

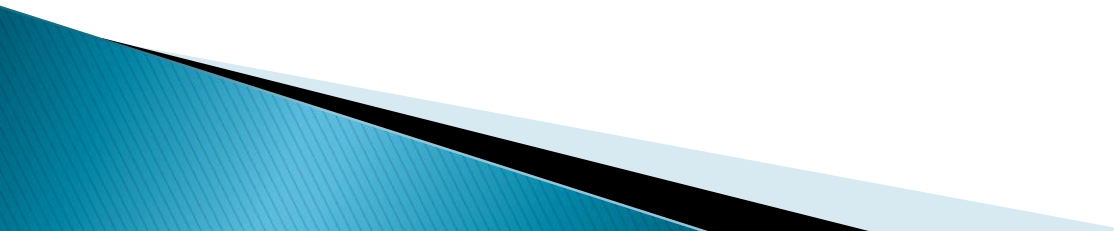
# the fundamentals of intellectual property rights and their protection in mauritius

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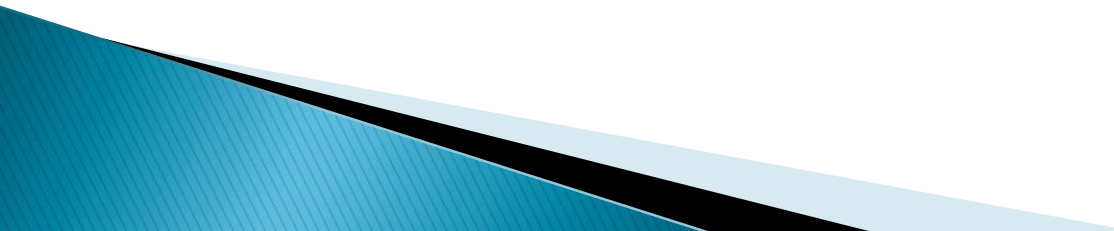
# What is Intellectual Property?

- ▶ Concept of property
  - ▶ Civil Code – art. 516  
  
« Tous les biens sont meubles ou immeubles. »
  - ▶ Immeubles / Immoveable – as benchmark of economic value/wealth
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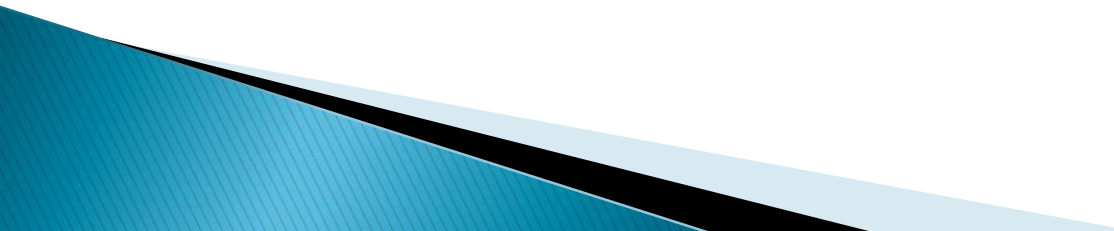
# What is Intellectual Property?

- ▶ Labour / creativity: creation of the human mind – an *intangible* form of property

[biens incorporels] – intellectual property

- ▶ Ideas, inventions, signs, and information.
  - ▶ Need to afford protection to such intangible property – a set of exclusive rights
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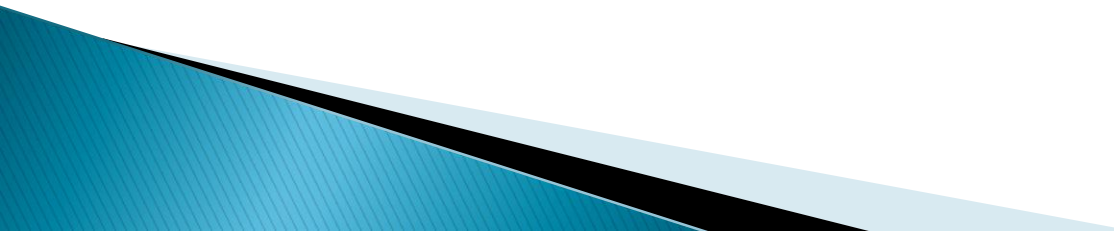
# What is Intellectual Property?

- ▶ Emergence of IP Rights and IP Law
  - ▶ Common types of intellectual property rights: copyrights, trademarks, patents, industrial design and trade secrets
  - ▶ Intellectual property law regulates the creation, use and exploitation of mental or creative labour” (Bently & Sherman).
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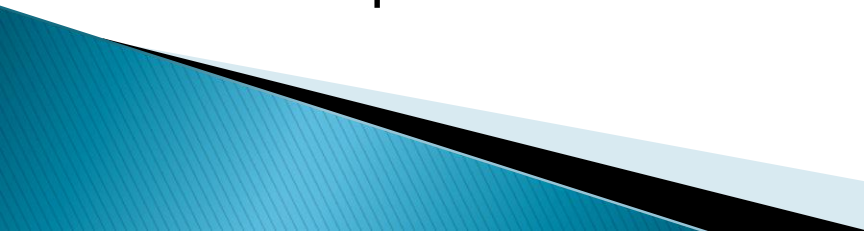
# What is Intellectual Property?

- ▶ British Statute of Anne 1710 and the Statute of Monopolies 1623: origins of copyright and patent law respectively
  - *An Act for the Encouragement of Learning, By Vesting the Copies of Printed Books in the Authors or Purchasers of such Copies, during the Times therein mentioned*
- ▶ 1791 French Law *"All new discoveries are the property of the author; to assure the inventor the property and temporary enjoyment of his discovery, there shall be delivered to him a patent for five, ten or fifteen years."*

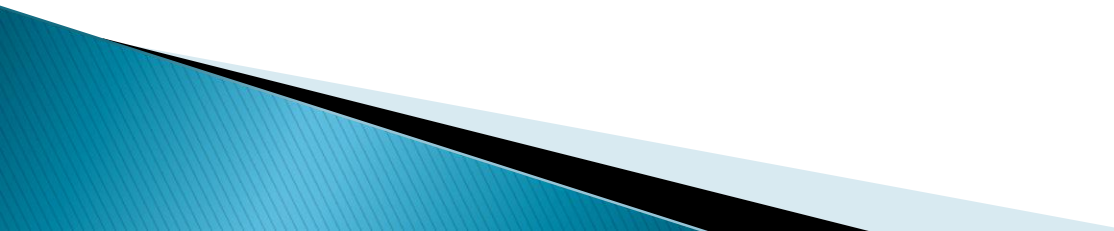
# Justification for protection IPR

- ▶ Encourages innovation – creators will not have sufficient incentive to invent unless they are legally entitled to capture the full social value of their inventions.
  - ▶ Financial incentive: exclusive rights allow owners of IPR to benefit from the property they have created, providing a financial incentive for the creation of an investment in intellectual property, and, in case of patents, pay associated R&D costs
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# Justification for protection IPR

- ▶ Economic Growth – The WIPO treaty and several related international agreements on IPR are premised on the notion that protection of IPR is essential to maintaining economic growth.
  - ▶ The *WIPO Intellectual Property Handbook* gives two reasons for intellectual property laws:
    1. to give statutory expression to moral and economic rights of creators in their creations and rights of the public to access those creations.
    2. to promote creativity and the dissemination and application of its results and to encourage fair trading which would contribute to economic and social development
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# Justification for protection IPR

- ▶ Morality: Article 27 of the UDHR: "everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author"
  - ▶ human mind is a source of wealth and survival – all property at its base is intellectual property. To violate intellectual property is therefore no different morally than violating other property rights which compromises the very processes of survival and therefore constitutes an immoral act.
  - ▶ Relationship between HR and IP
  - ▶ IP as an extension of the personality
- 



# Justification for protection IPR

- ▶ The other side of the coin:
  - Not an incentive to innovation: economic inefficiency as long as there is monopoly over certain IPR and goods.
  - Intellectual Property v/s intellectual monopoly
  - Free Movement: intellectual monopolies as harming health, preventing progress, and benefiting concentrated interests to the detriment of the masses; the public interest is harmed by ever expansive monopolies in the form of copyright extensions and patent protections

# Justification for protection IPR

- ▶ The other side of the coin (cont'd):
  - Creation of artificial scarcity in ideas and information which is *ab initio* free.
  - Information has historically been non-scarce, non-rival and difficult to exclude
  - Artificial quantitative relationship between intangible information and tangible goods on which this information is represented.
  - Ethical problems re socially valuable good, e.g. pharmaceuticals