



Intellectual Property

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Intellectual Property

“Intellectual property” (IP) is a term that refers to creations of the mind. Types of IP include a new machine an engineer develops to make construction easier, a new plant variety a farmer breeds, an original song your neighbour wrote, or the distinctive name you use to market your products/services. “Intellectual Property rights” (IPRs) are therefore the exclusive rights legally given to such creations of the mind and are similar to property rights in that they belong to the owner who has the exclusive rights to sell, import, license and use his property.

The objectives of Chapter 2 of the CARIFORUM-European Union Economic Partnership Agreement¹(EPA) on Innovation and Intellectual Property is to foster innovation and creativity to achieve sustainable development, promote trade and ensure the integration of CARIFORUM States into the world economy. The EPA recognizes the importance of protection and enforcement of intellectual property to achieving this goal.

While CARIFORUM states have committed to the implementation of the provisions of the EPA IP Chapter by the year 2014 (with the exception of Haiti which has until the year 2021), several of the EPA IP provisions are worded as “best endeavours”, thereby giving CARIFORUM states the option to implement these provisions only if and when they are so prepared.

Intellectual Property Tools and the EPA

In today’s knowledge-driven economies, protecting and managing IP assets can be critical to the success or failure of an enterprise. Following are the different types of intellectual property, which can be protected in a number of ways.

Copyright and Related Rights

Literary and artistic creations, such as a painting, books, music, performances, films as well as software are protected by copyright and related rights. Copyright and related rights are automatically obtained once the work has been committed to some tangible form, such as writing a poem on paper or recording a musical composition to a compact disc. The duration of copyright protection depends on the type of work protected, however, the Berne Convention for the Protection of Literary and Artistic Work, to which a total of 168 countries are party stipulates a minimum protection of the life of the author plus fifty years after his death for literary and artistic works.

Copyright and related rights provide the owner of the work with the exclusive right to decide how to treat that work, including licensing, performing, and distributing for sale. As managing the use of one’s works can be a daunting task, many copyright rights holders join collective management societies which are responsible for licensing copyrighted works and collecting royalties on behalf of the owner of the rights.

Article 143 of the EPA requires CARIFORUM countries to comply with two treaties: the World Intellectual Property Organisation (WIPO) Copyright Treaty, 1996 (WCT) and the WIPO Performances and Phonogram Treaty, 1996 (WPPT). These treaties speak to the availability of copyrighted works on

the internet by providing exclusive rights over material on the internet to copyright holders. These treaties also promote the use of technological protection measures (TPMs) and therefore require signatories to enforce legal remedies against persons who infringe on these exclusive rights.

Dominican Republic, Jamaica, Saint Lucia and Trinidad and Tobago are signatories to the WCT while Dominican Republic, Jamaica, Saint Lucia, Saint Vincent and the Grenadines, and Trinidad and Tobago are signatories to the WPPT.

OPPORTUNITIES UNDER THE EPA

1. Provisions relating to copyright under the EPA seek to ensure that rights holders from both the European Union (EU) and CARIFORUM states are adequately compensated for use of their works. When copyrighted materials are pirated, the rights holder as well as the country is affected. As such, CARIFORUM right holders who wish to export copyrighted products or services to the EU should find it easier to obtain remuneration for the use of such products or services.
2. The EPA also seeks to facilitate reciprocal agreements between respective CMOs, with the purpose of ensuring easier access to copyright materials as well as easier delivery of licenses for the use of such material throughout the EU and CARIFORUM states. The CMO should ensure that rights holders are adequately compensated for the use of such content by collecting and transmitting royalties².

¹ This falls within Title VI “Trade-related Issues” of Part II “Trade and Trade-Related Matters”
² Article 143.2(B) of the EPA.

3. In addition to exporting copyrighted works, under the Services Chapter of the EPA³, there are market access commitments by 26 European states (all EU Members except Belgium) for the exchange of entertainment services, except audio-visual. This means that CARIFORUM artists, musicians and other cultural practitioners, who are registered as a business, can send their members or employees to 26 EU states to supply entertainment services⁴ such as performances⁵, which are protected by copyright and related rights.⁶

During the 2012 London Olympics, there was the successful export of entertainment services, namely performers, through the Caribbean Soul Fusion Concert which showcased artists such as Belo (Haiti), Claudia (St. Lucia), Michele Henderson (Dominica), Xiomara Fortuna (Dominican Republic), Mystic (Guyana), Mr. Dale and Arturo Tappin (Barbados), and Christopher Martin (Jamaica)⁷.



In accordance with Article 66b of the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market Economy, which speaks to the establishment of a regional administration for intellectual property rights, Article 141 of the EPA also seeks to promote regional integration and the harmonisation of intellectual property laws.

In the case of patents, Article 141.1 encourages regional management of intellectual property rights through the establishment of a Regional Patent Office (RPO) and the grant of regional patents. The granting of regional patents would allow an inventor to file one single application with the RPO, which would result in automatic patent protection in all CARIFORUM countries.

In addition to the regional management of patents, Article 147 of the EPA requires CARIFORUM countries to accede to the Patent Corporation Treaty (PCT), and the Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure (1977, amended in 1980). The EPA also encourages CARIFORUM countries to accede to the Patent Law Treaty (PLT).

Currently, Antigua and Barbuda, Barbados, Belize, Dominica, Dominican Republic, Grenada, Saint Kitts and Nevis, and Trinidad and Tobago are all signatories to the PCT.

Dominican Republic and Trinidad and Tobago are signatories to the Budapest Treaty.

Patents

Inventions, such as the mobile phone and the steam engine, are protected by patents. Patents give legal rights to the creator of an invention to stop others from importing, selling, distributing or treating the invention in any way without the permission of the patent holder. In order to obtain a patent, the creator must have an invention that is new, not obvious to someone with knowledge and experience in the industry to which the invention relates, and one that is capable of being used or made in that industry. Applications for a grant of patent must be submitted for examination to national IP Offices, and once granted, is usually protected for up to twenty years from the filing date of the application. During this period, only the patent holder, or a licensee, can make, use or sell the patented product.

OPPORTUNITIES UNDER THE EPA

1. The PCT allows for an inventor to file a single patent application through WIPO, and therein name countries in which the inventor wishes to seek a grant of patent. It reduces the costs and procedures associated with filing patent applications in individual national intellectual property offices.
2. The Budapest Treaty makes it easier for applicants to patent micro-organisms in multiple countries and limits national procedural requirements.
3. The Patent Law Treaty (PLT) also limits the requirements of filing a patent application and would therefore lower the cost of applying for a grant of patent in CARIFORUM countries.

³ This falls within Article 83 "Contractual services suppliers and independent professions" of Chapter 4 "Temporary presence of natural persons for business purpose" of the EPA.

⁴ Kindly see Annex IV of the EPA for a detailed list of services sectors which includes the activities covered under the Central Product Classification (CPC) 9619 Entertainment Services list developed by the United Nations.

⁵ See Article 83 of the EPA for the specific conditions CARIFORUM entertainers must meet in order to benefit from the aforementioned market access.

⁶ (CRN), C. (2014). The CARIFORUM-EC Economic Partnership Agreement (EPA): Highlights of the Rules on Services & investment in the EPA. [online] <http://cafein-online.net/>. Available at: http://file:///C:/Users/DELL/Downloads/Brief_Highlights_re_Services_and_Investment_in_the_EPA_IU.pdf [Accessed 7 Oct. 2014].

⁷ Soul Fusion is coordinated by Caribbean Export Development Agency (Caribbean Export) under the 10th European Development Fund (EDF).



Industrial Designs

Industrial designs are applied to a wide variety of products of industry and handcraft: from technical and medical instruments to watches, jewelry, and other luxury items; from housewares and electrical appliances to vehicles and architectural structures; and from textile to leisure goods. Industrial design rights only protect the shape, texture, pattern, or colour of a product and must be formally applied for in order to be registered.

The Hague Agreement for the International Registration of Industrial Designs, 1999, allows for a single application to be filed through WIPO wherein countries which are signatory to the Hague Agreement can be designated for protection of the design. Article 146 of the EPA encourages CARIFORUM states to accede to this treaty. Under the EPA, CARIFORUM states also agree to protect industrial designs that are new or original and that have individual character. The EPA requires that this protection be provided by registration for a period of 5 years but not exceeding 25 years from the date of filing. The industrial designs provision of the EPA also requires the protection of unregistered industrial designs for at least 3 years, provided the design is copied.

Belize and Suriname are signatories to the Hague Act of 1960.

OPPORTUNITIES UNDER THE EPA

1. The Hague Agreement, like the PCT, is a useful tool for designers to seek protection for their designs in multiple territories through a single international registration with WIPO. CARIFORUM designers wishing to market their designs in other territories can capitalise on the filing of one application for protection with reduced formalities and expense, thereby minimising the costs of obtaining protection in other territories.

2. With the expansion of protection to unregistered designs for up to 3 years from the date the design is made public, CARIFORUM designers can seek action against the intentional copying of an unregistered design. This extended protection is useful in areas of design which change rapidly such as fashion.

Trademarks

Every business has a name under which it operates and most businesses have a brand associated with their product or service. This brand or name can be protected under intellectual property as a trademark. A trademark can be any sign that can be represented graphically, including letters, numbers and pictures. Once registered, a trademark is protected for ten years and can be renewed indefinitely.

One of the requirements under Article 144 of the EPA is for CARIFORUM countries to consider acceding to the Madrid Protocol for the International Registration of Marks (1989) and the revised Trademark Law Treaty (2006). The Madrid Protocol is a treaty which seeks to facilitate the registration of trademarks worldwide by allowing a proprietor to file a single application with WIPO, and designate the countries in which trademark registration is sought.

Antigua and Barbuda is a signatory to the Madrid Protocol.

OPPORTUNITIES UNDER THE EPA

1. For Micro, Small and Medium-sized Enterprises, it would prove very costly to register a trademark in every potential export market. The Madrid Protocol therefore seeks to minimise these costs and the procedures associated with filing trademark applications in multiple territories.
2. Under the Madrid Protocol, a Micro, Small and Medium Enterprise may also save costs post registration as all renewals, recordals of changes in the name or address of the proprietor, and assignments can be carried out through WIPO without having to renew or record such changes separately in each of the designated territories.

In 2010, the West Indian Rum & Spirits Producers' Association (WIRSPA) completed the implementation of an EU funded project to revamp the rum industry in the Caribbean. The programme included the establishment of the 'Authentic Caribbean Rum' (ACR) brand. The ACR brand is a registered

trademark which belongs to WIRSPA and can be placed on bottles, packaging and promotional materials of brands that have signed license agreements with WIRSPA. While each brand maintains its identity, the ACR brand has been used to denote authenticity, provenance and quality of the rums within the WIRSPA portfolio, which includes rums from Antigua & Barbuda, Belize, Bahamas, Barbados, Dominica, Dominican Republic, Haiti, Guyana, St. Lucia, St. Vincent & The Grenadines, Suriname and Trinidad & Tobago. WIRSPA is currently implementing the 2012 - 2016 CARIFORUM Rum Sector Support Project. This project will develop marketing and communication campaigns for the ACR brand, promote collaboration, quality and best practices amongst Caribbean rum producers, and the development of the ACR brand.

Geographical Indications

A geographical indication (GI) is a sign used on goods that have a specific geographical origin and possess qualities, reputation or characteristics that are essentially attributable to that place of origin. Usually, a GI takes the name of the place of origin of the goods. Agricultural products typically have qualities derived from the territory in which it is grown, including the soil, climate and other natural elements. GI protection means that producers from other regions are barred from using a GI region's name on their products.

GI provisions of the EPA seek to strengthen protection of GIs as well as to develop well-defined systems of GIs in CARIFORUM states. Article 145 seeks to ensure that GIs benefit from extended protection in the EU. An example of such extended protection includes the prohibition of the use of a geographical term by a proprietor on his product even where the origin of the product is indicated, the geographical term is used in translation, and the product clearly states the words 'imitation', 'type', 'style', 'method', 'kind' and such similar words.

OPPORTUNITIES UNDER THE EPA

1. Where a geographical indication is protected under national legislation in a CARIFORUM state, the right holder can request that the EU recognises and protects the product as a GI. When the product receives GI protection, no other product can be traded in the EU under the same description.
2. A GI classification allows rights holders to charge a premium above margin price for such products. Consumers will be more likely to purchase a GI branded product over other brands as they would be assured of the quality and origin of the product through the value associated with that GI. Within the EU, the price of a product with a "Protected Designation of Origin" may be as much as 40 percent higher than that of a similar non-GI product.



Example of a Geographical Indication

Jamaica Blue Mountain Coffee is currently registered as a certification mark under the Trademarks Act, which is the system of protection afforded in countries such as the United States of America and Belize, for the protection of GIs. According to the World Intellectual Property Organisation, the reputation of Blue Mountain coffee has rendered it a priceless intangible asset, inherent linked to the region where it is grown. The Coffee Industry Board of that country has therefore taken steps to register Jamaica Blue Mountain Coffee as a GI with the Jamaica Intellectual Property Office⁸.

Plant Varieties

Plant breeding is the manipulation of a plant's genetic characteristics to produce a new set of characteristics that would benefit humankind. Plant breeders select variations of plants to reproduce with specific characteristics such as a variety which can thrive in drought-like conditions. Provided the variety is new, distinct, uniform and stable, a grant of plant variety rights can be sought. A grant of "Plant Variety Rights" (PVR) for a new plant variety gives you the exclusive right to produce for sale and sell propagating material of the variety⁹.

While PVRs provide exclusive rights, Article 149.1 of the EPA allows CARIFORUM countries to implement exceptions to exclusive rights granted to plant breeders to allow farmers to save, use and exchange protected farm-saved seed or propagating material. As such, Article 149.2 requires CARIFORUM states to provide protection for plant varieties and consider acceding to the International Convention for the Protection of New Varieties of Plants (UPOV), 1991.

⁸ Wipo.int, (2014). In Search of a Perfect Cup. [online] Available at: <http://www.wipo.int/ipadvantage/en/details.jsp?id=2612> [Accessed 12 Sep. 2014].

⁹ Iponz.govt.nz, (2014). What is a plant variety right (PVR)? | Intellectual Property Office of New Zealand. [online] Available at: <http://www.iponz.govt.nz/cms/pvr/what-is-a-plant-variety-right-pvr> [Accessed 14 Sep. 2014].

The Dominican Republic is a signatory to the UPOV Act of 1991 while Trinidad and Tobago is a signatory to the UPOV Act of 1978.

OPPORTUNITIES UNDER THE EPA

1. Using plant breeding to improve crops could be beneficial to farmers by increasing yields and nutritional value throughout the year as well as guaranteeing a product that is enhanced and resilient to pests, diseases and other ailments.
2. Effective plant breeding of varieties unavailable in the region, and the saving, exchanging and reusing of farm-saved seeds and propagating materials provided for under the EPA as an exception to PVRs, can result in reduced food imports in the region.
3. Farmers can also benefit from licensing new varieties to territories in need of similar varieties, therefore providing another source of revenue from farming.

Under the European Development Fund (EDF) Project entitled "Improving Caribbean Food Security in the Context of Climate Change", stakeholders from Barbados, Belize, St. Kitts & Nevis, and Trinidad & Tobago are engaged in the breeding of climate resilient crops and building the capacity of farmers who produce sweet potato, yams, beans, peas and corn. The project, which commenced in 2013, will extend over a thirty-six month period.

The G barbadens variety of sea island cotton is a unique plant variety of cotton that can only be found in Barbados and a few other islands of the Caribbean. The West Indian Sea Island Cotton Association has since sought international protection of this strain of cotton which possess unique qualities such as its extra long staple length, fine uniform texture, great tensile strength, silky lustre and an extremely soft feel.

Importance of IPRs and Trade

There is general agreement that there exists a positive two-way relationship between intellectual property and international trade. Intellectual property systems spur economic development by providing the basis for business transactions such as licensing ¹⁰.

Many small and medium sized enterprises (SMEs), in both developed and developing countries, rely heavily on intellectual property rights. Design rights, copyrights, patents and trademarks are essential for numerous industries composed mainly of SMEs such as the textile, toy, publishing, biotechnology, and retail industries, to name just a few¹¹. With these intangible assets representing up to 70% of a company's assets, most companies have had to shift their focus on protecting their intellectual property.

The Global Innovation Index (GII), which recognises the key role of innovation as a driver of economic growth and well-being, ranked Barbados 3rd in patent families filed in three or more offices and 7th in joint-venture-strategic alliance deals. Local communities particularly in developing countries can therefore use intellectual property systems to exploit the commercial potential of local or traditional products or resources. The effective management of intellectual property assets can result in extensive returns on research and development investments as well as provide the impetus for further innovation. Innovation fosters competitiveness and is one of the driving forces behind the economies of the developed world. IP capital is therefore crucial to most companies and should be exploited to the benefit of such companies.

¹⁰Intellectual Property: Source of innovation, creativity, growth and progress. (2014). 1st ed. [ebook] Paris: ICC, pp.12-13. Available at: <http://www.iccwbo.org/data/documents/intellectual-property/intellectual-property--source-of-innovation,-creativity-growth-and-progress/> [Accessed 14 Sep. 2014].

¹¹Ibid.

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