

Creative Economy and Intellectual Property Rights

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Friday, 21 June 2024

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Presentation Outline

1) Why is Intellectual Property Important?

Defensive and Offensive Dimensions

2) IP Considerations for Fashion

3) IP Considerations for Music and Film



The Importance of IP – The Good News is that Ethiopia has been there before!

Ethiopian Coffee: Defensive and Offensive Dimensions

Defensive Dimension: Prevent misappropriation and the unauthorized and un(der)compensated use of Ethiopian coffee brands by foreign coffee companies

Offensive Dimension: Build recognition of Sidamo, Yirgacheffe and Harrar brands in international markets, increase long term demand

Ethiopian Coffee - The Story of the Strategy (1)

- Ethiopian Fine Coffee Stakeholder Committee (includes cooperatives, exporters, the Ethiopian Intellectual Property Office and other government ministries) convenes to weigh IP options

Geographical Indication (GIs) vs. Trademarks

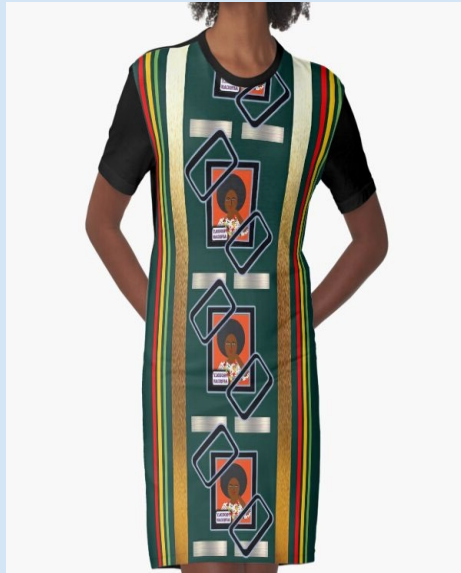
- GIs discarded – while Sidamo and Harrar are names after specific regions, not all of it is produced in the same region under the same circumstances; government oversight of producers practically impossible given small hold farming of coffee in very remote areas

Ethiopian Coffee - The Story of the Strategy (2)

- Better to protect commercial origin through trademarks; in 2004, Ethiopian Coffee Trademarking and Licensing Initiative is formed
- Government-centered initiative – Ethiopian government would apply for trademark registration of Sidamo, Harrar and Yirgacheffe names in key markets; Government would own the trade names
- Assistance from DFiD, an NGO and pro bono work of an international law firm for registration
- Foreign coffee associations in US and Japan challenge registrations on grounds that names had become generic and non-distinct
- Ethiopia reaches settlement with Starbucks in US; wins litigation in Japan citing that the names are distinctive and that typical local consumers have little knowledge of these coffee brands



The Ethiopian Fashion Industry and Intellectual Property



IP Considerations for Textiles and Fashion Industry

Options

- 1) Industrial Designs
- 2) Trademarks
- 3) Geographical Indications
- 4) Trade Secrets

Industrial Designs (1)

TRIPS, Article 25

1. Members shall provide for the protection of independently created industrial designs that are new or original. Members may provide that designs are not new or original if they do not significantly differ from known designs or combinations of known design features. Members may provide that such protection shall not extend to designs dictated essentially by technical or functional considerations.
2. Each Member shall ensure that requirements for securing protection for textile designs, in particular in regard to any cost, examination or publication, do not unreasonably impair the opportunity to seek and obtain such protection. Members shall be free to meet this obligation through industrial design law or through copyright law.

Industrial Designs (2)

- Protects the unique appearance of a product rather than what it's made of or how it works
- Can cover shape, configuration, pattern or ornamentation
- Requirement of novelty or originality
- TRIPS minimum duration of protection = 10 years (Art. 26)
- Right to prevent third parties from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes

The Hague Agreement

- The Hague System for the international registration of industrial designs offers the owner of an industrial design a means of obtaining protection in several countries by filing one application in one language, with one set of fees in one currency
- Ethiopia is not yet a party to the Hague Treaty

Trademarks

TRIPS, Article 15(1)

Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks

Trademarks (2)

- Can cover names (i.e., Sidamo, Yirgecheffe in the case of coffee), logos, designs, symbols, sounds and slogans
- Must be distinctive
- Initial registration for minimum of 7 years under TRIPS (Art. 18), potentially renewable in perpetuity
- Prevents others from using the same name or logo as your brand, or one that is confusingly similar to your brand; protects identity, reputation, investment of money and time, and market share

The Madrid Agreement and Protocol

- The Madrid System is a convenient and cost-effective solution for registering and managing trademarks worldwide; single international trademark application and one set of fees to apply for protection in up to 131 countries
- Ethiopia is not yet a party to the Madrid Agreement and Protocol

Geographical Indications (1)

TRIPS, Article 22

1. Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.
2. In respect of geographical indications, Members shall provide the legal means for interested parties to prevent:
 - (a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;
 - (b) any use which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention (1967).

Geographical Indications (2)

- Can cover products whose essential qualities are intricately tied to a geographical production area (such as wines, spirits, other food and drinks, i.e., champagne)
- Distinct connection to the place of origin, normally rooted in quality, reputation and/or characteristic traits
- Potentially in perpetuity (no minimum protection term specified in the TRIPS Agreement)
- Prevents others from using the same name for products produced outside the designated geographical area
- Generally needs robust local quality control mechanism to maintain brand reputation

Geographical Indications (3)

- No treaty facilitating foreign GI registrations; bilateral treaties of EU often include requirements to recognize European-based GIs on wines, spirits and food items (ex. EU-Viet Nam; EU-Japan)
- Notable example of textiles that are registered as a GI: Sarong Batik Petalongkan from Indonesia



Trade Secrets (1)

TRIPS, Article 39(2)

Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices so long as such information:

- (a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
- (b) has commercial value because it is secret; and
- (c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

Trade Secrets (2)

- Potentially in perpetuity but you need to keep the practice secret (ex. formula for Coca Cola®)
- Generally protected through enforceable confidentiality obligations in contracts
- No registration

Consider Other Ways to Add Value to Local Traditional Textiles

UNESCO Convention for the Safeguarding of Intangible Cultural Heritage

intangible cultural heritage means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage (Convention, Article 2(1))

Ex. Indonesian Batik, Croatian lacemaking



IP Considerations for Music and Film

“In a country blessed with over 81 diverse ethnic identities each having their own way of expressing themselves through sound, music has been a part of the socioeconomic fabric of the country for a long time. Each generation has also used music to mark their place in history and enhance the medium for future generations.”

British Council, Mapping of the Ethiopian Creative Ecosystem (2022)

Copyright



What is Copyright?

A legal vehicle to secure exclusive rights over creative ‘works’ and ‘neighboring rights’ by humans

TRIPS Agreement only defines what is not covered by a copyright – i.e., ideas, procedures, methods of operation or mathematical concepts as such; otherwise includes whatever the Berne Convention considers as a work that is eligible for copyright protection (Article 9)

Ethiopia is not a party to the Berne Convention; but still an important global reference point for copyright law

Copyrights grant exclusive economic rights for the life of an author plus 50 years under TRIPS; many developed countries have extended that to 70 years through bilateral and plurilateral trade treaties (after which the work will fall into *the public domain*); certain moral rights will continue to exist in perpetuity

ex. Original versions of certain early Disney characters are in the public domain

Copyrights come into existence the moment it is created (fixed onto the medium)

Registration possible in most jurisdictions, creates a rebuttable presumption of authorship



What is a Creative ‘Work’?

Requirement that the creative activity be fixed on some type of media:

- texts (papers and books)
- speeches, sermons and other similar pieces
- dramatic and musical works
- choreographic and pantomimic works
- musical and operatic compositions
- photographic and audio-visual works, including cinematographic works
- drawings, paintings, engravings, sculpture, lithography and kinetic art
- Illustrations, geographical charts, sketches and plastic works concerning geography, engineering, topography, architecture, landscaping, scenography and science
- adaptations, translations, parodies and other transformations of original works presented as new intellectual creations
- computer programs, video games
- collections or compilations, anthologies, encyclopaedias, dictionaries, databases which, by their selection, organization or arrangement of their content, constitute an intellectual creation
- variations and combinations of the above

Economic Rights

- Right to exploit the work; reproduction, distribution, public display, or performance of the work
- Right to license the work to others in exchange for a royalty
- Right to sue others for infringement of copyright in case of unauthorized use
- Copyrights grant exclusive economic rights for the life of an author plus 50 years under TRIPS; many developed countries have extended that to 70 years through bilateral and plurilateral trade treaties (after which the work will fall into the public domain); certain moral rights will continue to exist in perpetuity
 - ex. Original versions of certain early Disney characters are in the public domain



Moral Rights

- protects the integrity of a creative work; ensures that the work is not distorted, mutilated, or otherwise modified in a way that harms the creator's reputation or honor
- include right of attribution, right to author's personality, right to have a work published anonymously or pseudonymously, and the right to the integrity of the work
- moral rights are personal to the creator and cannot be sold or given away

"Imitation is the sincerest form of flattery."
— Charles Caleb Colton (1820)

but the digital environment makes it especially easy to copy and misappropriate

What is a Neighboring (Related) Right?

Rights granted to performers, producers of recordings and films, and broadcasting organizations

TRIPS, Article 14

1. In respect of a fixation of their performance on a phonogram, performers shall have the possibility of preventing the following acts when undertaken without their authorization: the fixation of their unfixed performance and the reproduction of such fixation. Performers shall also have the possibility of preventing the following acts when undertaken without their authorization: the broadcasting by wireless means and the communication to the public of their live performance.

2. Producers of phonograms shall enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms.

3. Broadcasting organizations shall have the right to prohibit the following acts when undertaken without their authorization: the fixation, the reproduction of fixations, and the rebroadcasting by wireless means of broadcasts, as well as the communication to the public of television broadcasts of the same. Where Members do not grant such rights to broadcasting organizations, they shall provide owners of copyright in the subject matter of broadcasts with the possibility of preventing the above acts, subject to the provisions of the Berne Convention (1971).

...

Term = 50 years from fixation for performances and producers; 20 years for broadcasts



Limitations and Exceptions

Berne Convention (Art. 9)

- must be limited to "certain special cases"
- cannot "conflicting with normal exploitation of the work"
- cannot do disproportional harm to the rights holders

balances exclusive commercial rights with important development goals

concept of *'fair use'* differs significantly between countries

typical examples: unremunerated private viewings, libraries, schools



Collective Management Organizations

- Critical for the copyright ecosystem
- Collects and distributes royalties to authors and their respective right holders
- First point of contact for cross-border licensing
- Copyright and Neighboring Rights Collective Management (CNCRM) in Ethiopia
- Initiates policy proposals for changes to copyright law (ex. JASRAC)

Multilateral Treaties on Copyright

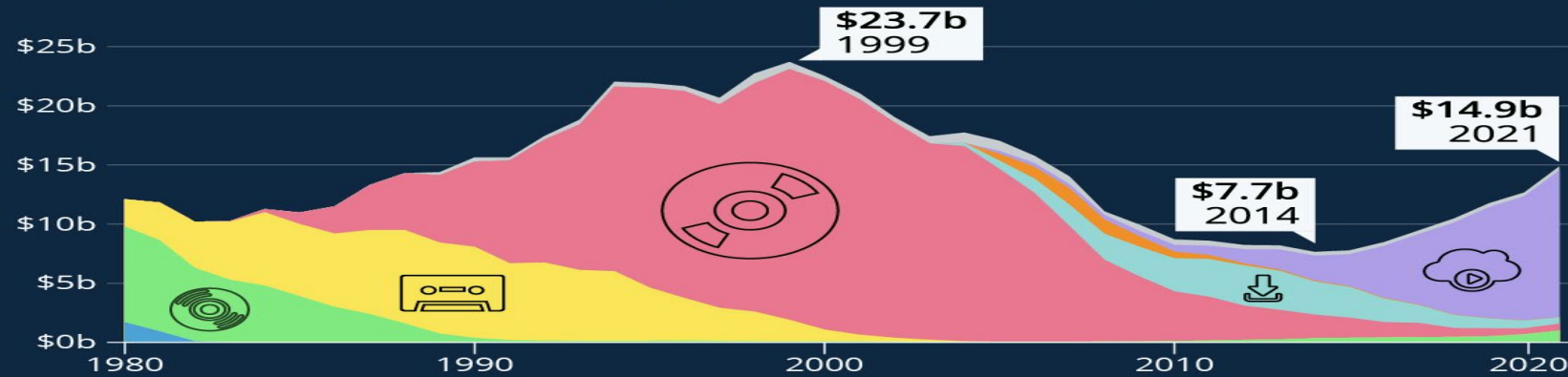
- Berne Convention (1886)
- Rome Convention (1961)
- The TRIPS Agreement (1995)
- WIPO Internet Treaties (1996)
- Beijing Treaty (2012)
- Marrakech Treaty (2013)
- Ethiopia not a party to any of the treaties
- However, unlike major industrial property rights, there exists no system to facilitate the recognition of copyrights in foreign jurisdictions

Copyright is Important, but So Is Digital Strategy!

From Tape to Tidal: 4 Decades of U.S. Music Sales

U.S. recorded music revenues from 1980-2021,
by format (adjusted for inflation, 2021 dollars)

- 8-Track
- Vinyl
- Cassette
- CD
- Downloads
- Ringtones
- Streaming*
- Others



* incl. SoundExchange payments to performers and copyright holders
for digital and customized radio services

Source: RIAA



statista

Thank you!

