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 to 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.
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 your customer’s copyright.
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.
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/](https://www.copyright.gov/registration/)

You can register up to 10 unpublished works on the same application, but **YOU MUST SELECT NOT TO 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.**
OTHER OPTIONS

- No © sign needed for subsitence, 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)
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.
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.

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THANKS!