

What is IPR?

Intellectual Property Rights (IPR):

legal rights which result from intellectual activity in the industrial, scientific, literary and artistic fields



Intellectual Property (IP)

- Literary, artistic and scientific works,
- performances of performing artists, phonograms and broadcasts,
- inventions in all fields of human endeavour,
- scientific discoveries,
- industrial designs,
- trademarks, service marks and commercial names and designations,
- protection against unfair competition.



Why protect IP?

- To give statutory expression to the moral and economic rights of creators in their creations and the rights of the public in access to those creations.
- To promote creativity and the dissemination and application of its results and to encourage fair trading which would contribute to economic and social development.



Types of IPRs

- Patents
- Trade Marks
- Copyright
- Industrial Design
- Plant Variety Protection
- Trade Secrets
- Geographical Indications
- Layout of Semiconductor Chips



Meaning of 'right' in IPR

- What is a 'right':

"A legal entitlement which is recognized and can be protected and the violation of which is deemed as 'unlawful' and leaves the right-holder with a remedy.

Meaning of 'right' in IPR

- Rights can be used in 2 ways:
 - as a liberty (gives the right-holder freedom to do certain acts)
 - as a licence (right to do something because someone has given you the consent)

Meaning of 'right' in IPR

- Certain rights manifest are inherent in a human being (Eg: human rights, right to vote, right to privacy), while certain rights manifest themselves outside human beings (Eg: rights in property)
- A right must be recognized by law.
- Rights can be **general** i.e. claimed by every citizen (e.g. right to protection by the State) or **exclusive** i.e. the right-holder can stop others from doing certain acts without his consent (e.g. right to property)

Meaning of 'right' in IPR

- IPR refers to rights which emanate from IP which are capable of being protected (Eg: copyright, patent).
- Violation of IPR refers to 'infringement'.
- Patent law protects the right to use/make/sell/import the invention.

Meaning of ‘property’ in IPR

- Property is a form of **regulation**
- Property can be of 2 kinds: public and private
- Public property is property which is held in common (also known as ‘the commons’), whereas, private property is owned by an individual.

Meaning of 'property' in IPR

- Real property (land) has **physical boundaries** & can be distinguished from the property of another
- The owner of land & its boundaries can be ascertained from the property deed.

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Transcript



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7:52

Intellectual property because it is not readily discernible, because the rights do not manifest

7:59

itself in time and space in a tangible or a tangible form, we find it difficult to settle

8:07

disputes on intellectual property rights. When it comes to patent that is why we have a requirement

8:13

of every invention to be expressed in writing disclosed in great detail, differentiating itself

8:21

with every other invention that went before it, which is close to it or proximate to it

8:27

and then explaining the contribution made by the invention inventor, with regard to what has gone



Meaning of 'property' in IPR

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9:27

then we would look at the patent specification, the document that encompasses it. Now you may

9:33

be wondering; so, is it easy to get an intellectual property right I just need

9:37

to put everything in writing that is not the case. If you put everything in writing,

9:41

there is a scrutiny that is done by the patent office. In India it is done by the Indian patent

9:46

office and only when you pass the tests that the Indian patent office will subject your written

9:52

description to will you be granted a patent, which will give you a title and a protection

9:57

for a limited period of time, provided you keep it alive by paying the required fees.

Meaning of ‘intellectual’ in IPR

- ‘Intellectual’ refers to ‘products that come out of our intellect’
- Intellect is our ability to think and understand ideas
- An idea is a product of careful thinking

Meaning of ‘intellectual’ in IPR

- Inventions are products of creative human labour.
- Intellectual effort cannot be perceived by others.
- Intellectual effort is special to the inventor and cannot be attributed to machines.

Common Characteristics of IP

- Protectable by law i.e. enforceable right
- Intangible
- Capable of being described and registered (copyright does not require compulsory registration).

Common Characteristics of IP

- Can be easily replicated
- Requires intellectual effort for its creation.
- Has commercial value
- Economists view IP as ‘public goods’:
 - non-rivalrous
 - non-excludable

Definition of IPR

- Rights which protect application/ expression of ideas & information which are of commercial value
- Rights which protect products of human creative labour (E.g.: patents, copyright)
- Inclusive definition given by WIPO
- Patents protect technological inventions

Definition of IPR

- Copyrights protect creative works (e.g. literary & artistic works)
- Designs protect visually appealing works & not their functional aspect
- Trademarks protect works/symbols which act as source indicator of goods/services
- Geographical indicators (GI) protect source of goods
- Trade secrets protect secret information related to trade.

Defining IPR

- Subject matter
 - Invention – Protected by Patent
 - Expression – Copyright
 - Aesthetic Design – Registered Design
- Registration (Government)
- Exclusive Set of Rights
- Duration



Registration

- Form by which IP is protected
- What the right holder has claimed
- Process by which IPR is recognised
- Backed by law
- Done by the Government

Patents Specification

- Has to explain the entire invention in detail including:
 - Working of the invention
 - Features
 - Advantages
 - Variations
 - What went before the invention
 - Illustration
 - Claims

Scrutiny by Patent Office

- Done in great detail
- First Examination Report
- Right holder is asked to justify his invention.
- Two types of Objections - Technical or Substantial
- E.g. of substantial objection:
 - Not patentable
 - Preceded in the art
 - Obvious for a person skilled in the art to do

Patent Prosecution

- Process of raising an objection over a patent
- Different from other IP prosecution
- There is a lot of analysis involved

Copyright

- Right to print, publish, perform or record the subject matter
- Expression of idea
- Forms of expression be captured in a medium
- Right to make copies
- Copyright regime requires the work to be recorded or copied to some medium

Set of exclusive rights

- Making copies implies a medium being there
- E.g. print is recorded on paper, films on tape
- IP rights first came up in the industrial revolution
- IP rights are commercially valuable
- Tied to an idea that can be shared, expressed or have an application out of it
- Industrial revolution was tied to ideas and dissemination of ideas

Kind of IPRs

- Copyright gives the creator the right to make more copies in different forms
- Trademark – using a symbol or word legally registered or established by use
- Patent – right to make, sell, use, offer for sale or import an invention

Duration

- Can be for a fixed term or renewed
- In trademarks a right that has not been renewed or used it cannot be enforced
- Right as long as right holder wants to keep it alive
 - Pay official fee
 - Needs to take action against people who are using it
- Trademark is an unlimited life IP

Two types of IP

- Limited life IP - can go to public domain
- Unlimited life IP - subject to renewal
- Duration of patent 20 years from the date of Application
 - By virtue of TRIPS Agreement
 - A Patent is not technology specific
 - Originally the patent term was 14 years
 - It was an exclusive privilege

- Copyright – Life of author + 60 years
- If institution – from date of publication + 60 years
- Trademarks – granted for 10 years can be renewed thereafter

Copyright

- Exclusive Right
- Conferred by the Government/upon creation
- Print, Publish, Perform, film, record etc.
- Duration: Life of Author + 60 years
- No separate registration needed for enforcement



Trade Mark

- Exclusive Right
- Conferred by Government/Established by use
- Symbol, word, mark etc.
- Marks help to identify the company
- Duration: Unlimited; subject to renewal

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Transcript



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- 3:21 The company's act has a noun for it, registering a domain name does not come under copyright
- 3:28 law.
- 3:29 There is a domain ah registration service, where you can go like private link manages
- 3:34 it you can get it as long as you keep renewing the name you can have it.
- 3:38 So, those things are it is not subject matter of copy right, they maybe some industry arrangement
- 3:44 they may be some other statutes like the companies act, by which you can register company names.
- 3:49 And now these rights pertain to multiple things



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Transcript



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in India.

5:09 If someone an Indian manufacturer starts using IKEA, IKEA could still come and stop that

5:16 person, because there a right to the mark is established by use international use.

5:23 And they have a reputation and there is another branch of law, as I mentioned earlier a law

5:27 of passing off can come to IKEA rescue to stop people from using it though, they may not

5:33 have business here, and they may not have registered it in India so, it is possible.

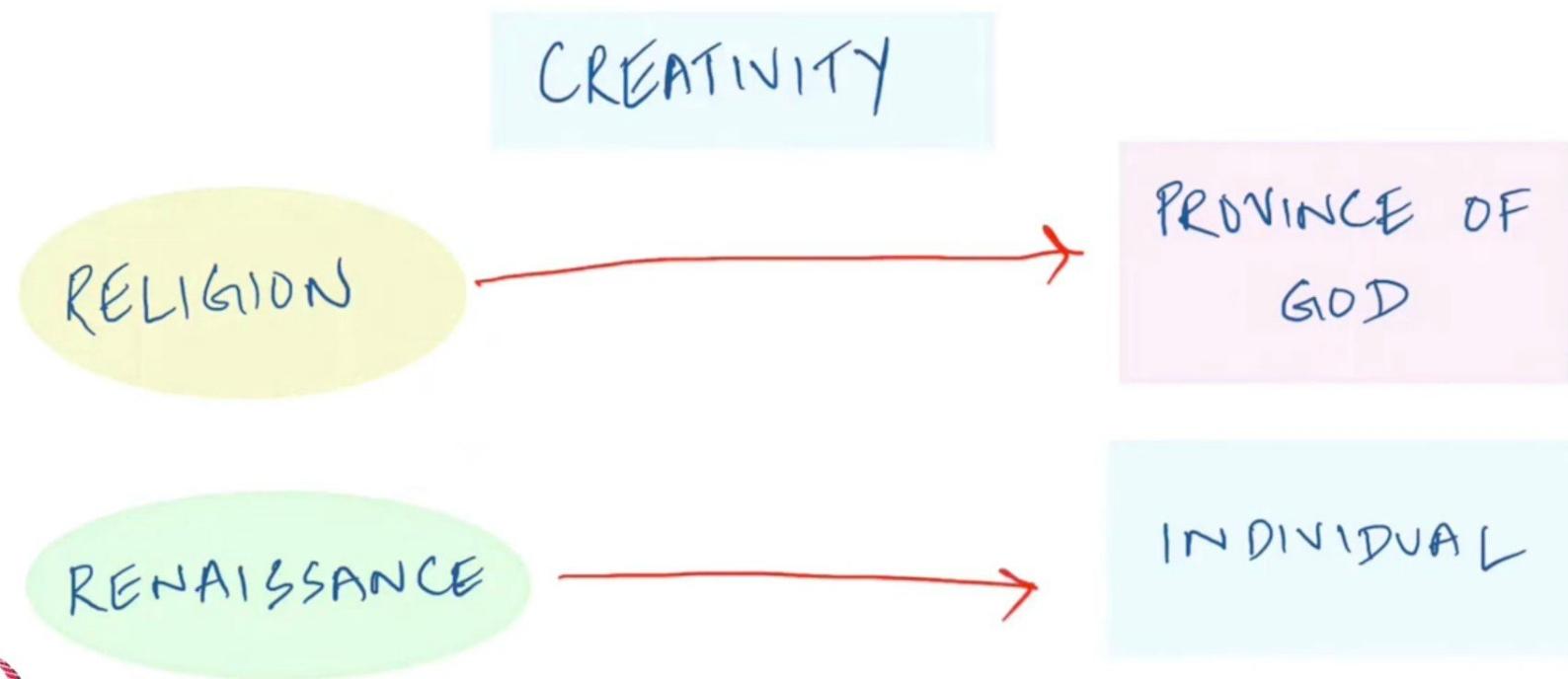
5:39 So, that is why we say that trademarks, when we say trademarks in that sense, we also include



Design

- Exclusive Right
- Conferred by Government
- Shape, configuration, pattern etc. (aesthetic)
- No functional element
- Not protected by Copyright
- Duration: 15 years

HUMAN CREATIVITY



HUMAN CREATIVITY

HUMAN-CENTRIC
INTELLECTUAL MOVEMENT

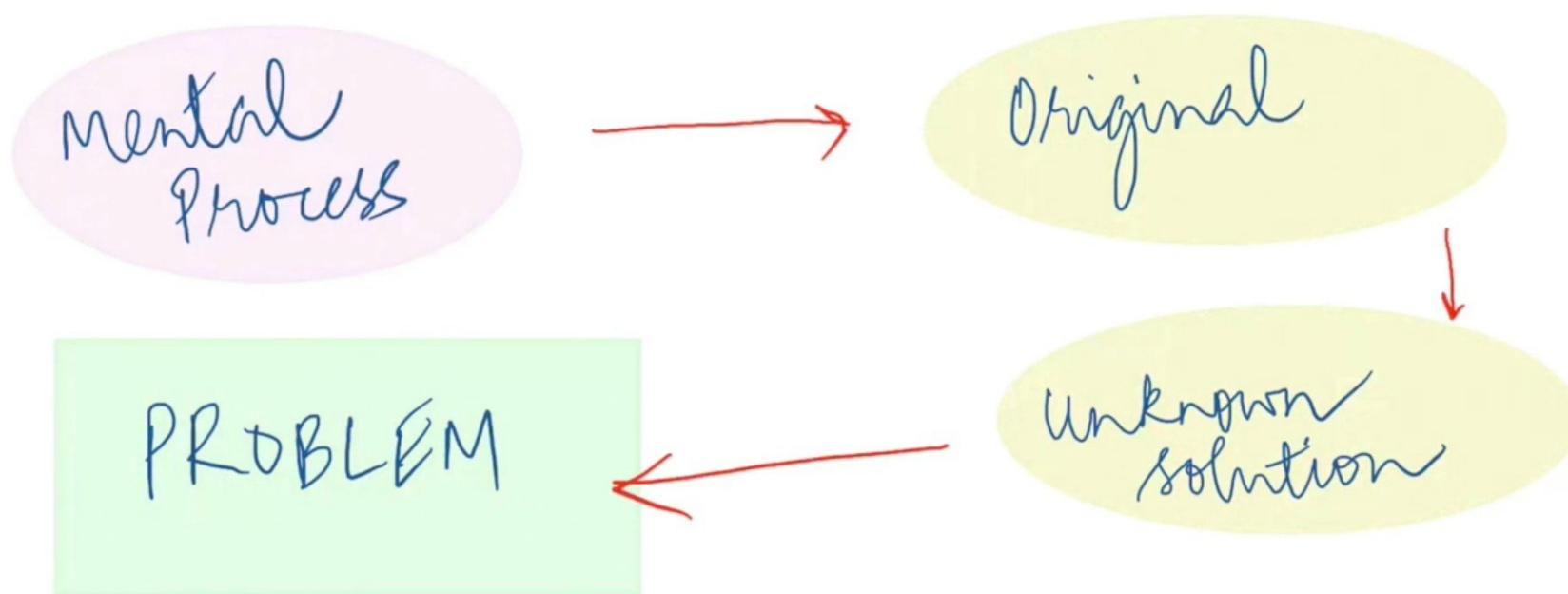
IMAGINATION



GENIUS
(INVENTOR)

TALENT
(SKILLED PERSON)

CREATIVITY AS PROBLEM-SOLVING



CREATIVITY AS PROBLEM-SOLVING

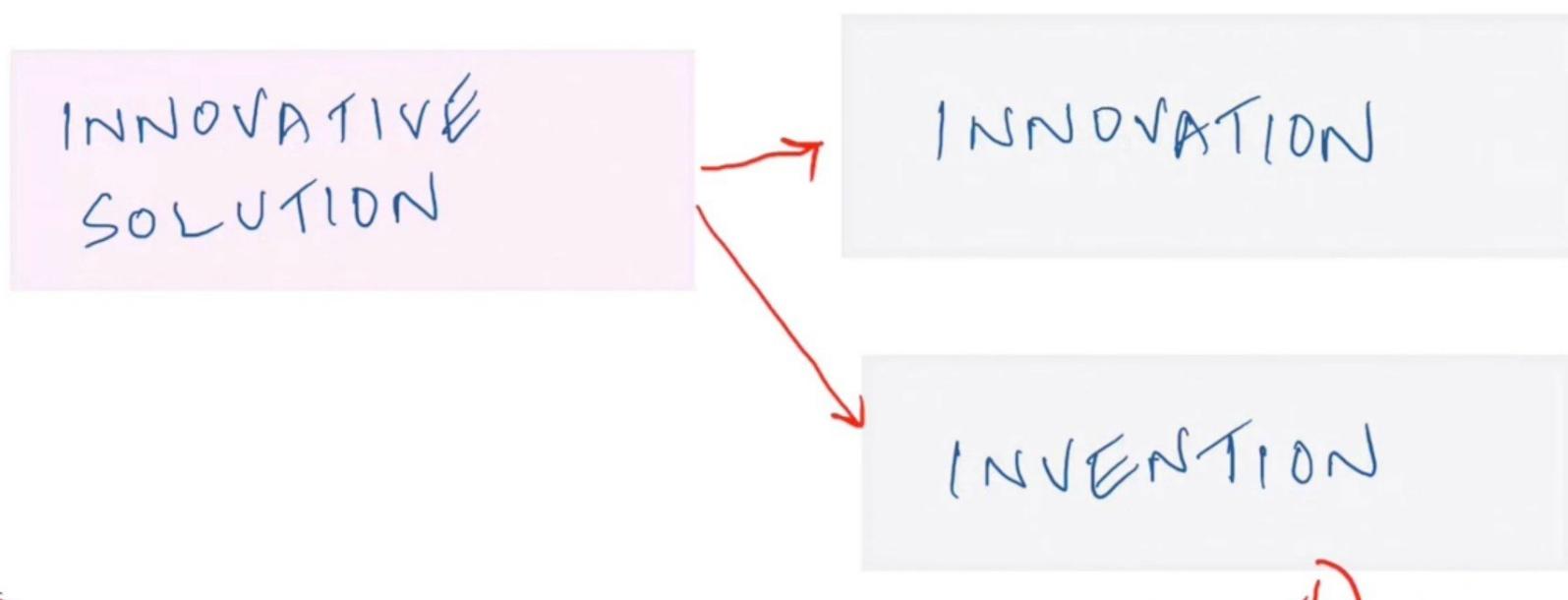


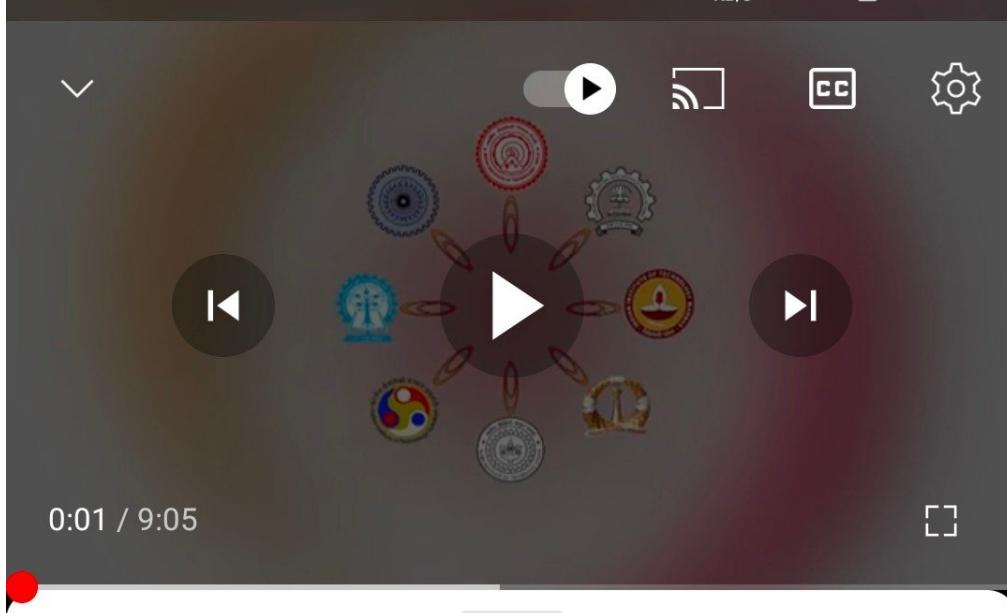
Copyright



Patent

CREATIVITY AS PROBLEM-SOLVING





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8:01 So, an innovative solution could either result in an innovation or it could result in an

8:09 invention, innovation is a very broad term intellectual property is more concerned about

8:14 invention, because patents would protect inventions.

8:19 We do not say that all innovations can be protected we only say that inventions can

8:26 be protected by way of patents and invention is the subject matter of patent law.

8:33 So, when we look at the problem solution approach in or when we look at creativity as a process

8:43 of problem solving, you have a problem for which we find the solution and if the solution

8:50 is creative then we call that as innovation



Origin of the term 'IP'

INTELLECTUAL



CREATION OF
PRODUCT

PROPERTY



REGULATION

Origin of the term 'IP'

WIPO

IPO

SYLLABUS IN
LAW SCHOOLS

CONSTITUTION

1949

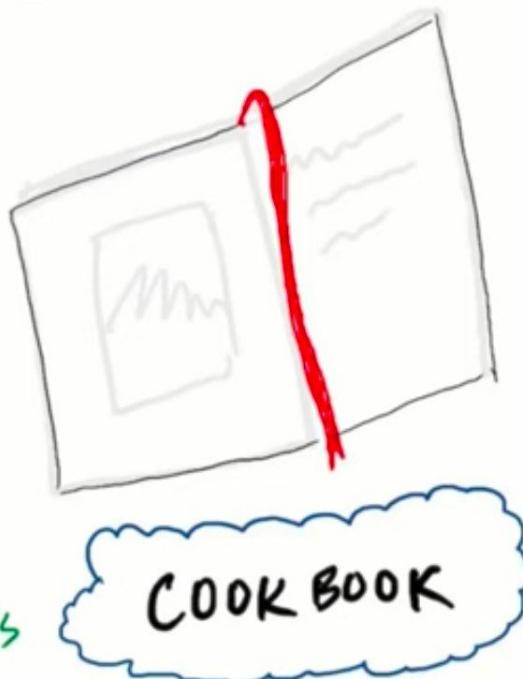
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2016

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TANGIBLE THINGS

PHYSICAL PROPERTY

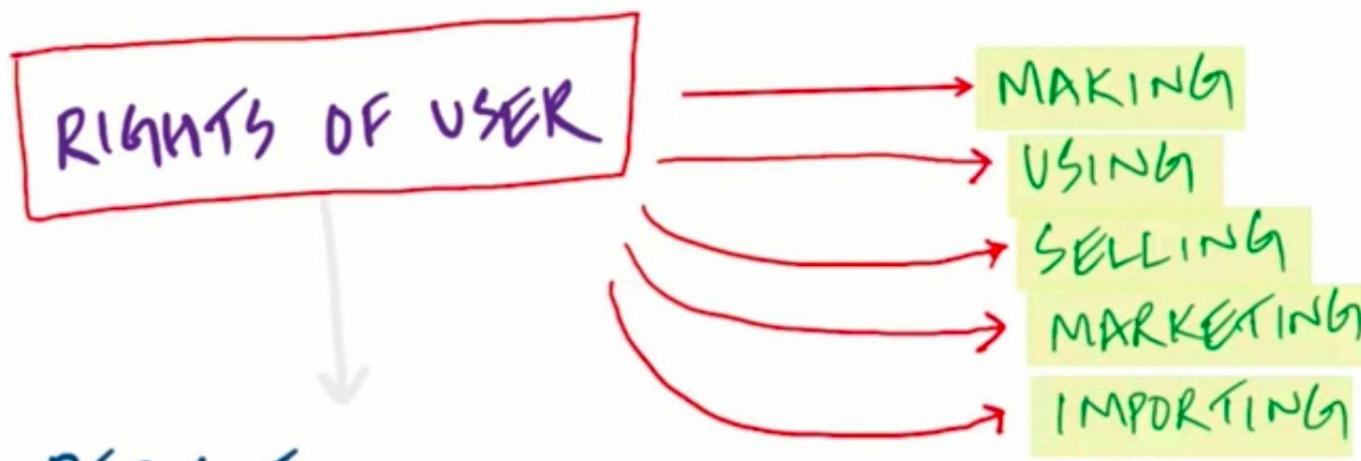
PAGES

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COVER

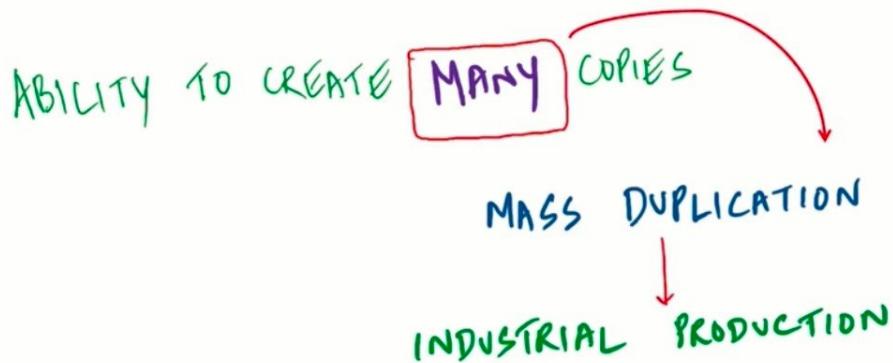
BOOK MARK

INTELLECTUAL PROPERTY LIMITS



DEPOSIT
REGISTRATION

CONCEPTS : ORIGINALITY
INVENTIVE STEP



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12:45 which the law requires you to prove.
For instance, in the case of copyright

12:51 you need to prove originality; in the case of
patents you need to show inventive step. So,

12:57 these are some of the restrictions on the
rights that have been conferred by
intellectual

13:03 property rights we will be looking at this
in greater detail in these specific lectures

13:07 Now, we found that the distinguishing feature
of
intellectual property is that it offers property

Property Protection

13:15 protection over intangibles. And intangibles
by themselves offer us a way to create
multiple



ABILITY TO CREATE

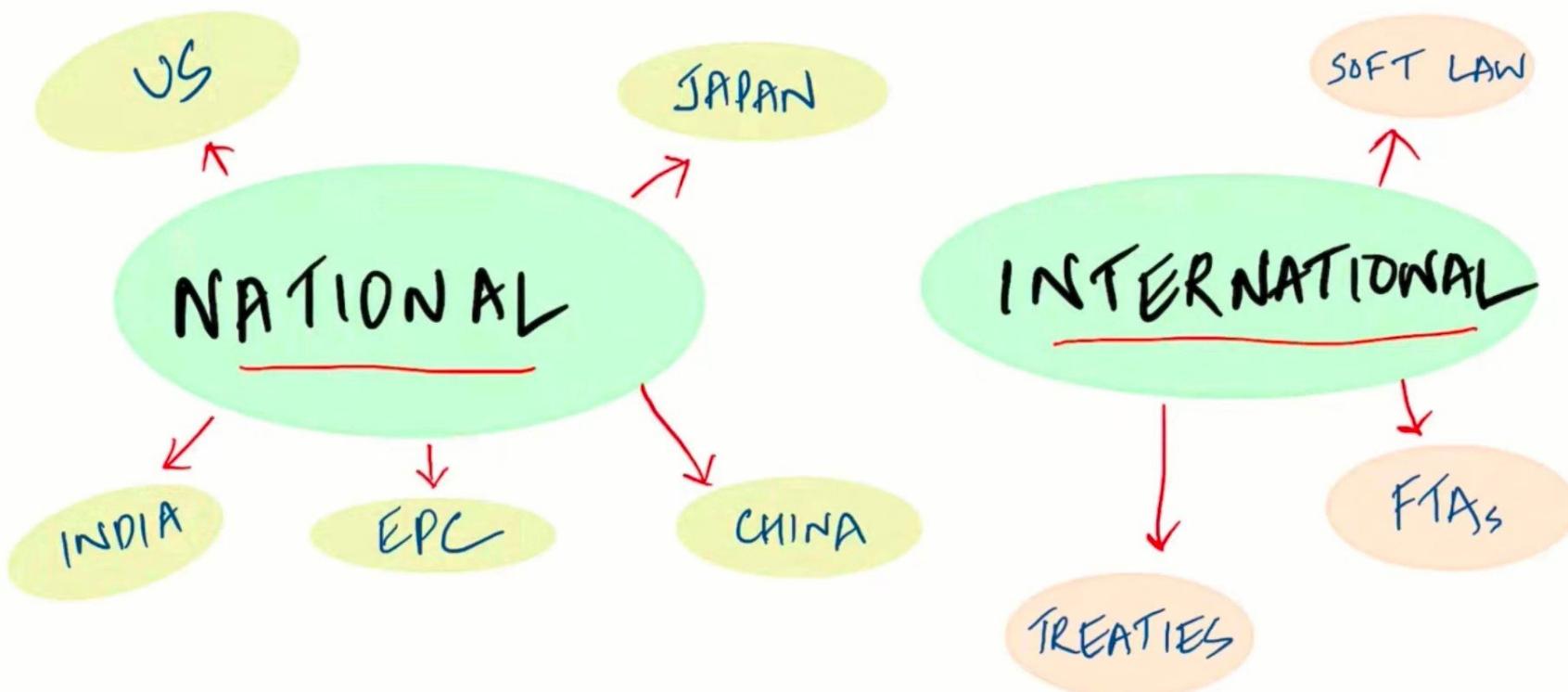
MANY

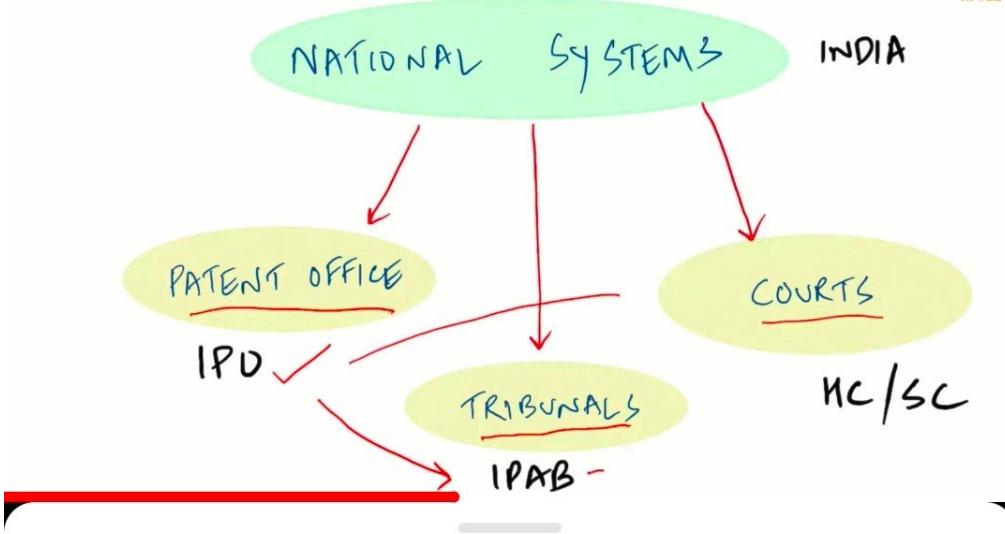
COPIES

MASS DUPLICATION

INDUSTRIAL PRODUCTION

PATENT REGIME





Transcript



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5:34 a group of countries. Now, this could also allow for recognition of intellectual property rights

5:40 of one country in another country. And you have something called the soft law. Soft law

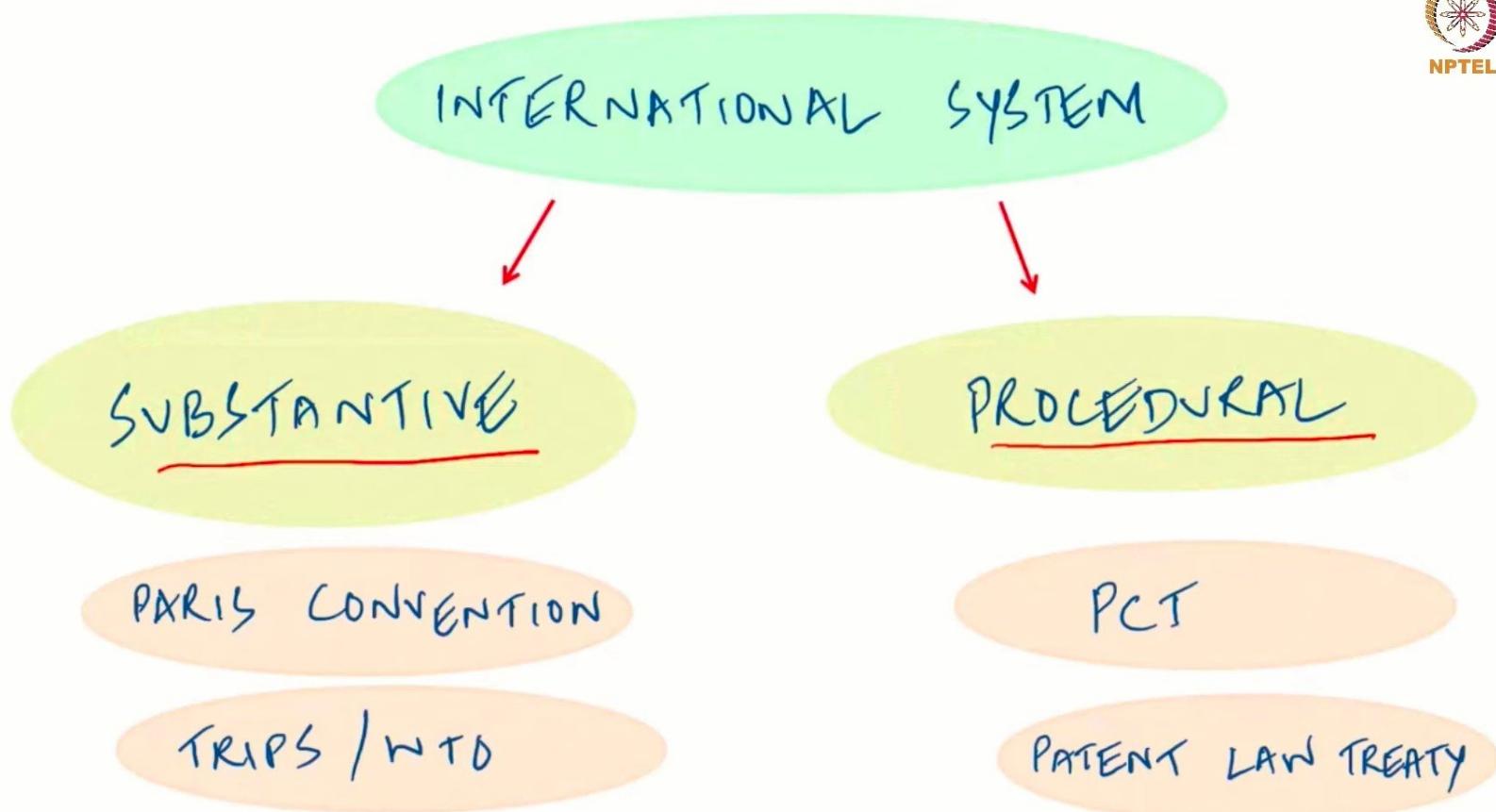
5:45 or nothing but treaties which are not signed by delete last few words; soft law is nothing

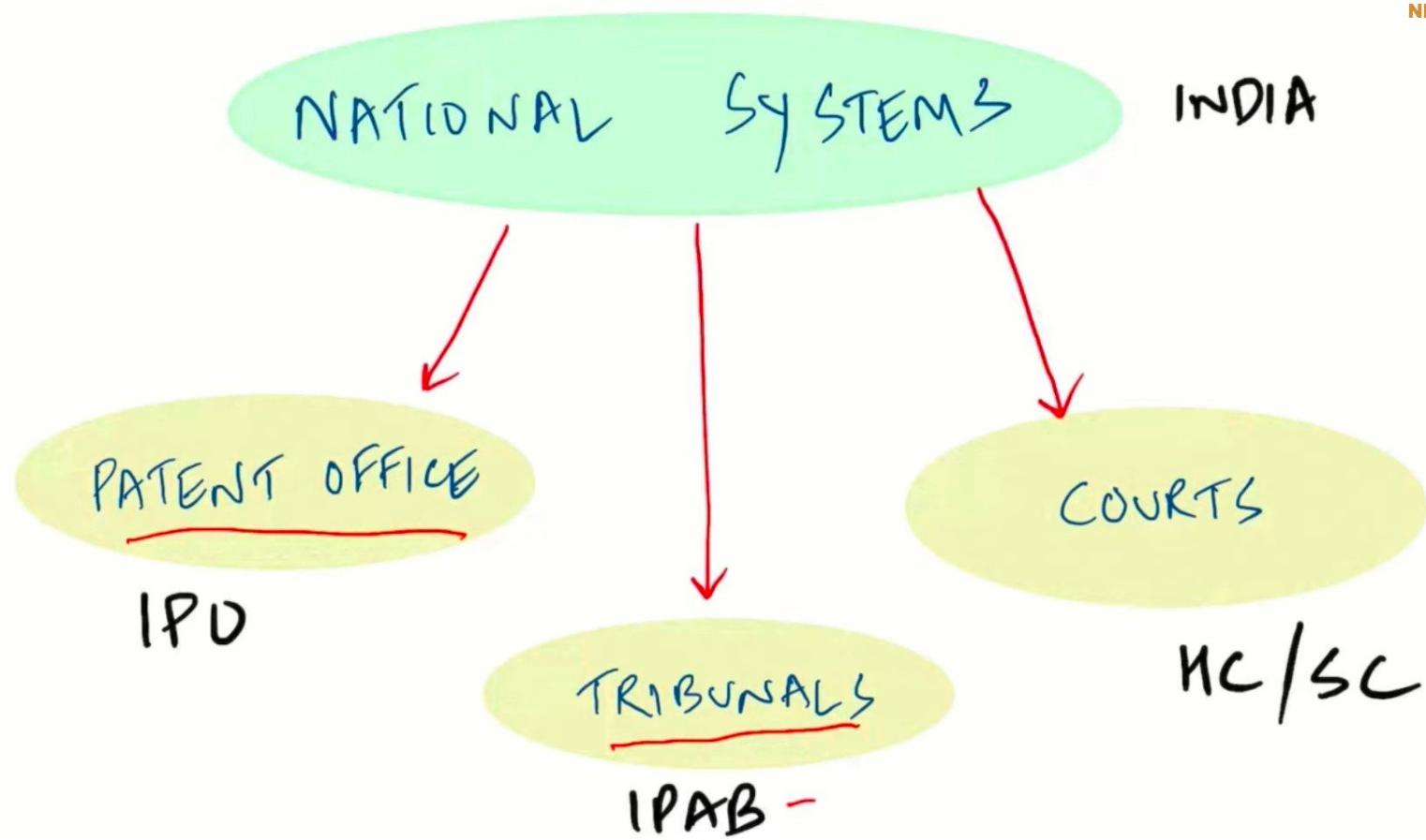
5:52 but an international arrangement where if something has to be accepted as a treaty,

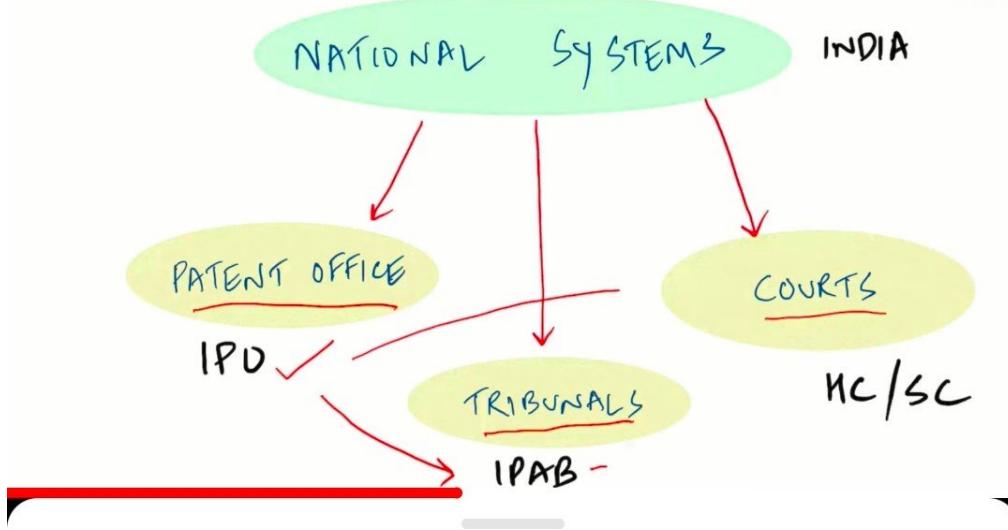
5:58 you first release it in the form of a soft law. It is a guideline for countries to follow;

6:03 eventually it may take the shape of a treaty if there is consensus across countries.

6:08 So, a national system, for instance, if you take the India's patent system comprises of the patent







Transcript



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6:20 we have the Intellectual Property Appellate Board or the IPAB and any enforcement mechanism,

6:28 the patent is granted somebody is infringing the patent goes to the courts and in India we

6:33 have the High Court and the Supreme Courts. So, this is the national patent regime.

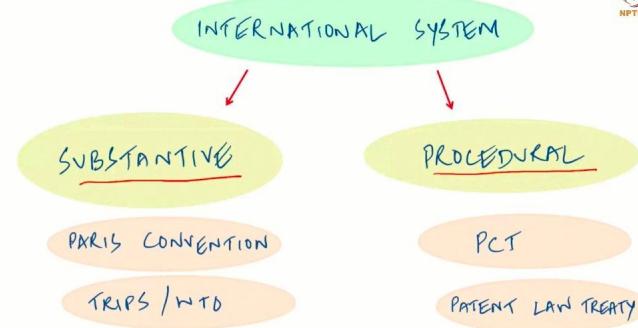
6:37 You have an office, the Intellectual Property Office which grants the patents. If there are

6:43 appeals over it, it goes to the tribunal which is the IPAB and if a granted patent is questioned

6:49 before a court or if there is an action with regard to enforcement say infringement,

6:54 it goes to the High Courts. And eventually if there is an appeal from the High Court,





Transcript



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7:01 The international system on patents can be divided into two; one you have the substantive regime and

7:07 you have the procedural regime. The substantive regime is nothing but efforts in substantive in

7:14 international law which were moved towards changing the substantive provisions of the

7:19 law. Whereas, the efforts on procedural aspects, there were certain treaties concluded and which

7:27 only had an effect on the procedural aspect of patent law. This is an important distinction

7:32 to understand because patent law comprises of stuff substantive provisions for instance what

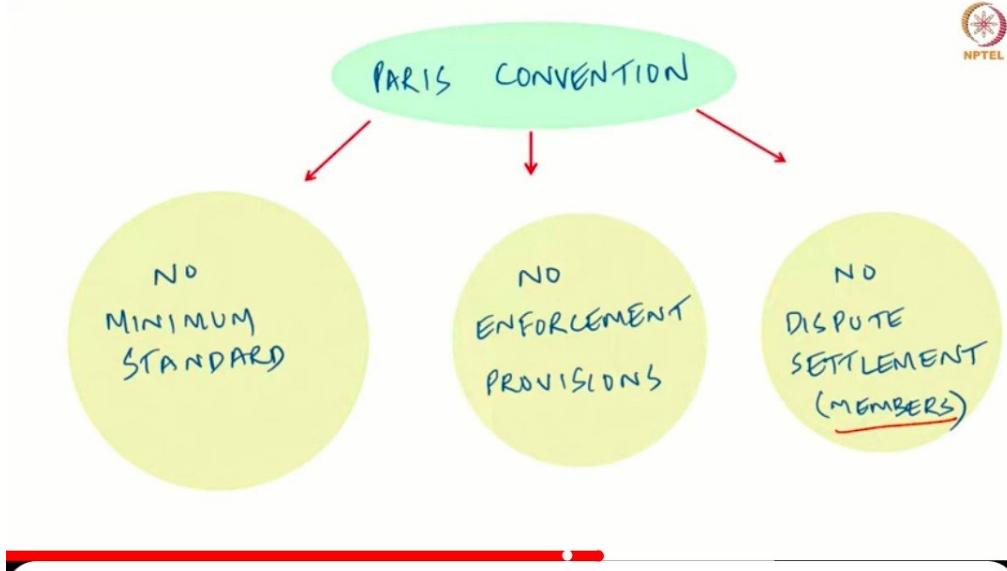
7:38 can be patented is a substantive provision and it also comprises of procedural aspects.

7:43 Now, who can file a patent, what should be the criteria for an applicant,

7:48 what should be the fees that should be paid, what are the administrative methods by which

7:57 you can intervene in the patent office, these are all procedural aspects of the patent system.

8:05 Now, the most important agreement is what we call the PARIS convention. The PARIS convention



Transcript



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8:05 Now, the most important agreement is what we

call the PARIS convention. The PARIS convention

8:12 created certain substantive changes in the patent

regime. Then we had the WTO and what we call the

8:21 TRIPS agreement. Now, on the procedural side,

we have an agreement called the or the treaty

8:26 called the patent cooperation treaty which allows applicants from one country to file

8:32 applications in another country and we also had something called the patent law treaty,

8:36 which tried to make some changes, but it was not widely accepted.



COPYRIGHT REGIME

NATIONAL

BOUNDARY

INTERNATIONAL

BILATERAL
ARRANGEMENTS

RECIPROCITY

COPYRIGHT REGIME

BERNE CONVENTION ✓
UNIVERSAL COPYRIGHT CON.
ROME CON.
TRIPS
WIPO TREATIES

NATIONAL TREATMENT
MFN
WORKS
TERM
NO REGISTRATION
IDEA / EXPRESSION



Transcript



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BERNE

10:41 convention. The BERNE convention made it easy for copyrighted works to be enforced across the globe.

10:48 It did not make, it did not make registration a mandatory condition for enforcement,

10:56 so that ensured that copyrights you could get a copy you could have a copyrighted work created in

11:02 one country, and it could be enforced in another country even without registration. Then we had

11:08 the universal copyright convention we also have the ROME convention, we had the TRIPS agreement,



COPYRIGHT REGIME

BERNE CONVENTION ✓

UNIVERSAL COPYRIGHT CON. ✓

ROME CON. ✓

TRIPS ✓

WIPO TREATIES ✓

NATIONAL
TREATMENT

MFN

WORKS

TERM

NO REGISTRATION

IDEA / EXPRESSION



Transcript



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10:34 Now, copyright regime in itself comprises of various conventions. First you have the BERNE

10:41 convention. The BERNE convention made it easy for copyrighted works to be enforced across the globe.

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BERNE CONVENTION ✓

UNIVERSAL COPYRIGHT CON. ✓

ROME CON. ✓

TRIPS ✓

WIPO TREATIES ✓

NATIONAL
TREATMENT

MFN

WORKS

TERM

NO REGISTRATION

IDEA / EXPRESSION



Transcript



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11:08 the universal copyright convention we also have the ROME convention, we had the TRIPS agreement,

11:13 and a host of WIPO treaties. Now, what did all these arrangements or conventions do.

11:19 One they brought in a principle of national treatment; they also brought in the principle

11:25 of most favored nation treatment. Now, these are two principles in international law,

11:29 which says that the protection that you offer to your nationals,

11:33 your citizens should be offered to foreigners as well. So, you treat foreigners as equals when

11:41 they are within your territory. The most favored nation treatment is another equality



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UNIVERSAL COPYRIGHT CON. ✓

ROME CON. ✓

TRIPS ✓

WIPO TREATIES ✓

NATIONAL
TREATMENT

WORKS ✓

MFN

TERM ✓

NO REGISTRATION ✓

IDEA / EXPRESSION

TRADE MARK REGIME

PARIS CONVENTION



MADRID TRAÉTIES



TRADEMARK LAW TR.



NICE AGMT



TRIPS / WTO

HARMONIZATION

TERM

NT

MFN

SERVICE MARKS

NO COMPULSORY L.