

# Intellectual Property in Seychelles

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AN OVERVIEW OF THE NATIONAL INTELLECTUAL PROPERTY SYSTEM

## **Trade Division**

Ministry of Finance, Trade, Investment and Economic Planning

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# Intellectual Property in Seychelles

## What is Intellectual Property?

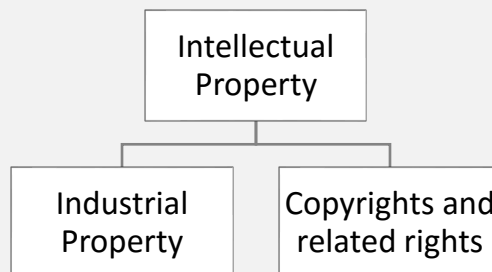
According to the World Intellectual Property Organization (WIPO), “Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.”

The creator of a creative or innovative work acquires intellectual property rights (IPRs) as a result, which arise from numerous creative and innovative thinking leading to the formation of inventions; literary and artistic works; designs; and symbols, names and images used in trade and commerce.

IPRs are exclusive rights. The notion is that if you created it, you must own it and so you must also have an exclusive right to its use and benefits. IPRs are also territorial rights, which means that they are only protected in the country where they are registered.

## Types of Intellectual Property Rights

IPRs are ordinarily grouped in two areas; copyrights and related rights and industrial property rights.



### *Industrial Property*

Industrial property ranges from patents for inventions, layout-designs of integrated circuits, to industrial designs, trademarks, service marks and geographical indications.

### *Copyrights*

Copyrights typically arise out of literary and artistic works. These include music, lyrics, choreography, poetry, scripts, screenplays, novels, drawings, paintings etc.

## IP Law in Seychelles

IP is mainly governed by the **Industrial Property Act 2014** and the **Copyright Act 2014**. However, there are other instruments that correlate with these two main legal instruments, including but not limited to the following:

- Companies Ordinance, 1972 (CAP 40)
- International Business Companies Act, 2016
- Licences Act, 2010 (CAP 113)
- Penal Code (CAP 158)
- Penal Code (Amendment) Act 2012 (Act No. 5 of 2012)
- Customs Management Act, 2011 (Act No. 22 of 2011)
- Business Tax Act, 2009 (Act 28 of 2009)
- Consumer Protection Act, 2010 (Act 30 of 2010)
- Seychelles Investment Act, 2010 (Act 31 of 2010)
- Fair Competition Act, 2009 (Act No. 18 of 2009)
- Animal and Plant Biosecurity Act, 2014 (Act 10 of 2014)
- Environment Protection Act, 2016 (Act 18 of 2016)
- Creative Industries and National Events Agency Act, 2016 (Act 17 of 2016)
- National Institute for Science, Technology and Innovation Act, 2014 (Act 6 of 2014)

### Main law

#### *Industrial Property Act*

The Industrial Property Act, 2014 governs the protection and use of patents, trademarks, geographical indications, utility models, layout designs and integrated circuits.

The Act also contains provisions with regard to the treatment of foreigners who are nationals or residents of other countries and who does not have business or industrial establishment in Seychelles as well as the application of international agreements to which Seychelles is a party or would be a party to.

This is a list of legislations for industrial property:

<b>PRIMARY LEGISLATION</b>
Industrial Property Act, 2014 (Act 7 of 2014)
<b>SECONDARY LEGISLATION (i.e. supplementary instruments)</b>
Industrial Property (Geographical Indication) Regulations, 2014 (S.I. 86 of 2014)
Industrial Property (Industrial Design) Regulations, 2014 (S.I. 87 of 2014)
Industrial Property (Lay-out Design) Regulations, 2014 (S.I. 88 of 2014)
Industrial Property (Marks) Regulations, 2014 (S.I. 89 of 2014)
Industrial Property (Patents) Regulations, 2014 (S.I. 90 of 2014)

The Industrial Property Act 2014 repealed the Patent Act of 1901 and the Trademarks Decree of 1978.

### *Copyright Act*

The Copyright Act, 2014 provides for the administrative enforcement of copyrights to protect eligible works by an exclusive right conferred to the author or another person for the lifetime of the author plus 50 years. This is applicable in Seychelles or elsewhere, on all or any part of the copying, reproduction, communication to the public or broadcasting of the work.

Eligible works include: literary and artistic, in particular; books, pamphlets, articles and other writings; speeches, lectures, addresses, sermons and other oral works; musical works, choreographic works and other works created for stage productions; musical works, with or without accompanying words; audio-visual works; works of architecture; works of drawing, painting, sculpture, engraving, and other works of fine art; photographic works; works of applied art; computer programmes; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.

This is a list of legislations for copyrights:

<b>PRIMARY LEGISLATION</b>
Copyright Act, 2014 (Act 5 of 2014)
<b>SECONDARY LEGISLATION (i.e. supplementary instruments)</b>
Copyright (Voluntary Registration) Regulations, 2015 (S.I. 15 of 2015)

The Copyright Act, 2014 repealed the Copyright Act of 1982.

### **Other notable legal instruments**

#### *Customs Management (Border Measures) Regulations, 2014*

The Customs Management (Border Measures) Regulations, 2014 provides for enforcement measures at the border with respect to counterfeit and/or pirated goods under Chapter 13.

#### *Creative Industries and National Events Agency Act, 2016*

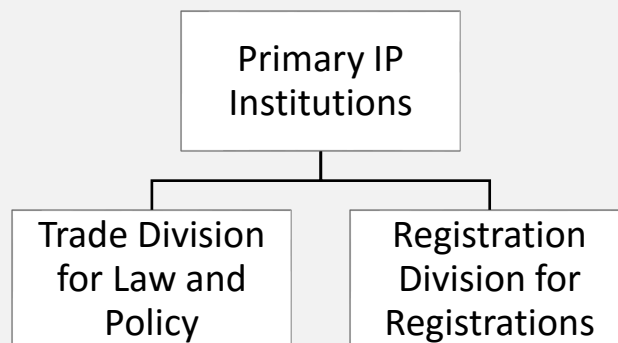
The Creative Industries and National Events Agency Act, 2016 provides for the establishment of an agency to be known as the Creative Industries and National Events Agency (CINEA) to promote the development of creativity, skills and talents in individuals and collectively in the fields of visual, performing and literature, arts and for organizing national events in a planned and coordinated manner and to provide for matters connected therewith or incidental thereto.

### *National Institute for Science, Technology and Innovation Act, 2014*

The National Institute For Science, Technology and Innovation (NISTI) Act, 2014 provides for the establishment of the National Institute of Science, Technology and Innovation, to provide for its composition, functions and powers which shall serve as an umbrella body providing leadership and coordination for research in science, technology and innovation and for matters connected therewith or incidental thereto.

## **The IP institutional framework in Seychelles**

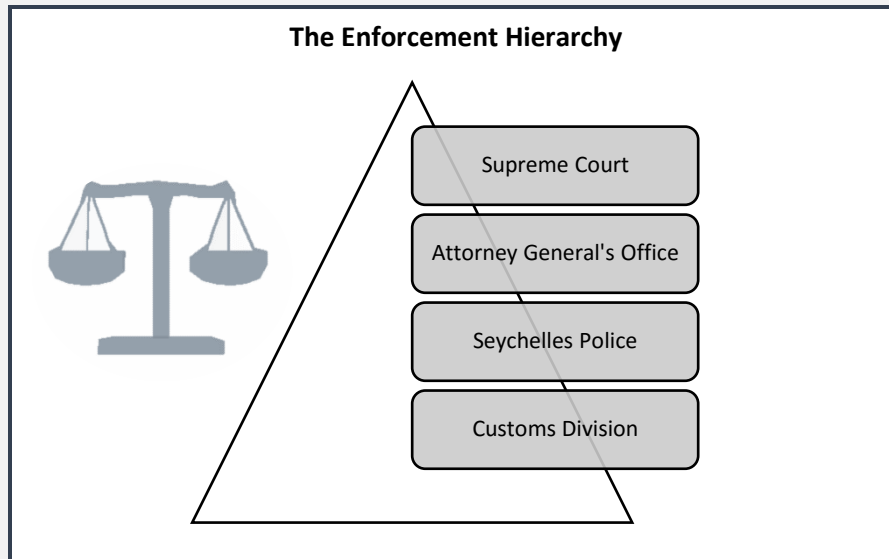
Following the decision by the Cabinet of Ministers on 28th February 2018 to establish a centralised IP Office, the Registration Division of the Department of Legal Affairs, President's Office, is the sole institution responsible for the registration of IP. The same decision states that the Trade Division of the Department of Trade, Ministry of Finance, Trade, Investment and Economic Planning shall be the body responsible for the law and policy concerning IP.



The Trade Division is also the Secretariat to the National IP Committee which was established since July 2017, serving as a forum for coordinating and guiding national stakeholders in relation to IP developments. The roles and functions of the National IP Committee are elaborated below.

## **Enforcement of IPRs in Seychelles**

There are Government bodies such as the Seychelles Police Force, the Customs Division, the Attorney General's Chambers and the Judiciary that are entrusted with enforcement of IPRs.



### *Supreme Court*

The Supreme Court of Seychelles has the power to decide on matters of infringements of IPRs under the Industrial Property Act 2014 and the Copyright Act 2014, whether or not the matters are brought before the court through criminal proceedings or as a civil suit.

### *Attorney General's Office*

The Attorney General's Office provides advice to other governmental departments on legal concerns in relation to IP, drafts IP laws and regulations, prosecutes offences under the Industrial Property Act 2014 and the Copyright Act 2014 and oversees the functions of the Registrar General's Office.

### *Seychelles Police*

The Seychelles Police has the power to enter and search premises, as well as seizing property reasonably suspected to be infringing of IP rights, and submit case briefs in that regard to the Attorney General's Chambers for prosecution, whenever a warrant is issued by the Court to carry out the search.

### *Customs Division*

The Customs Division of the Seychelles Revenue Commission has the responsibility to enforce border measures and in so doing, ensure that goods entering the country are not infringing of IP rights in Seychelles or counterfeit. Their role is to seize goods and suspend clearance of goods where such goods are found or suspected to be counterfeit or infringing of IP rights. In some instances, the goods that are found to be counterfeit or infringing of IP rights are re-exported and not allowed entry into the country.

Aside from the enforcement mechanism available through the criminal justice system, IP law also provides for civil remedies, which rests entirely on the rightsholders to pursue a lawsuit against the infringer.

Despite the existence of relevant laws and institutions dealing with enforcement of IPR, as well as the claims of the stakeholders that indicate the serious problems surrounding counterfeiting and piracy, no IPR infringement case has been brought before these law enforcement agencies as of yet. This may be due to a number of factors including the size of the local market, which foreign right holders might consider very small, and lack of awareness of the right holders on how to enforce their right in case of infringement.

## **Trade-related aspects of IPRs**

### The link between trade and intellectual property

When creators or inventors come up with an intellectual property, it is found that most, if not all, begin to trade in that property for some profit. This is where the trade-related aspect of IPRs comes in.

The trade-related aspects of IPRs include the aim of providing effective and adequate protection of IPRs so as to:

- a) promote fair use and fair competition in national and international trade,
- b) reduce distortions and impediments to trade,
- c) encourage creativity and innovation for trade expansion, and;
- d) promote the development of knowledge, sustainable development and economic growth.

### The role of the Trade Division

The role of the Trade Division in relation to IPRs is therefore to ensure that these goals are met as much as possible. One of its primary objectives in relation to IPRs is to ensure that measures implemented by the government do not hinder the protection of IPRs and, to ensure that measures implemented for the protection of IPRs do not themselves become barriers to trade and that there is a sufficient balance between the interests of right holders and that of users.

Therefore, due to its commitment to the WTO and the TRIPS Agreement specifically, additionally, given that the Trade Division will now be the policy making body of the IP Office, the Trade Division is thoroughly involved in the implementation of IP law and the continuance of IPR protection in Seychelles.

## The National IP Committee

The National IP Committee serves as a coordination mechanism between national stakeholders. It coordinates by collectively working on IP related matters that arise on the national level and provide recommendations on how to properly address them.

The Chairperson of the National IP Committee is the Principal Secretary for Trade, who acts as the liaison between the National IP Committee, other committees and other Government bodies regarding IP related issues. The Chairperson also ensures that all interests are heard and provides a decision when a consensus of opinion has been reached.

The National IP Committee was formed primarily for the purpose of coordinating and guiding national stakeholders in relation to IP developments. However, the National IP Committee's roles and functions also include the following:

- to serve as a coordination mechanism which will allow all the members to be aware of what each stakeholder is doing so that decisions or positions can be made collectively on a national level.
- to work collectively in assisting and providing entrepreneurs with required information and assistance on IP rights.
- to advise competent authorities during the process of reviewing current legislations and enactment of new legislations relating to IP.
- to discuss the implementation of current international agreements Seychelles is party to and any future agreements Seychelles envisage to join.
- to formulate national positions in negotiations relating to IP.
- to discuss the requirement of the country in the areas of IP and the policies that will need to be put in place to ensure that the local community benefits from their required IP rights.
- to discuss awareness and sensitisation programmes that will be beneficial for the business community and the public as a whole.
- to acquire the required technical assistance and capacity building necessary for the implementation of IP policies and legislations.
- to discuss any IP related matters that may arise on the national level and provide recommendations on how to address these.

The Committee typically meets once a month and sometimes on ad hoc basis. It consists of 22 organisations, including governmental and non-governmental entities.



## **IP related organisations and treaties**

Seychelles is currently a member of two international IP related organisations, namely, the World Trade Organization (WTO) since 26th April, 2016 and the World Intellectual Property Organization (WIPO) since 16th March, 2000.

### *World Trade Organisation (WTO)*

The WTO is a facilitator of international trade and currently has 164 members who are party to it. The organisation has brought about positive contributions to international trade amongst countries through the many principles that the organisation has adopted including trading without discrimination, freer facilitated trade, maintaining predictability through binding and transparency, promoting fair competition, encouraging development and economic reform.

In terms of IP, Seychelles became officially bound by the WTO Agreement on Trade Related Intellectual Property Rights (TRIPS) upon its accession to the WTO. This means that the WTO TRIPS Agreement has been enforceable for Seychelles since 26<sup>th</sup> April, 2016. The TRIPS agreement covers many areas of intellectual property such as copyright and related rights; Trademarks including service marks; Geographical indications including appellations of origins; Industrial designs; Patents including the protection of new varieties of plants; the layout-designs of integrated circuits; and undisclosed information including trade secrets and test data.

The agreement is a minimum standards agreement, which allows members to provide more extensive protection of intellectual property if they wish to do so. Respectively, each areas of intellectual property covered in the TRIPS agreement sets out minimum standards of protection to be provided by each member. The agreement sets these standards requiring, first, that the substantive obligations of the main conventions of the WIPO, Paris convention for the protection of Industrial Property, and the Berne convention for the protection of literary and artistic work must all be complied with. The agreement also lays down certain general principles applicable to all IPR enforcement procedures and the procedures and remedies that must be available so that right holders can effectively enforce their rights.

### *World Intellectual Property Organization (WIPO)*

WIPO is an intergovernmental organisation which in 1974 became one of the specialised agencies of the United Nations system. The origins of WIPO date back to 1883 and 1886 when the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works provided for the establishment of an "International Bureau". WIPO was created "to encourage creative activity, to promote the protection of intellectual property throughout the world". It also administers multiple treaties specific to different areas in the realm of IP.

The following are IP related treaties signed by Seychelles:

- WTO Trade Related Intellectual Property Rights (TRIPS) Agreement

- Protocol of amending the TRIPS Agreement – Implementing of Paragraph 6 of the Doha Declaration
- Paris Convention for the Protection of Industrial Property
- Patent Cooperation Treaty (PCT)
- Beijing Treaty on Audiovisual Performances which has been signed by not ratified.
- The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS) to the Convention on Biological Diversity (CBD).

## **A Message from the Principal Secretary for Trade**

“A society that values intellectual property creates an economy that thrives. It is thus vital that due significance is given to the protection of intellectual property rights. We want an economy that values intellectual property so that we can cultivate innovative thinking and guarantee an advancement in the quality of trade. Hence, it is as important to acknowledge our responsibilities in respecting these rights as it is to recognise our own IP rights. IP carries obligations as much as they carry privileges, as it is largely the product of people’ innate abilities to create and innovate. It demands recognition, reward and respect. So let us use IP, not as a simple marketing strategy but, as a fuel for our economy. Because without the creativity and innovation involved in bringing goods and services to life, what would you have to trade?”



**Ms. Cillia Mangroo**

Principal Secretary for Trade and  
Chairperson of the National IP Committee

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