



# Social Media and Intellectual Property

## Audience

(January 13, 2021)



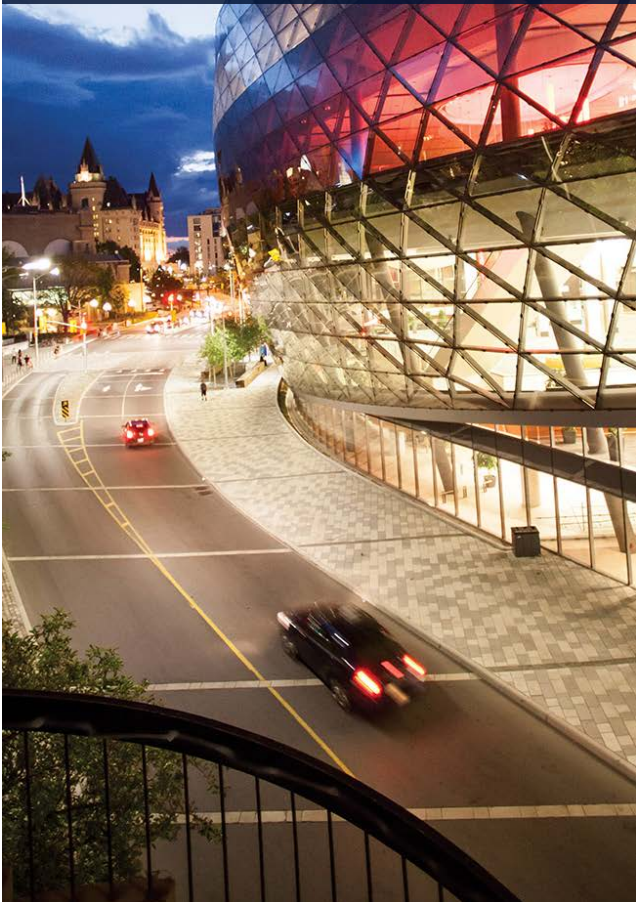


# CANADIAN INTELLECTUAL PROPERTY OFFICE

## AGENDA

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

# CANADIAN INTELLECTUAL PROPERTY OFFICE



## 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 CIPPO's highly skilled workforce

Source: CIPPO Human Resources Plan, March 2017



# WHAT IS IP?

IP is a *creation* of the mind.

## Traditional forms of IP

### TRADEMARK

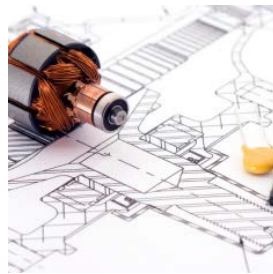


Brands: words, designs, etc.

Geographical indications

Certification marks

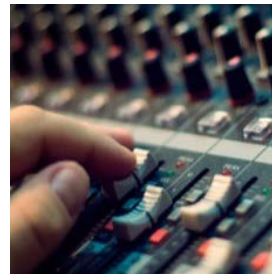
### PATENT



New or improved

- product
- composition
- machine
- process

### COPYRIGHT



Creative works (literary, artistic, educational, or musical)

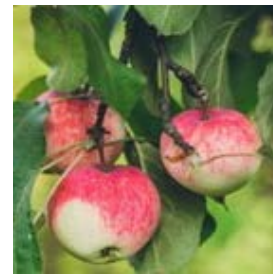
Software

### INDUSTRIAL DESIGN



A product's unique appearance

### PLANT BREEDER'S RIGHT



New varieties of plants

### TRADE SECRET



Valuable information

Lists or descriptions

Social media accounts

Customer lists

## 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,**



## COPYRIGHT V PERSONALITY RIGHT

# 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 V PERSONALITY RIGHT

## 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



# COPYRIGHT V PERSONALITY RIGHT

## 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

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## Your rights

- Copyrights/ personality right
- Don't need to registered
- You generally don't loose 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

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*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

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*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

Term	Simplified
<i>Worldwide</i>	SMP can use it anywhere in the world
<i>Royalty-free</i>	SMP doesn't have to pay you, even if they make money from it
<i>Non-exclusive</i>	You still own your stuff, and grant other licenses
<i>Sublicensable</i>	SMP can license this to others



# 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

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### 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

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- 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 <sup>TM</sup> or <sup>®</sup>
- “inspired by” trademarks
- Creating similar shaped trademarks from trademark designs found online.
- Use of metatags

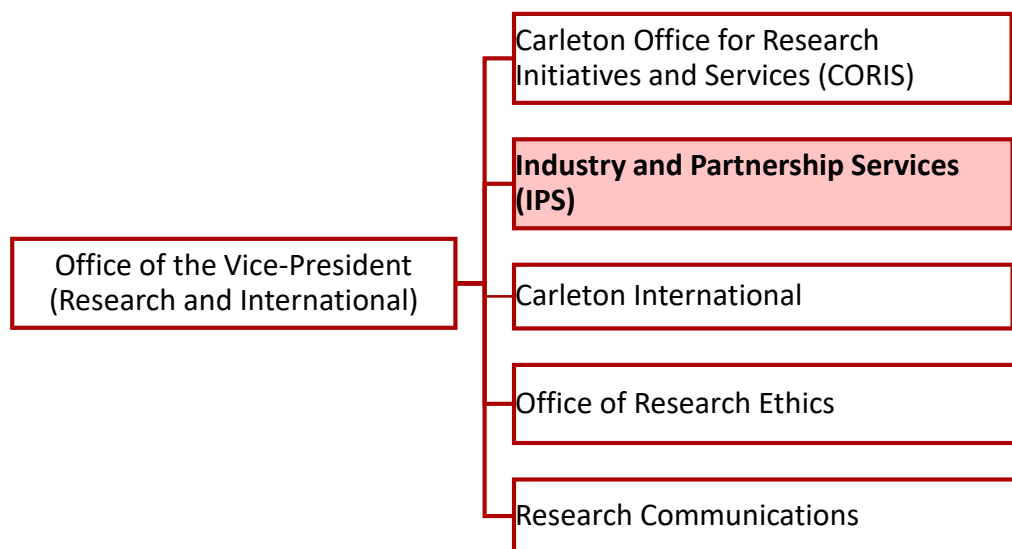
## Trade secrets



- 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**



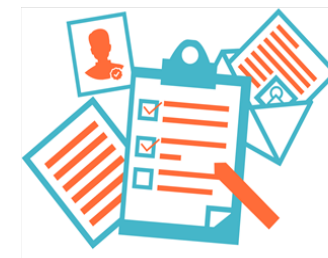
Identify and negotiate with potential partners



Leverage public funding with external capital and expertise



Provide advice regarding management of IP (commercialization)



Structure a suitable arrangement

4<sup>th</sup> Floor, Arise Building, x3570

[ips@cunet.carleton.ca](mailto: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 commercialisation 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](mailto:theresawhite3@cunet.carleton.ca)





## SPEAK WITH A CIPO IP EXPERT



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**

VS.

### 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](http://www.cipo.gc.ca) or [Canada.ca/ip-for-business](http://Canada.ca/ip-for-business)

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Phone: 1-866-997-1936

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OPIC



@OPIC\_Canada



# Evaluation



<https://form.simplesurvey.com/f/I/IPAE>

Canada 