

MODULE 5

ENFORCEMENT AND LICENSING

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SO YOU NOW HAVE SOME IP

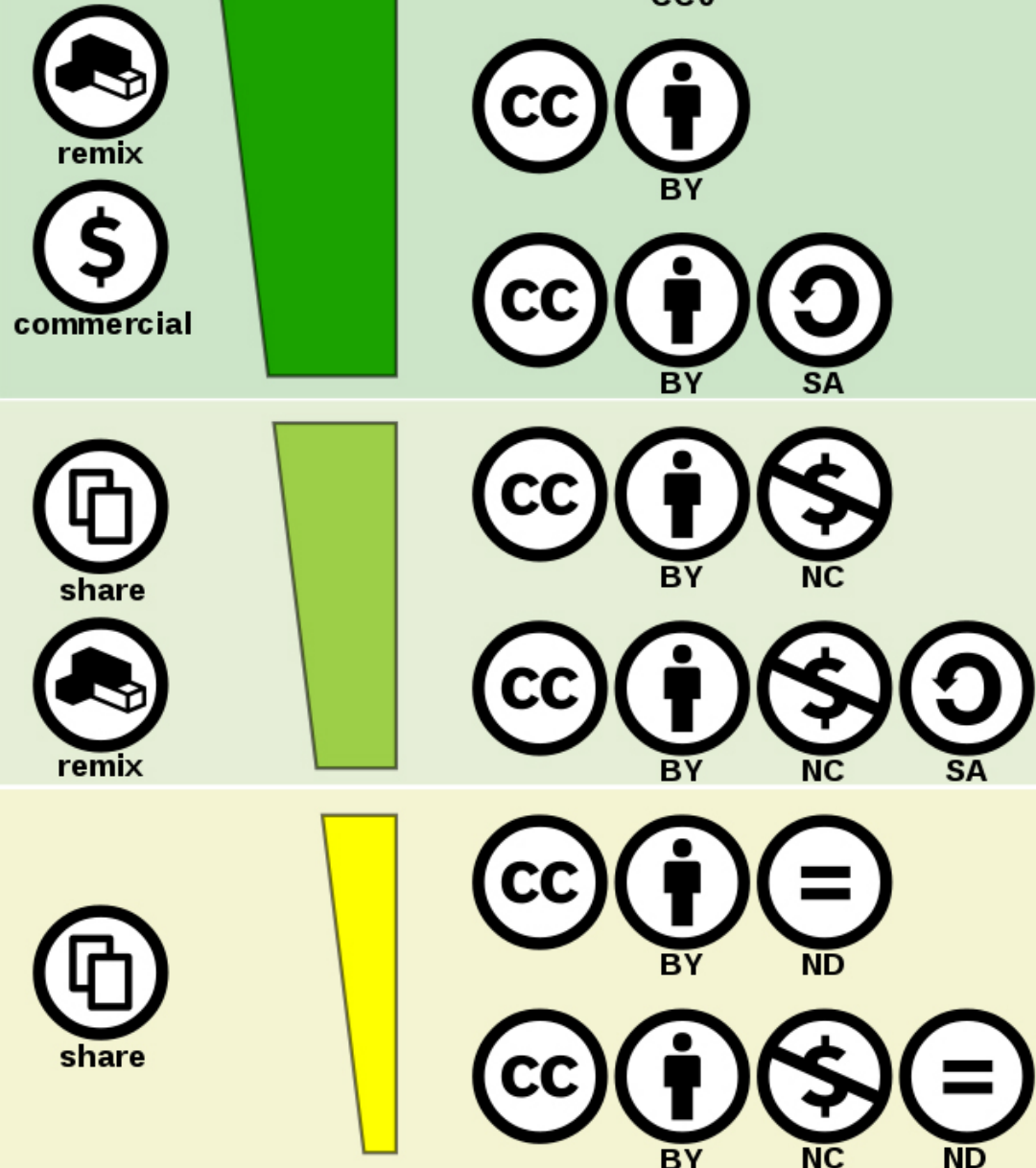
- Be it copyright, design or trade marks (and maybe a patent if you're lucky), what next?
- As an IP owner, you can be as involved with your property as you want.
- Management of IP usually means licensing and enforcement.



LICENSING

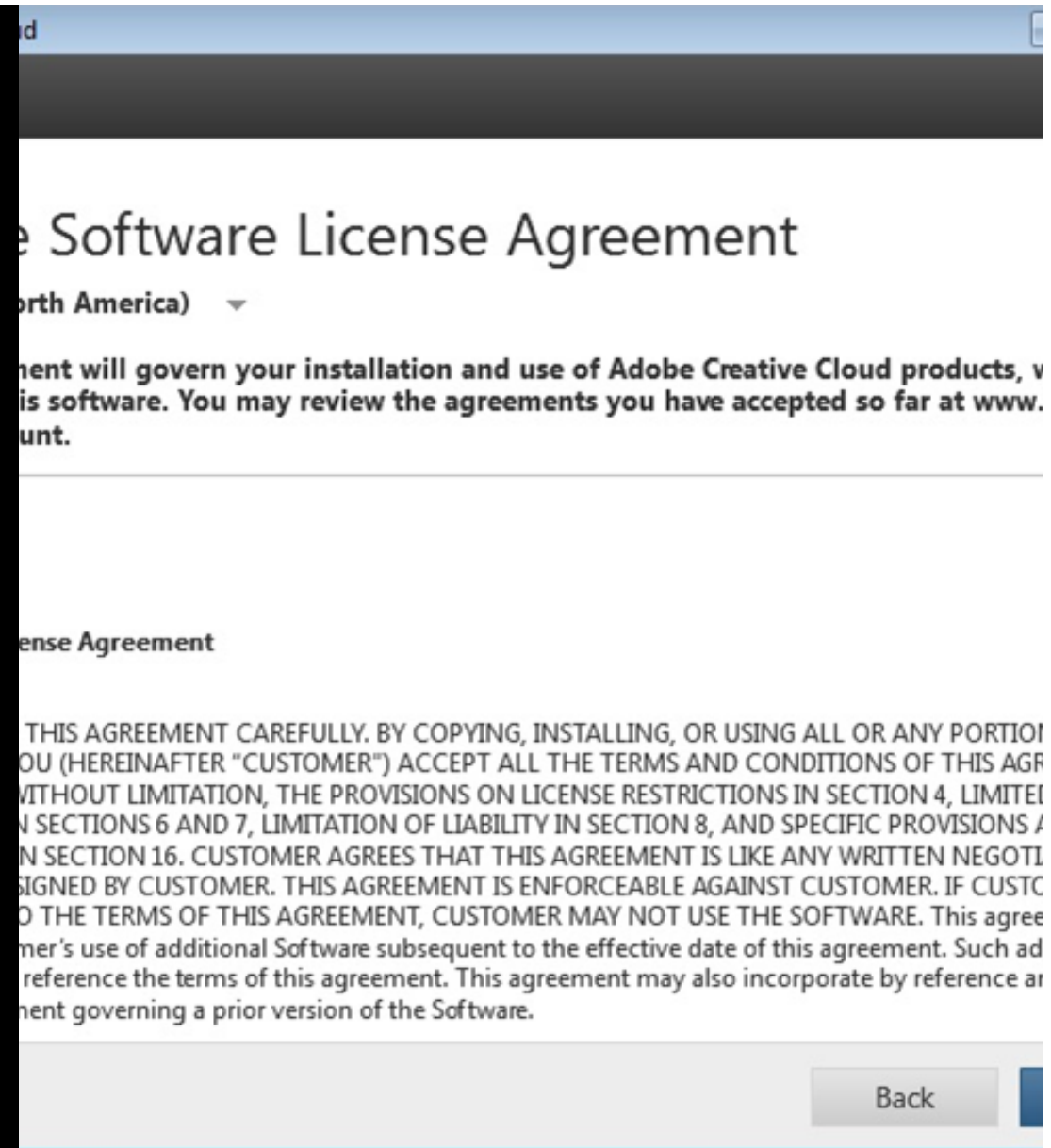
LICENSING BASICS

- As mentioned in Module 2, copyright allows the owner to licence any of their exclusive rights (copy, lend, publish, distribute, etc).
- 2 main types of licences in app (copyright):
- **Licensing agreement:** you licence content and/or software to others.
- **End-user licence agreement (EULA):** this is the licence agreement between you and your users, it tells them what they can do with your property.



COMMON ELEMENTS

- The basic concept is that with a licence you allow others to use your property.
- But how? Licences can be a very basic document in which you give users some permissions.
- There's no set standard for a licence, depending on your jurisdiction, it could be drafted in the shape of a contract that your users and costumers will accept.



DRAFTING A LICENCE

- Many developers use licensing agreements from the Internet.
- Nothing wrong with that in principle, but you have to consider that these licences are often drafted with the laws of one country in mind (EU, USA), they may not be relevant to your country.
- Best advice is to hire an IP lawyer from your country.

COPYRIGHT LICENSE AND CONTRACT

AGREEMENT made this _____ day of _____, 20____, between _____ hereinafter called "PUBLISHER" and _____ hereinafter called "COMPANY" is as follows:

1. PUBLISHER is the owner, or has the right to grant licenses in connection with a certain musical composition entitled: _____ by: _____.
2. PUBLISHER hereby gives COMPANY the non-exclusive right, privilege and authority to use said musical work, words or music or both, upon phonograph or talking machine records, as long as COMPANY performs its obligations under this contract.
3. COMPANY hereby agrees to pay PUBLISHER for every record sold and paid for, which serves to reproduce the said musical composition, a royalty of: _____ £ per record. _____ £ per album.
4. (a) COMPANY agrees to furnish to PUBLISHER quarterly within thirty days after the end of each calendar quarter, financial statements and to make payment of royalties.
(b) In the event COMPANY has failed to send both financial statement and the royalty check on last day due, PUBLISHER may demand that statement and payment be made no later than ten days after date of demand.
In the event COMPANY has failed to send both correct financial statement and correct royalty check on or before said 10th day:
(1) PUBLISHER may cancel the license to use said musical work; cancellation of the license to use said musical composition shall not terminate COMPANY'S obligations under this contract, including obligations to render statements and make payments.
(2) PUBLISHER may, but need not, issue another license in all ways similar to this one except that the royalty rate on all records shall be _____ £ per record manufactured.
5. This license is limited to the recording of the musical composition by the following artists: _____ on the following record label and record number: _____ and on an album, in the event one is made.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals and have executed this contract on the day, month, and year above written.

PUBLISHER: _____ COMPANY: _____

BY: _____
BY: _____

Get [Free Music Contracts](#) templates and more, just click the link!

THINGS TO LOOK FOR IN A LICENCE

- There are a few things to watch out for in app development, and these are questions that you should ask yourself and your legal team.
- Who is your audience?
- How do they interact with your product?
- Is there a point at which they can sign up to terms and conditions?
- Are users capable of uploading content on their own? If so, you need to include a limitation of liability for yourself, and also specify what happens with you customer's copyright.

https://unsplash.com/photos/YNliXm_hMn8



ENFORCEMENT

ENFORCEMENT OF REGISTERED RIGHTS

- The first step is obviously to register the work.
- Some registered rights such as trademarks have a certain vigilance requirement, “use it or lose it”, or a brand becoming too generic over time.
- Vigilance could mean to keep checking registers for similar marks.

United States of America United States Patent and Trademark Office

EARTHWELL

Reg. No. 5,146,716

Registered Feb. 21, 2017

Int. Cl.: 21

Trademark

Principal Register

International Markets Group, Inc. (CALIFORNIA CORPORATION)
130 Indian Cliffs Drive
Chico, CA 95973

CLASS 21: Stainless steel water bottles sold empty; stainless steel food and beverage canisters, cups, insulated tumblers for use as drinking glasses, insulated containers for food and beverage for household or domestic use, flasks, growlers, and vacuum bottles sold empty; glass water bottles sold empty; stainless steel beverage jugs; glass beverage jugs

FIRST USE 5-27-2016; IN COMMERCE 5-27-2016

The mark consists of the word “EARTHWELL” in stylized form.

SER. NO. 87-110,585, FILED 07-20-2016
NANCY L. CLARKE, EXAMINING ATTORNEY



Michelle K. Lee

Director of the United States
Patent and Trademark Office

NON-REGISTERED RIGHTS

- How can you protect your copyright if it's not registered?
- Have evidence of authorship (witnesses, time-stamped photographs, self-addressed sealed envelopes, software backups, cloud storage).
- Self-registration.
- Register with the US Copyright Office.
<https://www.copyright.gov/registration/>

Important

up to 10 unpublished works on the same application, but **YOU MUST SELECT**

g the application for a "Group of Unpublished Works," and **click here** to watch
g this application.

NOT BE USED to register a "collection" of unpublished works. If you submit
Copyright Office will examine, and if appropriate, register only 1 of your works
for those works you will need to resubmit them using an appropriate application

. This is your starting point for all things related to the registration of copyright
works typically registered with the U.S. Copyright Office.

Office (eCO) Registration System

Registration Process

OTHER OPTIONS

- No © sign needed for subsistence, but it doesn't hurt.
- Usual format is © Name (Year).
- Digital tools such as watermarking or digital rights management.
- Using social media to prove authorship and date.
- (stock image here used for illustration)



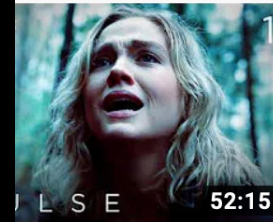
alamy stock photo

ONLINE ENFORCEMENT

- Actual copyright law is decreasingly relevant as creators try to protect their work in various other ways.
- Platforms have become copyright enforcers.
- YouTube now holds such market power that it has become a jurisdiction on its own right.

Featured: Impulse Series Season 2

Director of The Bourne Identity and Edge of Tomorrow



IMPULSE S2 • EP1

IMPULSE S2 - Ep 1 "Mind on

Free episode



Impulse Season 2 Official Trailer

Impulse ✓
10M views • 1 month ago



IMPULSE S1 • E1

Impulse - Ep 1 "Pilot"

Impulse ✓
Premium Free episode

For subscriptions



In Body is Bad

Stick ✓
20 hours ago



Common Sense Criticism v Pea Brain

Bob the Science Guy
3.3K views • 7 hours ago



IG vs RNG CPL 2019 China Professional League...

DotA Digest ✓
8.9K views • 15 hours ago

OTHER ENFORCEMENT STRATEGIES

- Cease and desist letters are always the first line of defence, most IP disputes tend to be resolved amicably.
- Some people don't know about IP, or misunderstand it, so a friendly but firm letter informing possible infringers tends to be very effective.
- Use technical tools, such as search engines to look for infringement.

CEASE AND DESIST DEFAMATION SAMPLE FORM

DATE

FOR NEGOTIATION
AND SETTLEMENT PURPOSES ONLY

Re: Defamation
Our client:

Dear _____:

Please be advised that our firm has been retained by _____ to investigate and take legal action against you for making unwarranted and defamatory attacks against him and made by you.

(Description)

_____ has been a _____ for in business _ years and is also employed as _____.

_____ has established a well founded reputation as a ___ and college professor and your unwarranted actions and baseless accusations have damaged that reputation and adversely affected our client's business.

You have personally stated willfully false and misleading comments about our client. An example of your defamatory statements is as follows:

(Describe defamatory statements)

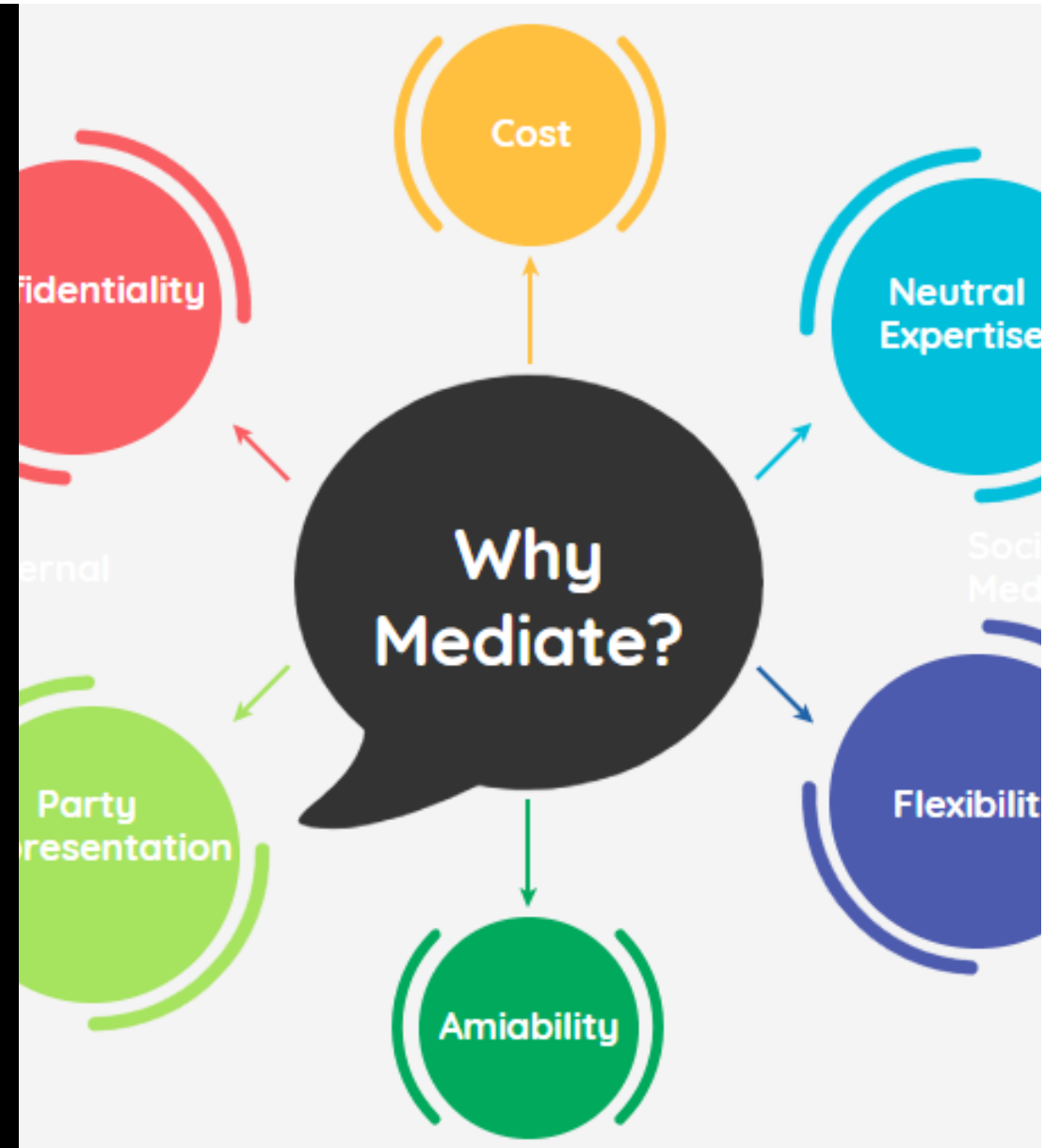
The above statements made in reference to _____ are utterly false and without merit, and they are defamatory *per se* in that they depict our client as engaging in fraudulent activity that violates civil and criminal law.

Your attempts to spread libelous/slanderous and defamatory material about our client have raised serious and irreparable injury to his reputation and his business. Our client will not stand by and allow this misconduct to continue.

We hereby that demand you:

DISPUTE RESOLUTION

- If all else fails, you may want to use mediation and arbitration to solve disputes.
- These are steps just short of going to court, and are semi-structured processes that use mediators to solve disputes.
- Some online dispute resolution methods exist, including WIPO (see accompanying materials).



AND EVENTUALLY...

- If all else fails... go to court.



GOING IP-LESS?

- Maybe consider whether IP enforcement fits your business model. You may want to protect your works through trade secrets, or simply by staying ahead of the competition, or using data as your business model.
- Some large companies tend to worry less about copyright, but this is rare. For example, SpaceX and Tesla have been very open about some images and inventions, even going as far as stating that they won't enforce some of their IP.

<https://www.flickr.com/photos/spacex/50199448011>



THANKS!

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