



Protecting Intellectual Property

Saturday, August 10, 2013
8:00 am - 12:00 pm
Terlaje Professional Building, Hagåtña

Summary Workshop Report

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Summary Workshop Report

Protecting Intellectual Property

August 10, 2013

**The Guam Council on the Arts and Humanities Agency (CAHA) Gallery
Terlaje Professional Building, Hagåtña, Guam**

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Introduction

A three-hour workshop on intellectual property (IP) was held on 10 August 2013 at the Guam Council on the Arts and Humanities Agency (CAHA) gallery, located on the first floor of the Terlaje Professional Building in Hagåtña, Guam. Participants from the local arts community of Guam attended the workshop, which consisted of presentations by Attorney Vince Camacho from Carlsmith Ball, LLP; Monique Storie, Interim Director of the Micronesian Area Research Center (MARC); Robert Tupaz, a representative from Speaker Judith Won Pat's office at the Guam Legislature; and Leo Babauta, a popular blogger and author from Guam now based in San Francisco. The workshop was the second in a series of educational workshops entitled, *Cultural Design with History in Mind*, targeted to Guam's local arts community in preparation for the 2014 opening of the Guam and Chamorro Educational Facility (Guam Museum) and the 2016 Festival of the Pacific Arts (FESTPAC), which Guam is hosting.

The goal of the IP workshop was to provide information about intellectual property rights and protections as they can be applied to artists and other cultural works. The term **intellectual property** refers to the property of one's mind or proprietary knowledge. Intellectual property can be a trademark, an invention, a design or the practical application of one's idea. A useful knowledge of IP rights can help artists understand how their work can be protected or effectively marketed. The various topics covered in the workshop included legal definitions, the use and protection of archival materials, proposed legislation to create a Guam trademark commission, and an innovative approach called uncopyrighting.

Participants: About 70 members of the Guam arts community, including artists, artisans, and cultural producers and educators.

Facilitator: Monica Okada Guzman, Chairperson, Guam Council on the Arts and Humanities (CAHA) Board of Directors

Hosted by: Guam Council on the Arts and Humanities Agency (CAHA), a division of the Department of Chamorro Affairs, the Guam Preservation Trust (GPT) and the Guampedia Foundation, Inc.

Presenters: Vince C. Camacho, Esq., Carlsmith Ball, LLP

Monique Storie, PhD, Interim Director, Richard F. Taitano Micronesian Area Research Center, University of Guam

Robert Tupaz, representing Judith T. Won Pat, EdD, Speaker, 32nd Guam Legislature

Leo Babauta, author/blogger, *ZenHabits.net*

Welcome

Monica Guzman, Guam Council on the Arts and Humanities Agency (CAHA) Board Chair welcomed and thanked the workshop participants. Guzman asserted this workshop was very important—important enough to hold on a Saturday so more people could attend. Guzman then invited Zina Ruiz, a cultural arts teacher from Pa'a Taotao Tano', to open the workshop with a chant of blessing in Chamorro. Ruiz began by explaining that Chamorros have always been rooted in the land and how important it was for them to always ask permission from the ancestors to use it. She wanted, therefore, to use the words of the ancestors for this blessing.

After the blessing, Guzman then proceeded to explain that the workshop was a collaboration between CAHA, Guam Preservation Trust and Guampedia. She introduced Guampedia staff members Rita Nauta and Dominica Tolentino who provided technical assistance during the workshop presentations. Guzman then explained that the presentations and other materials would be made available to the participants on a CD distributed after the workshop, as well as online at Guampedia (<http://Guampedia.com>). Other people acknowledged at the workshop included CAHA staff Jackie Balbas, Sherry Barcinas, Paul Cruz, Mark Duenas, and new staff member Bria. The workshop speakers were also introduced: Vince Camacho, an attorney from Carlsmith Ball; Robert Tupaz from Speaker Judi Won Pat's office; Monique Storie from the Micronesian Area Research Center; and author Leo Babauta, who participated via Internet video call. Also present were Stephanie Flores, chief of staff for Senator Tina Muña-Barnes, and Therese Hart, chief of staff for Speaker Won Pat.

Presentation One

“Protecting Intellectual Property”

By Vince C. Camacho, Esq.
Carlsmith Ball, LLP

This presentation by Attorney Vince Camacho focused on United States federal government copyright laws. Camacho noted that although these laws may not necessarily protect people outside of US jurisdictions, he wanted to highlight what laws are already in place and what protections Guam resident artists may have under the US intellectual property (IP) scheme. The US IP scheme protects residents in the US, its territories and jurisdictions. The copyright law also applies in foreign places if the US has a treaty with their respective governments.

Camacho explained that **intellectual property** generally characterizes the non-physical property that is the product of individual thought and ideas, i.e., what’s in your head. The rights that protect IP involve the control of those ideas, the ability for you to protect those ideas and what you produce from those ideas—in other words, the physical manifestation of those ideas. For example, if one expresses their ideas and produces a piece of work, whether it is a written work, a play, a song or a picture, etc., that is what IP laws will protect—the right to ideas by protecting the right to produce and control the physical manifestations of those ideas.

Camacho then explained the different forms of IP: **Copyright**, generally distinguished by the symbol ©; **patents**; **trade secrets**, **trademarks** (™) and **service marks** (SM). Trademarks and service marks are unregistered. However, the symbol ® indicates that a trademark is registered with the US Trademark and Patent Office.

Copyright is the first form of IP that is protected under the federal IP scheme. It is a form of protection provided to authors of original works of authorship—the operative word is **original**. This protection is available for published and unpublished works if they arise from an original thought. Copyrights, therefore, protect literary works, musical works (including the accompanying words), dramatic works, pantomimes and choreographed works, pictorial works, graphics, sound recordings, sculptural works, motion pictures and other audio-visual works.

Camacho asked, “Does everyone need a copyright?” The misnomer is, yes, you do need a copyright, but the true answer is, you don’t. He explained, when one looks at copyright, the question should be, “Do you have to register the copyright?” Camacho answered, no, you can have a copyright without registering it with the US Copyright Office. What the copyright actually does is, it gives the owner the exclusive right to do—and authorizes others to do—the following (limited in scope, with some exceptions):

- Copyright allows the “owner” to reproduce the work, or prepare derivative works. Camacho noted that copyrights are transferrable; you may be the original copyright holder, but because it has value, you can also transfer it with its value. Therefore, the “owner” of a copyright is not always the same person who came up with work of art. Camacho also defined derivative works as based on the original work but that are different from the original in some shape, form or fashion. They are derived from original.

- Copyrights also allow the owner to distribute copies, by sale (for example to transfer the copyright), or by rental, lease or lending.
- Copyrights also allow the owner to perform the work publicly, or display the work publicly.

Camacho also explained what copyrights do not protect:

- Copyrights do not protect works that are not fixed in a tangible form. These are ideas that are still in your mind. For example, if you discuss an issue with someone and that someone else produces the work, it was not copyrighted, so there is no protection.
- Titles, names, phrases and short slogans are also not copyrightable.
- Familiar symbols and designs, variations of ornamentation and coloring of lettering, and the listing of ingredients are not copyright protected. However, there may be other protections offered, such as under trademark law, if not copyright law.

Camacho then explained the limitations: not all copyrights are protected 100% for the exclusive use of its author or by the owner of the copyright. The US government provides what is called **fair use** for education or community purposes through which works of art may be reproduced. Reproductions by libraries and archives, such as MARC, are allowed, as well as the effect of transfer of phonograph records, certain performances and displays, and secondary transmissions of broadcast programming by cable. If an individual tries to issue a cause of action against another for infringement for doing any of these things, these are their defenses—fair use, for public education or community purposes, reproduction for library or archive, etc.

Camacho reiterated that one does not have to register a copyright with the US Copyright Office; they can just put a “c” on their work. But to enforce any infringement action the copyright has to have been registered. In other words, registration with the Copyright Office is the “teeth”—the legal formality intended to make a public record of the copyright, so everyone is given notice that the work is copyrighted and protected. Due process in a court case requires notice, so copyright registration gives the public notice.

One advantage for copyright registration is that it is on public record, because before you can file any infringement suit, you have to register with the US Copyright Office. If registration is done before or within five (5) years of publication of a work, this provides *prima facie* evidence of the validity of the copyright, meaning, it is a fact. If it is made within three (3) months after publication of your work, or prior to infringement, statutory damages and attorney fees are available. Having a copyright also allows the owner to record the registration with US Customs for protection (so that if works of art are coming from outside the US and these items are infringing on a copyright protected work, then they can be stopped). This is a big advantage for us in the Asia-Pacific region.

Camacho then emphasized that it is the owner of the copyright who enforces it—there is no federal agency or local entity that enforces copyright protection.

Camacho explained that **patents** protect inventions and the discovery of new and useful properties or processes, machines, articles of manufacture or compositions of matter. This is the strongest form of protection available. In order to get a patent, a design has to be novel or

new; it cannot be a derivative of another machine or article of manufacture. Patents give the exclusive monopoly for 20 years for any expression or implementation of a protected work. While copyrights have exceptions like fair use and public archives, the owner has full control over patents—there are no exceptions.

There are two types of patents: utility and design. **Utility patents** protect any new, useful non-obvious process, machine, article of manufacture or composition of matter or improvement. These have to be original. **Design patents** protect any new, original, and ornamental design for an article of manufacture.

Camacho further mentioned that patents require usefulness—the works have to be useful, novel and non-obvious (original). The “useful” requirement is met if an invention meets one of its intended purposes. So in the application process, the applicant has to identify the intended purpose, the process, and what you intend to protect. He explained, you may not actually be trying to protect the *item*, but rather, protecting the *process* in creating that item. In fact, an invention may be invalidated if the item was made known publicly before the patent was allowed.

Camacho pointed out that the patent process is lengthy; it can take a long time to complete the application process. Again, the invention must be non-obvious to anyone who is familiar enough with the idea you are trying to patent. For example, if you are coming up with a new engineering design to lift a bridge, other engineers have to find that process novel, and that it has not been used before in world of engineering.

Camacho mentioned that a patent holder has the right to make, use and sell or authorize others to sell the item, while precluding others from doing the same thing. The patent owner has exclusive control. Utility and design patents lapse after 20 years. Farmers or horticulturalists can patent a plant, such as a new hybrid; this protection is up to 14 years.

Camacho then reviewed the differences between a copyright and a patent. Copyrights are for works that are creative or artistic in nature, and in a fixed medium. They extend beyond the life of the creator, so they can be deeded, gifted, willed or given in trust to a charity or someone else—a copyright can be bequeathed as part of your estate. With a copyright, there is automatic protection, although there are limitations (e.g., doctrine of fair use). Patents, on the other hand, are granted to inventions not known before; they must be applied for and awarded before one gains exclusive right; in other words, one has to apply and get approval before they get the authority for exclusive use. The patent process is more time consuming, expensive, and inventions cannot be used without permission from the holder without infringement. Copyrights do not have to be registered, but patents do have to be registered.

Camacho then went over trade secrets. **Trade secrets** are nonpublic information, for example, the recipe for Coca-Cola, or cooking recipes with secret ingredients. The listing of ingredients, however, is not protected; if they are listed, then the ingredients are not considered a trade secret, especially if they are known to the public. Therefore, they are not protectable. Trade secrets are things to keep close to your heart and make sure no one has access to them. Trade secrets that are sufficiently valuable can be used in the operation of a business or enterprise—they add a value to your service; they must be secret and offer a competitive advantage over others. The owners of trade secrets have exclusive rights to make and use the secret, so long as it remains a secret—otherwise, if they become public they are no longer protectable and no longer of value. That is why major companies like Coca-Cola spend millions of dollars to protect the formula for Coke.

Trademarks are any word, name, symbol or device or combination thereof adopted by a manufacturer or merchant to identify goods and distinguish them from goods produced by others. With copyrights, words, phrases, symbols and certain fonts were not protected. But when talking about trademarks, these compilations are protected.

A **service mark** refers to a service provider. For example, Detry Plumbing is a service provider. They can protect their name or logo, so it is not necessarily a product. Protection is limited and may be waived, in cases where a mark ceases to represent a company or interest, or if it becomes entrenched as part of the common language or culture. For example, Xerox, a company that manufactures photocopying machines, is now commonly used as a term for photocopies. As a result, Xerox believes this usage devalues their company and their products, so they have spent lots of money to protect their company name.

Camacho explained that selecting a mark for a trademark must be done with very distinct care. If you try to file it for protection, the US Trademark and Patent Office actually publishes what you are trying to file and then anyone in the US can challenge it. While not every mark can be registered, there may be cases where one might not necessarily want to register a mark. Also, not every mark is protectable, so not every mark can be used as the basis of a legal claim to keep others from using similar marks on related goods and services. For example, using the word “hot” on a cup for coffee; someone may try to register that, but it might not be cost effective to go through the process to protect its use.

Camacho also indicated that there is a hierarchy of marks leading to greater protection: **fanciful or arbitrary marks** are more likely registrable and likely to get the okay from the US Trademark Office. **Suggestive marks** suggest but do not describe the qualities or connection of the services or goods; they may or may not be strong enough to trademark. **Descriptive marks** are words that describe goods and services. For example, “creamy yogurt.” This is a descriptive mark because of the word “creamy,” so it may or may not get protected. Compare that to the mark, “Humåtak Ice Cream Parlor.” This mark is fanciful and arbitrary because the terms “ice cream parlor” and “Humåtak” are not necessarily related. It also is not suggestive—one cannot only get ice cream in Humåtak; but it is also not descriptive, nor generic, because Humåtak does not describe an ice cream store.

Like copyrights, trademarks are not required to be registered. Although putting a TM or SM lets people know that this is someone else’s mark, it is not necessarily protected by the US’s scheme. Registration, though, has advantages: there is the legal presumption of ownership; the exclusive right to use the mark in the US (although it is not protected outside the US unless there is some form of a treaty between the US and the other country). Camacho pointed out that Guam has its own registration statute in Article 4 of 5, GCA, Chapter 20. It does not do a lot but it recognizes US trademark registrations. If the mark is registered in Guam, then it is only protected in Guam.

Nevertheless, registering a trademark provides due process and public notice of a claim of ownership of the mark. It is listed in the US Patent Office and Trademark databases. It is able to be recorded with US Customs, so that items coming in with that mark can be seized and one can file action on infringement. An owner can also use the registered trademark symbol ®; and in federal court cases, the trademark can be used as a basis to obtain other protections in other countries should the product or service be exported out of the US.

A question was asked about the term “patent pending,” and why items like that are allowed in the market? Camacho explained that you are not protected by a patent until it is approved. But a business might have a product they want to get out into the market but they believe they are giving people notice that there is a patent pending in the US Patent Office by indicating it on the product.

Another participant brought up as a follow up question, but, what if there is a malicious company that wants to take advantage of a huge sale of an item and they say that they have a patent pending, will it confuse the Patent Office? Camacho asserted that, no, adding that individual may not have standing in court to file an infringement on the patent because the patent has not been approved. More than likely, he explained, once you register or apply for a patent, it is in the Patent Office files, so more than likely, your patent will come out first. When you indicate something is “patent pending” you have to have filed it.

A participant asked a question regarding her mother’s artwork. She had had it copied, but someone had printed the artwork and put it on a website in Germany. The artwork has her mother’s signature. She understands this is not a copyright but shows that it is her work. What rights is she entitled to with her signature on her work? Camacho replied, none unless, if she is still living, she can register for a copyright for protection with the US Office and then go seek an infringement action. He added, if your work goes to a foreign country, there may be no cause of action. Leo Babauta will talk about the advantages of not having a copyright. So, there is still room for good for the participant’s mother.

Another participant asked if the list of things a copyright owner can do, is actually saying that the people who do not own the work or copyright cannot do these things. Camacho replied that the list only applies if you are protected. A simple “C” mark will give notice to the public. You have the copyright symbol © to show that it is copyrighted, because to get any of these legal protections the work will have to be registered. The US might have a treaty with Germany that covers copyrights, but probably not with Asian countries, that is why there are a lot of counterfeits produced there.

A question was asked under trademarks, if one of the exclusions is common language or culture, how about an indigenous Chamorro word, for example, *chelu*? “Chelu” is popular locally and stateside. Can someone put a trademark on that word? Camacho answered that in the process of registering a trademark, if one uses a foreign language or characters, the general rule is they have to translate that word or character into English, and if the translation in English is protectable, then the Office would register it. Unfortunately, in the Trademark or Patent Office, Chamorro may not be a known language or it may not be seen as a foreign language. Being able to translate something into English accurately or appropriately may also be a challenge. The participant followed up if a particular font or the way the word Chelu was written would make a difference? Camacho replied that it could, and that is the difficult part of registering a trademark. He recounted trying to get a Japanese company to register a mark and the description of the logo or characters that had to be provided was extensive and the vocabulary used was difficult. So for example, if your mark has a blue circle and you need to describe it, you realize there are different ways to describe a blue circle. Or in naming a font, it could be called something else. In some cases you actually have to measure the diameter of circles or the length of the lines used. So it is a very difficult, detailed process, and it goes back and forth.

The participant asked another question about the design of a hook, which happens to be a popular design for artists who carve. Does that fall under common language or culture that

could be an exclusion to a trademark? He recounted how he had tried to use the word *chelu* and hook, and other things that are local on Guam in creating his work. Camacho replied by asking if what the artist is trying to protect is the hook or the process of creating the hook? The participant answered, he was trying to trademark the work itself, the artwork of the hook. Camacho said that this can actually pass muster because the font is different, the way the hook is used in the design—it really depends on the design. The participant responded with an example of having already used the word *chelu* with the hook for three years in Las Vegas, and then was sued by a storeowner on Guam to stop using it. But he is looking at it as a local cultural expression that is an exclusion to the trademark law. Camacho answered that when you are talking about the cultural aspect of art, you are talking about something like the *Inifresi*, for example; it is commonly used in the culture, everyone uses it. But it does not represent a product or service, it represents culture. If we are going to protect the word *chelu* with a hook, that is a business venture, so there is a distinguishing mark between something used in culture and a non-business form, versus protecting that symbol for business purposes.

Another question regarding trademark was asked, if the Guam trademark only applies to Guam, if someone brings that product to the States and reproduces it, is there no protection? Camacho responded that there is no cause of action in the US but there is protection here. In dealing with issues of exploitation, he asks his clients if they only want to register their work here at the Guam Department of Revenue & Taxation, where it is only \$50? But, with e-commerce nowadays and how many things can be sold outside of this jurisdiction, he advises his clients to consider the dangers and risks of only registering on Guam.

Another participant asked what the ballpark figure for recording copyrights and patents might be; also, regarding e-commerce, if someone can claim the title of a website and sell that domain name to another, does that apply here if we are to copyright locally? Do federal laws supersede Guam laws regarding copyrights and patents? Camacho replied, yes, the federal statute supersedes the local statute. He explained, there are advantages to copyrighting here if you are doing business here, and do not foresee your work being a multimillion dollar product or service. The reason why we have all these copyrights protected is because they have value. For businesses regarding trademarks, it is all about branding, and so these businesses and companies spend millions to create and to protect the brand because it has value to them. As far as costs, it really depends. With trademarks, you can file for a trademark, but someone may oppose it, and then you spend years fighting out the issues with the trademark office.

A participant asked in the case of the brand, I Love Guam (I ♥ Guam) is that not common enough? Camacho replied that actually, it is registered and what makes it unique is the heart and the font; it is not just the phrase, it is the picture and the design. You can write “I Love Guam” in script. All those “I love (heart) ...” are protectable.

Another participant asked if someone on Guam comes up with an idea and registers it on Guam, and someone takes it to the States and registers it there, does the federal copyright supersede Guam's? Camacho responded that generally, federal law supersedes local, but when the copyright was placed on file, it put everyone on notice. They have the right to oppose awarding of that protection. If your product was in commerce before theirs, including on Guam, which is part of the US, you can file and say your product was in commerce earlier and be protected. For example, the brand Hydrox cookies uses packaging that reminds people of Oreos. There is no conflict because Hydrox came out into the market before Oreos, but they had filed for protection, so when Oreos came out, Hydrox claimed they were protected from any infringement.

Another participant asked about any copyrights before the I ♥ Guam—do they have any protection in this case? Camacho replied they do not because the copyright does not protect the I ♥ image, but rather, the phrase. The owner of I ♥ Guam has a lot of brand value and financial value they will want to protect. Camacho reiterated it is the owner who enforces copyright. If the owner does not find it infringing or lacks the resources to enforce infringement action, then the federal government will not either. Another question was asked if all the elements of a symbol have to be used to be considered infringement? Camacho answered that when one files for trademark protection, the questions that you are asked are endless. The elements have to work together in their entirety. If you have gone through the process you have to provide the actual mark in use and that is what is protected, the mark in use. So if they take the derivative of that, and if you have enough money, you can fight it. Camacho reminded, you can protect derivative works; if you consider it derivative of your mark, you might take action, but it is up to the courts to decide in the end.

Another participant asked if someone has a signature that is a registered trademark, would it affect her artwork if she placed her signature on them? Camacho responded that this was important because many might have patent, a trademark and copyright application for the same product—and the reason is because the trademark protects your logo, name, brand; copyright protects whatever you may write in that particular product or service; and the patent will protect the process. In some cases, some artists may have a product or a specific process they are trying to protect, so they will have a patent, a trademark, and may, or may not, have a copyright protection.

A question was raised if an artist passes away, will the copyright automatically transfer to a spouse or children? Camacho answered that copyrights are protected for the life of the owner and for a few years after their death, depending on what kind of work is being protected. Copyrights can be deeded—they are bequeathable. The participant then asked if master paintings, such as those by Van Gogh, are copyrighted? Camacho replied that they are not, they were not painted in the US and besides, the artists are dead. The owners of the originals cannot file for registration. For American artists they have to be alive to apply for protection, but it is not necessarily infringing if someone makes a copy of their work. The infringement is in the commercial use of a work, if someone is making money off of it.

A participant asked about surrendering copyrights, for example, in the media. When writing his column he has to surrender his right to the *Pacific Daily News* (PDN). Camacho explained the reason why the media does this is because it is a public work. When that article is printed in the newspaper, it becomes public domain and archives, which are exceptions to copyright. When you are asked to surrender your copyright this is so you will not have any action against someone doing research with your work or going back to public records. He added, you can still use your work, but it does not give the publisher exclusive rights to only use your work, and you can publish it somewhere else. But it depends on your agreement. In terms of protection you are surrendering to them because your work is going into public domain, but it depends on the agreement with the publisher.

Regarding anthologies and literary collections, Camacho explained that if you are dealing with books or works of art, you do that because the publisher pays you a royalty. The copyright is transferable, and you are transferring the right to them to publish. That is a contract issue outside copyright protection law. A participant added, this would be just like printing a painting in the newspaper. The artist may claim that the painting be used only for

that issue; but they need to be specific where the publisher has the right to print their work, just like photographs. If you had registered the copyright, then that is a different issue.

A question was asked, in the case of I ♥ Guam, if one hypothetically had a bumper sticker from a decades old political campaign, can one use that mark if they are the individual who created that design? Camacho responded there might be statute of limitation issue, depending on how far back the mark went. But since they registered it, you had had a chance to oppose it.

Another participant asked if their work as an artist was signed, but it is not registered, do they have protection if their work is photocopied, and would there be grounds for a suit? Camacho answered there may be, but in order for that to happen, the artist needs to have had it registered. They have to have given public notice; they can have protection but they cannot sue them in court. Another participant gave an example of her brother who had made a map and copyrighted it, and a foreign company copied it and made money off of the copied design. Her brother approached the company personally and proved they had copied it. He was protected and they could not continue using it.

Another participant asked, does each product that you produce have to be registered, for example photographs? Camacho answered that yes, they do. But the photographer could also take their pictures and put a "c" on them, so everyone knows that they are protected, then register those pictures. Or if they see their photos being used without permission, register those specific photos. Registering them allows the owner to sue if needed. The "c" has to be in front and noticeable; it has to be on the original work of art, because whoever holds the copyright has the exclusive control over it. In the event that someone is infringing, the artist can register the work and then sue.

A participant asked, what if one went ahead and got the federal trademark and received certification and the local trademark, and they find out later that someone is infringing on their rights but they do not want to sue? Camacho recommended that they go meet with the person and have a discussion; an attorney could send a cease and desist letter, and then take them to court. There is no one at the Attorney General's Office who will pursue this. The owner has to be the one to take action. They can hire an attorney who will sue on their behalf.

Regarding the location of the copyright sign, Camacho said for a painting, it has to be in front; on a sculpture it is different because the copyright applies to the whole thing; jewelry, too, can have a small "c," usually on the clasp. For sculpted works, the mark must be on the piece itself and not the platform or plaque, and held in place by whatever means will keep it there.

A question was asked regarding unpublished work, or a film script or idea, short of registering, can that script be mailed to oneself, having gone through the postal system and marked, would that provide a similar copyright protection? Camacho replied that you do not have to do that, just show that this work was created on a particular date. To show the date of creation, for example, writers have their notes and research, or a compiled file that can prove that this work of art was created before any other work of art. Especially if you have a manuscript then if someone copies it, you can show that it is actually your work of art. You have to have standing in court, and the way you have standing is to be registered to sue for infringement.

Camacho added that with today's technology people need to know how to protect themselves from hackers stealing important files and other work. Finally, Camacho commented that plagiarism is one of the highest forms of infringement.

Presentation Two

“Bill 156-32: An Act to Create the Guam Trademark Commission for the Development of a Cultural Trademark Statute for the Protection and Preservation of Guam’s Chamorro Cultural Arts”

**By Robert Tupaz, Office of Speaker Judith Won Pat
32nd Guam Legislature**

Robert Tupaz from the Guam Legislature presented a brief overview of Bill 156-COR, which is an act to create a Guam Trademark Commission. The Speaker, along with Senators B. J. Cruz, Tina Muna-Barnes and Chris Duenas, introduced Bill 156 COR in light of the upcoming Festival of the Pacific Arts in 2016. The bill already had a public hearing which was held on Wednesday, August 7, 2013. According to the bill, in recognition of the need to protect the cultural arts of Guam, the Guam Trademark Commission will have the special purpose of:

“...developing policy direction and recommendations relative to coordination, planning, implementation, administration, promotion, compliance and enforcement of the ‘Guam Trademark and Intellectual Property Rights Act’ and the ‘Guam Cultural Trademark Act.’”

Tupaz explained the trademark registration process will be two-fold, and entails a local process to register trademarks (with the issuance of a certificate of registration) and a federal registration, which would cover any registration from Guam. The aim is to develop a policy and process that will bridge the local and federal registration processes. Basically, one would register at the trademark office with the Guam Department of Revenue & Taxation, and a synchronized process would then facilitate the federal registration, so that one can be registered at both the local and federal levels. In doing the research for this bill they found a dispute case currently being heard in court where there is a product registered in the States and one on Guam, but the product on Guam has been in existence longer.

Tupaz then mentioned the other area of consideration for this bill is in traditional cultural expression or traditional cultural art and to ensure their protection. In the public hearing held by Senator Barnes there were two testimonies submitted regarding the bill. Tupaz urged the participants to submit testimony as well. The cut off date for this was Saturday, August 17, 2013. He asserted that the bill is necessary for Guam to have better protection of its cultural trademarks. The participants were informed that testimony should be sent to Senator Vicente Pangelinan, Chair of the Committee on Appropriations, before the budget session on Monday, August 20, 2013. Tupaz emphasized that the funding for the commission would be discussed in the budget session, and may be affected, such as funding for consulting attorney fees.

The bill itself has about five and a quarter pages of finding and intent, and talks about cultural expression, the registration process and differences between Guam and the United States. The bill entails the formation of an 11-person commission, chaired by the senator that heads the committee with legislative oversight, which at this time is Senator Cruz. The commission will also include the director of Rev and Tax or their representative, who will be the vice-chair; the president of the Department of Chamorro Affairs, who will help with the “Guam” branding; and representatives from the Guam Visitors Bureau and Guam Economic Development Authority; the Attorney General of Guam to provide legal guidance regarding intellectual property rights and artisans’ potential rights; the Chair of CAHA or a representative; a member each of the legislative majority and the minority; and then three members appointed by the Speaker from different arts/cultural associations. The commission chairperson will have the power to impanel subcommittees. The commission will have a six-month timeline to do its job; if they need legal advice, in addition to the AG, they may also hire private counsel.

The duties of the commission will be: to develop a new Guam Trademark law that mirrors federal trademark and intellectual property rights statutes; a cultural certification trademark program, similar to the program in New Zealand; to license and promote cultural arts manufactured or produced in Guam. The commission will also identify initial types of cultural arts for use of trademark; develop criteria for lineage of cultural knowledge qualifying for use of trademark; develop criteria for authenticity of works qualifying for use of trademark; and develop criteria for quality of works qualifying for use of trademark. The commission will also work on the criteria for cultural content, sources, meanings and functions of the proposed trademark image, and the proposed process for certifying artists, arts organizations and vendors. It will also work on the proposed terms for use of the trademark in advertising, marketing and sales.

A participant asked about the timing for the testimony and hearings. Tupaz answered that the public hearing has just taken place; legislative policy has a 10-day courtesy rule to gather additional testimony. Already testimony has been submitted by the president of Chamorro Affairs and by the Small Business Development Workshop in support of the legislation. What is needed is a bigger push for the bill.

A participant asked if the process will be like a “One Stop” place to register, and will it be automatic? Tupaz answered it mostly will be a way to facilitate the process of federal registration. Another participant asked if all the other involved government agencies support the bill? Tupaz replied, yes, that this bill complements the Guam Product Seal Law, and the other agencies are agreeable. Another participant asked, if they have a work of art, they can come in and register it? Tupaz responded that the commission will explore the possibilities of registration; you can register with Rev & Tax on Guam but you may not necessarily get protection in the United States, but you can get advice on that as well. The participant commented that it should be more than just getting advice on how to register, but should be more concrete. Tupaz responded the vision is to get this Guam office going to facilitate the process. To get the commission started, there needs to be more favorable testimony for the bill. Tupaz emphasized, the more support the better. Since the bill has been heard, it can be included in the budget talks, but what is needed is written testimony in support of the measure. Further questions can be sent to the Speaker’s office at speaker@judiwonpat.com.

Workshop Break

Presentation Three

“Art & the Archives: Intellectual Property Rights in the Library and Archival Settings”

By Monique Storie, PhD, Interim Director

Richard F. Taitano Micronesia Area Research Center (MARC)

University of Guam

Monique Storie’s presentation addressed the issue of copyright and intellectual property in libraries and archives from two perspectives: as an artist-patron, and then as a contributor. She explained, when referring to the artist as a patron, this is somebody who is seeking information and looking at how to use that information in various forms of art production, creation or performance. She emphasized that libraries and archives are set up to provide access to the community; they seek to assist patrons in finding information. When we think of a library we think of a building and books, but library staff are trained to help find materials. Staff sometimes will have to ask a patron a lot of questions, and sometimes they will send the patron elsewhere to another department. Storie explained that some people get confused about that, but the library really is a point of entry into the information-seeking process. Libraries also store, safeguard, and make available to the community information and materials that have historical, social, cultural and community interest or significance.

Storie explained that when an artist goes to the library, it is usually to do research for art. They may want to look at what the cultural context was for the art. This is also an opportunity to do the research necessary towards copyright and patents. If you start to do the research you can see what other people have already created and so ensure your item is unique.

People also come to the library to get creative inspiration. For example, if you want to depict a mural of a particular time or to create a sense of what a particular period in Guam history might look like, MARC has a fair number of photographs to look at, but also there are various things that can be read that can give more information one can incorporate into their art.

Using archive information can also help an artist develop a sense of accuracy. Storie explained, sometimes we have romantic images of what life was like, for example, during World War II, or the Spanish period. It is good to take our romantic and creative side and juxtapose that with the analytical side to get to the crux of what you want to say in your art pieces.

Storie then discussed copyright in libraries. Copyright is designed to do two things: to provide protection for the people who create particular art works, and also to encourage the production of new creative works. Fair use is one way to encourage the development of new creative works. Libraries have the role of “gatekeeper” to information, but really it comes down to fair use. Fair use is about how you can access information in such a way to spur on new information, but still honor what has been done by previous scholars or artists.

If someone wants to copy something for inspiration or to examine it for their work, MARC encourages patrons to consider four things if they want to make a copy (if that is allowable), keeping in mind that libraries are set up for educational purposes:

- **Purpose of Use:** What do you intend to use the information for: is it for your own research, or will it be incorporated into a commercial design?

- **Nature of Publication:** What is the nature of the publications you are researching? For example, if you are looking at a book, how would that information help you in terms of meeting your information needs?
- **Amount Used:** How much do you really need in order to answer your question? For example, if you want to do a picture of a 19th century woman who is going to church, you might ask questions like, did she wear a scapular or cross, did she wear her hair up or down? Do you need to photocopy the entire work of Freycinet or CAHA's masters series? In other words, how much is really needed to answer your questions?
- **Effect on the market for the work:** This is related to the idea of intellectual property. When making copies, what you are doing may have some impact on the market. Sometimes it is a positive impact: if I make a copy (of a book, for example) and share it with my friends more people might be interested and buy the book. On the other hand if I make a copy for myself, I am not going to go buy the book.

Storie pointed out these are the types of questions librarians and their patrons go through. They ask, can I make a copy of a particular piece in a library? Sometimes these might be hard questions. After all, it is just a picture. But artists realize works like these are your passion, life, and creative work. The library or archive staff should try to help patrons balance what is needed and protecting everybody's rights and access to information.

Storie then talked about an artist as a contributor or a creator of information. She said, at some point in time, an artist might want to put their work into a library, museum or archive. If so, there are some things to think about. Storie explained, when considering making a donation, from the MARC perspective, copyright and subsidiary rights are important. When you create something, you have the right to make a copy or authorize someone to make a copy. You have mechanical reproduction rights that affect how your work can be reproduced. You also have the right to decide how much of your work can be copied. For example, if you have 300 photographs, but only want to copy ten of them, then you can make this determination— this is a digest right. There are also electronic rights that deal with putting things on the Internet and making them available online.

A lot of collecting institutions like MARC have particular criteria and rules. There is an acquisition policy. Specifically, MARC archives items that are written by or about someone from Guam or Micronesia. These items must have historical, cultural, political or social significance. If they do not, the MARC may reject or may accept them, but then release parts of works to other collecting institutions. So, when thinking of where to place your works, think about the institution's acquisition policies, what are the conditions for the things they may want to keep, and what are the conditions that they may return something back to you or give it away.

When MARC accepts an item as a donation, they request a **deed of gift**. This says that MARC has all rights to that material. Storie explained, the reason MARC asks this is because if anytime someone wants to photocopy a large section of your work, the artist would have to be contacted to provide written permission to allow MARC to make a copy. In other words, the deed of gift provides easier access under fair use; with the artist's permission, then MARC does not have to play the "middle man." MARC can also add it into the cultural record and make it available for others to do research. It provides a level of protection and a way to get information out to others easily.

A participant asked if there was a certain method to find information faster; in other words, what would the staff need to know to find information? Storie replied that the more information of what an artist has in mind, the better, but MARC does have a reference process where they will ask questions about what you want to do and what the final form of your art piece will look like. This will help MARC guide you in the right direction. For example, if you want to do picture of Sumay church, photographs might be better to go through than written documents.

Another participant asked about continuing use of reference materials or if one has to come up with new materials for every project. Storie responded that there is a statute of limitations to holding onto information; the quick answer, however, is you have access to the information for as long as you need it.

Another participant asked if there is something that MARC or a library would have but that item is also something one has in their personal collection (maybe because someone in their family had a copy of it), do they still need permission from MARC to use it? Storie replied that this goes back to who exactly is the owner of the copyright. For example, if you have a photograph from Manny Crisostomo who decided to give up photography and deeded his pictures to MARC, then MARC would need to figure out if the work given to you falls under MARC's ownership. In general, however, if you have a copy that you receive from another source, that is yours and you do not need to get permission from MARC to use it.

A participant asked if MARC purchases documents or if they are donated? Storie answered that MARC does both. They attempt to purchase at least three copies of new works. She explained further, when MARC was established in 1967, it was set up as a place to do research. Its focus was on historical documents, and this distinction was made to complement the focus of the Guam museum. The idea was that MARC would deal with documents for research purposes, and the museum would be the place for artifacts and artwork for display and for research purposes. Storie mentioned that MARC does get things from various avenues, but they focus their efforts on things in print, such as magazines, photos, and on occasion, they will accept illustrations, usually as part of an archival collection based on an individual, as opposed to an art collection. MARC is under the University of Guam, so they have staff that are UOG personnel. The library collection does seek out grants for preservation of materials, or to produce information.

A participant asked if all the journals or publications at MARC have been digitized? Storie replied that not all their publications have been digitized, but they are working with particular copyright owners to get that information. They are already working on UOG publications, for example, *Xanadu* and *The Guam Recorder*, which were published in the 1970s. These are actively getting online. They have also worked with the late Tony Palomo to get *Pacific Profiles* online, so they are trying to find out what MARC can put online, and supplement what is already available. If something is online, MARC will try to point you there. Some old issues of the *Guam Newsletter* and the *Guam Recorder*, for example, are online already.

A participant asked if they have pictures from the library, can they paint exactly what is in the picture? Vince Camacho pointed out that the operative word is "original." The participant clarified that they want the picture to be real; what if they just painted the whole picture exactly, in other words, replicate the photograph's image but in a different medium? Camacho replied that if the copyright holder is no longer alive, the image is in the public domain and there is no protection of that image, but the artist would still need to verify that. Storie added that if a picture comes from the MARC library files, she can find out if the original artist/

photographer is alive. Some of MARC's photographs are from the National Archives, so if the photos were done by the military, they might be public domain.

Another participant commented a photographer has the right to make derivative works. The photographer might have had a vision for their image, so copying it might be an issue. Storie responded that on the archive side that is where the deed of gift is. An item is donated just for research purposes as opposed to granting full access rights. Another participant asked if an image is copied but not exactly and there are some changes made, is the artist still liable? Camacho replied that this depends on the copyright holder. Derivative works are also protected; there is no yes or no answer, as it depends on the holder of the copyright.

Presentation Four

“Why You Should Consider Uncopyright for Your Art”

By Leo Babauta, author/blogger

ZenHabits.net

Leo Babauta's presentation focused on “uncopyright,” a term that refers to not registering or copyrighting one's creative works. Babauta described his background: he started his blog *ZenHabits* in 2007 while working at the Guam Legislature. The website took off quickly, and he soon had over 26,000 subscribers from all over the world. Babauta then quit his day job and found he made enough money from sales of his e-book and print book when he signed with a publisher in New York. The sales and blogging full-time helped support his wife and six children in Guam. For him as a writer it was a dream come true and an interesting experiment learning how to make money online, reach a broad audience and share what he was learning with other people.

Babauta then decided to try what he called an “uncopyright experiment.” He was one of the first writers to do this. The idea came from the open source software world, which is the opposite of companies like Microsoft, where they make the program and no one else can get the code. Rather, open source software is when others make the program code and everyone else can access it, make it their own, change it and reuse it.

He explained the philosophy is beautiful in that everyone benefits from your work and then everyone contributes to this “global library” of amazing work that people are doing. He believed this was enriching people's lives and code that people are writing.

Babauta decided to try to uncopyright his writing. He did this because he found that even though he had copyright on his blog, people were stealing his material and putting it on other sites with ads on it and making money using his work without permission. This was piracy and Babauta would contact these individuals and angrily try and get them to stop but would be ignored. He found it took a lot of time and energy to fight this. So, based on an inspiration from open source software, he wondered what would happen if he let go of the idea of copyrighting his material. Babauta explained that he first thought he would not be able to make money as a writer anymore and would have to give up his dream job. To his amazement, however, nothing bad happen, and amazingly, good things happened: he did not lose revenue and actually gained readers. He went from 26,000 subscribers in 2007 to 300,000 subscribers and more than 1,000,000 readers today. Letting go of the copyright, he felt, helped him by removing the barriers for sharing his work.

Babauta gave as an example trying to reprint the work of Harry Potter series author J.K. Rowling. There are lots of barriers to do that, and they probably would say no. But Babauta asks, what if you could take that art and reuse it and make something new with it? This has been done with uncopyrighted work for hundreds of years. Charles Dickens, for example, had copyright problems, but before that, people like Leonardo Da Vinci would have his work taken by people who reused them in their art. This turned out to be something good for the art world. For Babauta, he believed that not only has his work grown, but he has made more money, and people have let him know that his work is useful to them, which amazes him. People think his work is good enough to use in newsletters, book chapters, websites, etc., and also to make money.

Babauta stated he was glad he put his work out there and let people reuse it, and saw this as a way of giving back to the community of writers and artists that he has personally benefited

from. He explained he was inspired by the people before him. He took ideas from great people, reused them in his own way, and now, this was his way of giving back. Babauta believes that the arts community is not here to selfishly guard their ideas but rather to help each other do what we love to do and start a conversation—to enrich each other with ideas.

Babauta claimed that he has seen other people being inspired to do the same thing, and they, too, had the same great results. He encouraged the participants that if they think they could try this as an experiment in their own work, they might find the same feeling—the feeling that comes from knowing that people are grateful for your work.

A participant asked if Babauta charges for his subscriptions. He answered that his subscriptions are free, and that he makes his money from selling his e-books. For example, one could buy one of his e-books for \$10. But since these are uncopyrights, they can be shared. One may argue that Babauta is losing money when people buy his book and share it, but he believes that while he may not be making money, he is gaining readers, reaching more people and a new audience. And if they like his work they might share it with more people. He sees this as a way to spread his work by removing the barriers. Babauta also has a membership program, where he charges \$10 to help people change their habits and their lives. He does videos or conducts online courses using live videos, answers questions, writes articles, and does interviews that focus on teaching people how to do things. In other words, Babauta says he can use any kind of medium and teach online and share information.

Another participant asked if in his field of work infringement is getting out of hand. Babauta replied that it was when he first started. People did not need to copy and paste his work, they could get programs that steal files directly from websites. He found it was hard to get a lawyer to go after them, and did not want to do that, nor spend his time trying to track people to protect his work. Lawyers have better things to do. Although he does not know the current state of online infringement anymore he imagines it is just as bad, but with uncopyrighting, he took that out of his life and focuses on creating what he wants.

A participant asked if the people that use his open source system give reference to having taken part of his work and used it? Babauta replied that 99% of the time they do; they will link back to him and his website, and he is fine with that because people may want to go and look for more on his site. Because his site is uncopyrighted, people can take whatever they want. There are some licenses out there where things can be shared without permission, but sources need to be given credit (these are called “creative commons” licenses which allow for free access but some rights are retained). For Babauta, it is not required, but he is grateful when people do give him credit for his work that they use.

A participant commented that as a teacher at Guam Community College she does use Babauta’s website, and is glad he is not copyrighted. She said his essays on *Zen.Habits* are great ideas and great for teaching about writing. She also appreciates his ideas on uncopyrighting and openly sharing his work, which is a great resource for teachers. She also expressed her appreciation for the fact that Babauta is “homegrown,” he is from Guam and a real inspiration for artists and writers here. Babauta responded that he is glad she appreciates and is sharing his work. He added, if any of the participants would like to talk about making money online, although he is not in the business of making money, he can help.

Babauta mentioned that if you release the copyright of your work, and sell digital and video copies of your work, while you may think that is dangerous, people will generally want to come to the source. He explained, if there are ten copies out there of the same writing or

video, he has found that people go to the trusted sources—they go to the person they trust most, who is likely the creator of the work. Because the creator has shared their work with others, users are grateful and likely will want to donate and contribute to their efforts. For example, some buy his e-books just to say thanks for the free stuff he gives them through his website. He emphasized if you are the creator and a trusted source online people will come to you versus an untrusted source. He advised participants to always be trustworthy when they are online. A lot of “spam sites” will try to sell bad things and put pop-up ads all over—to him, that is a signal they are not trustworthy. Babauta reiterated he is not trying to sell anything, but rather he wants people to read and benefit from the free things he offers and send the signal that “I am trustworthy.”

Babauta further mentioned that for musicians copyright is something that protects these works of art. However, copyright, to him, does not protect the musician but the giant corporations and labels they are signed under. These are the ones with the money to pursue copyright infringement. Musicians, however, have survived without copyrights. He said, “If people like your stuff they will go to find you live, or listen to your music live, or see your artwork live.” For Babauta, audiences pay for this live conversation and enjoy the added value of the free stuff he has given away. This is what builds their trust in him. He has something audiences want to read, and it shows that they are willing to pay to talk to him for that live interaction, which is more valuable, the one-on-one conversation. He said, “Go live if you want to make a living; free is the way to go if you want to prove that you are worth seeing live.”

A participant asked about the term “copyleft.” Babauta explained there are a number of different terms in the open source world, and “copyleft” may actually be the same thing as “uncopyright.” There are also GPL and MIT licenses, which are kind of confusing.

Babauta reiterated he is not trying to sell the participants on this idea of uncopyrighting, as there are a lot of important things to learn in this workshop about copyrights. But, he realized that as he was worrying about whether he was infringing on others or if others were infringing on his work, it caused him problems, stress and anger. He found when he gave those away, he found himself happier and free to focus and create the content he wanted to create. He was also grateful to receive the gratitude of people who liked his work and him for sharing it.

Shannon Murphy, Managing Editor at Guampedia (and Babauta’s mother) stated that Babauta actually had helped create Guampedia when the project became its own nonprofit, using open source software, and making the content open as well. The exception is the photographs and images which need permissions for use, usually from MARC. Murphy emphasized the information on Guampedia about Guam history and culture is not something to be held onto, but to be used and spread everywhere.

A participant asked if Guampedia follows the uncopyright principle. Murphy replied that it does, in a way. They want people to use the information on the site, so there is no license. Rita Nauta added that the things up on the Guampedia website, such as images and people’s work, Guampedia has gotten permission to use them, and so others have to get the permission as well from the proper sources. In a sense Guampedia is a like a library or repository, an entry way for researchers. Guampedia, though, does have original work for which they do want credit as the source. For example, on Guam History Day events, people will comment that everything they saw on the students’ projects was from Guampedia. Nauta said, “In a way this validates our existence. This is what we are here for. Guampedia has been around since 2008 to be a free community resource, a trusted scholarly resource, because that is something

we want to distinguish us from [other sites like] Wikipedia. Everything except interpretive essays go through a peer review process.”

The workshop ended with a few more questions and answers:

Nauta reminded the participants that the deadline for submitting testimony regarding Bill 156 and the creation of a Guam Trademark Commission was Saturday, August 17, 2013. Once the commission is established it will have six months to work on creating the policy for the trademark registration process.

A question was asked regarding where people can go to see what kinds of patents, trademarks or copyrights are pending and what others are doing. Camacho replied that the US Patent and Trademark Office has a site: <http://uspto.com>, as well as the US Copyright Office. He advised, the first step is to go onto the website with your idea in mind and see if anyone is registered or in the process of registration. If so, then the process stops there, unless you want to do something else. The website has a search engine that can be used in different ways, such as searches based on industry, product, or types of commodities. For example, if someone wants to create a company and the commodity is women’s clothing, there are categories that can be looked up for skirts, blouses, shoes etc., on this website. If one is interested in finding existing trademarks, there is a search function for that as well. Camacho advised, even if you are going to register your mark only on Guam, this is a good place to start and then to also do a search at Rev & Tax.

Guzman then demonstrated several quick searches using variations of “I Love Guam” and the Two Lovers Point legend on the website. Camacho pointed out that folktales and myths are not copyrighted because they are in the public domain. A work has to be unique or original, or they could place the story elsewhere or in a fictional place. Regarding slogans, Camacho added that one would have to look on the system to see what is actually protected and use that as a guide. The US Patent Office will also assist in searches, as these offices employ hundreds of attorneys that work in this area. Indeed, when an individual fills out an application they will be assigned an attorney. In response to another question, Camacho added that Rev & Tax will assign a name when you are registered, not for copyright purposes, but to ensure that there is no confusion over the name of a company and that there is enough differentiation.

Closing

In closing, Nauta thanked the presenters and everyone at CAHA and Guzman, as well as Guam Preservation Trust for providing the refreshments at the workshop. She stated this workshop was a cooperative effort leading up to the 2016 FESTPAC to showcase Guam to those people that are coming to visit during the festival. She reminded participants to complete the evaluation form and provide feedback. The information from the workshop as well as other resources on intellectual property was made available on the distributed CDs and will be on the Guampedia website (<http://Guampedia.com>).



Protecting
Intellectual
Property

