

Make the Most of Your Creativity – Your Intellectual Property



What is Intellectual Property (IP)?

Intellectual property (IP) represents the product of your mind or intellect. Your ideas and creativity are expressed in different ways, through writing, music, art, designs, performances and inventions. The unique cultures, products, goods and services of the Pacific region are becoming an increasingly significant contributor to the economies of the Pacific Islands.

Copyright, registered trade marks and designs, traditional knowledge, confidential information, plant breeders' rights and patents are all forms of IP. IP laws differ across the Pacific, so it is important that you check what can and can't be protected under the laws of your country - to do this, contact the relevant government department in your country for further information (details are provided at the end of this brochure).

Why is IP important?

Creativity, an important part of cultural identity, is expressed in different ways. The results of this creativity – new products, brands and designs – appear almost daily on the market, and can be used to contribute to the economic and social well being of a country in a number of ways. Protection for this creativity can be provided through means such as copyright, trade marks, patents, designs and confidentiality agreements. For example, protecting local inventions so that the country can benefit financially, trade marking local product brand names for use in export markets, and protecting

and promoting traditional resources such as medicinal plants.

Your IP is important, but you just might not know it yet! IP can be the name of your business, a design, an invention or a song. You can take action to safeguard it and prevent others from using it without your permission. To do nothing may put your rights at risk – what would you do if someone stole your unique weaving process or copied your *tapa* design?

A short explanation of things that can be protected by intellectual property law is provided in this brochure.

Music, Stories and Art – Protected by Copyright

The purpose of copyright is to protect your original works of art, writings, music, films, broadcasts and even computer programs from unauthorised use by other people. Copyright can also protect such things as music performances, dances and stories. Copyright allows creators to benefit financially from their works and to retain some control over how those works are used. Performers, namely singers, dancers, and actors are protected for their interpretation of a work – that is, how the work is performed to the public. The protection primarily grants them exclusive rights of use for their performance.

Copyright is an automatic right granted to the author of an original work. This means you do not need to apply to the Government to register it. A work is protected from the moment it is first recorded, drawn or written. The owner of the copyright in a work has the right to copy, publish, communicate (such as broadcast or even email) and adapt it, and to perform it in public. There are some exceptions that allow free use of copyright works, such as copying for research or study. Those wishing to use your copyright work must seek your permission first. To help alert others to your copyright, you can date and name your work like so:

© *Siose Latukefu* 2003.

A number of countries have copyright collecting societies in place. These organisations manage copyright works on behalf of owners who have registered their works with them. These societies also collect license fees from the use of the works and distribute the royalties to the copyright owners. For more information, check with your local IP office.

Ask Before You Use It! – Performing Music

Everyone has a favourite local performer like Black Rose, and it's natural to want to sing their songs with friends at parties.

This is fine, but if you plan to use another person's original song, you need to seek the permission of the original creator of the song. So if you want to record a cover version of a song, or if your band wants to perform the song live, you need to ask the permission of the songwriter. If they give you permission they may ask for a royalty payment for the use of their song. Each case is different but you should check before performing someone else's song in public, copying it or recording it. There have been some recent cases in the Pacific where artists have used another person's songs without permission, which have resulted in costly court action.

Copyright protection for music means the songwriters, producers of recorded music and performers can receive income from their creative works. This enables them to continue to create and to contribute to their culture. It's a fair way for creative people to get the rewards for their creative work.

Logos, Brands and Names – Protected by Registered Trade Marks

A trade mark identifies a product or service as coming from a particular trader, distinguishing them from other traders' similar goods. They also provide an indication of quality that customers use to make purchasing decisions. Good trade marks can improve a business' image and profits as the brand becomes more well known in the marketplace - think of how well-known brands such as Nike®, Coca-Cola® and McDonalds® are today!

Trade marks are valuable assets that need to be protected and the best way to protect them is with a registered trade mark. Some registered trade marks from the Pacific region that you may recognise include Aribacas Blue Mountain Coffee (Papua New

Guinea); Sun Snacks taro and breadfruit chips, and Wilex soaps and chocolate (Samoa); and Fiji Water and Fiji Rugby logos (Fiji).

A registered trade mark can generally be a group of letters, a word, phrase, sound, smell, shape, logo, picture, aspect of packaging or any combination of these. There are certain things that can and can't be registered - check with your local JP office before you apply. As the owner of a registered trade mark you have the exclusive right to use that trade mark for the goods specified in the registration. You can also stop other traders from using your trade mark. When you have a registered trade mark, you can use the ® symbol to make others aware it is registered.

Protecting Their Name – Arabicas Blue Mountain Coffee

Papua New Guinea's famous coffee roasting and packaging company Arabicas Pty Ltd specialises in organically grown Arabica coffee direct from Goroka in the Eastern Highlands region, where the cool temperature ensures the freshness of the coffee.

The company dates back to the very beginning of coffee growing in PNG when the first Jamaican Blue Mountain coffee was planted in the 1930's. Today, Arabicas exports its roasted, packaged coffee to 17 countries and has also achieved a good share of the local market in PNG. Arabicas produces high-quality gourmet coffee for niche markets, including certified organic coffee and the well-known Blue Mountain brand. Special catering packs are also supplied to hotels, restaurants and other customers.

The company's trade marks, which feature some of the exotic birds of PNG, have been registered in a large number of countries. This has secured Arabica's position as a supplier of premium quality coffee.

The company has distribution networks in many countries and through their strong intellectual property, branding and marketing strategies, Arabicas brands have established a growing reputation as a high-quality product. And if the owners of Arabicas were to sell their company, they can get a higher sale price due to the value of their registered trade mark. It has a cash value just like their other important assets such as land, crops, machinery and buildings.



Carvings, Weavings and Clothing Designs – Protected by Registered Designs


Registered designs are used to protect the visual appearance of manufactured products. This includes the shape (think of the Coca-Cola® bottle) and the patterns, lines and colours (such as a sulu pattern design). Designs protect how something looks, not how it works.

A registered design gives you a legally enforceable right to use your product's design to gain a marketing edge. It also prevents others from using the design without your permission - you may take legal action if another person uses your registered design without your consent.



Keeping Your Design Yours

Using other people's designs without their permission - whether it is on clothing (like lava lavas or sulus) or on items such as carvings and paintings - can mean you are infringing their rights. Imagine if someone from another village or country used your design without your permission? By protecting your creativity with a registered design, you can protect your design - which means no one else can exploit your culture for financial gain.



Medicines, Stories and Performances – Traditional Knowledge and Expressions of Culture and Folklore

Traditional knowledge is the type of knowledge passed on from generation to generation. It covers such things as traditional medicine, farming and fishing techniques, handicrafts, music, and art. Traditional knowledge can be the source of information that leads to developments such as new pharmaceutical medicines or improved plant breeds.

Expressions of culture and folklore cover all forms of artistic expressions that are based on custom and tradition derived from continually evolving communities. They include peoples' knowledge, traditions, customs, beliefs and innovations as represented in things such as their names, stories, art and craft designs, dances and songs.

The Pacific region is rich with culture, tradition and talent. It is important for Pacific people to be able to benefit from others using their traditional resources to enable economic and social development in the region. Traditional knowledge and expressions of culture and folklore are emerging areas of intellectual property protection and the laws to protect it are still being developed. Check with your local IP office for more information.

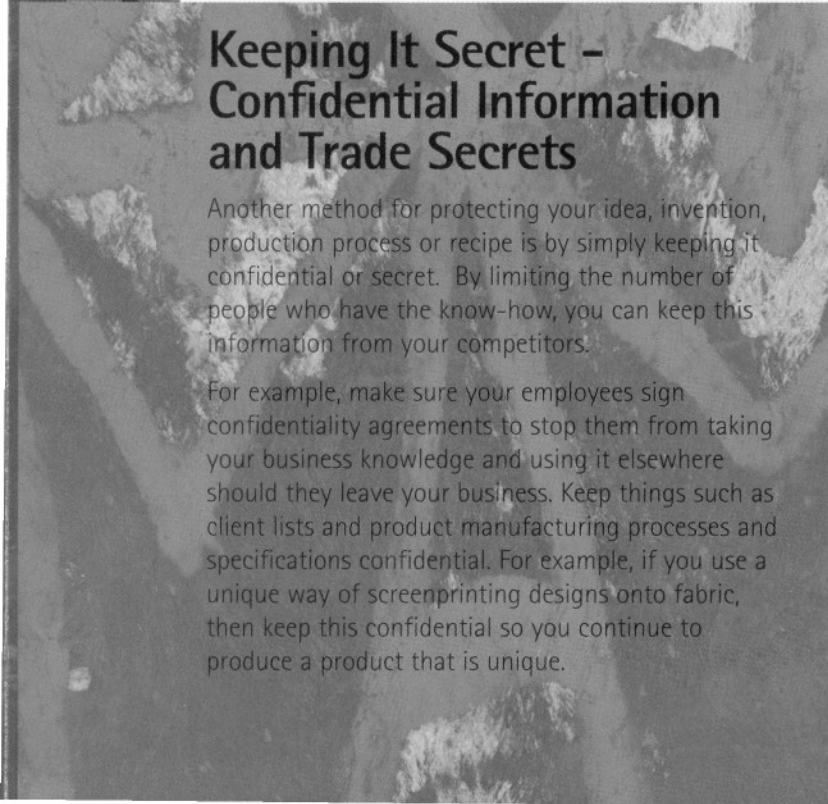


South Pacific Villages Benefiting from Knowledge-Sharing Agreements

There are several projects active across the Pacific involving villages, in places such as Fiji and Samoa, that are sharing their traditional medicine practices with regional and international organisations to develop new medicines to treat diseases such as cancer and AIDS.

Agreements have been put in place so that the villages, traditional healers and their families will receive benefits for their contributions to the project. These benefits include payments for collecting plant samples, support for community development projects and shares of profits from any pharmaceuticals that may be developed.

Not only will these villages benefit from their traditional knowledge and practices, they will also have control over how and who uses their valuable cultural traditions.



Keeping It Secret – Confidential Information and Trade Secrets

Another method for protecting your idea, invention, production process or recipe is by simply keeping it confidential or secret. By limiting the number of people who have the know-how, you can keep this information from your competitors.

For example, make sure your employees sign confidentiality agreements to stop them from taking your business knowledge and using it elsewhere should they leave your business. Keep things such as client lists and product manufacturing processes and specifications confidential. For example, if you use a unique way of screenprinting designs onto fabric, then keep this confidential so you continue to produce a product that is unique.

New Plants and Foods – Protected by Plant Breeders' Rights

Plant breeders' rights are the exclusive commercial rights granted to the owner of a registered plant variety, such as commercial and agricultural varieties. To be eligible for protection the applicant must show that the new plant variety is distinct, uniform and stable. Like patents, trade marks and copyright, plant breeders' rights are a form of intellectual property. An example of a plant breed that could be protected under this law is a blight-free taro plant.



Inventions, Innovations and Ideas – Protected by Patents

If you have invented something new you can use a patent to protect your invention. A patent is a right granted for any device, substance, method or process that is new, inventive and useful. Patents give effective protection if you have invented new technology that will lead to a product or process with significant long-term financial gain.

A patent is legally enforceable and gives the owner the exclusive right to commercially exploit the invention for the life of the patent (which could be up to 25 years). No-one else can use, distribute, manufacture or sell the invention without the patent owner's consent. This right is not automatic - you must apply for patent protection for your invention. (See the contact list at the back of this brochure and call your IP office for details).



In return, patent applicants must share their know-how by providing a full description of how their invention works. This information becomes public and can provide the basis for further research by others. You cannot patent artistic creations, mathematical models, plans, schemes or other purely mental processes.

Some examples of well-known inventions are the utility truck, ball point pen, mobile telephone, can opener, DVD player and bicycle.

What else should you know?

IP protection laws differ from country to country across the Pacific region. For this reason it is important to check with your IP office for more specific information on the laws in your country.

Where do I go for help?

For general information about IP protection and to obtain application forms, visit your local IP contact point. For further information, see the list of contact details and helpful websites provided in this brochure.

You can also visit your local Business Enterprise Centre (BEC) or government business assistance office for information about how to make the most financially from IP in your business.

For more specific advice and assistance and to help you decide on the best IP protection for you, we recommend you seek the advice of an IP professional such as a patent or trade mark attorney, or IP lawyer. You will find details for these people in your local telephone directory.

List of IP Contacts for the Pacific Islands

Cook Islands

Crown Counsel, Crown Law Office
PO Box 105, Avarua
Rarotonga
Ph (682) 29337
Fx (682) 20839
legaladv@foraffairs.gov.ck

Papua New Guinea

Intellectual Property Office
of Papua New Guinea
Investments Promotion Authority
PO Box 1281, Port Moresby NCD
Ph (675) 3213 900
Fx (675) 3215 155
www.ipa.gov.pg

Federated States of Micronesia

Department of Economic Affairs
PO Box PS 12, Palikir Station, Pohnpei
Ph (691) 320 5133
Fx (691) 320 5854

Republic of the Marshall Islands

Attorney General's Office
PO Box 890, Majuro
Ph (692) 625 3244
Fx (692) 625 5218

Fiji

Ministry of Justice
Level 7, Suvavou House,
Victoria Parade, Suva
Ph (679) 3309 866
Fx (679) 3305 421

Samoa

IP Registry, Justice Department
PO Box 49, Apia
Ph (685) 22671 or 20786
Fx (685) 21050
sipo@lesamoa.net

Kiribati

Department of Commerce, Industry
and Tourism
PO Box 510, Betio, Tarawa
Ph (686) 26158,
Fx (686) 26233,
commerce@tskl.net.ki

Solomon Islands

Registrar General's Office
c/- Ministry of Foreign Affairs and
Trade Relations
PO Box G10, Honiara
Ph (677) 21250
Fx (677) 20351

Nauru

Department of Justice
Government Offices
Yaren
Ph (674) 444 3747; 444 3155
Fx (674) 444 3108; 444 3158

Tonga

Intellectual Property and Company
Registration Office
Ministry of Labour, Commerce and
Industries
PO Box 110 Nukualofa
Ph (676) 24306,
Fx (676) 27791
registraripcr@mici.gov.to

Niue

Crown Counsel
PO Box 40, Premier's Dept
Office of the Attorney General
Ph (683) 4228
Fx (683) 4208

Tuvalu

Crown Counsel
Attorney General's Office
PO Box 63, Funafuti
Ph (688) 20116
Fx (688) 20817

Palau

Assistant Attorney General
Ministry of Justice, Koror
Ph (680) 488 3198
Fx (680) 488 4567

Vanuatu

State Law Office
Private Mail Bag 048
Port Vila
Ph (678) 22362
Fx (678) 25473

Helpful Websites

Asia-Pacific Economic Cooperation
Intellectual Property Rights Experts' Group
www.apecipeg.org

IP Access (Australian IP Information site)
www.ipaccess.gov.au

IP Australia

Discovery House
Phillip ACT 2606
Ph (612) 6283 2999
Fx (612) 6283 7999
assist@ipaaustralia.gov.au
www.ipaustralia.gov.au

Intellectual Property Office of New Zealand

Level 4, 330 High Street
Lower Hutt, NZ
Ph (64) 4560 1600 Fx (64) 4568 0747
www.iponz.govt.nz

Pacific Islands Forum Secretariat

Private Mailbag, Suva, Fiji
Ph (679) 331 2600 Fx (679) 331 2226
info@forumsec.org.fj
www.forumsec.org.fj

University of the South Pacific School of Law

law.vanuatu.usp.ac.fj

World Intellectual Property Organization

www.wipo.org

