

Lesson 7: Intellectual Property (IP)

Script:

In the current age of globalization and internet, intellectual property law or IP has become increasingly important.

The first component of IP law that I would like to talk about is inventions and **patents**. An invention in order to be patentable must meet certain key requirements; first of all the invention must be **novel** or it must include some sort of **inventive step**; second of all it must be useful meaning it must lend itself to some sort of commercial or industrial application, and finally this invention must be **non-obvious**. Once a patent application is filed, if it meets these criteria, then a patent is granted by the competent authority for a specific period of time or specific term, which varies from country to country.

Another key component of IP law are **trademarks**. This is basically a distinctive mark that the public associates with a certain **brand**; in other words it is an identifier of a specific product good or company. An application to the Trademark Registry office is made in order for a trademark to be granted and one of the key factors that will be considered by the office is whether a trademark is **distinctive**, meaning whether there is some point of differentiation from other trademarks for the same or similar goods or services.

The Third Key area of IP law is **copyright**. Copyright arises automatically upon creation of some sort of **creative work** and this includes books articles, music, movies, and so on. The author has exclusive rights over the use of the creative work in question, unless they allow others to use it. They can do this in two ways. First of all, they can grant a **license** to a third party for a certain amount of money for them to be able to exploit their creative work for a specific period of time and through specific means; the alternative to a license is **assignment**. This is a broader tool whereby the rights to the copyrighted work are permanently transferred to another party for a specific amount of money.

In the United States, however, for certain specific purposes such as education the copyright laws contain certain exceptions which allow free use of certain creative work such as textbooks; this is what is referred to as the **doctrine of fair use**. Having said that, one must always be careful to ensure that the purpose of the use is truly educational as well as that the amount of the copyrighted material is not too extensive.

There are also other IP rights and issues that arise in different situations. For example **cybersquatting** which is an illegal practice that can be challenged in the court, whereby someone registers a **domain name** (meaning a website name or a trademark name) that is very similar or almost the same as some other well-known domain name or trademark in order to create some sort of confusion in the mind of the public and perhaps to force the owner of the other domain name or trademark to buy it out in order to avoid this confusion.

There is also something called **passing off** which refers to the illegal practice of **misrepresenting** some sort of goods or services for those of another usually better known company or brand, for example misrepresenting goods such as clothing or shoes as those of a well-known brand.

In addition we also sometimes hear of something called **trade secrets** which basically refers to a specific recipe or method of either doing business or creating a good or service, which is particular to a company or business. However these trade secrets are more difficult to defend and protect than other IP rights

There are a number of remedies available to those whose IP rights have been infringed. These can be pursued either through civil actions in Court, or through arbitration. One of the most common remedies are damages and the types of damages are quite similar to those we have outlined in module 4 when we were dealing with contracts. However, within the range of damages that are available in the field of IP law, the most common one is **restitution** also known as **account of profits** whereby the infringing party who unjustly enriched themselves as a result of the unfair use of a patent or trademark or copyrighted material must give up or return to the rightful IP right holder the money they made as a result of the infringement.

In some cases, where an infringement has been discovered or where it is suspected that an infringement is about to take place the IP right holder can issue a **cease and desist letter** warning the other party that they are aware of what is going on and that they should stop their activity immediately. If that doesn't work often a **motion for an injunction** can be filed with the appropriate Court. An injunction granted by Court will order the infringing party to immediately seize or stop their activities or their intended or planned activities.