and logos on clothes, pharmaceutical inventions, articles in the newspapers, TV programmes, pop songs, cinema films and fashion design. The following example of a computer illustrates the nature of different kinds of intellectual property in the product.



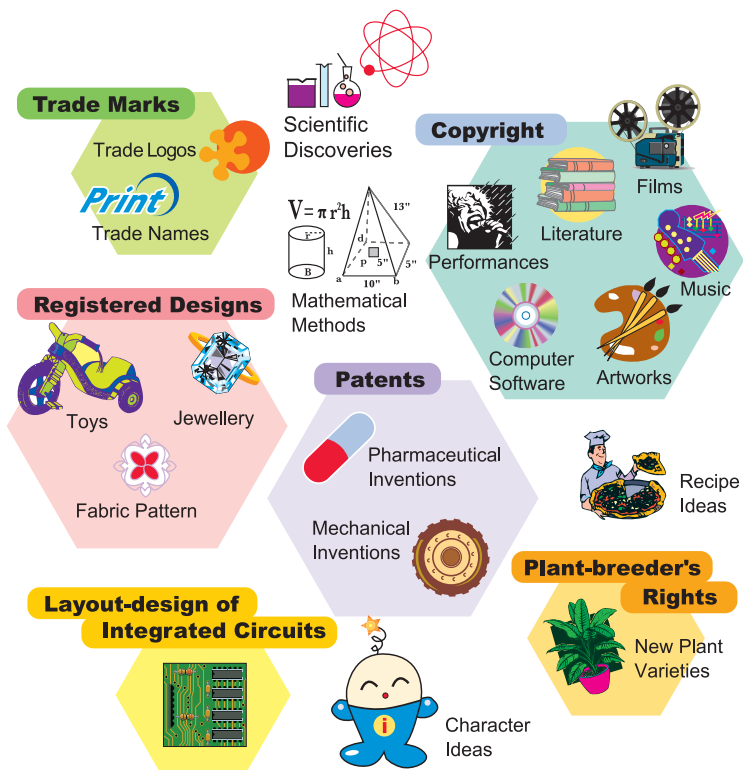
Why is Intellectual Property Protection Important?


Protection of intellectual property helps protect creativity. The efforts of writers, artists, designers, software programmers, inventors and other talents need to be protected in order to create an environment where creativity can flourish and hard work be rewarded.

Hong Kong is a vibrant place with tremendous creativity. The high standard of our film production, television programme production, sound recording production, publications, fashion and jewellery design, graphical design and production skills are well-known world-wide and embraced by overseas markets. As an international trading centre, Hong Kong provides entrepreneurs with a free and fair business environment which has the necessary intellectual property rights protection.

What is Protected?

The shaded parts of the picture briefly illustrate what is protected and what is not.





To balance the interest of intellectual property rights owners and the society as a whole, not all types of ideas, inventions or creations are protected by intellectual property law. For example, while permission should be obtained for incorporating a famous cartoon character protected by copyright into a commercial product and a pharmaceutical invention may be protected by grant of patent, an idea however, is outside the scope of copyright protection and a new diagnostic method for or therapeutic treatment of a disease is also not protected by patent laws.

Intellectual Property Protection in Hong Kong

Our Commitment

The Government of the Hong Kong Special Administrative Region (“HKSAR”) fully recognises the contribution to the economy coming from the creation of intellectual properties. We have been making on-going efforts to ensure that the intellectual properties of local and overseas investors would be protected at the same level or even better than in other developed economies.

Basic Law and Intellectual Property Rights

Recognising the importance of intellectual property protection in the HKSAR, the Basic Law, the constitutional document of the HKSAR, specifically provides in Articles 139 and 140 that the HKSAR should on its own develop appropriate policies and afford legal protection for intellectual property rights.

Intellectual property rights registered in the HKSAR are not automatically protected in the Mainland, and vice-versa. To obtain protection in the Mainland and the HKSAR, proprietors must register their rights in the two places separately.

Intellectual Property Department

To underline the commitment of intellectual property protection, the Government established the Intellectual Property Department in July 1990. The Department is responsible for advising the Secretary for Commerce and Economic Development on policies and legislation to protect intellectual property in the HKSAR; for operating the HKSAR’s Trade Marks, Patents, Designs and Copyright Licensing Bodies Registries; for promoting awareness of and respect for intellectual property through public education and different

activities; and for promoting the development of the HKSAR as an intellectual property trading hub in the Asia-Pacific region.

Customs & Excise Department

The Customs and Excise Department is responsible for enforcing the criminal aspects of infringement of intellectual property rights. It investigates complaints alleging infringement of trade marks and copyright and complaints alleging false trade descriptions. The Department has extensive powers of search and seizure, and cooperates with overseas enforcement authorities and owners of trade marks and copyright in a concerted effort to combat infringement of intellectual property rights. The Department has received many commendations for its work from both public and private institutions.

As a member of the World Trade Organization (“WTO”), the Customs and Excise Department will help rights owners to enforce their rights in relation to copyright and trade mark goods through border enforcement measures, in accordance with Hong Kong, China’s obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS Agreement”).

Intellectual Property Law

What is Intellectual Property Law?

The law affords legal protection of rights in intellectual property by providing protection in different categories of monopolies. Broadly speaking, intellectual property law:

- defines rights by ring-fencing the monopolies granted;
- defines permitted acts by creating certain legal exceptions to the monopolies in the public interest;
- defines remedies which set out the way the right owner or the government can enforce rights by civil or criminal proceedings; and
- sets out ways that rights can be acquired, for example through registration and how rights can be assigned or licensed by one party to another.

For example:

- the owner of a registered trade mark can attach his/her mark to his/her own goods or services, and he/she can stop anyone else from attaching the mark to their goods or services;
- the owner of a patent can manufacture products incorporating his/her patented invention, and can exclude anyone else from using that invention; and
- the owner of a copyright can copy, publish, perform his/her works, and can stop anyone else from doing so.

The legal protection of rights in intellectual property allows creators and subsequent owners of rights to gain economic benefit from charging other

people royalties or a lump-sum for using the marks, products or works over which they have obtained their legal monopolies.

Just as the law defines offences against tangible property, for example stealing a car or breaking into a house, the intellectual property law also sets out offences (criminal infringement) against intellectual property. For example, selling goods with counterfeit trade marks, trading in pirated music, video or computer software are all acts which may constitute criminal infringement.

Summary of Categories of Intellectual Property Protected in the HKSAR

The following table summarises the general characteristics of different categories of intellectual property protection available in the HKSAR. Further details of each category are described in separate sections below.

	Trade marks	Patents	Designs	Plant Varieties	Integrated Circuit Designs	Copyright
Type of subject-matter normally protected	Signs that distinguish goods or services of one trader from those of others	Invention	Industrial product designs, fabric designs	New agricultural or horticultural plant varieties	Lay-out designs of integrated circuits ('mask works')	Books, software, plays, music, paintings, sculptures, photographs, films, sound recordings, broadcasts, cable programmes, performances
Whether registration is required for effective protection in the HKSAR	YES	YES	YES	YES	NO	NO
Enforcement available in the HKSAR	Civil, Criminal	Civil	Civil	Civil	Civil	Civil, Criminal

Domestic Protection and International Protection

Intellectual property law of the HKSAR is domestic law. For example, a right conferred under the HKSAR law only applies in the HKSAR. On the other hand, various international conventions require member countries or economies to offer protection of the intellectual property rights of persons from the other member countries or economies. The main international intellectual property conventions which have been applied to the HKSAR by the People's Republic of China are:

- the Paris Convention for the Protection of Industrial Property (“the Paris Convention”);
- the Berne Convention for the Protection of Literary and Artistic Works (“the Berne Convention”);
- the Universal Copyright Convention;
- the Nice Agreement concerning the International Classification of Goods and Services for the purposes of the Registration of Marks;
- the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorised Duplication of Their Phonograms (“the Phonograms Convention”);
- the Patent Cooperation Treaty;
- the Convention establishing the World Intellectual Property Organization (“WIPO”);
- the WIPO Copyright Treaty; and
- the WIPO Performances and Phonograms Treaty.

Hong Kong, China is a member of the WTO in its own right, and our intellectual property protection system meets the standards set out in the TRIPS Agreement.



Trade Marks

What is a Trade Mark?

A trade mark is a sign that distinguishes the goods or services of one trader from those of others.

Registered and Unregistered Trade Marks

Trade marks may be registered or unregistered. Unregistered trade marks may be protected by the common law action of passing off. Generally speaking, a passing off claim requires proof of misrepresentation made by a trader which causes damage to the goodwill of the claimant. Passing off is usually a more difficult action to bring than an action for infringement of a registered trade mark. Therefore, we strongly recommend trade mark owners to register their trade marks.

Trade Marks Registered outside the HKSAR

The HKSAR's trade mark registration system is separate from the other trade mark systems in the Mainland or elsewhere in the world. Trade marks registered with the Trademark Office of the China National Intellectual Property Administration or trade marks registries of other countries or regions do not automatically receive protection in the HKSAR. In order to obtain protection as registered trade marks in the HKSAR, trade marks must be registered under the Trade Marks Ordinance (Cap. 559).

Trade Marks Ordinance

The Trade Marks Ordinance (Cap. 559) came into force in April 2003. It provides the framework for the HKSAR's system of registration of trade marks and sets out the basis and criteria for registration, as well as the rights attached to a registered trade mark.

In comparison with the former statutory regime, the Trade Marks Ordinance has increased the range of signs that can be registered as trade marks, and has also simplified application and examination procedures. Under the current law, the range of signs which can be registered as trade marks is broadened, for example by allowing distinctive sound and smell marks to be registered. Further, multi-class applications are allowed, and procedures for registering particulars about trade mark assignments and licensing have also been simplified.

Owners' Rights

The owner of a registered trade mark has the exclusive right to use the mark on the goods and/or the services for which the mark is registered.

Infringement

Civil action

In general, a registered trade mark owner can take civil action to prevent unauthorized use of a sign which is identical or similar to the registered mark for identical and/or similar goods and/or services for which the mark was registered, where such use is likely to cause confusion on the part of the public.

Where the registered mark in question is a mark entitled to protection under the Paris Convention as a well-known trade mark, an infringement claim may also be brought against an unauthorized use of an identical or a similar sign for any goods and/or services, provided that such use has taken unfair advantage of, or is detrimental to, the distinctive character or the reputation of the registered mark.

Criminal sanction

Anyone fraudulently uses a trade mark, including selling and importing goods bearing a forged trade mark, or possessing or using equipment for the purpose of forging a trade mark also commits a criminal offence under the Trade Descriptions Ordinance (Cap. 362).

Hong Kong Trade Marks Registry

The Hong Kong Trade Marks Registry started operating in 1874, and is one of the world's oldest trade marks registries. The Registry has also been registering marks for services in addition to goods since 1992.

Trade Mark Registration

If an application for registration of a trade mark satisfies the prescribed requirements for registration, the applicant will be notified that the particulars of the trade mark application will be published in the Hong Kong Intellectual Property Journal. The public then have a period of three months to oppose the application under any of the grounds stipulated in the Trade Marks Ordinance. In the absence of any opposition, the mark can normally proceed with registration thereafter. The registration is effective from the filing date of the application to register.



Company Names

Separate laws and systems regulate the registration of company names, business names and trade marks in the HKSAR. A company name registration at the Companies Registry or a business name registration at the Business Registration Office (Inland Revenue Department) is not the same as a trade mark registration at the Trade Marks Registry. Company or business names that have been registered in the HKSAR should also be registered separately as trade marks if proprietors wish to prevent them from being registered or used by others as trade marks.

Convention Priority

As the Paris Convention has been applied to the HKSAR, and Hong Kong, China is a member of the WTO, applicants for trade marks in the HKSAR can enjoy a right of priority in respect of their corresponding applications in a Paris Convention country or a WTO member.

Application of the Madrid Protocol to the HKSAR

The Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (“Madrid Protocol”) is an international agreement administered by WIPO to facilitate the registration and management of trade marks in different jurisdictions. A trade mark owner can file an international application via the trade mark office where his/her basic mark is held. By paying one set of fees, the trade mark owner may designate one or more contracting parties of the Madrid Protocol in seeking trade mark rights protection. Each designated contracting party then examines the international application according to its domestic trade mark laws and practices. Owners may also manage their trade mark portfolios maintained in different jurisdictions through a single procedure with WIPO.

While the People’s Republic of China is a contracting party to the Madrid Protocol, the Protocol currently does not apply to the HKSAR. With the introduction of the Trade Marks (Amendment) Bill 2019 into the Legislative Council in early 2019 and subject to the progress of the Bill and other preparatory work, the Government plans to liaise with the Central People’s Government to seek application of the Madrid Protocol to the HKSAR in 2022-23 the earliest.

Patents



What is a Patent?

Patents protect technical innovations. An invention which is new, involves an inventive step and is susceptible of industrial application is patentable in the HKSAR if it does not belong to the excluded classes of inventions. The local patent system encourages development of new technology by granting a patent for an invention which gives the patent owner the right to exclude others from using the invention in the HKSAR for a limited period. In exchange, the patent owner is required to make full disclosure of the invention.

Territorial Protection

Like the other types of intellectual property rights, patent protection granted in the HKSAR is territorial. In other words, patents granted in the HKSAR can only be enforceable in the HKSAR. The HKSAR patent system is separate from the other patent systems in the Mainland or elsewhere in the world. In other words, patents granted by the China National Intellectual Property Administration or other patent offices elsewhere do not automatically enjoy protection in the HKSAR.

Patents Ordinance

The Patents Ordinance (Cap. 514) came into effect in June 1997. It replaced the previous Registration of Patents Ordinance (Cap. 42) and provided the HKSAR with its own independent patent law. There are two types of patents granted in the HKSAR, namely standard patents and short-term patents.

Standard Patents

Standard patents, subject to renewal, have a term of protection of up to 20 years. Applicants may apply for the grant of standard patents under the “re-registration” system or the “original grant patent” system.

(a) Standard patent (re-registration)

Prior to 19 December 2019, the grant of a standard patent in the HKSAR had been solely based on the prior grant of a corresponding patent by one of the three designated patent offices, namely, the China National Intellectual Property Administration, European Patent Office (in respect of a patent designating the United Kingdom) or Intellectual Property Office in the United Kingdom. In other words, it is a pre-condition that the applicant should file a corresponding patent application with one of the designated patent offices before seeking patent protection in HKSAR under the “re-registration” system.

- An application for a standard patent (re-registration) must be filed with the Hong Kong Patents Registry in 2 stages, first by filing a request to record within 6 months after the date of publication of the corresponding patent application in one of the designated patent offices, and second by filing a request for registration and grant within 6 months after the date of grant of the corresponding patent by the designated patent office or publication of the request to record in the HKSAR, whichever is later.
- Standard patents (re-registration) are granted subject to formality examination.
- Standard patents (re-registration) granted in the HKSAR are independent of their corresponding patents granted by the relevant designated patent offices, and are enforceable in the HKSAR.

(b) Standard patent (original grant)

After conducting a major review of the local patent system, the Government decided to set up an original grant patent (OGP) system in HKSAR while retaining the re-registration system. With effect from 19 December 2019, applicants may seek standard patent protection by filing OGP applications directly in the HKSAR without the need to file a prior corresponding patent application in one of designated patent offices.¹ OGP applications are subject to substantive examination by the Hong Kong Patents Registry for determining the patentability of their underlying inventions.

Short-term Patents

The Patents Ordinance also provides for grant of short-term patents for inventions with a shorter commercial viability. Short-term patents, which are renewable up to the maximum protection term of 8 years, are also granted subject to formality examination.

A short-term patent applicant may directly file an application with the Hong Kong Patents Registry without filing any previous patent application in support. As the People's Republic of China has applied the Paris Convention to the HKSAR, and Hong Kong, China is a member of the WTO, applicants for short-term patents can enjoy a right of priority in respect of their corresponding applications subsequently filed in a Paris Convention country or a WTO member.

As a refinement to the patent system, starting from 19 December 2019, short-term patents may be subject to post-grant substantive examination by the Hong Kong Patents Registry for determining their validity. Request for such examination may be made by the relevant patent owners or any third party having reasonable grounds or legitimate business interest in the matter.

¹ The legal and procedural framework for the OGP system is contained in Patents (Amendment) Ordinance 2016 and the Patents (General) (Amendment) Rules 2019 which came into effect on 19 December 2019

Owners' Rights

A patent gives the patent owner the right to exclude others from making, putting on the market, using or importing the patented product, or putting on the market, using or importing any product obtained directly by means of the patented process.

Infringement

A patent owner can take civil action to prevent any person from infringing the relevant patent, and seek remedies including an injunction, an order for delivery up, damages or an account of profits and a declaration that the patent is valid and has been infringed.

Patent Cooperation Treaty

The People's Republic of China has applied the Patent Cooperation Treaty ("PCT") to the HKSAR since 1 July 1997 to facilitate the seeking of patent protection in the HKSAR. Where an international application under the PCT has entered its national phase in China, the applicant may apply for patent protection in the HKSAR based on the international application in accordance with the statutory requirements.

Copyright



What is Copyright?

Copyright law primarily protects expression of human creativity. Such expression is known as “works” in which copyright subsists. Common types of copyright works include books, software, musical compositions, plays, photographs, drawings, paintings, sculptures, sound recordings, films, broadcasts and cable programmes. Materials available to the public on the Internet may also involve copyright works.

Copyright Ordinance

The Copyright Ordinance (Cap. 528) came into effect in June 1997. It provides comprehensive protection for recognised categories of original literary, dramatic, musical and artistic works, as well as for sound recordings, films, broadcasts and cable programmes, and works which are made available to the public on the Internet.

The HKSAR’s copyright law protects not only underlying works but also the typographical arrangement of published editions of literary, dramatic and musical works. Performers’ rights in their performances are also protected by the law.

There are no formalities required to obtain copyright protection for works in the HKSAR. Works of authors from anywhere in the world, or works first published anywhere in the world, qualify for copyright protection in the HKSAR.

International Conventions

The People's Republic of China has applied the Berne Convention, Universal Copyright Convention, the Phonograms Convention, the WIPO Copyright Treaty and the WIPO Performance and Phonograms Treaty to the HKSAR. Furthermore, as a member of the WTO, Hong Kong, China complies with the requirements under the TRIPS Agreement.

Owners' Rights

Copyright law gives copyright owners certain exclusive rights known as "restricted acts". These include:

- copying the work;
- issuing copies of the work to the public;
- renting copies of the work to the public;
- making available copies of the work to the public, e.g. through the Internet;
- performing, playing or showing the work in public;
- broadcasting the work or including the work in a cable programme service; and
- making an adaptation of the work.

Different types of copyright works have their respective copyright duration. Please see the table below for reference:

Copyright Works	Basic Period of Copyright Duration
Original literary, dramatic, artistic and musical works	until 50 years after the author of the work dies
Sound recordings	until 50 years after production/release
Broadcasts, cable programmes	50 years after broadcast
Films	until 50 years after the last of the following dies: (a) the principal director; (b) the author of the screenplay; (c) the author of the dialogue; or (d) the composer of music specially created for and used in the film.
Typographical arrangement of published editions	until 25 years after first publication

In addition, the author of a copyright literary, dramatic, musical or artistic work, and the director of a copyright film, subject to certain conditions and exceptions, enjoy moral rights. These are the right to be identified as the author or director, and the right to object to derogatory treatment of the work or film that amounts to a distortion or mutilation or is otherwise prejudicial to the honour or reputation of the author or director. A performer of a live aural performance or a performer whose performance is fixed in a sound recording also enjoys similar moral rights. Further, any person has the right in specified circumstances not to have a literary, dramatic, musical or artistic work falsely attributed to him as author, and not to have a film falsely attributed to him as director.

Infringement

Copyright in a work is infringed by a person who without the permission of the copyright owner does, or authorizes another to do, any of the above restricted acts in relation to the work as a whole or any substantial part of it directly or indirectly. On the other hand, there are certain specific situations where a person may be permitted to make reasonable use of someone else's copyright works without seeking prior permission from the copyright owners and not constituting copyright infringement. Details can be found in sections 37 to 88 of the Copyright Ordinance.

A copyright owner can take civil action against an infringer in order to seek necessary relief against the infringer, such as an injunction to prevent further infringement, damages, additional damages or account of profits which the infringer made. A right-holder of moral rights can commence civil action against any infringer of his/her rights.

The law imposes criminal sanctions for infringing activities conducted for commercial purposes, such as making infringing copies for sale or hire, or commercial dealings with such copies. End-user piracy in business by possessing pirated software, movies, television dramas or musical (sound/visual) recordings, or by making/distributing significant quantities of pirated printed publication on a frequent or regular basis, also attracts criminal sanctions. The maximum penalty is imprisonment for four years and a fine of HK\$50,000 per infringing copy. Piracy activities conducted outside the HKSAR may in some circumstances also constitute an offence under the HKSAR's copyright law if the purpose is to enable infringing copies to be imported into the HKSAR.

Furthermore, any person, who for commercial purpose, makes, imports, exports or deals in products for defeating technological copyright protection systems, or provides commercial services for enabling customers to defeat such protection

systems is liable to a term of imprisonment of up to four years and a maximum fine of HK\$500,000.

Parallel Importation

Parallel importation of a copyright work usually means the importation into the HKSAR without the permission of the copyright owner, of a genuine copy of that work which was originally made with authorization of the copyright owner and destined for a market outside the HKSAR.

The HKSAR's law does not impose any restriction on parallel importation of computer software products, including for commercial dealings in such parallel imports, unless the principal attraction of the product involves musical sound or visual recordings, movies, television dramas, e-books, or a combination of them.

For other types of copyright works, there is generally no restriction for end users to import or possess parallel imported copies, whether for personal or business use. However, parallel import or use of parallel imported copies for the following purposes is prohibited:

- dealing in the copies (i.e. selling, hiring or distributing for profit); and
- playing or showing the works in public, if the copies concerned are movies, television dramas or musical (sound/visual) recordings.

Commission of any of the above prohibited acts is subject to both civil and criminal sanctions during the 15 months starting from the work's first publication anywhere in the world. Where the work has been published for more than 15 months, civil liability will continue to apply.

Registered Designs



What is a Registered Design?

The new visible shape, configuration, pattern or ornament applied to an article by an industrial process are features capable of protection by design registration. Examples of registrable designs include fabric patterns, and the outward appearance of watches, jewellery, toys or mobile phones.

Registered Designs Ordinance

The Registered Designs Ordinance (Cap. 522) which provides the HKSAR with its own design protection system came into effect in June 1997. Applicants can apply for registration of designs directly with the Hong Kong Designs Registry. Designs are registered subject to a formality examination. As the Paris Convention has been applied to the HKSAR, and Hong Kong, China is a member of the WTO, applicants for design registration in the HKSAR can enjoy a right of priority in respect of their corresponding applications subsequently filed in a Paris Convention country or a WTO member.

Owners' Rights

A registered design owner has the exclusive right to make for sale or for use for the purpose of trade or business, or sell in the HKSAR any article in respect of which the design is registered and to which that design or a design not substantially different from it has been applied.

Infringement

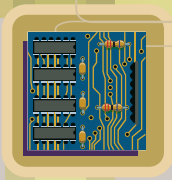
Under the Registered Designs Ordinance, the right in a registered design is infringed by a person who, without the consent of the registered owner, does anything which is the exclusive right of the registered owner. Claims for infringement by the registered design owner may be brought to the court by civil action. The registered design owner may apply for an injunction, an order for delivery up, damages or an account of profits.

Designs Registered outside the HKSAR

The HKSAR's designs registration system is separate from the design systems in the Mainland or elsewhere in the world. Designs registered with the China National Intellectual Property Administration or designs registries of other countries or regions must separately be registered in the HKSAR under the Registered Designs Ordinance before they can be protected in the HKSAR.

Term of Protection for Registered Designs

Registered designs, subject to renewal, have a term of protection of up to 25 years under the Registered Designs Ordinance. For those designs protected in the HKSAR under the law previously in force, they enjoy continued protection beyond their current periods of registration on application to renew in the HKSAR, provided that the total period of registration does not exceed 25 years.



Layout-design (Topography) of Integrated Circuits

The Layout-design (Topography) of Integrated Circuits Ordinance (Cap. 445) of the HKSAR, which came into effect in March 1994, protects the original layout-design for incorporation into an integrated circuit. Subject to certain exceptions, the owner is able to take civil action to prohibit others from reproducing or distributing his/her layout-design without his/her consent or without payment of royalties. There is no need to register the layout-design right and protection is automatic.



Plant Varieties Protection

Plant varieties protection is also known as “plant breeders’ rights”. A plant breeder, like other intellectual property owners, has the exclusive right to authorise reproduction of his/her new plant variety. The Plant Varieties Protection Ordinance (Cap. 490) confers intellectual property rights on breeders of plant varieties. The Director of Agriculture, Fisheries and Conservation is the Registrar of Plant Variety Rights who considers applications for plant variety rights. A plant variety must be new, distinct, homogeneous and stable in order to be considered for protection under the law.



Trade Secrets

Trade secrets are confidential information that have commercial value, such as formulae, methods, technologies, designs, product specifications, business plans, lists of customers and suppliers. In the HKSAR, trade secrets are protected by the common law of confidence. An obligation of confidentiality will arise whenever the information is communicated to or acquired by a person who knows or ought reasonably to know that the other person wishes to keep that information confidential. A disclosure of trade secrets to another person would be detrimental to the interests of the owner. The remedies available for breach of confidence include injunctions, damages, account of profits and delivery up of materials containing confidential information. To enhance the protection of trade secrets, you should sign confidentiality agreements with all parties to whom you have imparted your trade secrets.

Protection of trade secrets is particularly important when the intellectual property right is not registrable or you find the period of patent protection (20 years) not long enough. Whereas patents enjoy a limited term of protection, trade secrets protection lasts until the information becomes public knowledge. The formula for Coca Cola is a good example of long-kept trade secrets. However, trade secrets protection does not give you exclusive rights. Your competitors may independently invent an identical product or process or come up with the same ideas which they can exploit freely.

How do trade secrets differ from patents or copyright?

A patent application requires disclosure of details of invention. In other words, such details cannot be kept confidential as trade secrets. As mentioned above, the durations of protection afforded by patents and trade secrets are different.

Copyright only protects the expression of ideas and information, but not ideas and information per se. The law of confidence protects the substance of ideas and information, no matter how they are expressed. There are statutory permitted acts for works protected by copyright but not works protected by confidence.

Intellectual Property Department



Address : 24 Floor, Wu Chung House, 213 Queen's Road East, Hong Kong

Enquiry Hotline : (852) 2961 6901

Fax : (852) 2838 6276

Website : <http://www.ipd.gov.hk>

E-mail : enquiry@ipd.gov.hk

Full texts of the intellectual property law are available through the Hong Kong e-Legislation system offered by the Department of Justice at the website: <https://www.elegislation.gov.hk/>

Customs Piracy Report Line : (852) 2545 6182

Intellectual Property Department

Government of the Hong Kong Special Administrative Region

December 2019

© Hong Kong Special Administrative Region Government 2019

All rights reserved

This publication may be copied, distributed or exhibited in any form for non-commercial use without the prior permission of the Government of the Hong Kong Special Administrative Region provided that the following notice appears in the work:

This material is taken from "Intellectual Property in Hong Kong" © 2019 and is used with the permission of the Government of the Hong Kong Special Administrative Region.



**Intellectual Property Department
The Government of the Hong Kong
Special Administrative Region**

