Social Media and Intellectual Property

Audience
(January 13, 2021)

Building a prosperous and innovative Canada.
AGENDA

- Who are we?
- Why IP matters
- What is IP?
- Why we discuss IP and Social media?
- CIPO resources and tools
WHO WE ARE

SPECIAL OPERATING AGENCY OF INNOVATION, SCIENCE AND ECONOMIC DEVELOPMENT (ISED) CANADA

Provide quasi-judicial functions

Deliver quality and timely IP rights

Build IP awareness and education

Advance innovation

Support businesses operating globally

Our ISO certification positions Canada as a global leader in the delivery of high-quality patents.

1,000+ employees make up CIPO’s highly skilled workforce

Source: CIPO Human Resources Data, March 2019

WHO ARE WE?
WHAT IS IP?

**IP** is a *creation* of the mind.

### Traditional forms of IP

<table>
<thead>
<tr>
<th>Trademark</th>
<th>Patent</th>
<th>Copyright</th>
<th>Industrial Design</th>
<th>Plant Breeder's Right</th>
<th>Trade Secret</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brands: words, designs, etc.</td>
<td>New or improved: product, composition, machine, process</td>
<td>Creative works (literary, artistic, educational, or musical)</td>
<td>A product's unique appearance</td>
<td>New varieties of plants</td>
<td>Valuable information: lists or descriptions, social media accounts, customer lists</td>
</tr>
<tr>
<td>Geographical indications</td>
<td>Certification marks</td>
<td>Software</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Non-traditional IP

- Fictitious names
- Domain names
- Social media accounts
- Customer lists
- Territory rights
- Publicity rights
What is social media?

Social media are interactive computer-mediated technologies that facilitate the creation or sharing of information, ideas, career interests, and other forms of expression via virtual communities and networks.
60's: **CompuServe** (primitive form of emails)
1979: **UseNet** - virtual bulletin
1988: **Internet Relay Chats** (IRC)
1997: **Six Degrees**: Facebook’s ancestor
1999: first blog

• 2000: Creation of **MySpace**, **LinkedIn**, **Flickr**
• 2005: **YouTube**
• 2006: **Facebook** and **Twitter**
• 2010+: **Tumblr**, **Spotify**, **Foursquare**, **Pinterest**, **TikTok**, **Snapchat**
DIFFERENCE IN COPYRIGHT AND PERSONALITY RIGHT

Copyright relates to:
- Right to make reproductions of your work
- To publish or perform your work
- To broadcast or make it available to the public

Personality Rights relate to:
- Use your personality and likeness for commercial purpose
- New case law may be moving towards “privacy rights of non-famous” personalities
COPYRIGHT

Protects creative, original works in various forms including literary, dramatic, musical, or artistic

Exclusive rights to reproduce the work, and to publish, translate, perform, etc.

Automatic upon creation:
• registered = certificate of ownership

Duration varies by jurisdiction
  e.g. Canada = life of creator + 50 years

Copyright examples
• Books
• Plays
• Music
• Website
• Software code
PERSONALITY RIGHTS

- Mostly a common law right - **Civil law** in Canada (Quebec) has personality rights in statute.
- Famous people
  - “misappropriation of personality”
- Non-famous people:
  - Privacy rights protected under “intrusion over seclusion”

Includes:
- Rights of Image
- Publicity Rights
- Endorsement Rights
- Privacy Right
Service Terms on Social Media

Your rights
- Copyrights/personality right
- Don’t need to registered
- You generally don’t lose your rights, BUT you give a license

The license you grant to Social Media Platforms (SMPs)
- Licensed IP rights (to do what, with what, where, to whom and for how long?)
Sample License Grant
Copyright

You retain your rights to any Content you submit, post or display on or through the Services. By submitting, posting or displaying Content on or through the Services, you grant us a worldwide, non-exclusive, royalty-free license (with the right to sublicense) to use, copy, reproduce, process, adapt, modify, publish, transmit, display and distribute such Content in any and all media or distribution methods (now known or later developed). This license authorizes us to make your Content available to the rest of the world and to let others do the same.
Sample License Grant

Copyright

Specifically, when you share, post, or upload content that is covered by intellectual property rights on or in connection with our Products, you grant us a non-exclusive, transferable, sub-licensable, royalty-free, and worldwide license to host, use, distribute, modify, run, copy, publicly perform or display, translate, and create derivative works of your content. This license will end when your content is deleted from our systems.
### Sample License Grant Terms

<table>
<thead>
<tr>
<th>Term</th>
<th>Simplified</th>
</tr>
</thead>
<tbody>
<tr>
<td>Worldwide</td>
<td>SMP can use it anywhere in the world</td>
</tr>
<tr>
<td>Royalty-free</td>
<td>SMP doesn’t have to pay you, even if they make money from it</td>
</tr>
<tr>
<td>Non-exclusive</td>
<td>You still own your stuff, and grant other licenses</td>
</tr>
<tr>
<td>Sublicensable</td>
<td>SMP can license this to others</td>
</tr>
</tbody>
</table>
Sample License Grant
Compensation

Such additional uses by [SMP], or other companies, organizations or individuals, **is made with no compensation** paid to you with respect to the Content that you submit, post, transmit or otherwise make available through the Services as the use of the Services by you is hereby agreed as being sufficient compensation for the Content and grant of rights herein.
Sample License Grant

Personality Rights

You or the owner of your User Content still own the copyright in User Content sent to us, but by submitting User Content via the Services, you hereby grant us an unconditional, irrevocable, non-exclusive, royalty-free, fully transferable, perpetual worldwide licence to use, modify, adapt, reproduce, make derivative works of, publish and/or transmit, and/or distribute and to authorise others users of the Services and other third parties to view, access, use, download, modify, adapt, reproduce, make derivative works of, publish and/or transmit your User Content in any format and on any platform, either now known or hereinafter invented. You further grant us a royalty-free license to use your user name, image, voice, and likeness to identify you as the source of any of your User Content.
Liability

Your responsibility

• You promise that you have the IP rights for what you post
• You are liable for copyright infringement
Avoiding infringement: Copyright

You **represent and warrant** that you have, or have obtained, all rights, licenses, consents, permissions, power and/or authority necessary to grant the rights granted herein for any Content that you submit, post or display on or through the Services. You agree that such Content will not contain material subject to copyright or other proprietary rights, unless you have necessary permission or are otherwise legally entitled to post the material and to grant Twitter the license described above.
What's a copy?

“infringing”: “any copy, including any colorable imitation, made or dealt with in contravention of this Act.”

What is a copy?

• Does it have to be copied exactly?
  • No, but it must have copied a SUBSTANTIAL PART.

What's considered substantial?

• Substantiality is determined with regard to the QUANTITY and QUALITY of the part copied (wrt the original work).
Fair Dealing

• Not all substantial copying is infringing.

• Sections 29-29.2 provide a defense of fair dealing for the purposes of:
  • Research or private study, parody or satire and education (s. 29)
  • Criticism or review (s. 29.1)
  • News Reporting (s.29.2)
User Generated content exception

29.21 (1) It is not an infringement of copyright for an individual to use an existing work or other subject-matter or copy of one, which has been published or otherwise made available to the public, in the creation of a new work or other subject-matter in which copyright subsists and for the individual — or, with the individual’s authorization, a member of their household — to use the new work or other subject-matter or to authorize an intermediary to disseminate it, if (a) the use of, or the authorization to disseminate, the new work or other subject-matter is done solely for non-commercial purposes; (b) the source — and, if given in the source, the name of the author, performer, maker or broadcaster — of the existing work or other subject-matter or copy of it are mentioned, if it is reasonable in the circumstances to do so; (c) the individual had reasonable grounds to believe that the existing work or other subject-matter or copy of it, as the case may be, was not infringing copyright; and (d) the use of, or the authorization to disseminate, the new work or other subject-matter does not have a substantial adverse effect, financial or otherwise, on the exploitation or potential exploitation of the existing work or other subject-matter — or copy of it — or on an existing or potential market for it, including that the new work or other subject-matter is not a substitute for the existing one.
Tips

• Use Public Domain works

• Credit and Ask permission  
  • Simply crediting not enough

• Read license terms
CONSIDERATIONS FOR OTHER IP RIGHTS

**Patents**
- Public disclosure/Enablement
- 12 month grace period (Canada and USA)

**Trademarks**
- Avoid generic use of a trademarks without™ or ®
- “inspired by” trademarks
- Creating similar shaped trademarks from trademark designs found online.
- Use of metatags

**Trade secrets**
- Values is tied to the trade secret remaining confidential.
- Educating employees on confidential information
Industry and Partnership Services

IPS supports collaboration between companies and other partners and the University’s researchers

- Identify and negotiate with potential partners
- Leverage public funding with external capital and expertise
- Provide advice regarding management of IP (commercialization)
- Structure a suitable arrangement

Office of the Vice-President (Research and International)

- Carleton Office for Research Initiatives and Services (CORIS)
- Industry and Partnership Services (IPS)
- Carleton International
- Office of Research Ethics
- Research Communications

4th Floor, Arise Building, x3570
ips@cunet.carleton.ca
https://carleton.ca/ips/
How Industry and Partnership Services can help

• Confidentiality, Research, IP Agreement to protect IP ownership

• Identify and Evaluate Discoveries
  • Identify opportunities for innovation transfer and commercialization.
  • Researcher(s) complete a Disclosure Form and request a meeting.

• Promote innovations on- and off-campus

• Conduct IP assessment and recommend IP strategy (patent, trademark, copyright, etc)

• Conduct Market Assessments and identify potential partners

• Develop a commercialization strategy (licensing or assignment) and ensure your IP strategy is aligned with market assessment

• Analyse commercialization options (licensing or assignment)

• Assist with patent prosecution and maintenance (due dates)

Contact Dr. Theresa White, Manager- Contracts and Innovation Transfer
theresawhite3@cunet.carleton.ca
Connect with IP experts to answer your questions

CLIENT SERVICE CENTRE (CSC) CLIENTS

- Inventors and innovators
- Businesses and entrepreneurs
- Academic sector
- Law and agent firms
- Not-for-profit organizations
- Media

When to refer

- Questions regarding general IP information
- Questions regarding a specific file or application
- Assistance completing an online form

IP ADVISORS (IPA) CLIENTS

- Inventors and innovators
- Businesses, entrepreneurs and self-employed persons
- Academic sector

When to refer

- Shows interest in obtaining training sessions
- Would like to know about the strategic value of IP
- Needs assistance creating an IP strategy
CONTACT CIPO

www.cipo.gc.ca or Canada.ca/ip-for-business

Client Service Centre
Phone: 1-866-997-1936

In-person meetings by appointment
Canadian Intellectual Property Office
Place du Portage I
50 Victoria St., Room C-229
Gatineau, QC K1A 0C9

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Caroline Lefebvre – caroline.Lefebvre@Canada.ca

Pacific Region – Ryan Shaughnessy – ryan.Shaughnessy@Canada.ca