



CORPORATE & BUSINESS SERVICES

MACGILLIVRAYS

S O L I C I T O R S

COPYRIGHT AND TRADE MARKS: WHAT IS THE DIFFERENCE?

It is common for people to confuse the terms "copyright" and "trade mark", but since intellectual property is an important and valuable asset for many businesses it is essential that people are aware of the difference between the two and understand how to legally protect their intellectual property.

WHAT IS COPYRIGHT?

Copyright is a legal right that 'protects the owner's original expression of ideas or information in a material form', however it does not protect the ideas or information themselves.

What copyright does protect is original works of art, literature, music, film, broadcasts and computer programmes against copying and certain other uses.

Copyright is automatic and belongs to the creator of a work from the moment the work or music or other is represented in a tangible form, that is, written down or recorded in some way.

Copyright gives the owner of the copyrighted work the exclusive right to use, sell or licence the work.

Because copyright applies automatically once the original work is created in a material form, the work does not need to be published in order to be protected by copyright in Australia. Nor does the copyright notice - the symbol © have to be put on the original work for it to be protected.

In Australia, copyright is governed by the *Copyright Act 1968* (Cth) and the common law. Unlike trade marks, copyright is not dependent upon formalities such as registration or notice - there is no system of registration for copyright protection in Australia.

More recently the Australian Government has made significant changes to copyright laws. These include the introduction of a range of measures such as introducing the ability to track and recover proceeds of serious copyright crimes and strengthening evidential presumptions in copyright proceedings. A recent example is the Government's investigation into the alleged piracy of *The Simpsons Movie*, which has resulted a Sydney man facing new intellectual property criminal charges (disturbing and infringing copyright material) after allegedly becoming the first person in the world to illegally upload *The Simpsons Movie* to the internet. The young Australian allegedly recorded the movie on his video-capable mobile phone at a NSW cinema (on July 26, the first day of the film's global screenings) and then managed to upload the entire film to a US file sharing website, hours before the film had screened in the US.

The Australian Federation Against Copyright Theft (AFACT) reported that their piracy investigators found the footage and had it removed in two hours, but by that time 3000 users of the site had already downloaded the copy to their computers.

The files were uploaded to other sites, and it is estimated that within 72 hours the video had been downloaded 110,000 times around the world. The original posting was allegedly traced to the man's home, which was raided by Australian Federal Police and who removed computers from his home during the raid.

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COPYRIGHT AND TRADE MARKS: WHAT IS THE DIFFERENCE?

WHAT IS A TRADE MARK?

A trade mark can be a word, phrase, letter, number, sound, smell, shape, logo, picture, aspect of packaging or a combination of these. It is something that is used to distinguish goods or services. An example is the Qantas kangaroo which readily distinguishes Qantas' products and services from that of other airlines.

Another example is of Donald Trump who tried unsuccessfully in the United States to trade mark his coined phrase, "You're fired" from the hit show "The Apprentice". Paris Hilton also unsuccessfully attempted to trade mark her common saying "that's hot" as seen in the teen hit show "The Simple Life".

In Australia, trade marks are governed by the *Trade Marks Act 1995* (Cth) and common law and unlike the situation with copyright, the legal right to use or deal with a trade mark is not automatic.

Trade mark registration is not compulsory in Australia. However, registering a trademark gives the registered owner the 'legal right to exclusively use, licence or sell it within Australia for the goods and services for which it is registered'.

It is advisable to register a trade mark. Registration helps protect the owner of the trademark from other people or businesses using a substantially identical or deceptively similar mark for the same goods and services. The description of the goods and services that the trade mark is listed under is extremely important and determines the scope of the protection afforded by registration of the trade mark.

To be registerable a trade mark must comply with certain conditions set out in the *Trade Marks Act 1995* (Cth). There are numerous situations in which a trade mark may become difficult to register.

Once the trade mark has been registered, the registered symbol ® is used next to the trade mark to indicate that it has been registered. Under the *Trade Marks Act 1995* it is an offence for this symbol to be used next to an unregistered trade mark.

Note - the symbol ™ does not indicate that the trade mark has been registered rather that it has been submitted for registration and registration is pending.

Protection of a trade mark is the owner's responsibility. If someone is using your registered trade mark without your consent they may be infringing your exclusive rights in regard to your trade mark and you should seek legal advice immediately.

If you have any questions regarding the above article or you have an intellectual property issue that you wish to discuss, please do not hesitate to contact a member of the MacGillivrays Corporate & Business Services Team.

BY MARIA CAPATI
Solicitor, Corporate
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CLIENT CONFERENCES AND WHY SOLICITORS SHOULD ATTEND

E X P E R T I S E



At MacGillivrays we invest a significant amount of time and money in keeping abreast of industry developments - especially those which may impact on our clients. One way we do this is to have solicitors attend client industry conferences. We also sponsor external experts to present topics which we consider are relevant to our clients at industry conferences.

Recently, MacGillivrays sponsored a presentation by Anne-Maria Butler, Queensland President of the Australian Human Resources Institute at the "Leading Edge Seminar 2007" hosted by the Bus Coach Association of NSW. Anne-Maria presented a paper on human resources and what is new in the recruitment and retention of star performers.

Solicitor Maria Capati (Corporate & Business Services) also attended the conference. Maria's work as a solicitor is quite specialised as she works closely with Partner, Peter Dwyer in relation to government bus contracts. Both Peter and Maria have been extensively involved in the negotiation process of many of the new service contracts between the State Governments of Queensland, New South Wales and Tasmania and bus operators.

Maria found attending the conference to be a valuable experience: "It has become clear to me that the success of your relationship with your clients in the transport industry is directly proportional to the time and effort you invest in getting to know them personally and their business. Attending client conferences in one way to learn and understand my clients' concerns and to develop solutions quickly and commercially."

BUSINESS REPORTING MADE EASIER

In the May 2007 edition of our Corporate & Business Services In-Brief, solicitor Kane Jacobson noted the increasing complexity of business regulation, reporting, and the burdens various business legislation places on Australian small business. It would appear that the Federal Government has been listening.

In an effort to cut red tape confronting business when reporting to government, the Treasury Department has recently launched its "Standard Business Reporting" programme (SBR).

The programme's first priority is to review financial reporting forms, with the aim that businesses will be able to use their own accounting/record keeping software to automatically pre-fill government reports such as BAS statements, company income tax returns and quarterly business indicators surveys rather than translating their own records into government reports.

The SBR programme will also create a single, secure, log on website for businesses to send financial reports to various Government agencies including:

- Australian Bureau of Statistics (ABS);
- the Australian Prudential Regulation Authority (APRA);
- the Australian Securities and Investments Commission (ASIC);
- the Australian Taxation Office (ATO); and
- potentially, State revenue offices.

This will eliminate the need for business to log in to separate systems to submit their financial reports to each of these agencies. The use of SBR will be voluntary.

According to the Treasurer's media release (No 084 30.8.2007):

Small and medium business will stand to benefit, with significant reductions expected in time spent preparing and submitting reports, and lower costs for those who assist them (such as tax agents and accountants). Costs to business are expected to include software upgrades, as well as learning about SBR and seeking professional advice.

It is expected that a range of pilots and trials will commence from mid 2008 and it is anticipated that full implementation will be complete in mid 2010 with take-up by business escalating over the subsequent three years.

MacGillivrays is currently developing a Small Business Package which will provide clients with instant and on-going legislative updates and advice which may effect their business along with practical advice in how to best utilise SBR. If you would like more information about our Small Business Package or how we can ease your small business burdens, please contact the MacGillivrays Corporate & Business Services Team.