



- Real vs. Intellectual Property (IP)
- Why do (most) countries recognize IP?
- Copying and IP ownership
- Different types of IP
 - Trade secrets
 - Trademarks
 - Patents
 - Copyrights
 - Trade dress
 - Designs

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Welcome back. We're going to talk in this segment about intellectual property. We're going to describe it, discuss it. We're going to figure out how it's different from other forms of property and why do governments around the world recognize it, use it, and find it useful for the people in their own countries and jurisdictions. We're going to discuss what it means when someone copies you and how you can prevent them from copying you. And then we'll talk through the details of the different types of intellectual property, starting with trade secrets, trademarks, patents, copyrights and then there are a bunch of other ones, which we're not going to get to today. Two of which trade dress, which varies a lot from jurisdiction to jurisdiction. Design. It's an absolute mess from country to country. It's actually very complicated-- you see we'll mention design in maybe some of the other ones as well today but we're not going to have time to go into lots of details about design. You may want to look that up for your own country and see how design is handled and then there are a bunch of other ones too, which we will not get into today. We'll talk about the four major types of intellectual property. So let's get going.

Notes

Summary



0m 05s

5.1 Intellectual Property

Launching New Ventures: Entrepreneurship & Strategy for Technology-Driven Startups

Prof. Chris Tucci and Prof. Marc Gruber

So let's talk about real property versus personal property versus intellectual property. Real property is physical property that cannot be moved. There's a whole set of law that's come to distinguish between property that can't be moved and property that can be moved, which is personal property. So examples of real property: your house, your apartment, if you own some land-- transferring that land there's usually subject to a bunch of rules and regulations, possibly taxes and there could be rules about you selling your land to someone else and how they should buy, when they should be recorded some place, etc. etc. So real property has its own set of rules. Personal property are other tangible goods that you own but that can be moved around: your clothes, your bicycle and other pieces of personal property that you have and of course we have rules and regulations about what to do with personal property. You can't just take someone's clothes without their permission and start wearing them. You can't steal someone's bicycle. If you do you could end up getting in trouble with the law, etc. So personal property is also a tangible good.

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Summary





- **Real property** is physical (tangible) property that cannot be moved
 - Examples: your house, apartment, land that you own
- **Personal property** are other tangible goods that you own
 - Examples: your clothes, your bicycle
- **Intellectual property** is “creative output” or the “product of the mind”
 - Examples: inventions, contents of a book (literature), music

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Now on the other hand, intellectual property is regarded as creative output or the product of the mind. So these are things like discoveries, inventions, literature, music, and over the centuries there has developed entire body of law relating to how to create, transfer, sell, rent, etc. this particular type of property and that's what we're going to talk about today.

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Let's talk about why different countries recognize intellectual property. Why do they setup these special rules for intellectual property? Most countries and different jurisdictions have slightly different rules. That's becoming less pronounced over time but still there are important differences across countries and they happen to correspond to the philosophy of the purpose of intellectual property. The purpose of intellectual property is to give people incentives to make discoveries and creative outputs. So therefore depending on how you approach the incentive to the inventor or the creative type person versus the benefit to society might influence how you structure your systems of rules and regulations and laws having to do with intellectual property. Some people call the "national innovation system". How you structure your national innovation system depends on how you feel about these different things. There's usually some kind of rules about disclosure. There's the exclusivity and there is the term of the protection that you have. So disclosure is just how much information you need to give out.

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Summary



0m 04s

Why do (most) countries recognize IP?



- Different countries have different rules about IP
- Governments (States) want to encourage creative output
 - They set up incentives so the different parties can decide how to proceed
 - The incentives often trade off disclosure against exclusivity against time horizon

- **Disclosure:** you tell everyone what you are doing
- **Exclusivity:** you can stop other people from copying you
- **Time horizon:** How long you get exclusivity

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Exclusivity is how much you can keep this to yourself to prevent others from copying you and the term is how much time you have exclusivity if you have it and what most governments or states as we call them, would say that there's a trade-off there, those three things define different aspects of how much you want to protect society versus how much you want to protect individual in terms of the inventor. So very long terms, for example, are generally considered to be really, really good for the inventor or for the creative-type people because they can make money from their inventions or their discoveries. On the other hand, that's not so great for society because it takes a long time before you can start building on those prior inventions whereas very short terms of exclusivity leads to perhaps a benefit to society and some might argue but that might hurt your incentive to make the investment in the first place to do the inventions. So this is the kind of things-- that's why in general governments around the world do acknowledge and recognize intellectual property and have a whole system of innovation to deal with it.

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Let's talk about preventing others from copying you. Also known as exclusivity. Generally speaking in most countries, if you are the owner of intellectual property you can prevent others from directly copying you. However, we have to remember that it is property so it has the same kinds of rules, regulations that you would have with other types of property as well. So you can sell your rights to your intellectual property. If you invent something and you gain some intellectual property on it, you could then write a contract to allow for its use by someone else or you could even sell your rights to that invention to someone else. When you write a contract to allow someone to use your technology or your invention, we call that a "license agreement" but a license agreement is just a fancy term for a contract that happens to deal with intellectual property. Usually it involves what we call "technology transfer" or the right to use something against receiving money, which is also called the "royalty" but there could be lots of other terms.

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0m 09s



- In most countries, if you are the owner of IP, you can prevent others from directly copying you
- IP is considered property, so you can sell your rights to your IP, or write a contract to allow for its use
 - This contract is called a *license agreement*
 - Anything that goes into a contract can go into a license agreement
 - In many cases, it is a transfer of technology (right to use) against money (*royalty*), but there could be many other terms

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Anything you can put in a contract, you can put into a license agreement so you might think of a very simple contract or license agreement as "I give you money and you give me the right to use your technology." But on the other hand, you could also say, "Well I give you money" "and then you give me the right " "to use your technology" "and then when I sell my product, " "which is your product" "is embedded in mine, then I'm going " "to pay you 5% of my gross sales" "of my product as a royalty." Okay and then you could have something even more complicated. You could say, "I'll give you some fixed amount of money," "plus amount of money that's based on the price of oil on that day" "that we close the deal and then you let me use your technology" "and then I give you a royalty which is based partially" "on the percentage of gross sales and partially on some other" "fluctuating asset that happens to be valued on a certain day" "that I actually transfer the money to you." So there's lots of complications here. Just think of a license agreement as any kind of contract that allows you to rent or allows someone to use your intellectual property and if they don't have it, then you can stop them from copying you.

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Okay, so let's walk through the four most popular types of intellectual property and define them, give some examples, and then talk about some of the pluses and minuses of each of these things. First is trade secrets. Trade secrets is where you take value information related to your business and you keep it a secret. You know that could be chemical formulation, it could be a process for manufacturing something, it could be the source code for some software application that you've made. These are things that are, in general, not obvious to anyone who sees your product or uses your service. They don't know how you got there and so if you can keep that particular aspect of it secret, then you have some kind of competitive advantage. Now in terms of disclosure, not only can you not disclose but you have to make active effort at keeping it secret. That means that you have to tell any employees that you have, that this is a secret. You can't tell anyone this under circumstances and some people go to great lengths by not disclosing all parts of the "secret" so that no one person has access to the whole secret. In terms of the term, duration of this is as long as you can keep it a secret then you get the competitive advantage.

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- You keep valuable aspects of your invention / creation / discovery secret
 - Examples: chemical formulations, manufacturing process steps, source code for apps
- It's the most common form of IP!

- **Disclosure:** none
Important: You have to make effort to keep it secret!
- **Term:** indefinite
- **Exclusivity:** You can sue people who steal your secret or who commercialize based on stolen secrets
- **Cost:** the cost of keeping it secret

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In terms of exclusivity, you can sue people for stealing your trade secret or divulging your trade secret in some cases. If you tell your employees that this is a secret and they're not allowed to tell anyone and then they turn around and tell someone and that person starts incorporating your secret into their products, then you can sue the employee for revealing the secret and you may be able to sue the competitor from gaining monetarily from a stolen secret. So there is a certain aspect of it. On the other hand, if there's an inadvertent leak of information-- you know, you have a secret formula and you write it down and you leave it on a train seat someplace and someone else picks it up and sees the secret formula, that is too bad for you. You just inadvertently revealed your secret and anyone could turn around and commercialize it at that point. This is the most important or let's just say the most popular type of intellectual property. We've done lots of research on this, surveys from different companies, different industries, and pretty much across the board except for some small exceptions, trade secrecy is the most popular form of intellectual property.

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Alright let's talk about trademarks. What are trademarks? Trademarks are symbols or words that are used to distinguish your company from other companies and to identify your business. It could be your brand name, it could be some logo or design that represents your company or it could be some words that identify your product or service and trademarks are used once they are put into use they must be used continuously. They can help identify the origin of the product and they can reinforce your brand image. So what do you do with the trademark is when you start using it-- and it should be sufficiently different from everyone else's-- then that identifies your company and you need to keep using it over and over again. Different countries have different rules on this but in general you need to continuous use your trademark and you cannot stop for any long period of time. So if you stop for more than two to five years, then you can lose your trademark. The one exception to that rule is you could actually be so phenomenally popular with your trademark that it becomes so ubiquitous that everyone starts using it as a generic term you can also lose your trademark. So be careful on that too.

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- Trademarks are symbols that can distinguish your business and help identify it

- Words
- Pictures / logos
- Brand names

- They reinforce your brand
- They reduce confusion in origin

- **Disclosure:** Yes, in use or via registration
- **Term:** Continuous use, no breaks
Registered trademarks are not necessarily available everywhere
- **Exclusivity:** You can stop people from imitating you and confusing customers

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You have to aggressively stop people from using your trademark to represent other products or competing products or services. That's the exclusivity part. You're allowed to stop people from posing as you or putting confusion into the market by using similar symbols or words or even using the same symbol that you already used and you can stop them from commercializing products and services that are associated with that particular mark.

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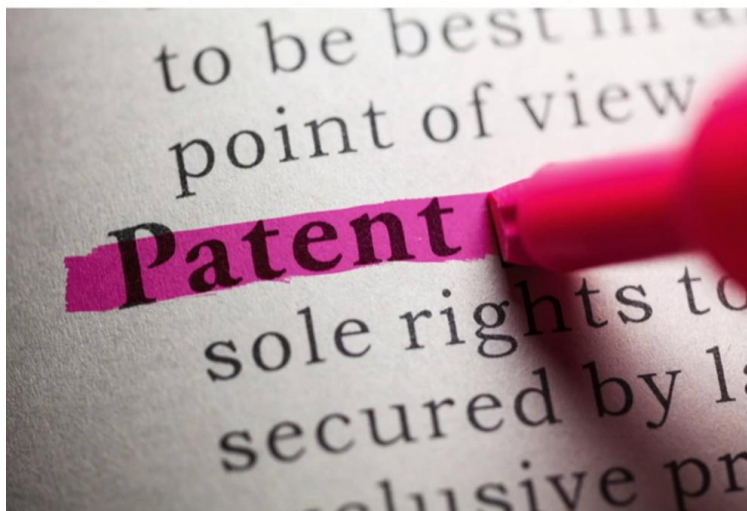
Okay, let's talk about patents, also known as patents. A patent is the right to exclude others from commercializing an invention, something that's given, usually by law and it could be a product innovation, it could be a process in some countries but not all, it could be a method. How do you get a patent? You have to apply through whatever country you want the patent to hold in or whatever jurisdiction you want it to be enforced in and you have to pass tests. Now not every country has exactly the same tests but most of them have requirements relating to the fact that the patent must be useful, someone has to find it useful. It can't be obvious and it has to be novel or new. It can't be the same as what someone else already did or the something that was in the public domain already. It has to be something new. It can't be obvious what you did and someone must find it useful. If these conditions are met, then the patent office in whatever jurisdiction may accept your patent. Then you'll be subject to some disclosure. Now disclosure rules also vary by jurisdiction. Sooner or later there's going to be full disclosure in the public domain.

Notes

Summary



0m 20s



- **Right to exclude others from commercializing an invention**
 - Product
 - Process
 - Method?
- Must pass tests to be accepted, such as useful, non-obvious, and novel
- Sometimes, investors like to see patents owned by startups

- **Disclosure:** full disclosure in public domain
- **Term:** Usually 15–20 years
- **Exclusivity:** You can stop others from producing or using your invention by suing them for patent infringement

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In some countries there's disclosure at the point of granting the patent or within X months of granting the patent or within X months of applying for the patent. But in general, within a few years, let's just say, after you apply for your patent pretty much everyone is going to know exactly what you did and again to get back to that point about encouraging further invention, that's the whole idea. You are trading off disclosure for exclusivity. So you're going to give everyone what you did, you're going to get it for usually 15 to 20 years depending on the country and even within the same country there may be different types of patents that may have different terms but on the order of 15 to 20 years you're going to have exclusivity and during that time you can stop others from producing or using the invention by suing them for patent-infringement. Just one note in terms of the start ups-- how this relates to start ups. Sometimes investors do like to see intellectual property owned by start ups. It's not always the case but sometimes it can add to the strength of your arguments about competition and how you're going to be successful in the market by saying that you do have some intellectual property, thus making it more difficult for competitors to copy you.

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Okay, let's move on to copyrights. Copyright is the right to copy, perform, or disseminate the output of creative works. So what are some examples of copyrights? They could be useful for literature, for music, for some software-- we won't get into the legal aspects of that because that's super complicated-- some documentation, some designs. Basically it's the written instantiation of some creative process. Now one of the benefits of copyright is in most countries copyright is automatic. As soon as you produce something, then you automatically are holding the copyright to that particular work and that copyright is a relatively long, long term. So that's going to be the life of the creator or author plus, depending on the country, usually between 50 to 70 years after the death of the author. So what does that mean? That means that you can prevent someone from making a copy of that particular work. Now there are lots and lots of restrictions on this, in the sense that you can't copyright an idea, you can only copyright the written form of the idea and when we talk about the written form we mean the exact written form. So you cannot stop someone from modifying what you've written and writing something related to what you've written.

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- **Right to copy, display, or perform works of art**
 - Literature
 - Music
 - Some software
 - Documentation
 - Some design
- Copyright is automatically assigned to the creator

- **Disclosure:** Yes, in publication or dissemination
- **Term:** Usually 50-70 years after death of creator
- **Exclusivity:** You can stop people from copying the exact words / music by suing for copyright infringement

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In general, you can't stop someone from making a parody of what you've written but on the other hand, you can stop them from making a literal copy. For example, in the case of a book, if you wrote a book and I took your book and went to a copy machine and made 1,000 copies of your book then I went on the streets and started selling copies of your book and making money from it, then if you found out, you could actually stop me from doing that and you could probably collect damages from me based on how much money I made and how much money you lost because of my actions. Copyrights are enforceable but it has to be more or less an exact copy.

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Okay, here's a summary of the different types of intellectual property with some of the major advantages and disadvantages of each of them. Alright, let's just walk through them really quickly. A trade secret, again, the lack of disclosure means you keep it a secret, which can lead to competitive advantage for as long as you can keep it a secret and as long as things in the market don't change that makes your secret irrelevant. A disadvantage is that if there's an inadvertent leak, your secret is out, there is nothing you can do about it once your secret it out there. You may be able to stop someone from stealing your secret or using a stolen secret but any kind of inadvertent leak means your secret is out and someone is going to be commercializing it and that's your problem at that point. In terms of reverse engineering-- reverse engineering can happen in lots of different places including in patents but if someone reverse engineers what you've done and you've kept it a secret then there's not much you can do and in some extreme cases, someone could even conceivably get a patent on something that you've kept a secret, you've never told anyone about and then they may be able to even stop you if they could from using your own secret.

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In terms of a trademark, it definitely reduces confusion in the market. So that's a big advantage. It reduces the possibility of some competitor posing as you or trying to sell things under your name or under your symbol, logo, etc. Disadvantages: as we mentioned, if it's so popular-- this is actually a fairly rare occurrence-- it could pass into the public domain if it becomes generic. Also if you stop using it for some period of time, generally speaking within two to five years, it could also pass in public domain therefore you would no longer be the holder of the trademark. In terms of patents, the advantages here you do gain exclusivity for a relatively long period and if the patent is accepted in whatever jurisdiction you've applied for and it's granted, then most places in the world do recognize patents and you will have some exclusivity in whatever jurisdiction you get your patent accepted. Disadvantage: you are given full disclosure and that leads to knowledge spill overs. In other words, people learn what you're doing based on your disclosure. They can make something similar. They may be able to invent something around what you're doing and so you are tipping them off in some ways.

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The costs are non-negligible. The cost of getting a patent itself is not that high but enforcement of patents is very, very expensive, not just in monetary terms, although it could be that, too. If you are being infringed on and you sue another company or if you are sued for infringement, you're going to find it's very, very expensive legally plus it's going to suck up the time of your founders and of your executives, people working in your company, etc. just to simply litigate the patent and so when we say "dedicating many resources" it's a disadvantage because you have to have a certain amount of resources just to be able to pursue patenting and then to enforce it you need to have even more. So that's going to take a lot of time and money. We'll talk about copyrights finally. Low cost, happens automatically, no formal registration necessary although certain countries do allow registration of copyrights as they do trademarks. The disadvantages are that you have to remember what is being protected: it's the embodiment of your idea that you produced already. It's not the idea itself. Ideas are not protected.

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0m 32s

Summary of different main types of IP

	ADVANTAGES	DISADVANTAGES
Trade Secrets	<ul style="list-style-type: none"> • Lack of disclosure can lead to competitive advantage • Term is unlimited 	<ul style="list-style-type: none"> • Inadvertent leaks means your secret is out! • Competitors can reverse engineer • Someone else may patent
Trademarks	<ul style="list-style-type: none"> • Reduces possibility of competitor posing as you 	<ul style="list-style-type: none"> • Passes into public domain if generic
Patents	<ul style="list-style-type: none"> • Exclusivity for long period • More or less recognized everywhere (if accepted) 	<ul style="list-style-type: none"> • Full disclosure leads to knowledge spillovers • Costs, especially enforcement • Need to dedicate many resources
Copyrights	<ul style="list-style-type: none"> • Low cost • No formal registration necessary 	<ul style="list-style-type: none"> • Ideas are not protected! • Can't stop modification (or parody) • Costs for enforcement

Source: Arshia Tabrizi, Tabrizi Law Office P.C.

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You cannot stop someone from modifying it, rewriting what you did, you can't stop people from parody-ing you-- which should be relatively rare event, I guess-- and your cost for enforcement, again here, are relatively high. If you need to go after someone in court, you can end up spending a lot of money and again top management founder time is very valuable and if they're sitting in court all day it's, generally speaking, not a great thing.

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23m 15s



So there you go that's a summary of different types of intellectual property. What's the purpose of intellectual property and now we're going to use that to think about appropriability and making money from your innovations. See you next time.

[illegible]

Summary



