

IPR Toolkit for Brunei Darussalam

Statement from Ambassador Emil Skodon

Welcome to U.S. Embassy Bandar Seri Begawan's Intellectual Property Rights Toolkit, designed to detail the nature of IPR protection in Brunei Darussalam and assist the American business community to protect their rights. This toolkit contains practical information on how the Government of Brunei registers and enforces IPR, and where rights holders can turn for additional assistance.

The U.S. and Brunei governments are united in their recognition of the value of intellectual property and the role it plays in economic development. As Brunei's economy moves further toward a knowledge-based economy with new investments in information technology, intellectual property will play an ever-increasing role.

The U.S. Embassy takes IPR protection seriously in Brunei Darussalam. We work closely with the Brunei's Attorney General's Chambers, the Royal Brunei Police Force and other law enforcement agencies and the local legal community to strengthen IPR enforcement in Brunei Darussalam.

We appreciate the progress that Brunei has made to date to protect the intellectual property rights for U.S. business, but recognize the long road ahead to provide genuinely adequate protection. The U.S. Embassy is committed to working with Brunei Darussalam to further strengthen their intellectual property system.

I wish you success in your business in Brunei Darussalam and assure you that the U.S. Embassy stands ready to assist you in any way that we can.

Sincerely,
Emil M. Skodon



I. What is IPR?

A. Countries with innovative local industries almost invariably have laws to foster innovation by regulating the copying of inventions, identifying symbols, and creative expressions. These laws encompass four separate and distinct types of intangible property – namely, patents, trademarks, copyrights, and trade secrets, which collectively are referred to as “intellectual property.”

II. Current IPR Framework

Brunei signed the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) on April 1994, one of the agreements negotiated during the Uruguay Round of multilateral trade negotiations which established the WTO. TRIPS came into force on 1 January 1995. TRIPS main features are Standards, Enforcement and Dispute Settlement.

Brunei passed IPR legislation to meet its TRIPS commitments which took effect on January 1, 2000. Current laws -- the Emergency (Copyright) Order 1999, Trade Marks Act (Cap 98), Inventions Act¹ (Cap 72), the Emergency (Layout Designs) Order 1999 and the Emergency (Industrial Designs) Order 1999 – are not always effectively enforced. Punishment for violations is mild, violators can be imprisoned for a term of 1 to 10 years, receive a fine not exceeding B\$5,000 or both. Amendments to the Copyright Order which are currently being finalized would impose stiffer criminal sanctions. Brunei does not have a strong track record in IPR enforcement due to lack of capacity and the fact that enforcement agencies do not have police powers under the respective IP legislation. The police have a small unit specializing in IPR investigations but smugglers often use the high jungles on Brunei’s borders to hide smuggling operations from law enforcement. Police and Attorney General’s Chambers officers have trained in IPR enforcement and are working to improve enforcement capabilities.

Trademarks

The Trade Marks Act (Cap 98) and Trade Marks Rules of 2000 are the legislation governing the registration of trademarks in Brunei Darussalam. To be registrable under the Act, a trademark must be visually perceptible, capable of being represented graphically (smell and scent marks are excluded) and capable of distinguishing goods and services of one undertaking from those of others. In addition, the proposed trademark must satisfy the formalities and substantive requirements as set out in the Act that governs the registration procedures.

Any person or legal entity -- local or foreign -- seeking to claim current or future use of a trade mark Brunei may apply to register trade mark. Under the Act, foreign applicants must provide an address for service in Brunei.

¹ The Emergency (Patents) Order 1999 has been gazetted but yet to come into force. Patent Rules are currently being finalized.

To register a trademark, the applicant must file Form TM1 together with the prescribed fee of B\$150 for each class of goods or services being registered. Currently, the Registry accepts for registration Classes 1 to 42 of the International Nice Classification of Goods and Services. The Trade Marks Rules are currently being amended to allow applications for Classes 43 to 45. Application forms may be obtained from:

Office of the Registrar of Trade Marks
First Floor, The Law and Courts Building
KM 1 Jalan Tutong
Bandar Seri Begawan BA1910
Brunei Darussalam
Tel: (673) 2231200, 2220382, 2231193/4/6
Fax: (673) 2231230
E-mail: info@agc.gov.bn

Copyright

The Emergency (Copyright) Order, 1999 provides for the protection original literary and artistic works such as lyrics, poems, books, computer programs and works of art. Under this order, the owner of the literary and artistic works can use his works as he pleases and may prevent others from exploiting his works without authorization. His rights are in the form of exclusive rights to authorize others to exploit his works in exchange for monetary benefit (royalties). Among the economic rights of the owner are the right of reproduction, the right to authorize public performance of the works, broadcasting or other communications to the public, translation and adaptation of the works.

Under the Copyright Order, there is no requirement for registration of copyright as the protection arises out of the creation of the works. The duration of protection is 50 years from the end of the year in which the author died.

Although the police do take occasional action on their own initiative to try to curb distribution of pirated CDs, DVDs, and software, the onus is on the copyright holder to seek enforcement of copyright. Under the Order, the owner can take civil action against the person who has committed the infringement. The place where the suspected infringing articles are located may be searched and the infringing articles can be seized by the Royal Brunei Police Force. In addition, the rights owner can also take action to recover the loss he suffered as a result of the infringement of his rights. The owner can also alert authorities of suspected infringement of copyright for border enforcement measures to prevent or suspend the release into circulation of suspected infringing articles.

The sale of unauthorized video cassettes, VCDs, DVDs, computer software programmes and games and CDs is prohibited under the Order. Anyone found guilty of the offense can be imprisoned for a term of up to 2 years or a fine or both.

Layout Designs

The Emergency (Layout Designs) Order, 1999 provides statutory protection for original layout designs that are created **after the commencement** of the Order. A layout design must be original in that it is the result of its creator's own intellectual effort and is not common place among creators of layout designs and manufacturer of integrated circuits at the time of manufacture. Such example of a layout design is the microchip.

Original layout designs are protected automatically as there is no requirement for registration or deposit of the layout. The duration of the protection is either 10 years after the first commercial exploitation, if the exploitation takes place within 5 years after the year it is created or in any other case, 15 years after the year of the creation of the layout design. Commercial exploitation may occur by importation, sale, hire, or distribution of a layout design or an integrated circuit made according to the layout design.

Industrial Designs

The Emergency (Industrial Designs) Order, 1999 and the Industrial designs Rules of 2000 provides for registration of new industrial designs for the visual appearance of products. Industrial designs are applied to a wide variety of products of industry and handicraft: from technical and medical instruments to watches, jewelry and other luxury items, from housewares and electrical appliances to vehicles and architectural structures, from textile designs to leisure goods.

The law enables industrial designs to be registered in Brunei Darussalam upon a pro forma check of the completed application only. To be registrable, an industrial design must be new at the filing date of the application: An industrial design is new if it has not been registered, published, used or sold in Brunei Darussalam or elsewhere before the date on which the application for registration was lodged.

Registration is for an initial period of 5 years extendable for two periods of 5 years each, totaling a maximum of 15 years. Renewal fees are payable every 5 years. Further information on fees and filing procedures can be obtained from:

The Registry of Industrial Designs
1st Floor, The Law and Courts Building
KM 1 Jalan Tutong
Bandar Seri Begawan BA1910
Brunei Darussalam
Tel: 673-2231200, 2220382, 2231193/4/6
Fax: 673-2231230
Email: info@agc.gov.bn.

III. Patents - The current act is the Invention Act (Cap 72)

A. Registration

The owner/Inventor/Assignee can register their patent in Brunei. The

process is a formal re-registration of an United Kingdom, Singapore and/or Malaysia patent in Brunei.

B. What can be registered

Any Grant of Patent issued from United Kingdom, Singapore and/or Malaysia is registrable with the Registrar of Patents in Brunei within three (3) years from the date of issue of such Grant.

C. Where to register

The Grant of Patent is to be re-registered with:

The Registrar of Patents
Office of the Registrar of Patents
1st Floor, The Law and Courts Building
KM 1 Jalan Tutong
Bandar Seri Begawan BA1910
Brunei Darussalam
Tel: 673-2231200, 2220382, 2231193/4/6
Fax: 673-2231230
Email: info@agc.gov.bn

D. Infringement and enforcement

Civil Court Proceeding

IV. Trade Secrets – Currently there is no specific law on this issue. However, protection for trade secrets is accorded under the common law.

V. Trademarks

A. Registration

Presently the trade marks registration is available from Classes 1 to 34 and service marks from Classes 35 to 42 (based on WIPO standards).

B. What can be registered

1. Types of trade marks registrable in Brunei are: trade mark for goods, trade mark for services, collective mark, certification mark, 3-dimensional mark, shape mark, color (s) as a trade mark, packaging, slogan, and series mark.
2. Protection of a registered mark begins on the date on which the application for its registration was filed (filing date). The term of protection is initially for 10 years but may be renewed subject to the payment of renewal fees at the tenth year of registration and thereafter every ten years.

C. Geographic Indications

Protection of GIs is subsumed under the Trade Marks Act (Cap 98) which can be protected as certification marks.

D. Where to Register

The Registry of Trade Marks
Office of the Registrar of Trade Marks
1st Floor, The Law and Courts Building
KM 1 Jalan Tutong
Bandar Seri Begawan BA1910
Brunei Darussalam
Tel: 673-2231200

Fax: 673-2231230
Email: info@agc.gov.bn

- E. Infringement and enforcement
 1. Unauthorized use of a registered trademark without the consent of the trademark owner constitutes an infringement.
 2. The owner of a registered trademark can enforce his rights as conferred by the trademarks legislation. He can also take legal action in court against the infringer by seeking relief in the form of an injunction and/or damages for his loss.
 3. Criminal sanctions are also available. Upon lodgment of a complaint by the registered owner, the Royal Brunei Police Force and the Royal Customs and Excise Enforcement Unit may conduct raids and seizure.

VI. Copyright

- A. Registration

No registration required.
- B. What can be protected under copyright

Literary works, dramatic works, musical works., artistic works, sound recordings, films, broadcasts, cable programmes, and published editions.
- C. Duration of protection:

For literary, artistic, dramatic and musical works: 50 years from the end of the calendar year in which the author died. For sound recording and film: 50 years from the year in which they were made or released. For broadcast and cable programmes: 50 years from the end of the year in which it was first broadcasted or transmitted. For typographical arrangement: 25 years from the end of the calendar year in which the edition was published.
- D. Where to register

Not applicable.
- E. Infringement and enforcement
 1. The Emergency Copyright Order 1999 can only be enforced if the owner of the copyright or intellectual property files a complaint to the police.
 2. Protection of copyright is automatic thus there is no formal procedure for registration in Brunei Darussalam.
 3. Both civil remedies and criminal sanctions are available. Upon lodgment of a complaint by the copyright owner, the Royal Brunei Police Force may conduct raids and seizures.

VII. Current Intellectual Property Legislation

- A. Domestic Legislation

The Inventions Act, Trade Marks Act and Rules, Copyright Order, Industrial Designs Order and Rules, Layout Designs Order and Merchandize Marks Act.
- B. International Treaties

1. World Trade Organization: <http://www.wto.org>
2. World Intellectual Property Organization (WIPO):
<http://www.wipo.int>
3. Berne Convention (as of 30 August 2006)
4. ASEAN Framework Agreement on Intellectual Property Cooperation:
<http://www.aseansec.org>

VIII. Reference Materials

A. US Government

1. U.S. State Department Bureau of International Information Programs:
<http://www.usinfo.state.gov/products/pubs/intelpro/index.htm>
2. United States Department of State: <http://www.state.gov/>
3. United States Department of State (Intellectual Property)
http://usinfo.state.gov/ei/economic_issues/intellectual_property.html
4. United States Department of Commerce: <http://www.doc.gov/>
5. United States Trade Representative: <http://www.ustr.gov/>
6. United States Patent and Trade Office: <http://www.uspto.gov/>
7. United States International Trade Commission: <http://www.usitc.gov>
8. United States Strategy Targeting Organized Piracy (STOP!):
<http://www.stopfakes.gov/>
9. Department of Justice, Computer Crime and IP Section:
<http://www.cybercrime.gov/>
10. DHS/Customs and Border Protection: <http://www.cbp.gov/>
11. Copyright Office, Library of Congress: <http://www.copyright.gov/>

B. US Industry Organizations

1. American Bar Association: <http://www.abanet.org/>
2. Association of American Publishers: <http://www.publishers.org/>
3. Biotechnology Industry Organization: <http://www.bio.org/>
4. Business Software Alliance (BSA): <http://www.bsa.org/>
5. International Federation of the Phonographic Industry (IFPI):
<http://www.ifpi.org/>
6. International Research-Based Pharmaceutical Manufacturers Association (IRPMA): <http://www.irpma.org.tw/english>
7. Motion Picture Association: <http://www.mpa.org/>
8. Music Publishers Association: <http://www.mpa.org/>
9. Pharmaceutical Research and Manufacturers of America (PhRMA):
<http://www.phrma.org/>
10. IIPA - International Intellectual Property Alliance:
<http://www.iipa.com>
11. Entertainment Software Association: <http://www.theesa.com/>
12. International Trademark Association: <http://www.inta.org/>
13. International Anti-Counterfeiting Coalition: <http://www.iacc.org/>

C. International Organizations

1. World Trade Organization, TRIPS:
http://www.wto.org/english/tratop_e/trips_e/trips_e.htm
2. World Intellectual Property Organization (WIPO):
<http://www.wipo.org/>

D. Local Associations

1. Attorney General's Chambers: www.agc.gov.bn
 2. The Law Society of Brunei Darussalam
P O Box 66, Seri Complex
Bandar Seri Begawan BA1778
Brunei Darussalam
Tel: 673-2222122
 3. No local IPR association.
- E. Enforcement Contacts
1. Head of Intellectual Property Division
1st Floor, The Law and Courts Building,
KM 1 Jalan Tutong
Bandar Seri Begawan BA1910
Brunei Darussalam
Tel: 673-2231200 Fax: 673-2231230
E-mail: info@agc.gov.bn
Attn: Ms. Naimah Mohd Ali
Tel: 673-2231229 Fax: 673-2231230
Email: naimah.ali@agc.gov.bn
 2. Head of Criminal Justice Division
Attorney General's Chambers
The Law Building
Bandar Seri Begawan BA1910
Brunei Darussalam
Attn : Mr Yusree Junaidi
Tel: 673-2244872 Fax: 673-2222720
E-mail: yusree.junaidi@agc.gov.bn
 3. Royal Brunei Police Force
Police Headquarters
Gadong BE 1710
Brunei Darussalam
Tel: 673-2423901 Fax: 673-2420086
Commercial Crime Unit
Block 2C, Jalan Ong Sum Ping
Bandar Seri Begawan
Brunei Darussalam
Attn: Supt. Haji Abd. Murad bin Haji Abd. Hadi
Tel: 673-2232001 ext. 812 Fax: 673 2232008
 4. Royal Customs & Excise Department
Ministry of Finance
Jalan Menteri Besar
Bandar Seri Begawan BB 3910
Brunei Darussalam
Attn: Awang Haji Bakar bin Haji Ludin
Tel: 673-2382333 ext. 213 Fax: 673-2382666
- F. Lawyers/Consultants
1. Abrahams, Davidson & Co
E-mail: adco@brunet.bn
 2. Ahmad Isa & Partners

- E-mail: ahmisa@brunet.bn
3. CCW Partnership
E-mail: ccw@pso.brunet.bn
 4. D.F. Abang Zen
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 5. Daud Ismail & Company
E-mail: daisco@brunet.bn
 6. Dr. Colin Ong Legal Services
Email: onglegal@brunet.bn
 7. Ho & Siong Advocates
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 8. Ihsan Associates
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 9. Irene Appaduray and Elinda Mohammad
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 10. Joseph Hoo, Morris & Lal
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 13. Sarjeet & Company
E-mail: sarjeedco@brunet.bn
 14. Susanna Lim Partnership
E-mail: slco@pso.brunet.bn
 15. Y C Lee & Company
Email: ycelelaw@brunet.bn
 16. Zainidi & Associates
E-mail: zen@brunet.bn
 17. Zul-Sukarla Law Office
E-mail: zullaw@brunet.bn

IX. Legal Disclaimer

Inclusion of material in this IPR Toolkit does not constitute legal advice and is not a substitute for advice of legal counsel and is subject to change according to the laws of the Government of Brunei Darussalam. The United States Government will strive to update and improve this IPR Toolkit as information becomes available and as United States Government resources allow. Additionally, the U.S. Government, the U.S. Department of State, their employees and contractors assume no legal liability for the accuracy or completeness or usefulness of any information, resource, or process contained disclosed herein.