Study Note: This introductory module should take around 1 hour to study

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Module 1: Introduction to Intellectual Property

What is Intellectual Property?

To some extent you may already know the answer to this question. We know that the inventor of a machine, the author of a book, or the writer of music somehow usually 'own' their work. From this ownership, certain consequences flow and you probably have been made aware of the fact that we cannot just copy or buy a copy of their works without consideration of their rights. Equally, original industrial designs of furniture, wallpaper and the like seem naturally to be owned by someone or some organization.

Each time we buy such 'protected' items, a part of what we pay goes back to the owner as recompense for the time, money, effort and thought they put into the creation of the work. This has resulted over the years in the development of industries such as the music industry growing worldwide and encouraging new talent to produce more and more original ideas and articles.

The following table suggests some of the things that are entitled to protection as intellectual property under national intellectual property laws and / or various international treaties:

Discs	Designs for objects	Geographical indications of origin for certain types of products
Performances	Images	Companies' names
Broadcasts	Logos	Industrial processes
Videos	Trademarks	Chemical formulas
Computer games	Integrated circuits	Materials
Computer programs	Inventions	Perfumes

Let's begin with a more formal definition of intellectual property, so as to build a solid foundation for later explanations of the various types of intellectual property, and then the relevant governing international treaties. The best place to start is with a consideration of the meaning of the word ***property***.

The outstanding features that most types of property share are that **the owner of the property is free to use it as she/he wishes, provided the use is not against the law, and to exclude others from so using that owned item of property**.

Now the term "intellectual property" is reserved for types of property that result from creations of the human mind, the intellect. Interestingly, the term ***intellectual property*** in the ***Convention Establishing the World Intellectual Property Organization***, or "WIPO", does not have a more formal definition. The States that drafted the Convention chose to offer an inclusive list of the rights as relating to:

> "Literary artistic and scientific works; performances of performing artists, phonograms, and broadcasts; inventions in all fields of human endeavor; scientific discoveries; industrial designs; trademarks, service marks, and commercial names and designations; protection against unfair competition; and "all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields." (Convention Establishing the World Intellectual Property Organization, Signed at Stockholm on July 14, 1967; Article 2, § viii)

For various administrative and historical reasons, intellectual property is usually dealt with under the following main headings:

1) Literary, artistic and scientific works e.g. books. Protection of this property is governed by laws* concerning **Copyright.**

2) Performances, broadcasts e.g. concerts. Protection of this property is governed by laws concerning Copyright's **Related Rights.**

3) Inventions e.g. a new form of jet engine. Protection of inventions is covered by laws concerning **Patents.**

4) Industrial designs e.g. the shape of a soft drinks bottle. **Indstrial Designs** may be protected by its own specialized laws, or those of Industrial Property or Copyright.

5) Trademarks, service marks and commercial names and designations e.g. logos or names for a product with unique geographical origin, such as Champagne. Protection is normally available under various laws. In this course the laws are covered within the **Trademark** module.

6) Protection against unfair competition. e.g. false claims against a competitor or imitating a competitor with a view to deceive the customer. This is a theme that occurs in many of the modules in this course and is in fact the subject of a separate module.

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* **The term "laws" includes national laws and international agreements: treaties, conventions and similar intergovernmental instruments. Treaties themselves may receive different treatment within various nations' governments.**

Self-Assessment Question (SAQ)

SAQ 1 : **For each of the following intellectual property examples state the area of IP law that would be most appropriate for their protection:**

1) A company wishes to ensure that no-one else can use their logo.

2) A singer wishes to assign the rights to reproduce a video she made of her concert.

3) A new way to process milk so that there is no fat in any cheese made from it.

4) A company has decided to invest in packaging, which is distinctive, and they wish to ensure that they have sole use.

5) **A company decides to use a logo that has the same shape as its competitor but with a different colour.**

Type your answer here:

Click here for answer

SAQ 1 Answer:

1) Trademark

2) Related Rights

3) Patent

4) Industrial Design

5) Unfair Competiton

Don't worry if you didn't get all of the answers right, in the rest of this course we will treat each of the areas in turn and explain the principles behind each of them.

Common to all of the areas are two principles:

- The creators of intellectual property can acquire rights as a result of their work.

- The rights to that work may be assigned or licensed to others.

Why do Intellectual Property Rights Matter?

The first reason is that it is both just and appropriate that the person putting in the work and effort into an intellectual creation has some benefit as a result of this endeavor. The second reason is that by giving protection to intellectual property many such endeavors are encouraged and industries based on such work can grow, as people see that such work brings financial return.

An example of this later point is given by the case of the world pharmaceutical industry. An investment of many years, and R&D expenses (lab time for creation, testing, government or agency approval procedures) running into the hundreds of millions of pounds sterling (or yen, rands, lira, dollars) may be necessary before any new medicine reaches the market. Without the IP rights to exclude competitors from also making such a new medicine, the pharmaceutical company creating such a new compound would have no incentive to spend the time and efforts outlined above to develop their drugs.

Without patent protection, such a company would face economic losses originating from the "free-riding" of their competitors. Without trademark protection, this company, again, could not build "brand loyalty" that, hopefully, would last beyond the years of protection granted by patents.

Without the protections given within IP laws and treaties, such pharmaceutical firms simply would not commit an effort to experiment, in searching for new health products. As you can see from this brief example, without the protections outlined above, the world might well be literally less healthy than it is.

Intellectual property rights may also help to extend protection to such things as the unwritten and unrecorded cultural expression of many developing countries, generally known as folklore. With such protection they may be exploited to the benefit of the country and cultures of origin.

The reason for States to enact national legislation, and to join as signatories to either (or both) regional or international treaties governing intellectual property rights include:

- to provide incentive towards various creative endeavors of the mind by offering protections;

- to give such creators official recognition;

- to create repositories of vital information;

- to facilitate the growth of both domestic industry or culture, and international trade, through the treaties offering multi-lateral protection.

In the next part of the course we shall examine in turn each of the areas of IP outlined above.