

A Plan to Expand Intellectual Property Protection in The Bahamas

Presentation to the Cabinet of The
Bahamas

5 December 2023



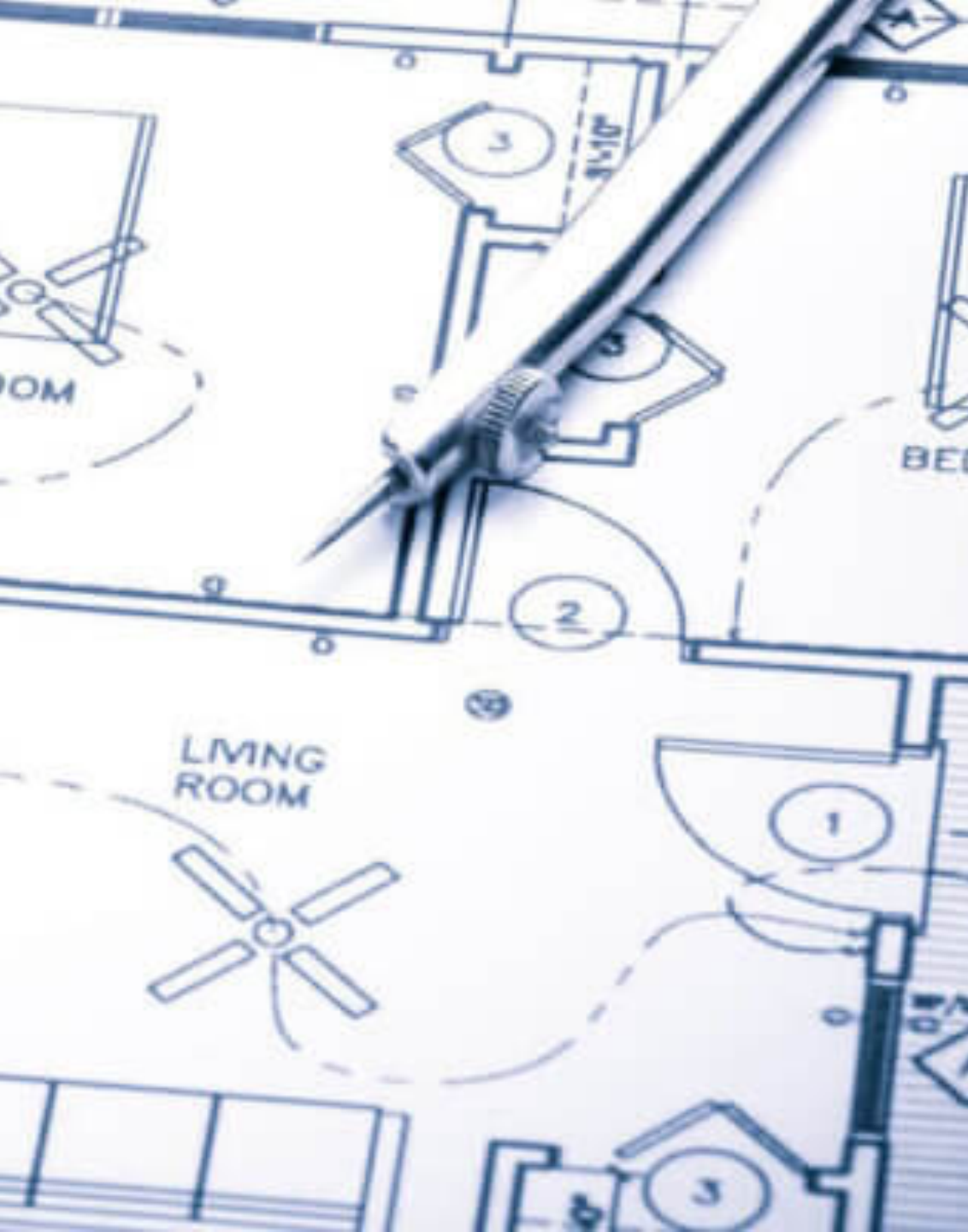


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Introduction and current status

Background

- Intangible assets constitute a crucial part of global value chains and production processes. From 2000-2014, intangible assets were estimated to account for one-third of company market values, double the contribution of tangible capital.
- COVID-19 and related health protocols caused significant challenges to global economies. Despite challenges, there was an innovation surge and increased value of intellectual property, contributing to global economic rebound.
- IMF data indicates a 6.0% global economic rebound in 2021, with modest growth estimates of 3.4% and 2.8% for 2022 and 2023 (WEO, 2023).
- Global intangible asset value grew from US\$65.7 trillion in 2019 to an estimated US\$74 trillion in 2021 (WIPO, 2022).
- Recent research conducted by Angus Chu (2021), demonstrates a positive correlation between strong intellectual property (IP) protection and innovation.

Creative Economy and Employment

- The World Bank estimated that creative economy (orange economy) continues to be a significant source of employment and provided around 30 million jobs in 2020 globally
- As outlined in the 2023 Speech From the Throne, a key component of the Government's legislative agenda includes the enhancement of the creative economy through expansion of IP protection for entrepreneurs operating in the orange economy.

Bahamian Strategy for Creative Economy

- The Bahamian strategy for improving the creative economy involves incentivizing creatives to protect their work, facilitating negotiation for international distribution. It also includes facilitating the use of IP as collateral for financing, introducing best practices, expanding to adoption and use of IP in The Bahamas by entrepreneurs and creatives, and preventing the abuse and loss of local creative material.

Introduction and current status, cont'd

Existing Legal Framework for IP

- The Bahamas joined the CARIFORUM/EU Economic Partnership Agreement (EPA) in October 2008 with the aim of increasing exports to the European market and diversifying the economy
- Prior to joining, the legal framework for intellectual property (IP) in The Bahamas was outdated. The colonial legal system of the United Kingdom protected IP until The Bahamas gained independence in 1973.
- Transitional provisions for WIPO Treaty, Paris Convention for the Protection of Industrial Property and the Berne Convention were made upon independence.
- In 2013, amidst efforts to diversify the Bahamian economy utilizing new trade sources, new legislation was drafted to modernize and enhance IP protection.
- This legislation includes Copyright Act, Patent Act, Trade Marks Act, and others, however the legislation was never enacted

Financial Performance

- Owing to the limited progress in modernizing the legal framework for IP protection, government revenue from the IP sector over the past ten years remained stagnant
- The Registrar General's Department analysis showed the largest volume of IP work related to trademark applications and registrations, similar to most developed countries
- Revenues associated with trademarks and patents were estimated at \$398,593 in 2012/13, but by 2021/22, they steadily declined to \$224,049.
- Revenues associated with copyrights were estimated at \$1,324 in 2012/13, decreasing to \$726 in 2021/22.
- The non-commercial fee structure regime for licensing of IP, last updated in 2003, further erodes the IP regulator's revenue

Introduction and current status, cont'd

Challenges and Impact

- Lack of modernization has led to a loss of competitiveness in the IP sector and potential revenues for the Government and businesses.
- The updated legislative framework for IP was not fully enacted, remaining non-compliant with CARIFORUM-EU EPA and WTO guidelines.
- The revenue loss due to the absence of modern legislation is estimated at 200 percent annually.
- Weak domestic IP protection prompts businesses to seek protection in the neighbouring US and other international jurisdictions, further exacerbating the revenue loss

Legislative Reform to Better Regulate IP in The Bahamas

There is a need to enact the existing compendium of IP related legislation, while providing regulations to administer the legislation

Legislative Reform to Better Regulate IP in The Bahamas, cont'd

- Copyright Amendment Act, 2015*, Copyright Amendment Bill, 2018 and Copyright Amendment Regulations, 2018 (Draft)
- False Trade Descriptions Act, 2015*
- Geographical Indications Act, 2015* and Geographical Indications Regulations, 2018 (Draft)
- Integrated Circuits Act, 2015* and Integrated Circuits Regulation, 2018 (Draft)
- Protection of New Plant Varieties Bill, 2015 and Protection of New Plant Varieties Regulation, 2018 (Draft)
- Patent Act, 2015* and Patent Regulations, 2018 (Draft)
- Trade Marks Act, 2015*, Trade Marks Amendment Bill, 2018 and Trade Marks Regulations, 2018 (Draft)

Introduction and current status, cont'd

A New Era of Global Bahamian IP Protection

Along with the passage of enhanced and expanded framework for IP protection in The Bahamas allows for Bahamian IP to be protected internationally.

Initially, the Government will seek global protection by accession to six (6) international agreements / treaties:

- Patent Cooperation Treaty
- Madrid Agreement Concerning the International Registration of Marks;
- Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks;
- Singapore Treaty on the Law of Trademarks;
- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations; and
- WIPO Copyright Treaty (WCT)

A New Era of Global Bahamian IP Protection

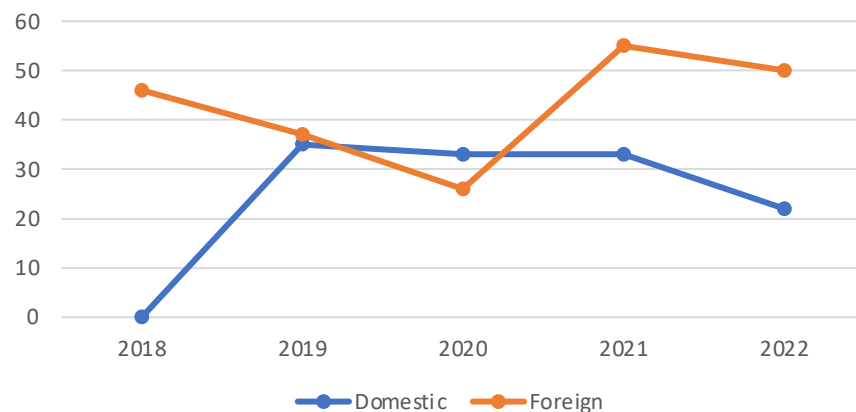
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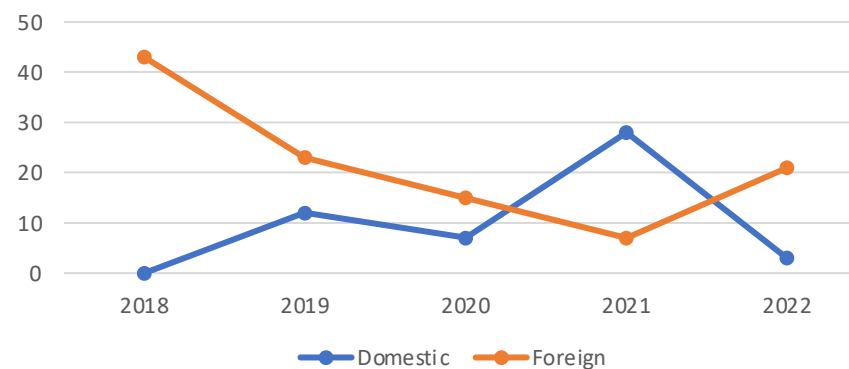
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The current trend of IP registration is worrisome

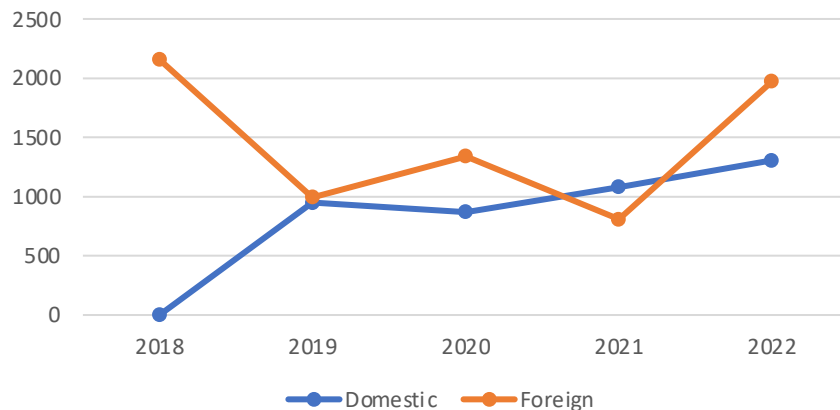
Bahamian Patent Applications



Bahamian Industrial Design (Copyright) Applications



Bahamian Trademark Applications



Save for the spike in domestic IP registrations during the COVID-19 pandemic period, there has been a trend of low domestic IP registrations and a preference for Bahamians to register IP abroad

A plan for patents

Patent Protection Potential in The Bahamas

WIPO defines a patent as “an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem”

- Strengthened patent legislation to allow for domestic prosecution for infringement on the protected patentable materials which have demonstrated uniqueness (ie. cannot patent a process that is commonplace to all Bahamians save for a collective patent)
- Despite 2018 Patent Act being passed in Parliament, new Patent Regulations provide orderly rules for the local implementation of the legislation and monitoring of the sector
- accession to the Paris Convention will provide international patent protection on business processes, production methods or inventions

Potential Beneficial Sectors

Several sectors/businesses have benefitted from patent protection in the past with even more sectors demonstrating potential for patentable activity in the future. These sectors may necessarily benefit from reforms in the system to protect patents in The Bahamas

- Hurricane shutter manufacturing;
- Salt manufacturing / extraction;
- Pharmaceutical production;
- Manufacturing of electronics;
- Local / unique alcohol manufacturing processes;
- Straw harvesting / production;
- Process for making artwork;
- Process for production / creation of junkanoo products;
- AND MORE.

A plan for patents, cont'd

Current Demand for Patent Protection

- For The Bahamas, with a relatively weaker legal framework for IP protection as compared Caribbean neighbours, a much larger portion of Bahamians opt for protection of IP internationally as compared to Caribbean counterparts
- Over the period 2018 – 2022, a total of 214 patent applications were made by Bahamians abroad, 91 applications more than the 123 registered domestically during the period
- Notable outliers are Antigua and Barbuda (2,207) and Barbados (3,707) who have significant patent filings by citizens/residents abroad
- The new framework is hoped to reverse this trend to encourage more domestic patent applications in line with regional trends

Caribbean Region Patent Applications						
State/IGO	2018	2019	2020	2021	2022	Total
Antigua and Barbuda	10	n/a	3	8	6	27
Bahamas	n/a	35	33	33	22	123
Barbados	n/a	31	29	73	60	193
Belize	24	32	23	27	32	138
Cuba	155	115	109	107	n/a	486
Dominica	4	3	2	11	2	22
Dominican Republic	228	243	217	227	241	1,156
Guyana	20	n/a	n/a	40	n/a	60
Haiti	n/a	n/a	n/a	n/a	n/a	0
Jamaica	79	65	57	76	19	296
Saint Kitts and Nevis	4	n/a	n/a	n/a	n/a	4
Saint Lucia	2	n/a	n/a	n/a	n/a	2
Saint Vincent and the Grenadines	4	3	5	11	1	24
Suriname	n/a	n/a	n/a	n/a	n/a	0
Trinidad and Tobago	139	113	112	151	149	664

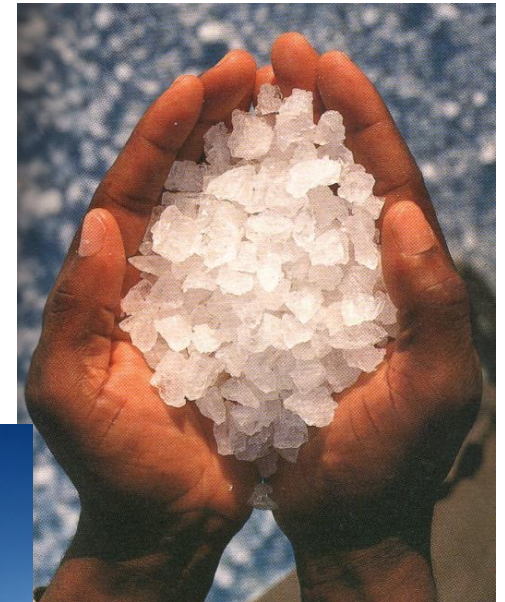
Bahamian Patent Applications Abroad						
State/IGO	2018	2019	2020	2021	2022	Total
Bahamas	46	37	26	55	50	214

Source: WIPO database and Registrar General's Department unpublished data

A plan for patents – Case Study

Bahamian Salt Manufacturing

- The Bahamas has operated in the niche sea salt production marketplace for generations, using creative methods to extract mineral rich salt from local salt ponds and flats and has only entered the commercial salt market in the 1900s
- The local extraction method itself, tied to environmentally sustainable practices itself may offer unique patent and branding opportunities in sustainable harvesting
- Similarly branded products retail for \$0.25 per ounce (\$4.00 per pound) and more, attributed to the boasted health options and high mineral content associated with the natural harvesting methods
- **Similar to other countries, opportunities exist to patent local, unique salt extraction and production process, aiding in brand strength and increased value of local salt products**
- Opportunities exist to partner and trademark locally produced salt and offer local gastronomy made possible only with salt extracted from certain local locations (use of geographical indicators)



A plan for trademarks

Trademark Protection Potential in The Bahamas

WIPO defines a trademark as “a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises.”

- The planned improved trademark framework allows for broad protection of trademark / branding of products sold locally and Bahamian products sold in the international marketplace;
- The current strategy of protection under the Madrid Agreement, Vienna Agreement and Singapore Agreement are intended to provide a broad international framework for the protection of international trademarks
- accession to the Madrid, Vienna and Singapore Treaties will provide international trademark protection for local business marks and aid in establishing business marks

Potential Beneficial Sectors

Several sectors/businesses have and continue to benefit from trademark protection in The Bahamas, both domestic and international businesses. These sectors may necessarily benefit from reforms in the system to protect trademarks in The Bahamas

- Branding of locally produced jams, jellies and pepper sauces;
- Branding of locally produced salt;
- Branding of bone fishing local, lodges and other residences;
- Branding of local arthouses / artisans;
- Branding of junkanoo products;
- AND MORE.

A plan for trademarks, cont'd

Current Demand for Trademark Protection

- For The Bahamas, with a relatively weaker legal framework for IP protection as compared Caribbean neighbours, a much larger portion of Bahamians opt for protection of IP internationally as compared to Caribbean counterparts
- Over the period 2018 – 2022, a total of 7,275 trademark applications were made by Bahamians abroad, while only 4,205 patent applications were recorded domestically.
- Notably, over the same period, regional leaders in trademark applications include: Dominican Republic [58,007], Jamaica [14,902], Cuba [12,468] and Trinidad & Tobago [8,474]
- Should the additional 3,070 applications have also been filed locally, Registrar General fees would have increased by more than \$153k under the current fee structure

Caribbean Trademark Patent Applications						
State/IGO	2018	2019	2020	2021	2022	Total
Antigua and Barbuda	766	n/a	690	748	759	2,963
Bahamas	n/a	948	870	1,081	1,306	4,205
Barbados	n/a	1,031	899	987	1,282	4,199
Belize	880	870	847	842	934	4,373
Cuba	2,977	2,906	2,241	2,048	2,296	12,468
Dominica	178	151	178	190	318	1,015
Dominican Republic	11,160	11,043	10,412	12,329	13,063	58,007
Guyana	609	n/a	n/a	708	n/a	1,317
Haiti	n/a	n/a	n/a	n/a	n/a	0
Jamaica	2,564	2,844	2,839	3,049	3,606	14,902
Saint Kitts and Nevis	281	n/a	n/a	n/a	n/a	281
Saint Lucia	385	n/a	n/a	n/a	n/a	385
Saint Vincent and the Grenadines	196	187	176	266	256	1,081
Suriname	546	536	508	543	659	2,792
Trinidad and Tobago	1,340	1,275	1,382	2,034	2,443	8,474

Bahamian Trademark Applications Abroad						
State/IGO	2018	2019	2020	2021	2022	Total
Bahamas	2,157	995	1,341	809	1,973	7,275

Source: WIPO database and Registrar General's Department unpublished data

A plan for trademarks – Case Study

Made in China Brand

- A popular trademark found on a wide variety of products starting in the 1940s and broadened to a global presence by the 1990s with the emergence of China as a manufacturing leader of the world
- The brand was originally created to support local businesses and became a source of national pride associated with affordable items of high quality
- The brand aided in bolstering local exports via brand recognition and also supporting the purchase of local goods by encouraging national pride
- **The opportunity exists to create and promote a similar “Made in The Bahamas” collective brand particularly to provide support to small businesses and collectives**
- Such a brand may support locally manufactured and produced products such as: straw bags, pepper sauces, local jams/jellies and other products with significant Bahamian content
- The use of a collective trademark must be deployed in tandem with a process to monitor product quality standards to ensure the long-term viability of the trademark.



A plan for copyrights

Copyright Protection Potential in The Bahamas

WIPO defines copyrights as “Copyright (or author’s right) is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture, and films, to computer programs, databases, advertisements, maps, and technical drawings.”

- Current status of Copyrights (Industrial design)
- Bahamas and The region
- Numbers of Bahamians who register copyright outside the country
- Treaty needed to improve Copyright (industrial Design) protection in The Bahamas
- Example of how it would benefit the work of each ministry (some ministries)
- The category of copyright protection is uniquely designed for parties who operate in the Orange Economy. Note that the protection provided in this category apply to products produced of a cultural nature and support the growth and development of a unique Bahamian cultural identity
- Despite passage of the 2018 Copyright Act in Parliament, the legislation was never enacted. Included with the amendments to this legislation are outstanding Regulations for the local implementation of the legislation and monitoring of the sector
- The new framework calls for The Bahamas to accede to the Rome Convention and WIPO Copyright treaty which provides broad IP protection to artisans and producers of work under this category in the global arena.

Potential Beneficial Sectors

Several sectors/businesses have benefitted from enhanced copyright protection in the past with even more sectors demonstrating potential for patentable activity in the future. These sectors may necessarily benefit from reforms in the system to protect patents in The Bahamas

- Authors and creators of literary work;
- Works of Playwrights;
- Musical work (recordings and performances);
- Actors and movie content;
- Poets and poetry;
- Artistic works such as paintings;
- AND MORE.

A plan for copyrights, cont'd

Current Demand for Industrial Design (Copyright) Protection

- For The Bahamas, with a relatively weaker legal framework for IP protection as compared Caribbean neighbours, a much larger portion of Bahamians opt for protection of IP internationally as compared to Caribbean counterparts
- Over the period 2018 – 2022, a total of 109 copyright applications were made by Bahamians abroad, while only 50 such applications were filed locally during the period
- Regional leaders in this category include Jamaica [836], Belize [343] and Dominican Republic [134]
- The low level of domestic copyright applications is in stark contrast to the more than 110 musicians, performers, playwrights and registered parties who produce copyrightable material

Caribbean Industrial Design Patent Applications						
State/IGO	2018	2019	2020	2021	2022	Total
Antigua and Barbuda	n/a	n/a	1	1	n/a	2
Bahamas	n/a	12	7	28	3	50
Barbados	n/a	n/a	n/a	n/a	n/a	0
Belize	56	106	87	94	n/a	343
Cuba	21	24	23	15	n/a	83
Dominica	n/a	n/a	n/a	n/a	n/a	0
Dominican Republic	31	40	16	21	26	134
Guyana	9	n/a	n/a	1	n/a	10
Haiti	n/a	n/a	n/a	n/a	n/a	0
Jamaica	121	207	217	100	191	836
Saint Kitts and Nevis	n/a	n/a	n/a	n/a	n/a	0
Saint Lucia	n/a	n/a	n/a	n/a	n/a	0
Saint Vincent and the Grenadines	n/a	n/a	n/a	n/a	n/a	0
Suriname	n/a	n/a	n/a	n/a	n/a	0
Trinidad and Tobago	22	11	16	17	11	77

Bahamian Industrial Design Applications Abroad						
State/IGO	2018	2019	2020	2021	2022	Total
Bahamas	43	23	15	7	21	109

Source: WIPO database and Registrar General's Department unpublished data

A plan for copyrights – Case Study

Protection of Locally Produced Content

- Concurrent with growth and development of the local tourism sector is the need to expand and develop a local cultural identity to support the sector. Expansion of copyright protection provides the base to ensure local artisans in the sector are duly compensated for their artistic work
- Based on Government data, there are more than 110 licensed performers, painters, writers and other persons engaged in the creative economy space who may potentially benefit from an expanded framework
- **Of particular importance, under the proposed framework and the Rome Convention, the reproduction of the performances of actors, singers, musicians, dancers and performers or literary and other artistic productions retain the rights to reproductions and transmittals of their performances**
- In tandem with the enhanced protection is the need for capacity building and awareness building for entrepreneurs of the benefits of IP protection
- Along with the protection of the content of Bahamian artists abroad, this also provides protection for the content of international artists being released locally in an unregulated manner



Next Steps

Legislation

- Draft legislation has been prepared by the Law Reform Commission to update the existing framework for IP protection in The Bahamas based on external reviews to align The Bahamas with international best practices in terms of compliance and to strengthen the sector
- Public consultation on the legislation to enhance the protection of IP in The Bahamas will continue until 15 March 2024 to allow sufficient time to compile and consider all comments and recommendations made
 - The debate of any legislative amendments is scheduled for Q12024
 - The accession to international treaties, if any, will occur after the passage of the necessary legislation
- Legislation and the guidance documentation are available on the website www.ipbahamas.gov.bs
- Accession to the relevant IP treaties is expected by end Q22024

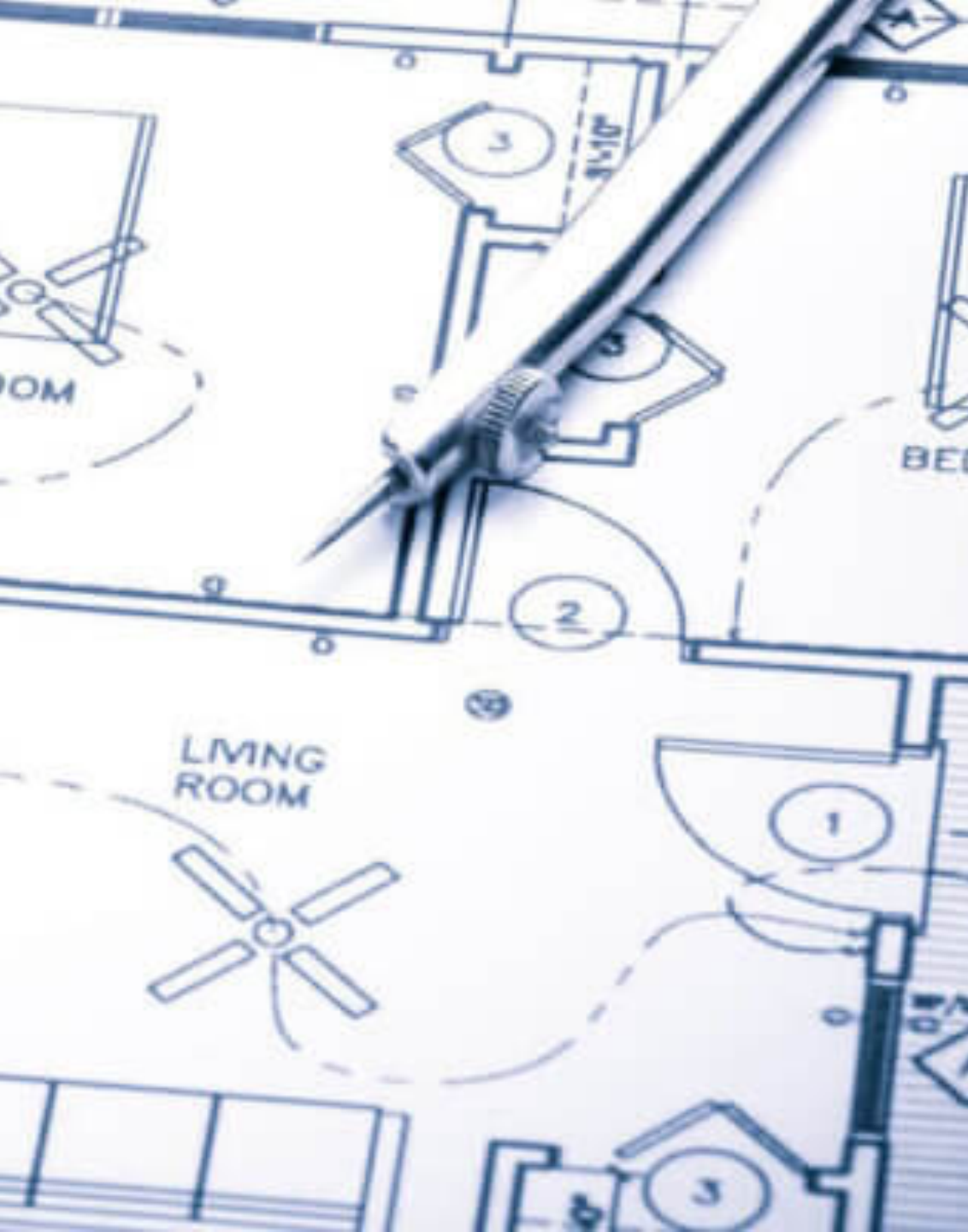
Strengthening the Capacity to Regulate IP in The Bahamas

- Legislation is presently being drafted to create a standalone IP Regulator for The Bahamas. This new regulator will allow for focussed attention on the growth and regulation of the sector. The new legislation is expected to be introduced in Parliament in 2024 after approval of the Cabinet
 - Included in this plan is the strategy to recruit additional dedicated specialist resources to aid in IP regulation
- Technical assistance is being requested from WIPO to upgrade the existing software and processes for application for IP protection in The Bahamas and abroad through the local regulator
 - Included in upgrade of existing infrastructure will be comprehensive training and capacity building exercises for staff
- The Bahamas will continue to partner with CarIPI and other regional projects to provide training, awareness building and other support to the Bahamian IP sector (further information on the project can be found at the following link [IP Documents | EU Funded IP Projects \(internationalipcooperation.eu\)](http://internationalipcooperation.eu))

Next Steps

Strengthening the IP Sector

- Technical assistance is being requested from WIPO to aid in creating a sector policy to govern IP in The Bahamas. The sector policy is expected to aid in shaping the current regulatory environment and aid in providing a nimble regulatory environment to quickly respond and adapt to future industry advances
- Included in the design of the new IP sector policy will be strategies for public engagement and awareness building exercises alongside partners to encourage enrolment and demonstrate the benefits of IP locally
 - This strategy calls for the hosting of regular industry briefings and updates on global and regional trends in IP to ensure expansion of IP protection into various local sectors
- **A key feature of this process is the ability of this new framework to allow agencies such as SBDC to provide comprehensive incubation support to MSMEs and become a true one-stop-shop: business advisory, financing assistance, incorporation advice and IP protection advice all under one roof**
- Over the medium to long term, an additional 11 international IP treaties have been identified for accession, allowing Bahamian entrepreneurs, creatives and others broad protections on their creative material



Appendix I – Legislative Reform

IP Legislative Reform

The enhanced copyright legislation is designed to provide the following benefits, among others:

The existing copyright legislation is designed to protect the rights that creators possess over their literary or artistic works. These types of works occur in a variety of forms such as literary works, music, theatre, paintings, sculpture, filmography, technical drawings and a variety of other artistic forms of expression. This legislation is designed to balance the rights of creators to control their intellectual property alongside the public interest to ensure broad access to such work.

The Act provides that a performer's rights will be infringed if a person, without their consent, displays or performs publicly the whole or any substantial part of a qualifying performance by means of a copy or phonorecord which was fixed without the performer's consent and that person knows or has reason to believe that it was so fixed. The act also provides remedies to a performer with respect to the broadcasting by wireless means and the communication to the public of their live performance without their consent.

The enhanced patent legislation is designed to provide the following benefits, among others:

The existing patent legislation safeguards the rights of research and development work with commercial application while also balancing the need for public access to such technological developments. The patent protection system is designed to encourage technical innovation by providing commercial incentives to research and development activity.

Contracting Parties are required to grant temporary protection to patentable inventions, utility models, industrial designs, and trademarks, in respect of goods exhibited at official or officially recognized international exhibitions held in the territory of any of them.

The Act provides for The Bahamas to join the Patent Cooperation Treaty in an orderly manner. This treaty allows for a single patent application to be used for global patent application processes.

For the purposes of civil proceedings in respect of the infringement of the rights of the owner of a patent, if the subject matter of a patent is a process for obtaining a product, judicial authorities shall have the authority to order the defendant to prove that the process to obtain an identical product is different from the patented process. The regulations further provide guidance on the process to be applied by the court in respect of the burden of proof in infringement proceedings.

IP Legislative Reform

The new legislation for new plant varieties is designed to provide the following benefits, among others:

This new legislation aims to encourage the propagation and breed of new plant varieties and the research and development efforts of plant breeders while also recognizing the social benefit of wide distribution of new plant varieties.

The new legislation will provide for judicial personnel to order the communication of banking financial or commercial information of an opposing party in cases where IPRs have been infringed on a commercial scale. This allows for proper investigation of the value off profits earned by someone who violates such IP protection.

Judicial authorities may also order infringers and other culpable persons to provide information on the origin and distribution networks of the goods and services which infringe the IPR.

The expanded legislation empowers competent judicial personnel to, at the request of the applicant and at the expense of the infringer, take appropriate measures for the dissemination of the information concerning the decision. These measures may include displaying the decision and publishing it or prominent advertising of the decision to advise the public of the illegitimacy of the infringed product.

The enhanced enforcement framework allows holders of IPRs to make an application for the suspension by the customs authorities of release into free circulation or the retention of goods which infringe intellectual property rights. This allows the Comptroller to exercise the powers conferred upon him by that legislation including the ability to seize the infringing goods.

IP Legislative Reform

The new legislation for the protection of integrated circuits is designed to provide the following benefits, among others:

This new legislation is designed to provide protection to the intellectual property surrounding the original design and production of microchips and other integrated circuits used in commercial applications.

In addition to allowing for the enforcement of intellectual property rights by the right holder or licensees, the legislation allows for collective rights management bodies and professional defence bodies (to the extent they are recognised in the laws of The Bahamas) to seek enforcement of intellectual property rights.

The expanded legislation empowers competent judicial personnel to, at the request of the applicant and at the expense of the infringer, take appropriate measures for the dissemination of the information concerning the decision. These measures may include displaying the decision and publishing it or prominent advertising of the decision to advise the public of the illegitimacy of the infringed product.

The enhanced enforcement framework allows holders of IPRs to make an application for the suspension by the customs authorities of release into free circulation or the retention of goods which infringe intellectual property rights. This allows the Comptroller to exercise the powers conferred upon him by that legislation including the ability to seize the infringing goods.

IP Legislative Reform

The new legislation for the protection of IP based on geographical origin is designed to provide the following benefits, among others:

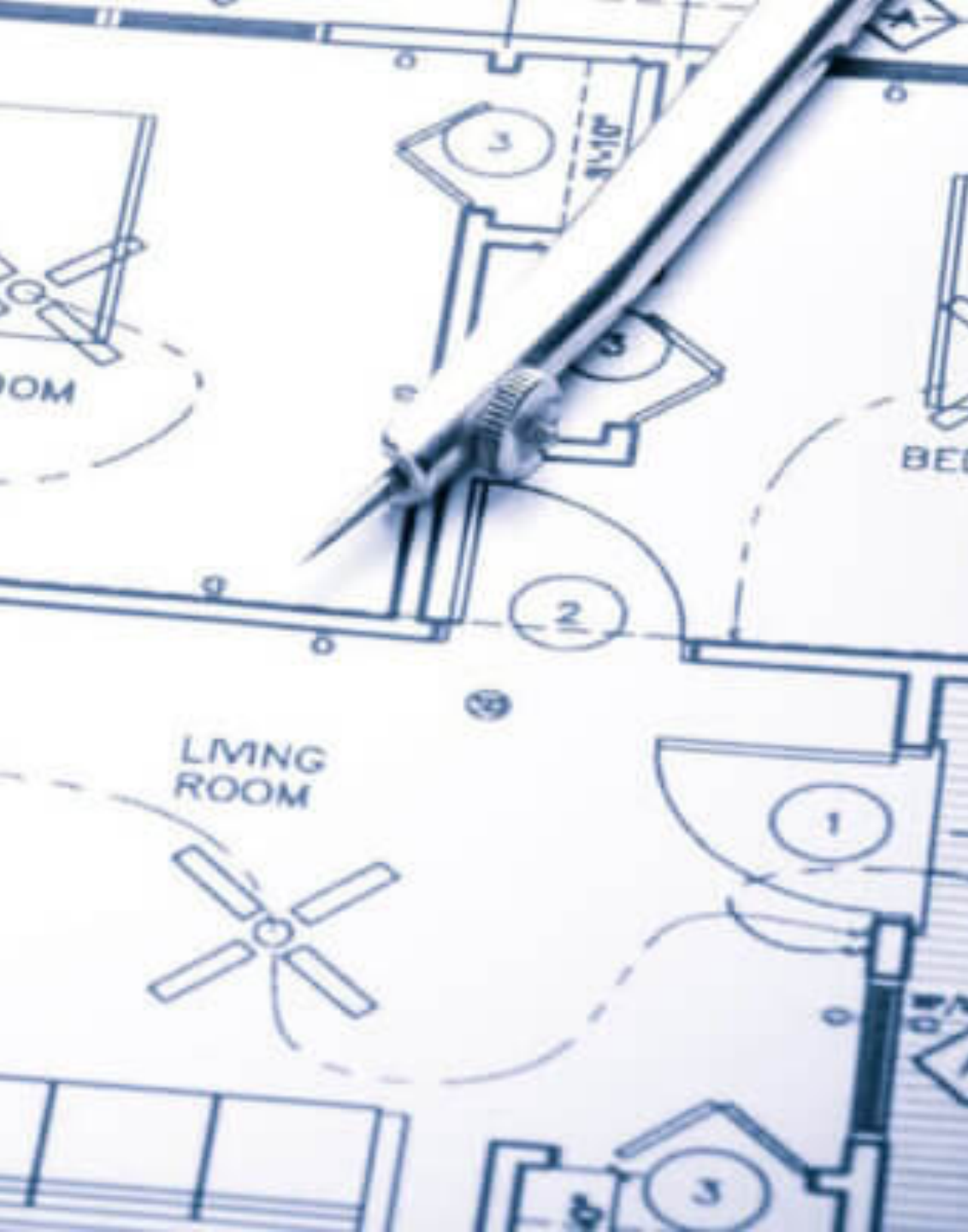
The aim of this new legislation is to provide IP protection to products of which the intrinsic value and qualities are linked to a specific location or area of production. This type of protection is typically applied to the primary or extractive sector where raw materials with certain qualities are harvested in a specific region.

The expanded legislation empowers competent judicial personnel to, at the request of the applicant and at the expense of the infringer, take appropriate measures for the dissemination of the information concerning the decision. These measures may include displaying the decision and publishing it or prominent advertising of the decision to advise the public of the illegitimacy of the infringed product.

The enhanced enforcement framework allows holders of IPRs to make an application for the suspension by the customs authorities of release into free circulation or the retention of goods which infringe intellectual property rights. This allows the Comptroller to exercise the powers conferred upon him by that legislation including the ability to seize the infringing goods.

The legislation allows that in cases involving the infringement of intellectual property rights, as a corrective measure, competent judicial authorities are able to order the recall or definitive removal from channels of commerce or destruction of goods that they have found to be infringing an intellectual property right. In proceedings relating to the improper use of the GI, the Court may grant any remedy or relief that it thinks fit. This provision allows the Court to do such things as the specific circumstances of the matter may require on a case-by-case basis.

CARIFORUM States are required to protect homonymous GIs provided that there is a sufficient distinction in practice between the GI first protected and the homonym subsequently protected, having regard to the need to treat the producers concerned in an equitable manner and not to mislead consumers. The legislation also provides that no protection to be given to a homonymous name that misleads the consumer in to believing that products come from another territory.



Appendix II – Treaty Descriptions

Patent Cooperation Treaty

The Patent Cooperation Treaty (PCT) makes it possible to seek patent protection for an invention simultaneously in each of a large number of countries by filing an “international” patent application. Such an application may be filed by anyone who is a national or resident of a PCT Contracting State. It may generally be filed with the national patent office of the Contracting State of which the applicant is a national or resident or, at the applicant’s option, with the International Bureau of WIPO in Geneva.

If the applicant is a national or resident of a Contracting State party to the European Patent Convention, the Harare Protocol on Patents and Industrial Designs (Harare Protocol), the Bangui Agreement, or the Eurasian Patent Convention, the international application may also be filed with the European Patent Office (EPO), the African Regional Intellectual Property Organization (ARIPO), the African Intellectual Property Organization (OAPI) or the Eurasian Patent Office (EAPO), respectively.

The Treaty regulates in detail the formal requirements with which international applications must comply.

Filing a PCT application has the effect of automatically designating all Contracting States bound by the PCT on the international filing date. The effect of the international application is the same in each designated State as if a national patent application had been filed with the national patent office of that State.

The international application is subjected to an international search. That search is carried out by one of the competent International Searching Authorities (ISA) under the PCT 1 and results in an international search report, that is, a listing of the citations of published documents that might affect the patentability of the invention claimed in the international application. In addition, a preliminary and non-binding written opinion on whether the invention appears to meet patentability criteria in light of the search report results is also issued.

The international search report and written opinion are communicated to the applicant who, after evaluating their content, may decide to withdraw the application, in particular where the content of the report and opinion suggests that the granting of patents is unlikely, or the applicant may decide to amend the claims in the application.

Madrid Agreement Concerning the International Registration of Marks

The Madrid System for the International Registration of Marks is governed by two treaties:

- the Madrid Agreement, concluded in 1891 and revised at Brussels (1900), Washington (1911), The Hague (1925), London (1934), Nice (1957) and Stockholm (1967), and amended in 1979, and
- the Protocol relating to that Agreement, concluded in 1989, which aims to make the Madrid System more flexible and more compatible with the domestic legislation of certain countries or intergovernmental organizations that had not been able to accede to the Agreement.

States and organizations party to the Madrid System are collectively referred to as Contracting Parties.

The system makes it possible to protect a mark in a large number of countries by obtaining an international registration that has effect in each of the designated Contracting Parties.

An application for international registration (international application) may be filed only by a natural person or legal entity having a connection – through establishment, domicile or nationality – with a Contracting Party to the Agreement or the Protocol.

Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks

The Vienna Agreement establishes a classification (the Vienna Classification) for marks that consist of, or contain, figurative elements. The competent offices of Contracting States must indicate in official documents and publications relating to registrations and renewals of marks the numbers of the categories, divisions and sections of the Classification to which the figurative elements of those marks belong.

A Committee of Experts in which all Contracting States are represented, set up under the Agreement, is entrusted with the task of periodically revising the Classification. The current (seventh) edition has been in force since January 1, 2013.

The Classification consists of 29 categories, 145 divisions and some 1,700 sections in which the figurative elements of marks are classified.

Although only 31 States are party to the Vienna Agreement, the Classification is used by the industrial property offices of at least 30 other States, as well as by the International Bureau of WIPO, the African Intellectual Property Organization (OAPI), the Benelux Organisation for Intellectual Property (BOIP) and the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) of the European Union (EU).

The Vienna Agreement created a Union, which has an Assembly. Every State that is a member of the Union is a member of the Assembly. Among the most important tasks of the Assembly is the adoption of the biennial program and budget of the Union.

Singapore Treaty on the Law of Trademarks

The objective of the Singapore Treaty is to create a modern and dynamic international framework for the harmonization of administrative trademark registration procedures. Building on the Trademark Law Treaty of 1994 (TLT), the Singapore Treaty has a wider scope of application and addresses more recent developments in the field of communication technologies. The Singapore Treaty is applicable to all types of marks registrable under the law of a given Contracting Party. Contracting Parties are free to choose the means of communication with their offices (including communications in electronic form or by electronic means of transmittal). Relief measures in respect of time limits as well as provisions on the recording of trademark licenses were introduced, and an Assembly of the Contracting Parties established. However, other provisions of the Singapore Treaty (such as the requirements to provide for multiclass applications and registrations and the use of the International (“Nice”) Classification) closely follow the TLT. The two treaties are separate, and may be ratified or adhered to independently.

Unlike the TLT, the Singapore Treaty applies generally to all marks that can be registered under the law of a Contracting Party. Most significantly, it is the first international instrument dealing with trademark law to explicitly recognize non-traditional marks. The Treaty is applicable to all types of marks, including non-traditional visible marks, such as holograms, three-dimensional marks, color, position and movement marks, as well as non-visible marks such as sound, olfactory or taste and feel marks. The Regulations Under the Singapore Treaty on the Law of Trademarks provide for the mode of representation of these marks in applications, which may include non-graphic or photographic reproductions.

The Singapore Treaty leaves Contracting Parties the freedom to choose the form and means of transmittal of communications and whether to accept communications on paper, in electronic form or in another form. This has consequences on formal requirements for applications and requests, such as the signature on communications with the office. The Treaty maintains a very important provision of the TLT, namely that the authentication, certification or attestation of any signature on paper communications cannot be required. However, Contracting Parties are free to determine whether and how they wish to implement a system of authentication of electronic communications.

The Treaty provides for relief measures when an applicant or holder has missed a time limit in an action for a procedure before an office. Contracting Parties must make available, at their choice, at least one of the following relief measures: extension of the time limit; continued processing; and reinstatement of rights in so far as the failure to meet the time limit was unintentional or occurred in spite of due care required by the circumstances.

The Singapore Treaty includes provisions on the recording of trademark licenses, and establishes maximum requirements for requests for recordal, amendment or cancellation of the record of a license.

Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations

The Rome Convention secures protection in performances for performers, in phonograms for producers of phonograms and in broadcasts for broadcasting organizations.

Performers (actors, singers, musicians, dancers and those who perform literary or artistic works) are protected against certain acts to which they have not consented, such as the broadcasting and communication to the public of a live performance; the fixation of the live performance; the reproduction of the fixation if the original fixation was made without the performer's consent or if the reproduction was made for purposes different from those for which consent was given.

Producers of phonograms have the right to authorize or prohibit the direct or indirect reproduction of their phonograms. In the Rome Convention, "phonograms" means any exclusively aural fixation of sounds of a performance or of other sounds. Where a phonogram published for commercial purposes gives rise to secondary uses (such as broadcasting or communication to the public in any form), a single equitable remuneration must be paid by the user to the performers, to the producers of the phonograms, or to both. Contracting States are free, however, not to apply this rule or to limit its application.

Broadcasting organizations have the right to authorize or prohibit certain acts, namely the rebroadcasting of their broadcasts; the fixation of their broadcasts; the reproduction of such fixations; the communication to the public of their television broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

The Rome Convention allows for limitations and exceptions to the above-mentioned rights in national laws as regards private use, use of short excerpts in connection with reporting current events, ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts, use solely for the purpose of teaching or scientific research and in any other cases where national law provides exceptions to copyright in literary and artistic works. Furthermore, once a performer has consented to the incorporation of a performance in a visual or audiovisual fixation, the provisions on performers' rights have no further application.

As to duration, protection must last at least until the end of a 20-year period computed from the end of the year in which (i) the fixation was made, for phonograms and for performances incorporated therein; (ii) the performance took place, for performances not incorporated in phonograms; (iii) the broadcast took place. However, national laws increasingly provide for a 50-year term of protection, at least for phonograms and performances.

WIPO Copyright Treaty (WCT)

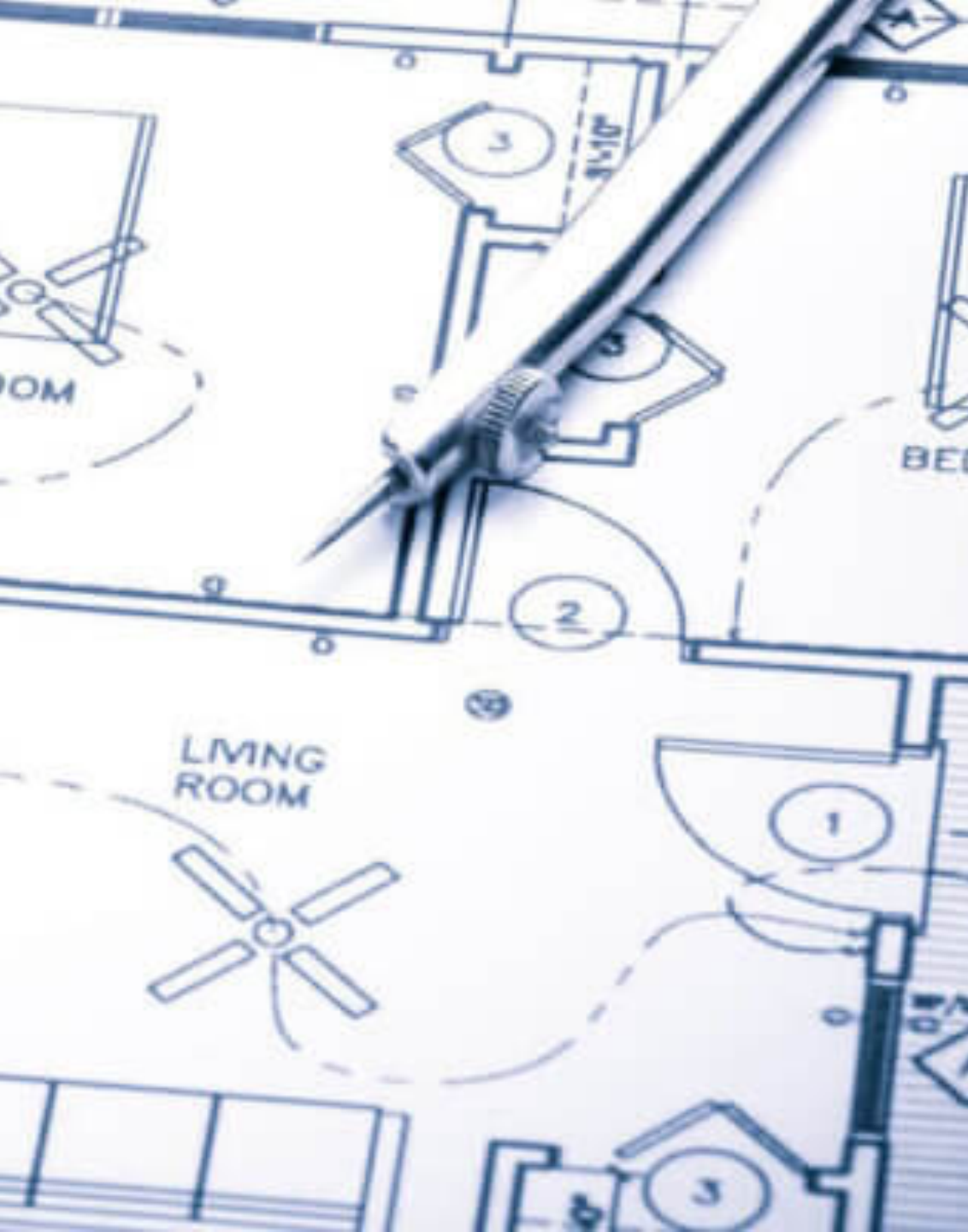
The WIPO Copyright Treaty (WCT) is a special agreement under the Berne Convention that deals with the protection of works and the rights of their authors in the digital environment. Any Contracting Party (even if it is not bound by the Berne Convention) must comply with the substantive provisions of the 1971 (Paris) Act of the Berne Convention for the Protection of Literary and Artistic Works (1886) (see the relevant Summary in this series). Furthermore, the WCT mentions two subject matters to be protected by copyright: (i) computer programs, whatever the mode or form of their expression; and (ii) compilations of data or other material (“databases”), in any form, which, by reason of the selection or arrangement of their contents, constitute intellectual creations. (Where a database does not constitute such a creation, it is outside the scope of this Treaty.)

As to the rights granted to authors, apart from the rights recognized by the Berne Convention, the Treaty also grants: (i) the right of distribution; (ii) the right of rental; and (iii) a broader right of communication to the public.

- The right of distribution is the right to authorize the making available to the public of the original and copies of a work through sale or other transfer of ownership.
- The right of rental is the right to authorize commercial rental to the public of the original and copies of three kinds of works: (i) computer programs (except where the computer program itself is not the essential object of the rental); (ii) cinematographic works (but only in cases where commercial rental has led to widespread copying of such works, materially impairing the exclusive right of reproduction); and (iii) works embodied in phonograms as determined in the national law of Contracting Parties (except for countries which, since April 15, 1994, have had a system in force for equitable remuneration of such rental).
- The right of communication to the public is the right to authorize any communication to the public, by wire or wireless means, including “the making available to the public of works in a way that the members of the public may access the work from a place and at a time individually chosen by them”. The quoted expression covers, in particular, on-demand, interactive communication through the Internet.

As to limitations and exceptions, Article 10 of the WCT incorporates the so-called “three-step” test to determine limitations and exceptions, as provided for in Article 9(2) of the Berne Convention, extending its application to all rights. The Agreed Statement accompanying the WCT provides that such limitations and exceptions, as established in national law in compliance with the Berne Convention, may be extended to the digital environment. Contracting States may devise new exceptions and limitations appropriate to the digital environment. The extension of existing or the creation of new limitations and exceptions is allowed if the conditions of the “three-step” test are met.

As to duration, the term of protection must be at least 50 years for any kind of work. The enjoyment and exercise of the rights provided for in the Treaty cannot be subject to any formality.



Appendix III – Case Studies

Case Study I – Cascarilla

Supporting Local Alcohol Production

- The bark of the cascarilla plant (*Croton eluteria*) has been harvested and exported from southern islands of The Bahamas chain of Acklins, Crooked Island and Samana Cay for decades
- The oil from this versatile plant is a key ingredient in the world-famous Italian liqueur, Campari, and has been used as an insect repellent, for various medicinal purposes and is in high demand in the perfume industry
- Presently, there are on-going efforts to industrialize Cascarilla production in The Bahamas in a sustainable including an existing project with the Bahamas Development Bank aiming at scaling up production and supporting local growers
- **Opportunities exist to provide Geographical Indication protection to regions where the plant is harvested, increasing the value of the product. Additional opportunities exist in applying patents to local harvesting and oil extraction techniques.**
- A more robust IP structure not only increases the value and branding of the extracted product, but allows local Bahamian harvesters to participate in the value chain and via a collective brand.



Photo credits: The Bahamas Development Bank

Case Study II –Junkanoo

Exploiting our Cultural Heritage

- Celebrated as one of the most vibrant and long-standing expressions of Bahamian culture, Junkanoo presents a unique combination of music, dance and art. Despite being such an integral component of Bahamian culture, the festival has historically never been exploited in a coordinated manner, aside from the annual parade
- **Junkanoo presents one of the most comprehensive examples of the opportunity to apply comprehensive patent, copyright and branding opportunities in a large-scale commercial manner with trickle down opportunities from all walks of life**
- From a national perspective, opportunities exist to apply a trademark to the national junkanoo parade. This will facilitate the sale of merchandise and establishing a global brand for the parade. Such revenues may be applied to sustainability of the event
- Opportunities also exist for the establishment of a collective patent applied toward various junkanoo techniques such as drum making and creation of costumes utilizing unique materials
- In Cabo Verde, efforts are underway to apply copyright protection to the local dance elements in its cultural performances to ensure any exploitation of the local performance is accrued to citizens. Application of IP from persons who film, photograph and broadcast junkanoo would benefit from the accession to the multiple treaties that would strengthen the copyright laws within the country.



Photo credits: Bahamas Permanent Mission, Geneva

Case Study III –Native Straw

Spinning Straw into Income

- The use of native straw; particularly the use of coconut palm, silver top palm, and sisal; has been a vital part of the Bahamian craft tradition throughout the archipelago for decades
- **Via use of collective Geographical Indicators (GI), Trademarks and Patents, opportunities exist to broaden the sustainable use and development of the straw industry in The Bahamas and for export**
- Similar to other jurisdictions, revenues from a collective GI framework on local palms may provide revenues to encourage sustainable agriculture in the sector over the long-term
- Opportunities also exist to patent local harvest and cultivation methods of local straw, providing revenues for local community associations
- Increased branding and IP protection for the production of local straw products allows for increased revenues to Bahamian workers at every level of the straw product value chain

