

Week 1: Overview of Innovation and Intellectual Property Law

Weekly revision summary

1. Weekly overview

Week 1 orients the unit and introduces the framework that runs through the whole term. It establishes that intellectual property (IP) is not a single right but a collection of statutory, equitable and common law protections attaching to different aspects of creativity, invention, confidential information, brand identity, reputation and commercialisation. The central skill is issue spotting: looking at a business or technology scenario and identifying the possible rights, ownership questions, registration issues, infringement risks and commercial choices. This connects to the unit's broader theme that IP sits where ideas meet commercial value, and that the first half of the unit (rights) feeds the second half (commercialisation).

2. Key concepts and principles

Idea versus protected expression. IP does not protect every valuable idea, concept, method or style. It protects more specific subject matter — the expression of an idea, a qualifying invention, a distinctive sign, product appearance, confidential information or goodwill. Clients often describe a problem too broadly ("they stole our idea"); the lawyer reframes this into what asset exists, what right protects it, who owns it and what was taken.

The main statutory IP rights. Copyright protects original works and other subject matter (including software code as a literary work); patents protect new, useful and inventive inventions; trade marks protect signs that distinguish goods or services in trade; designs protect the visual appearance of products. A key Week 1 skill is comparison — asking of each right what it protects, how it arises, whether registration is required, who owns it, how long it lasts and what infringement it prevents.

Registered versus unregistered protection. Registration is the practical dividing line. Copyright, confidential information, passing off and misleading or deceptive conduct arise without registration; patents, registered trade marks and registered designs require it. Registration creates powerful rights but demands planning, cost, timing, evidence and drafting.

Related (non-registered) protections. Not every important protection is a registered statutory right. Confidential information may protect information with the necessary quality of confidence communicated in circumstances importing an obligation of confidence; passing off protects goodwill against damaging misrepresentation; misleading or deceptive conduct under the Australian Consumer Law addresses conduct in trade or commerce that misleads or is likely to mislead. IP advice therefore often needs a wider lens than registered rights.

Overlapping and complementary rights. IP rights are complementary, not mutually exclusive. A single product can involve several at once — for a software platform, code and content (copyright), name and logo (trade marks), workflows and datasets (confidential information), and similar branding (passing off / misleading conduct), with ownership shaped by employment and contracts. This is why the workshops use one continuing scenario.

Ownership as the practical fault line. The creator is not always the owner. Employee work created in the course of employment may vest in the employer (subject to statute and contract), while an independent contractor often retains ownership absent a written assignment. Undocumented contributions by friends, students and collaborators are a classic ownership risk.

3. Key authorities

Authority	Relevant principle or legal test	Practical significance
Copyright Act 1968 (Cth)	Protects original works and other subject matter; protection arises automatically without registration.	Primary source for software, guides, website and visual content in a tech business.
Patents Act 1990 (Cth), s 2A	Object clause; protects new, useful and inventive registered inventions.	Registration and disclosure bargain central to invention protection.

Authority	Relevant principle or legal test	Practical significance
Trade Marks Act 1995 (Cth)	Registration of signs used to distinguish goods/services; unregistered branding still relevant to passing off / ACL.	Brand protection and clearance before launch.
Designs Act 2003 (Cth)	Registration (and certification) of the visual appearance of products.	Registration and certification important for enforcement.
Competition and Consumer Act 2010 (Cth), Sch 2 (ACL); Pt IV	Misleading or deceptive conduct; anti-competitive conduct relevant to IP licensing.	Consumer protection and competition limits on IP use.
Berne Convention; PCT; Paris Convention; Madrid Protocol; Hague System	International frameworks supporting protection beyond Australia; rights remain territorial.	IP strategy often extends overseas; Australia is not a Hague member.
IP Australia; WIPO	Administer/guide registration (patents, trade marks, designs) and the international system.	Orientation and guidance for registration strategy.

4. Practical application

In practice the lawyer separates the threads in a commercial "mess": what is protected, who owns it, what has been done with it, and what response makes commercial sense. Advice is often preventative — contributor and confidentiality agreements, IP assignment clauses, open-source registers, brand clearance searches, and version-control records that help prove authorship and copying. The unit stresses recurring questions: what is the client trying to protect, who created it, who owns it, was it protected properly, has it been copied or misused, and what outcome does the client actually want (compensation, a competitor stopping, a preserved relationship, a rebrand, or better internal controls).

Scenario — ClausePilot. Mia and Daniel build a legal-tech platform. Sophie improves the logo and landing page with no written agreement (ownership risk); ContractPilot alleges the name is too similar to its registered mark (trade mark / misleading conduct); a former contractor launches ClauseMate using similar structure and wording (copyright, confidential information, contract). The task is issue identification across overlapping rights, considering both the rights they hold and the risks they face.

5. Risks, systems and controls

Risk: Undocumented contributions (e.g. Sophie's logo) leave ownership unclear.

Control or response: Written contributor and IP assignment agreements before launch.

Consequence of failure: Business cannot enforce, register, sell or attract investment; deals delayed or devalued.

Risk: Choosing a brand too close to an existing registered mark.

Control or response: Trade mark clearance searches before adopting and promoting a name.

Consequence of failure: Infringement / misleading conduct exposure and costly forced rebrand.

Risk: Loss of confidentiality over workflows, datasets or know-how.

Control or response: Confidentiality agreements, access controls and records of disclosure.

Consequence of failure: Competitors misuse trade secrets; protection and commercial value lost.

6. Assessment and revision focus

The lecture expressly links Week 1 foundations to Assessment 1 (online test, 20%), which checks understanding of key concepts and legal principles from early weeks; students are told to build short notes weekly and not prepare the night before, focusing on differences between the rights (what each protects, and what arises automatically versus by registration). Assessment 2 (written, 30%) applies IP