Lecture 10, Mar 16, 2026

Intellectual Property (IP)

- IP is an asset; it can be owned, sold, and licensed just like real property
- There are several types of IP: patents, industrial designs, trademarks, moral rights, copyright and trade secrets
  - Each right is different in its source, subject matter, source, term, method of acquiring and transferring, and ownership rights
  - IP is highly jurisdictional; many things protected in the US are not protected in Canada and vice versa
- *Copyright* is applied to works and expressions of ideas
  - Source is statutory, from the *Copyright Act*, RSC 1985
  - Includes any original artistic works, recordings, performances, etc; generally very broad and can also include things like logos, code, engineering drawings
    * However, copyright cannot be claimed on mere ideas, only expressions of ideas
    * e.g. an artistic style cannot be copyrighted, but the works produced in that style are copyrighted
  - Applies in all of Canada, for the life of the author +70 years
  - Copyright gives the sole right to produce/reproduce a work
  - In Canada, copyright exists automatically upon creation of the work; can be registered but is not necessary
  - The owner of the copyright is the creator of the work, except in some situations e.g. working for a company
- *Moral rights* concerns inherent rights of a creator, rather than reproduction
  - Source is statutory, from the same source as copyright
  - Same territory, term, and method of acquiring as copyright
  - Concerns the natural and inherent rights of a creator, including anonymity (e.g. pen names), integrity (preventing modification of the original work in certain works), association (the right to be credited)
  - Moral rights cannot be sold or licensed, but can be transferred upon death of the creator
    * However moral rights can be waived
- *Personality rights* concerns identifiable personal attributes
  - Source is statutory in some provinces and common law
  - Concerns attributes that identify a person to the public, e.g. name, voice, likeness, etc.
  - Provincial or territorial, depending on situation
  - Exists indefinitely, but there is a question of how long it exists after the death of the individual
  - Gives the individual the right to control the use of their persona, including for commercial purposes
  - Exists inherently with the individual
- *Trademarks* concern elements used by companies to distinguish themselves
  - Source is statutory, from the *Trademarks Act*, RSC 1985
  - Covers anything that is used for the purpose of distinguishing goods from those made by others
    * Can cover designs, colours, tastes, sounds, scents, names, certification marks, official symbols, etc
    * The trademark cannot be too generic, e.g. a coffee that smells like coffee
    * Some things cannot be registered, e.g. surnames, clearly descriptive marks (e.g. “coffee shop”), and non-distinctive marks (e.g. generic names)
  - Applies in Canada for 10 years since registration, and can be renewed indefinitely; is lost if not used for 3 years
  - Gives the exclusive right to use the registered trademark in respect of the associated goods and services
    * Only applies for the goods and services registered, e.g. Starbucks for coffee
    * Infringements can be submitted to the federal court
      - Unregistered trademarks have the use of “passing off”, which is similar to normal infringement but is harder to establish

            - *Depreciation of goodwill* is when some action depreciates the trademark, e.g. making a parody name that harms the original
    - Can be challenged before or after registration by the Trademarks Opposition Board
    - Must be registered with the CIPO; can also come from common law
- *Industrial designs* (and IC topographies) concern the copyright of useful goods, i.e. design patents
    - If a useful good is produced a certain number of times, it loses inherent copyright, and must be registered as an industrial design instead
    - Applies in Canada until 10 years after registration or 15 years after filing
- *Patents* protect the right of an inventor
    - Application of patents requires disclosing details of how to make the invention
    - Comes from the *Patent Act*, RSC 1985
    - Concerns any new and useful thing or improvement
        * Similar to copyright, ideas themselves cannot be patented, including scientific principles, theorems, and "higher life forms" (e.g. mice)
        * New patents must be:
            - Novel – not previously disclosed/"anticipated", based on a Person Skilled in the Art (PSITA)
                - This includes information outside of the jurisdiction of filing
            - Useful – must relate to "the useful arts" and do what it says it does
                - More so a check that the invention works and generally easy to meet
                - A prediction of utility as opposed to demonstration is allowed, but must not be speculative
            - Non-obvious – was the invention obvious given what a PSITA knows based on prior disclosed information?
    - Applies in Canada, for 20 years since the filing date, without renewals
    - Grants the exclusive right to make, use, and selling the invention
    - Must be filed with the CIPO
        * The patent application must contain a specification or disclosure of the invention, including its operation or intended use, how to make it or how to perform it (for a PSITA), working principles
        * It should also establish claims – clearly and explicitly define the subject matter of the invention, which informs the scope of the rights granted
    - Infringement is when a patent is used by someone other than the holder to interfere with the holder's monopoly
        * The whole claim needs to be infringed, unlike copyright
        * Exceptions include use of the invention for the development and submission of information required by law, fair dealing (non-commercial experimentation), dedication to the public, exhaustion (does not persist past first sale)
- *Know-how* includes valuable but uncopyrightable and unpatentable things such as craft experience, a particular practice, etc.
    - Information that is secret, substantial, identified and valuable
- *Trade secrets* are how know-how is protected
    - Comes from various sources
    - Trade secrets must be commercially valuable information (grants an advantage), known to a small number of people (confidential), and has been subject to reasonable protections to ensure it remains secret
    - Term is indefinite as long as the secret is kept safe
    - Can be sold or licensed, but once made public it cannot be made secret again
    - Since it's not public, a competitor could apply for a patent or trademark over the invention if they independently invent it for themselves
    - Trade secret is only protected if the owner can show that the infringing party somehow accessed the secret information; it does not grant any rights on its own
        * Actions an be taken against any person that breaches their obligation to keep the information confidential, through e.g. contracts, common law doctrines such as good faith, fiduciary duty,

and industry standards

* Test for breach of confidence includes proving that the information is confidential, communicated in confidence, and misused by the party it was communicated to