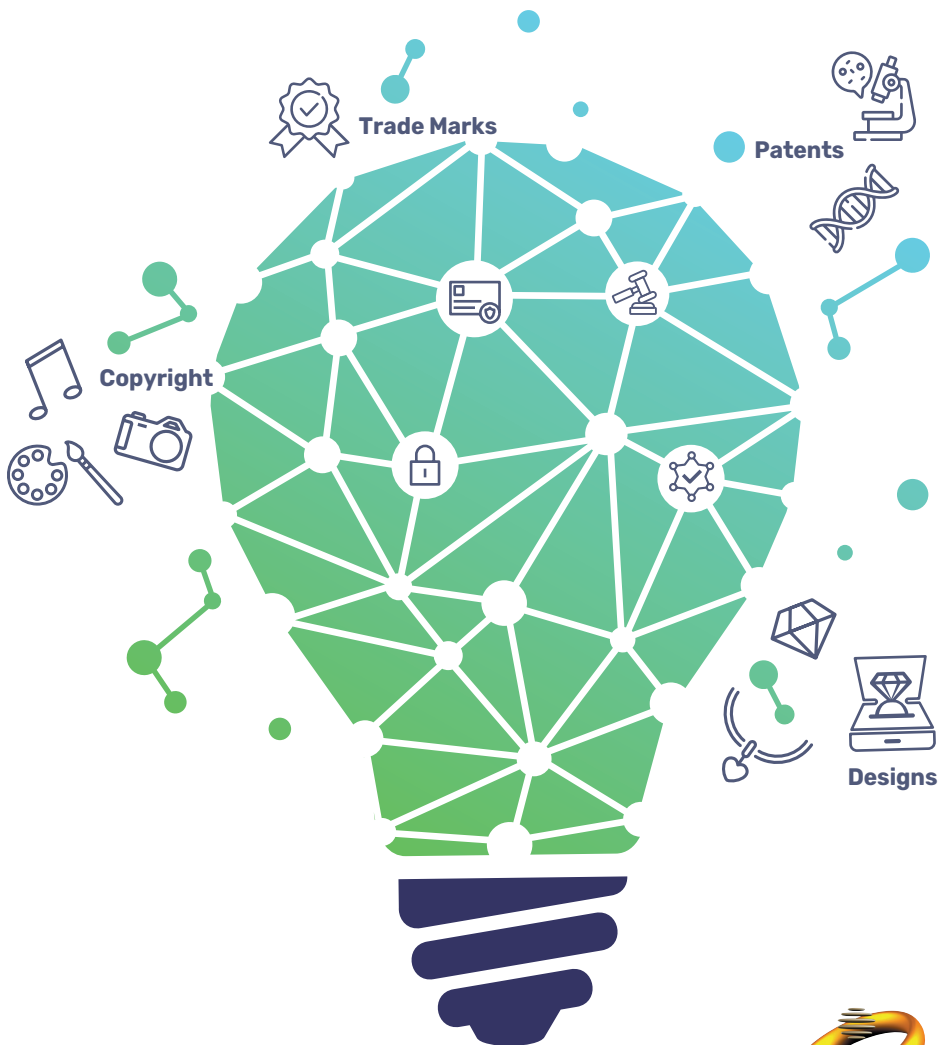


INTELLECTUAL PROPERTY IN HONG KONG



Disclaimer

This publication is intended only for general information and does not constitute legal advice. Please seek independent professional advice on the intellectual property issues, where necessary.

Intellectual Property in Hong Kong

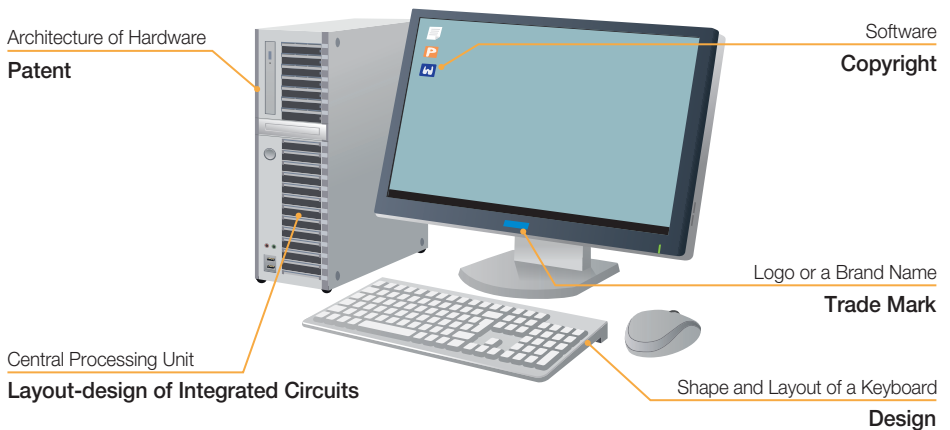
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Introduction

What is Intellectual Property?

Intellectual property refers to creations of the mind. It is the name commonly given to a group of different types of intangible property, including trade marks, patents, copyright, designs, layout-designs of integrated circuits, plant varieties and trade secrets . Intellectual property is all around us and forms part of our daily lives: different kinds of intellectual property underlie consumer products, such as brand-names/logos on clothes, pharmaceutical inventions, articles in newspapers, TV/radio/cable programmes, pop songs, cinema films and fashion designs. The following example of a computer illustrates the nature of different kinds of intellectual property in the product.



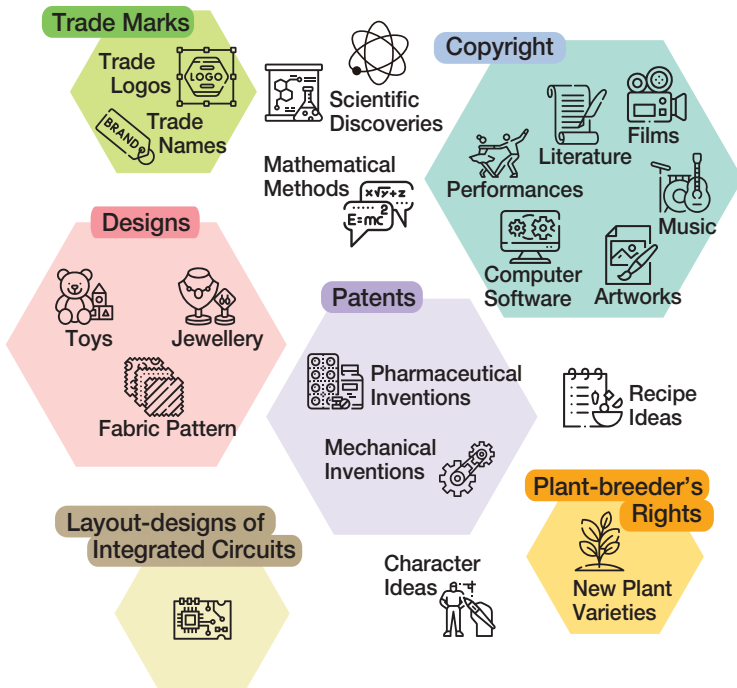
Why is Intellectual Property Protection Important?


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

Hong Kong is a vibrant place with talents in the creative as well as innovation and technology sectors/industries. The high standard of our film, television and sound recording productions, publications, fashion and jewellery designs, graphical designs 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 coupled with strong protection of intellectual property rights.

What is Protected?

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





To balance the respective legitimate interests 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 examples, while prior 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 a patent, an idea itself is outside the scope of copyright protection and a new diagnostic method for or therapeutic treatment of a disease is 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 significant contribution to the economy coming from the creation, exploitation and commercialisation of intellectual properties. We are committed to continue enhancing the intellectual property regime of Hong Kong to ensure that the intellectual properties of local and overseas investors are well 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 of registrable intellectual property rights 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 Hong Kong as a regional intellectual property trading centre under the National 14th Five-Year Plan.

Customs and 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, as well as complaints alleging false trade descriptions. The Department has extensive powers of search and seizure, and cooperates with enforcement authorities as well as owners of trade marks and copyright in Hong Kong and elsewhere 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 Hong Kong, China is a member of the World Trade Organization (“WTO”), the Customs and Excise Department helps 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;
- 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;
- defines permitted acts by creating certain legal exceptions to the monopolies in the public interest; and
- defines remedies which set out how rights can be enforced by the right owners (by civil actions) and, where appropriate, by the Government (by criminal sanctions).

For example:

- the owner of a registered trade mark can use the mark in respect of the owner's goods or services, and the owner can stop anyone else from using the mark in respect of identical/similar goods or services;
- the owner of a patent can manufacture products incorporating the patented invention, and can exclude anyone else from using that invention; and
- the owner of a copyright can copy, publish, perform the copyright 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, inventions or works over which they have obtained their legal monopolies.

Just as the law defines offences against misappropriation of tangible property, for example stealing a car or breaking into a house, the intellectual property law also sets out offences (criminal sanctions) against infringement of intellectual property rights. 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 major categories of intellectual property protection available in the HKSAR. Further details of each category are described in separate sections below.

	Trade marks	Patents	Copyright	Designs	Layout-designs (Topographies) of Integrated Circuits	Plant Varieties	Trade Secrets
Type of subject-matter normally protected	Signs that distinguish goods or services of one trader from those of others	Inventions	Books, software, plays, music, paintings, sculptures, photographs, films, sound recordings, broadcasts, cable programmes, performances	Industrial product designs, fabric designs	Layout-designs of integrated circuits ('mask' works)	New agricultural or horticultural plant varieties	Confidential information covering commercial information (e.g. business plans, lists of suppliers and clients, marketing / advertising strategies) and technical information (e.g. formulae, test data of products)
Whether registration is required for effective protection in the HKSAR	YES	YES	NO	YES	NO	YES	NO
Enforcement available in the HKSAR	Civil, Criminal	Civil	Civil, Criminal	Civil	Civil	Civil	Civil

Domestic Protection and International Protection

The intellectual property law of the HKSAR is territorial in nature, i.e. rights conferred under our domestic intellectual property law are only enforceable 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, treaties and agreements 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;
- the WIPO Performances and Phonograms Treaty; and
- the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (“the Marrakesh 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.

What is a Trade Mark?

A trade mark is a sign that distinguishes the goods or services of one trader from those of others, and that is capable of being represented graphically. The sign may consist of elements such as words, letters, numerals, designs, colours, sounds, shapes and a combination of such signs.

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 China National Intellectual Property Administration or any other trade mark office elsewhere 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 registration system of trade marks and sets out the basis and criteria for registration, as well as the rights conferred on a registered trade mark.

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. A trade mark is registered for an initial period of 10 years. The registration may be renewed indefinitely on payment of renewal fees, and the period of each renewal is 10 years.

Infringement

Civil action

In general, a registered trade mark owner can bring a civil action against unauthorised 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 unauthorised 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 repute of the registered mark.

A registered trade mark owner may seek remedies including damages or an account of profits, injunction or order for delivery up.

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), and is liable to a fine of \$500,000 and imprisonment for five years.

Hong Kong Trade Marks Registry

The Hong Kong Trade Marks Registry, operated since 1874, 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 has 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

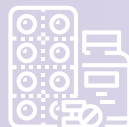
As the Paris Convention has been applied to the HKSAR, and Hong Kong, China is a member of the WTO, applicants for trade marks in the HKSAR can enjoy a right of priority in respect of their corresponding applications in a Paris Convention country or a WTO member.



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. Under the international registration system of the Madrid Protocol, a trade mark owner can, by paying one set of fees, file an international application via the trade mark office where his/her basic mark is held, and designate more than one contracting parties of the Madrid Protocol for seeking trade mark protection in multiple jurisdictions. 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 has not been applied to the HKSAR. The Trade Marks Ordinance was amended in 2020 to provide for a domestic legal basis for the future application of the Madrid Protocol to the HKSAR. Following the amendment, the Government is seeking to complete all the preparatory work (including introducing a subsidiary legislation to set out the operational procedures), with a view to having the Madrid Protocol applied to the HKSAR as early as practicable.



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.

Patents Granted outside the HKSAR

The HKSAR's patent system is separate from the other patent systems in the Mainland or elsewhere in the world. Patents granted by the China National Intellectual Property Administration or any other patent office elsewhere do not automatically enjoy protection in the HKSAR. To protect an invention in the HKSAR, a patent must be granted in respect of the invention under the Patents Ordinance (Cap. 514).

Patents Ordinance

Under the Patents Ordinance, which came into effect in June 1997 in replacement of the previous Registration of Patents Ordinance (Cap. 42) to provide the HKSAR with its own patent regime, 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 “original grant patent” (OGP) system or the “re-registration” system.

(a) Standard patents (original grant)

Following a major review and reform of the local patent system in the 2010s, the Government has been implementing the OGP system in the HKSAR since 19 December 2019. The OGP system enables direct and also first filing of applications for standard patents in the HKSAR without the need to file any prior corresponding patent application elsewhere.

Standard patents (original grant) are granted subject to substantive examination by the Hong Kong Patents Registry for determining the patentability of their underlying inventions.

(b) Standard patents (re-registration)

The grant of a standard patent under the “re-registration” system is 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. It is therefore a pre-condition that the applicant for standard patent (re-registration) should file a corresponding patent application with one of the three designated patent offices before seeking patent protection in the HKSAR under the “re-registration” system¹.

Standard patents (re-registration) are granted subject to formality examination only. Once granted, standard patents (re-registration) are independent of their corresponding patents granted by the relevant designated patent offices, and are enforceable in the HKSAR.

Short-term Patents

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

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 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 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 three 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.

Convention Priority

As the Paris Convention has been applied to the HKSAR, and Hong Kong, China is a member of the WTO, applicants for standard patents (original grant) or short-term patents can enjoy a right of priority in respect of their corresponding applications filed in a Paris Convention country or a WTO member.

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 bring a civil action against any person for infringing the owner's 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 by the defendant.

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.



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 works covering original literary, dramatic, musical and artistic works, as well as 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 of 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, the WIPO Performance and Phonograms Treaty and the Marrakesh Treaty to the HKSAR. Furthermore, as a member of the WTO, Hong Kong, China complies with the substantive standards for copyright protection 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;
- performing, playing or showing the work in public;
- communicating the work to the public, which includes broadcasting the work; including the work in a cable programme service; and making available of the work to the public; 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 authorises 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 for certain purposes 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 bring a 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 bring a 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. [If unauthorised communication of a copyright work to the public is for or in the course of any trade or business consisting of communicating works to the public for profit or reward, it will attract criminal sanctions. The maximum penalty is imprisonment for four years and a fine of HK\$50,000 per copyright work being infringed.] 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 authorisation 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.

Copyright (Amendment) Ordinance 2022 (effective 1 May 2023)

The Copyright (Amendment) Ordinance 2022 updates the HKSAR's copyright regime to strengthen copyright protection in the digital environment. Major amendments include introduction of an exclusive technology-neutral right for copyright owners to communicate their works to the public through any mode of electronic transmission with corresponding criminal sanctions; new and expanded copyright exceptions to allow use of copyright works in certain common Internet activities, facilitate online learning and operation of libraries, museums and archives, and allow media shifting of sound recordings; and new "safe harbour" provisions to provide incentives for online service providers to co-operate with copyright owners in combating online piracy and to provide reasonable protection for their acts.



What is a Design?

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

Designs Registered outside the HKSAR

The HKSAR's design registration system is separate from the other design systems in the Mainland or elsewhere in the world. Designs registered with the China National Intellectual Property Administration or any other design office elsewhere do not automatically enjoy protection in the HKSAR, and separate registrations of the designs under the Registered Designs Ordinance (Cap. 522) are the pre-requisite to their protection in the HKSAR.

Registered Designs Ordinance

The Registered Designs Ordinance 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 formality examination.

Convention Priority

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 filed in a Paris Convention country or a WTO member.

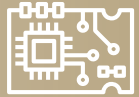
Owners' Rights

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. Registered designs, subject to renewal, have a term of protection of up to 25 years under the Registered Designs Ordinance.

Infringement

The right in a registered design is infringed by a person who, without the consent of the registered design owner, does any act which the registered owner has the exclusive right to do. The registered design owner may bring a civil action against the infringer, and seek remedies including an injunction, an order for delivery up, damages or an account of profits.

Layout-designs (Topographies) of Integrated Circuits



The Layout-designs (Topographies) 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. There is no need to register the layout-design right and protection is automatic. Subject to certain exceptions, the owner is entitled to bring a civil action to prohibit others from reproducing or commercially exploiting his/her layout-design without his/her consent or without payment of royalties.

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 the breeder’s new plant variety. The Plant Varieties Protection Ordinance (Cap. 490) confers intellectual property rights on breeders of plant varieties. A plant variety must be new, distinct, homogeneous and stable in order to be considered for protection under the law. The Director of Agriculture, Fisheries and Conservation is the Registrar of Plant Variety Rights who considers applications for plant variety rights.

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. The formula for Coca Cola is a good example of long-kept trade secrets.

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. While most registrable intellectual property rights enjoy a limited term of protection, trade secrets protection lasts until the information becomes public knowledge.

Protection of trade secrets is particularly important when the intellectual property right concerned is not registrable or the maximum legal protection term of the registrable intellectual property right concerned (e.g. 20 years for standard patents) is not considered as long enough for the owners of trade secrets. To enhance the protection of trade secrets, the owners of trade secrets should sign confidentiality/non-disclosure agreements with all parties to whom the owners have imparted their trade secrets.

On the other hand, trade secrets do not always offer their owners exclusive rights, e.g. competitors may independently invent an identical product or process or come up with the same ideas which they are entitled to exploit freely.

Owners of trade secrets may bring civil actions for breach of confidence against an unauthorised disclosure of their trade secrets. The remedies available for breach of confidence include injunctions, damages or an account of profits and delivery up of materials containing confidential information.

How do trade secrets differ from patents or copyright?

The grant of patent protection for an invention must involve disclosure of details of the invention. In other words, such details cannot be kept confidential as trade secrets. As mentioned above, the respective durations of protection afforded by patents and trade secrets are different.

Copyright only protects the expression of an idea or information in the form of copyright works, but not the idea or information itself. 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 for works protected by the law of 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

Important Reminder: Applicants and their employees or agents must not offer an advantage as defined in the Prevention of Bribery Ordinance (Cap. 201) to any government officer in connection with their applications or while having dealings of any kind with government departments.

Intellectual Property Department

The Government of the Hong Kong Special Administrative Region

February 2024

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The Government of the Hong Kong
Special Administrative Region**