
Digital Media and Information Literacy: Managing Your Organization's Brand and Communication Strategy

Desrie Markham LL.B., L.E.C., C.Dir.

Intro

Lawyers play a crucial role in supporting the brand-building process by ensuring that an organization's digital media and information literacy strategies are **not only effective but also legally compliant**. Attorneys significantly contribute in managing an organization's brand and communication strategy, by navigating through the web of intellectual property laws found in Antigua and Barbuda's

- Copyright Act 2003 Act,
- the Patent Act 2018 and
- The Labour Code

The Various ways are as follows:

1. Protecting Intellectual Property

- **Trademark Advice and Registration:** Lawyers can help identify unique brand elements that qualify for trademark protection, such as logos, slogans, and brand names. Lawyers manage the registration process to ensure that these elements are protected against unauthorized use, which is fundamental in building a strong brand identity.
- **Copyright Protection:** Attorneys can assist in protecting original content created by the organization, including marketing materials, website content, and advertising campaigns, ensuring that others cannot legally copy or use this material without permission.

2. Advising the Client on Advertising Standards

Compliance with Advertising Standards: Lawyers ensure that the organization's advertising efforts comply with any national, and international advertising standards or laws. This includes legislation related to truthfulness (Defamation Act 2015), non-deception, and fairness in advertising, which helps in maintaining the brand's integrity.

Social Media Guidance: They provide guidance on the use of social media platforms for marketing and communication, ensuring compliance with the terms of service of each platform and advising on issues related to endorsements, influencer partnerships, and user-generated content. Lawyers would advised clients in the context of Antigua and Barbuda’s Defamation Act 2015, The Electronic Crimes Act 2013, Copyright Act 2003 Act and the Patent Act 2018.

3. Managing Risk in Digital Communication

- **Data Privacy and Security:** Lawyers play a pivotal role in ensuring that the organization's handling of customer and client data complies with data protection laws, such as the **Data Protection Act 2015**. This is crucial for maintaining consumer trust.
- **Crisis Management:** In the event of a communication crisis that could impact the brand, lawyers can provide strategic advice on legal considerations and mitigation strategies, helping to manage the narrative in a way that minimizes legal risks and protects the brand's reputation.

4. Ensuring Ethical Marketing

- **Guidance on Ethical Practices:** Attorneys can advise on ethical marketing practices, ensuring that the organization's strategies align with legal standards and social expectations. This includes guidance on diversity and inclusion, environmental claims, and social responsibility marketing.
- **Monitoring and Enforcement:** They can monitor the market for potential infringements of the organization's intellectual property rights or misleading claims by competitors that could harm the brand. Lawyers can enforce rights through legal actions if necessary, protecting the brand's market position and reputation.

5. Educating the Organization

- **Policy Development:** Lawyers can help in drafting internal policies and guidelines that govern how the organization communicates with the public and uses digital media. This ensures that all team members are aligned with legal requirements and brand values.

In Antigua and Barbuda, the unauthorized use of brand materials online by individuals not officially affiliated with an organization poses a significant challenge, especially for youth organizations striving to maintain their reputation and control over their brand identity. Addressing this issue requires a nuanced approach that combines legal measures, communication strategies, and digital media and information literacy efforts. A response strategy to deal with unauthorized use is as follows:



1. Use Digital Rights Management (DRM) and Copyright Protection Tools

- a) Use DRM Tools: For digital materials, consider using DRM tools to help to prevent unauthorized copying and distribution.
 - ◆ Digital Rights Management software used by publishers to control access to the documents and other digital content like ebooks, reports etc.
- b) Register Copyrights with the Antigua and Barbuda Intellectual Property and Commerce Office under the **Copyright Act 2003 Act and the Patent Act 2018**. Where applicable, register copyrights for the organization's materials. This can provide stronger legal standing in cases of infringement.

The Antigua and Barbuda Copyright Act 2003 applies to:

- Literary works such as novels, poems, plays, reference works, and newspaper articles;
- Computer programs, databases;
- Films, musical compositions, and choreography;
- Artistic works such as paintings, drawings, photographs, and sculpture;
- Architecture; and
- Advertisements, maps, and technical drawings.

Subject matter is not protected under copyright law. These include ideas or concepts, discoveries, procedures and methods. Works or other subject matters that are not in a tangible form of writing or recording and subject matters that are not original works of the individual also do not apply to copyright. All works must be fixed or placed in some permanent form for copyright to apply.

There are two types of rights under copyright:

- **Economic rights**, which allow the rights owner to derive financial reward from the use of his works by others; and
- **Moral rights**, which protect the non-economic interests of the author.

The economic rights owner of a work can prohibit or authorize:

- its reproduction in various forms, such as printed publication or sound recording;
- its public performance, such as in a play or musical work;
- its recording, for example, in the form of compact discs or DVDs;
- its broadcasting, by radio, cable or satellite;
- its translation into other languages; and
- its adaptation, such as a novel into a film screenplay.

The moral rights give the right owner to:

- Be identified as the author
- Object to treatment of his/her/its work that is derogatory i.e. addition, deletion, alteration or adaptation the work or treatment that is damaging to the honour or reputation of the author
- Not have a literary, dramatic, musical or artistic work falsely attributed to him as an author.

A patent is the right granted to protect an invention. This infers that exclusive rights are granted for an invention, which is a product or a process that provides a new way of doing something, or offers a new technical solution to a problem. (Patents Act 2018, Section 2).

By patenting an invention, the patent owner holds exclusive rights to that invention. This suggests that the patent owner has the right to decide who may – or may not – use the patented invention for the period in which the invention is protected.

Patents may be granted for inventions in any field of technology, however there are a few key areas which are excluded from patentability. These include:

1. A discovery, scientific theory or mathematical method;
2. A scheme, rule or method for doing business, performing a mental act or playing a game;
3. Computer programs as such;
4. A method for the treatment of the human or animal body by surgery or therapy, as well as diagnostic methods practised on the human or animal body;
5. Plants and animals other than micro-organism;
6. Essentially biological processes for the production of plants or animals other than non-biological microbiological processes.
7. Plant varieties
8. Known substances for which a new has been discovered and:
9. Inventions – the commercial exploitation of which it is necessary to prevent in Antigua and Barbuda in order-
 1. To protect public order or morality, including to protect human, animal or plant life or health; or
 2. To avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by law.

1. A patent may be granted only for an invention which satisfies the following conditions: (Section 5 of the Patents Act 2018)
 1. An invention must be of some practical use and must offer something new which is not part of the existing body of knowledge in the relevant technical field.
 2. The invention must involve an “inventive step” which means that it could not be obviously deduced by a person having ordinary skill in the relevant technical field.
 3. The invention must be capable of industrial application, meaning that it must be capable of being used for an industrial or business purpose beyond a mere theoretical phenomenon, or be useful.
2. An invention may be, or may relate to, a product or a process.

A patent shall expire 20 years after the filing date of the application. Once the period of protection has come to an end, the invention becomes off patent, meaning anyone is free to make, sell or use it. (Section 12, subject to Subsection (2) of the Patents Act 2018)

Any type of disclosure (whether by word of mouth, demonstration, advertisement or article in a journal), by the applicant or anyone acting for them, could prevent the applicant from getting a patent. It is essential that the applicant only make any disclosure under conditions of strict confidence.

2. Engage and Educate Offenders

- a) **Initial Contact:** When unauthorized use is identified, the first step is often to reach out to the individual or entity involved. This communication should be educational, explaining the importance of the brand guidelines and the potential harm their actions could cause.
- b) **Offer Solutions:** If the use was unintentional, provide clear steps for how the offender can rectify the situation, such as removing the content or applying for official authorization to use the brand materials.

Copyright infringement is a crime under the Copyright Act 2003, which can lead to fines and or imprisonment for those responsible. In the event that you discover that your copyright is infringed, there are civil and criminal remedies available to you against those who have infringed your copyright.

Therefore, the enforcement of your copyright depends predominantly upon you.

The owner of a patent, or an exclusive licensee in his own name, can bring civil proceedings against infringements committed after the registration of a patent. Owners of registered designs should consult their legal advisers before taking steps to defend their rights.

Moreover, any person who knowingly performs an act which constitutes an infringement as defined in subsection (1) of the Act is liable on summary conviction to a fine of \$100,000 or to imprisonment for a term of three years.

3. Enforce Through Legal Channels

- a) **Cease and Desist Letters:** If the unauthorized use continues or is of a malicious nature, the organization might need to escalate the matter by sending a cease and desist letter. This letter should clearly state the organization's legal rights and the actions required by the offender to comply.
- b) **Legal Action:** As a last resort, the organization may consider legal action against the offender for the contravention of pertinent provisions of the Copyright Act 2003 Act and the Patent Act 2018. This step should be taken after thorough consideration of the potential costs and benefits, as legal actions can be resource-intensive and may impact the organization's public image.

- **There is no need to file for registration to get copyright protection. An author automatically enjoys copyright protection as soon as he/she creates and expresses his original work in a tangible form, such as in a recording or writing.**
- **The finished product of your work must bear your name and the year or date of creation or publication. You may also use the universal copyright symbol © or the word “copyright” on the copies of your work alongside your name and the date or year. This serves to give notice to others of your rights in the work and help you prove your copyright ownership in Court.**
- **A common method of recording copyright is to place a copy of your creation in a self- addressed envelope, seal it and post it to yourself via registered mail. Once the envelope arrives, leave the envelope sealed and keep it safely. You are advised to also keep all rough work, sketches and materials used in the creative process as further proof.**
- **Comparably, emailing a copy of your creation to yourself also offers copyright protection. This provides a digital timestamp of your work which serves as proof of the date of your copyright claim.**

Patent Protection Requirements

**Patents must be applied for using the Form 1
- Request for grant of Patent Certificate.**

Employee's Rights

A hand holding a smartphone against a red background. The phone screen is dark and mostly blank, with some faint, illegible text visible. The hand is positioned in the lower right quadrant of the frame, with the thumb resting on the screen. The background is a solid, vibrant red color.

Tip

Depending on the type of employment contract, employees may be entitled to different rights.

Some contracts remove certain rights from employees and employees, by signing, agree to them

C56. Every employee whose probationary period with an employer has ended shall have the right not to be unfairly dismissed by his employer; and no employer shall dismiss any such employee without just cause.

ADVISED POSITION: Negotiate your contract so that you act from a position of strength when employed.

If a work is made for hire, the employer or the party that specially ordered or commissioned that work is the initial owner of the copyright in the work unless the employer or the commissioning party has signed a written agreement to the contrary with the work's creator.

EG, an employee who was tasked to create a logo or a design mark specifically for the company will not have ownership of that commissioned work. However, if they were to contract that they owned the copyright for all works made by them, the ball strays into their court.

- In the absence of such clauses, the employee may:
 1. Start by examining the Labour Code Cap 27. While these laws might not explicitly mention digital media, they establish the legal framework for employment relations, including termination procedures and protections against unfair dismissal.
 1. **Digital and Social Media Policy:** Although specific laws regulating social media conduct in the workplace might not exist in our territory, organizations often adopt internal policies. These policies set expectations for online behavior and the potential consequences of policy violations, including dismissal. An employees conviction for violation of criminal provisions of Digital and Social Media legislation such as the **Electronic Crimes Act 2013** may also constitute grounds for dismissal.
 1. **Privacy and Data Protection:** In Antigua and Barbuda, there are certain privacy norms especially regarding monitoring employees' online activities. While employers may have certain rights to monitor online conduct related to the workplace, employees also have privacy rights (constitutional and otherwise) that need to be balanced.