

1 - Introduction to Intellectual Property

Types of IP

Copyrights

Copyright law protects creative works by granting exclusive rights to produce and sell those works

Examples of copyright works include: Books, Painting and sculptures, Songs and recordings, Plays, tv shows and movies, Architectural works, Copyright does not protect ideas. For example, copyright will protect a movie script but not an idea for a movie. Copyright is a separate right to a property right. For example, you do not obtain any rights in copyright to a book once you buy it

Patents

Patent law protects inventions by granting exclusive rights to exploit (e.g., make, use and sell) the inventions for the life of patent (i.e., 20 years from the date of filing of a patent application)

Examples of patentable subject matter include: Electronic devices (such as smartphones, tvs, etc), Pharmaceuticals, Processes (e.g., method of manufacturing steel)

Do not include scientific principles, discoveries (things that occur in nature), mathematical formulas, abstract ideas and other intangible concepts

Trade Marks

Trade Marks are used to distinguish the source of goods and services of one party from those of others.

Trade Marks are right that are granted for letters, numbers, words, phrases, sounds, smells, shapes, logos, pictures and/or aspects of packaging.

Trade Marks provide exclusive rights to commercially use, licence or sell them for the goods and services that they are registered under.

Examples include: brands, product names, company names, slogans, catchphrases and logos.

History of IP

Copyright

- Introduction of printing press (rapid dissemination of ideas)
- Tudor Dynasty introduce printing monopolies control publishing – publishers must be members of Stationers Company (control sedition, heresy and treason)
- 1641 - dismantling Stationers Company monopoly
- 1709 - *Statute of Anne*
 - Grant rights to authors
 - Authors could license to publishers / printers

Patents

Venetian Statute 1474

- Modern patent statutes derive from Venetian Statute
- Principles are still applicable today (innovation is promoted by providing incentive for invention)

Statute of Monopolies 1623

- First English patent law statute
- Repealed all past and future patents and monopolies, except future novel inventions
- Basis for Australian patent law

Trade Marks

1266 - Bakers Marking Law

- allowed bakers to identify their bread by stamping or pricking it

1363 - Maker's Mark Law

- law requiring use of assay and makers marks by English silversmiths

What IP rights are infringed?

Using your IP as a product?

- Copyright

- Patent

Using your IP in connection with their products?

- Trade mark / Passing Off / s18 ACL

Using your IP in creating their products?

- Confidential information
- Patents

IP philosophy

Personality-Based

- Protect name/reputation
- Ideas are an extension of our personalities: individuals have moral claims to their own talents, feelings, character traits and experiences
- There are many examples of intellectual property where there is no evidence of the creator's personality (process for making steel, customer list, pharmaceuticals, etc)

Incentives-Based (Utilitarian)

- Intellectual property rights provide incentives to innovate and create
- Absent incentives, authors and inventors might not endeavour to produce intellectual property
- How do we know what the actual costs and benefits are of intellectual property?
- Is there a better way to stimulate innovation?

Lockean-Based

- Labouring, producing, thinking, and persevering are voluntary - individuals who engage in these activities are entitled to control the fruits of their labour
- Intellectual property rights reward hard work (Locke's theory)
- *Millar v Taylor* (case granting perpetual rights to the publication of books) per Mansfield LJ:
"It is just, that an author should reap the pecuniary profits of his own ingenuity and labour."

Intellectual "property"

- Intangible rights that can be dealt with like chattels or real property – can be sold, mortgaged, licenced, bequeathed, etc
- Difference between IP and real property – restrictions on ownership (e.g., can deface the Mona Lisa but cannot copy it)

Public Domain

The "*Public Domain*" consists of creative materials that are not protected by IP laws because:

- they were never entitled to IP rights
- they were once protected by IP rights but entered the public domain when their terms of protection ended
- failure by their owners to take steps to protect their IP rights

The public owns works in the public domain, i.e., anyone can use them without obtaining permission

International treaties

- Berne Union – copyright works
- Rome – broadcasts, sound recordings
- Paris – patents, trade marks
- WTO TRIPS – Uruguay Round 1995

WIPO – World Intellectual Property Organization (administers the treaties)

Australian Constitution

Power for Parliament to legislate in relation to IP is provided in section 51 of the Constitution:

The Parliament shall, subject to this Constitution, have power to make laws for the peace,