

Casey Martone: Good afternoon, everyone. Welcome to today's webinar IP for Digital Business. Today I'm joined by Matt Lee. Welcome Matt.

Matthew Lee: Hey, how you doing?

Casey Martone: So before we get underway, I'll do some quick housekeeping. I noticed that we've got a few people just are still joining our session. So as they come in, I'll busy pick up these messages. In the console that's presented to you, there will be a questions panel. If you have a question for Matt at any point in the presentation, please use that panel to ask your question, and we will do our absolute best to answer that as we go along. If we are unable to answer the question, I don't know if Matt will cover it yet, I'll hold off and we will do as much as we can at the end of the session. Today's session will run for about 50 minutes, and there'll be time at the end of the session to ask additional questions or anything that hasn't been covered off. Matt, welcome. You've been in IP Australia for 10 years?

Matthew Lee: Yeah, over 10 years now. It's been a little bit of time, yes.

Casey Martone: And you are our resident expert and suppose expert and educator on all things, IP awareness and education, and you've obviously delivered this digital business package, so over to you.

Matthew Lee: All right, thanks Casey. Hi, everyone as Casey has mentioned, my name is Matt. I'll be helping run the presentation today as well. I've been here at IP Australia as said before, for over 10 years. For the large portion of that, I was working in the patent examination area, examining, computing and ICT related inventions so that was a period of a good seven years. And in the last few years, I've been working in the communication area with the startup and small business engagement team to talk to small businesses and small entities about ways that they can not only protect their intellectual property better, but also ways that they can get value out of the intellectual property as well.

Matthew Lee: Today's session is going to be covering specifically intellectual property for digital business. So that means that if you're a textile app, there's going to be a lot in here for you. But even if you're a small business or some other type of business, which wants to have some kind of online presence, and let's face it, most of the businesses out there today are looking to have that whether you're selling online or you're contacting your customers online. Hopefully, there'll be something in this session for you as well. Let's jump into it.

Matthew Lee: IP Australia, for those of you who aren't aware is the Australian government agency that helps to administer the registered intellectual property systems. That's patents, trademarks, designs, and plant breeders rights. We will be covering those in a moment. Now, we also do some other regular Australian government functions such as negotiating international treaties and the like on

intellectual property and we also do education and awareness activities such as the thing that we're doing today here with you.

Matthew Lee: What is the intellectual property? We're going to give you a quick overview of some of the basics of intellectual property. If you want a more in depth introduction to intellectual property and some of the concepts surrounding that, I do encourage you to sign up to a webinar that we're running in two weeks time on IP 101. But we'll cover some of the basic fundamentals here just in case you need a refresher. Intellectual property is defined as the application of the mind to something new and original. The way I like to think about it myself is that, it's literally the expression of an idea in some kind of form.

Matthew Lee: And that can mean many different types of forms such as a new invention, a brand, a design and artistic creation but this by no means is an exhaustive list. Intellectual property is literally all around you in ways that you might not consider. In terms of the digital space, if you think about data itself is going to be valuable intellectual property because if you ever lose control of that data, it lands in the hands of a competitor for example, then it's going to hurt your business because that data has intrinsic value.

Matthew Lee: Same thing with customer contact list and the like as well. Intellectual property can be in many different types of forms that you may not even realise too. To cover some of the types of intellectual property that you might encounter more commonly, we've got an example here of an Australian invention called the Flow Hive. Now, I know the theme of today's session is meant to be about digital business, but this one was a good one because it just represents a lot of different types of intellectual property in the one particular product. As I said, this is an Australia invention. It was invented by a family called the Andersons who live up in the northern New South Wales coast and they are family of beekeepers.

Matthew Lee: When you do traditional bee keeping, it's normally a pretty involved process to try and extract honey out of the hive. You have to put on a pretty cumbersome suit to protect yourself from stings. You walk up to the hive. Sometimes you will smoke the hive to placate the bees and make it a little bit easier to access to honey. Crack open the top of the hive, pull the actual panel out with the honeycomb in it, extract the honey, then do it all in reverse by putting the panel back, putting the lid back on top and then walking away, taking off the suit, and after that it's quite a bit of time which has been expended.

Matthew Lee: Instead, what the Anderson's came up with, was a better way of extracting honey. They came up with this particular invention and the way that it works is that there's a tap or a kind of handle which you can pull on the side of the Flow Hive. You don't need to put on your protective gear, you simply walk up to the Flow Hive, you turn that tap and then it'll split the honeycomb structure that you can see in the bottom right there to make the honey flow down into the jars that you've put underneath there. And you don't need to open up the hive, you

don't need to disturb the bees and therefore you don't need to put on the same protective gear or smoke as you would normally do with traditional beekeeping.

Matthew Lee: It's a much faster process, it's better for the bees because they're not as disturbed and it's easier and more efficient as well. It's a pretty good invention, they ran a very successful Kickstarter campaign at the time which was the most successful Kickstarter campaign at the time for any type of product on there and they've done quite well. Now, again, the reason why I wanted to highlight this is because we got a lot of different types of intellectual property all tied up with this product. And the first one that we have here is, for trademarks for the brand Flow Hive.

Matthew Lee: When we talk about trademarks, we're talking about brands on ways to differentiate yourself from that of other businesses in the same marketplace. They've got a trademark on name Flow Hive. You can also get trademarks on things like logos too. But that's not where it ends, because in Australia, you can literally get anything which differentiates your product and services from that of other competitors as a trademark. For example, Cadbury has the colour purple which is trademarked in relation to chocolate. If you ever walk down a supermarket aisle and look at the chocolate aisle and see that wall of purple confronting you, that's probably going to be Cadbury right there.

Matthew Lee: If you jump up in the shape of a star and you're selling cars, chances are you might be doing it on the half of Toyota. They have a trademark over that particular jumping movement in relation to selling cars. If you're doing the same thing except in relation to selling planes, it might be Jetstar instead. And in Australia, we also have one trademark for a smell. It's a smell of eucalyptus as applied to golf tees. If there's any keen golfers out there and you think that you want to smell a golf tee for a good luck or whatever other purpose, then you can also know that that's a particularly registered trademark here in Australia too.

Matthew Lee: Moving on, we also have patents on this particular Flow Hive. They have a registered patent for the split cell technology and that picture in the bottom right is actually taken from the patent application for the Flow Hive too. When we talk about patents, we are talking about inventions. Inventions as you can see here sometimes come in the form of a mechanical apparatus but in Australia, you can also get patents for methods and processes and ways of doing things too. We will be exploring this in a little bit more detail later on in relation to software and the computer related inventions. You also have a registered design, which is for the appearance of the frames of the Flow Hive.

Matthew Lee: When we talk about the designs, we're not talking about blueprints, or schematics instead, what we're talking about is the appearance of a physical product. Generally speaking, this isn't going to apply to most digital software or technology products that you develop simply because we're looking at physical things such as industrially applied furniture, or maybe appliances or sometimes

people in the fashion industry. And we're looking at the aesthetic appeal of that particular product to see whether it's new and distinctive. Finally, we've also got a note here for copyright. Now, copyright is a little bit unusual because unlike the others it doesn't actually require any form of registration.

Matthew Lee: Here we've got the marketing videos and other type of material that they've produced which is associated with the Kickstarter campaign and other marketing that they've done for Flow Hive and they have copyright associated with that. And that's probably going to be the realm where some of the computing and other digital products sit. As I mentioned before, there's no registration process for copyrights. Unusually, compared to the others, copyright is all American free. For things like patents, trademarks and designs and one I left off which is plant breeders rights, which relates to people in the agriculture industries.

Matthew Lee: All of those require you to apply to IP Australia before you can actually secure that right. Copyright though, however, just happens as soon as you put pen to paper, or as soon as you take a photograph or as soon as you start to create your artwork as well. For those artistic creations, literary creations, dramatic works, as soon as you express the idea in that material form, it automatically has that copyright attached to it. Now, unusually software is actually also protected by copyright as a literary work. In the same way that novels are protected or stories, software code is also protected in the same way.

Matthew Lee: However, it's limited as well because only the expression of the particular piece of software is protected, not the functionality. If you write your code in a particular type of programming language, whether it will be Java or C or anything like that, then your software code or the source code or the executable code will be protected by copyright. But if it does a particular function, other people can come along and emulate the same function using their own written code instead, because that aspect isn't protected by copyright.

Casey Martone: What we've got here, I suppose different examples particularly the Flow Hive of how a business can use the multiple IP rights, to put them around their business to protect their ingenuity, their innovation and their brand so that they can I suppose stop those competitors etching on their competitive advantage.

Matthew Lee: Yeah, that serves exactly right. And there's also going to be more reasons why you want to build a portfolio of intellectual property protection as well. And I'll get too an example which will demonstrate why in a moment. One other note that I have is that copyright again, because it has no registration process, isn't administered by IP Australia instead it's the responsibility of the Department of Communications and the Arts as well. Okay, the other relevant piece of intellectual property which also doesn't require registration is confidential information or trade secrets and then they're only protected in the form of a non-disclosure agreement.

Matthew Lee: Now, a non-disclosure agreement is simply that. It's an agreement between you and another party to keep a secret. And the most famous example that we have, that most people are aware of is the Coca Cola recipe. Now, Coca Cola has been in business for a long time over 100 years, and I'd say that they've done pretty well for themselves in the meantime. And they've managed to keep the Coca Cola recipe secret for that entire time, which is no mean feat. And the way that they've done that is that, if you happen to be exposed to the Coca Cola recipe, you have to sign a pretty lengthy document which basically promises that you're going to keep that secret and not disclose it to anybody else.

Matthew Lee: Now Coca Cola has managed to do that fairly successfully. But of course, if you have a secret and you've agreed to keep it secret, I would say that the way that I would describe it is that, NDAs can be fragile because if that secret is exposed by somebody, like a third party, or somebody that you've given the information over to, it's really hard to put back into the box. You can pursue them the damages, for breach of that particular agreement and through the court system, but unfortunately, it's really hard, once the secret is out there or the information is out there to try and get that back as well.

Matthew Lee: So some people if you happen to have a system like a Coca Cola, they're trying keep that under wraps, then they can be very successful. But otherwise, sometimes you wouldn't pick and choose what the places that you might want to use it. It's also worth mentioning that in some startup communities in particular, such as when you talk to investors be it Angel investors or other venture capitalist firms, that they generally don't sign non disclosure agreements for various reasons.

Matthew Lee: One reason that I've been told is that, it's pretty administratively heavy, because they get lots of people approaching them with different ideas and it's hard to keep track of all of the ideas that they're given. They don't want to just be burdened by having NDAs and different types of agreements with so many different parties, which they have to keep track of, and manage as well. So just something to be aware of.

Casey Martone: I suppose the real question here Matt is that, you've got trade secrets, you've got copyright, patents, trademarks and designs. I suppose as a business, one of the hardest things to get across in the early stages is how do you apply a strategy around that? I suppose what Matt's presenting here is that, the hearer of a different mechanisms that you can use and you can implement, you need to obviously seek some advice in a lot of things, weighing up the decision to use a non-disclosure agreement versus seeking a patent That's a very big decision, and you do need to get some really good advice about the pros and cons and the application as well as the commercial benefit or dis benefit and risks. Here I suppose we are presenting all those options but we do want you to I suppose think about the benefits and the risks with each of them, when you're looking at you are an IP strategy.

Matthew Lee: Absolutely. And I think that some of the startups I have talked to as well, I don't know if it's a jump in and say that I need to get an NDA or [inaudible 00:14:21] every single party. But again sometimes it needs to be the right thing to do. Not only, it may not be the right timing or the right person in the NDA with but also if you feel that it's just wasting your time and effort, if you're not going to actually use that later or that might not be necessary. But again, we always encourage throughout this entire webinar as well as after we leave this session today to think about, what advice or help that you might need to basically get something tailored to your own situation.

Matthew Lee: I guess that's a good way to segue into this is that, for those people who happen to be on this lean bootstrapped budget as well. Perhaps legal advice because it can be somewhat of an expensive process, depending on what you do. Maybe something that you go, "Okay, I'm not if I have the money or funds to do this right now." One thing that we've recently developed here at IP Australia is that, we have the IP contract generator. And it's at the link at the bottom there, which is ipaustralia.gov.au/NDA.

Matthew Lee: If you want, you can jump into that website and have a look at what we have there. I think contract generator will allow you to plug in a few details of your own entity as well as the other entity that you happen to be dealing with. And once you actually get those details into the system, it will automatically spit out a contract, which is a basic NDA document that you can use and then you can tailor it to your own needs as well. It can be a really good starting point for you to say, "Okay, I need to just get an NDA whipped up for myself, because I've got some situation that I want to keep secret."

Matthew Lee: Here's a good resource that you can have that generated automatically and it's free of charge. We don't charge you anything for making that. Again, I'd like to encourage you that if you use this tool that you use as a starting point, and again, tailor it to your specific situation. But again, it's something that we've done recently. It's available to you for free.

Matthew Lee: Now, I mentioned before that it's important to build up an IP portfolio. This is an example of a recent story of a company called Zoox. Now they're in the business of autonomous vehicles or self driving cars. Unlike some of the other companies which are in this particular space, such as Uber and Waymo, they are looking at building a vehicle from scratch. Up until very recently, they were operating at stealth mode, so nobody was quite sure what they were doing behind the scenes. And it was only is at one point last year that they went public with some of the details at their operations. Also during this point as well, they happened to do a raise in the middle of last year for 500 million and that was US dollars. It was the equivalent of about 800 million Australian at a particular valuation of 3.2 billion US as well, which is a lot of money. That's a lot of money.

Casey Martone: Significant isn't it.

Matthew Lee: That's right. And this is coming from a company which hasn't sold a single thing. They haven't got the product to market, they're still under development phase. Despite that, they've still got the valuation of \$3.2 billion.

Casey Martone: Matt I'm going to ask you where's that value at?

Matthew Lee: So the value of that particular company lies in this intellectual property. One of the founders of this is Tim Kentley-Kay who's in Australia as well. He went over there with this big idea, got an American partner Jesse Levinson. And they started working on this concept of building their own autonomous vehicle as well. As part of that process, they've developed a lot of intellectual property and also one of their very early venture capitalists funds was also an Australian venture capitalists funds as well which put money in there.

Matthew Lee: And one of the quotes that they have is that, they were willing to stump up this cash and I think that they put up that raise was \$40 million. They were willing to stump up that cash because they recognised the value of intellectual property that they built up in Zoox. And not only was it something of value, but they said that ... And this is a quote is like they say, "We also know that even if the ultimate vision of the driver-less taxi is not achieved, the team will still be building significant value in its IP, which would be strategic to a very fast growing space with lots of big players watching intently. This provides some risk mitigation to getting our capital back."

Matthew Lee: What they're doing is that they're saying that you have this intellectual property built up even if things go pear shaped, there is a lot we can do with this intellectual property, and therefore we're more willing to take that step with you and put capital into your particular business because you've also got that portfolio built up as well. So what I wanted to kind of emphasise in here is that again, we have all those types of intellectual property we covered whether it be trademarks, patents, even copyrights, and non disclosure agreements, confidential information.

Matthew Lee: If you happen to spend the time to just think about your intellectual property in your business that can be valuable not only from a protection point of view to fend off competitors, but also to attract the investors as we can see in this particular example, as well.

Matthew Lee: All right, now let's jump into a few more details we'll be covering a few different topics along the way on starting from some of the things that you can think about when you get your idea for your particular business venture, developing it, taking it to market and then maybe even going overseas as well.

Matthew Lee: We'll start with this first one here, which is about computer implemented inventions, and patents. Now, a lot of people that I've talked to in the startup industry, they've said, "I've got this great idea. I want to make sure I lock it down." And they think that the best way to lock it down is to get a patent. And

it's true in a lot of cases, if you want to protect the functionality over product we saw before that copyright doesn't cover that. The only way to do that instead would be to use a patent unless you can find some other way to use a trade secret or NDA type of protection instead.

Matthew Lee: However, the rules in Australia are pretty complicated in this space as well. So let's have a quick exploration. Now, why would you consider getting a patent in the first place? We have a company here, which is called Longtail UX, which is a Sydney based company and they're in the software as a service or SaaS space. Effectively, what they do is they analyse businesses and their websites the way that they run and they help improve the search engine optimisation or SEO of that websites using some of their patented algorithms and techniques to improve, findability of that particular website as well on the Internet.

Matthew Lee: By helping your business get found, obviously that's going to improve your marketing and overall visibility, that's the type of service that they provide. And they've got this particular quote here, which just demonstrates the value of having a patent on their own technology, because it allows them to go out themselves and find those clients as well as investors because they have taken those steps to protect their protected technology through patents.

Matthew Lee: What does a patent actually give you? Well, it actually provides you with protection or in the monopoly right to exploit the invention after you secure that registered patent. That could be controlling how your product is sold, manufactured, developed, etcetera, etcetera. And it can protect products and services through protecting things like an actual machine. It can be apparatuses and inventions but also methods and processes as well.

Casey Martone: So Matt we have a question from one of our audience, when you say proprietary technology what is it that you're actually mean? Can you use some different words to kind of contextualise that a little bit?

Matthew Lee: Yes, so proprietary technology, again, I think is using many different contexts. But I think that the way it was used there was that it's saying that this was technology which they had developed in house. I'm not sure if they did it in partnership or other people or contractors coming into their organisation. But something that they developed within the company structure and might have sold protection from it again, through the patent process. They were able to demonstrate that they were the owners of this particular technology and that's something that we do check as part of the patenting process hence we're able to apply for the patent and then get a secured as well and demonstrate that it passed all the steps conveniently, the steps are listed below.

Matthew Lee: Before I get to that, we'll just cover the second point which is to say that registration lasts for 20 years for a standard patent. Eight years for an innovation patent which is a slightly easier of patent to obtain. And again, it might be relevant for people in the software and digital space too because you

only need a short period of protection. You assess patents on many different criteria. But the main criteria that we have here are novelty, inventive step and manner of manufacturer.

Matthew Lee: To explain these, novelty basically looks at is your product or is your idea something that has been done before ever? If it hasn't been done before, we then go to the next one inventive step. If your invention is new, what's the closest thing that was previously invented before you and what's the difference between that and what you've got in front of you right now? And is that step significant enough? Or is it a very, very small minor improvement that people would find obvious?

Matthew Lee: And if you can clear that and saying that no, it's like my invention is new, it was novel and the step is big enough to not have been obvious to people working in that particular industry. We get to the last point which is manner of manufacturer. Now, this is the big sticking point when it comes to software and digital products. And again, I've had extensive experience working in the patent area in the computing technology section dealing with this question a lot. The manner of manufacturer role was implemented to basically say, what are the types of innovations that we want to have protected by patents?

Matthew Lee: And again, patents last for up to 20 years. That's a long time, right? There are certain types of things that under the law, we say that, "No, you can't have a monopoly right over that." Now, there are some clear exceptions such as you can't patent human beings, you can't patent laws and discoveries of nature and you can't patent purely mental processes. They all make sense there's a common sense argument to say, "No, somebody should own that." You don't want to company owning humans or the way that you should be thinking instead. There are clear reasons for those exceptions.

Matthew Lee: However, there is also an exception for purely financial and business schemes as well. That's something again, where we say, "Okay, we don't want to have those types of inventions protected, because again, there's very similar to those mental processes that we mentioned before as well. And that's not the type of thing that we want to grant inventions for. The way that we think about digital products and services is that we say that, "Okay, what is it that we want to give patents for?"

Matthew Lee: In IP Australia, we can distil it down to a basic question. Is your invention a technic or does it involve some level of technical innovation? Or instead, can we characterise it as a business innovation. If it's a technical innovation, then you're more likely to be able to obtain a patent and if it's a business innovation only, you're more unlikely to get the patent. To explain the difference between these, Uber is a very successful company in the ride sharing space. They have a number of patents. However, the main thing that Uber is known for is a ride sharing service.

Matthew Lee: That in and of itself is a business innovation because people have their own cars and it's a scheme that allows people to use their own cars to pick up other passengers using an app and take them to a destination that they choose to do so. Uber does not have any patents which related to that particular scheme. Instead, Uber has a number of patents on GPS technology, as well as the way that it functions with their app and processes that particular data as well. So GPS technology in this particular instance, can be regarded as a technical innovation because they will be able to take that technology, make improvements on the technical side of things to say, "Yes, we've got something new with GPS and a better way of using it. And the actual business innovation side they haven't got a patent on instead."

Matthew Lee: Now you could argue that Uber might be successful for a number of reasons, but this is also a good example to say that you don't necessarily have to get a patent to be successful. And again, this will apply to a lot of people in the digital space, especially if you happen to be making an app or some other kind of web platform or digital platform instead. Because if you happen to be servicing a segment of customers in an unusual way, then sure, you may be like Uber, disrupting a market and coming up with a great idea that people would love.

Matthew Lee: But if it happens to be in business scheme, then you won't be able to get a patent for it, or it's unlikely that you will be able to get the patent for it. Because it falls more on the business innovation side than the technical innovation side as well. So really, we're looking for improvements to technology. Are you making data? Are you structuring it in different way? Are you making a computer run fast? Are you making a system which allows you to retrieve data storage from hard drives or databases in a more efficient way? Types of things like that, are more clearly going to be technical innovations, other schemes and methods are going to be characterised as business innovations and therefore not eligible for patent protection.

Matthew Lee: To give you a slightly perspective on the same point, I've got an example here regarding block chain. Now block chain is are pretty popular technology for the last few years used for a variety of different purposes. If you happen to conceive over a new type of block chain, which has its own new data structure, and satisfies the other steps that we said before, novelty and inventive step, for example, then you may be able to get a patent for that.

Matthew Lee: However, if you use a particular type of existing block chain and you use it for a new use that hadn't been contemplated for before, say, using it for the fashion industry, tracking the origin of a particular dress and the like, then that's a new use of that technology. But again, it's business type of use, which may be characterised as a business innovation and therefore you may not be able to get a patent on it. Now, I have to emphasise that this is a fairly complex area of law. There's a lot of court cases which have been arising in the Australian court system over the last decade on this particular topic and there's still some cases in progress at the moment as well.

Matthew Lee: Suffice to say that because it's such a complex area, we really strongly encourage you to seek legal advice if you sort of keen on getting a patent in this space. Or even if you think that you have something which might be able to be protected or would you just want to make sure for peace of mind instead. It is again, very complex, there are a lot of grey areas and exceptions to it as well. There are more details on our website if you want to delve into the technical side of things and the legal ease. But again, we encourage you to seek legal advice on this particular topic where possible.

Matthew Lee: Okay, just a follow up question about proprietary technology, means that you've applied for a patent, so not necessarily. You don't necessarily have to apply for a patent to have proprietary technology. It's more of a question of ownership. So is there something that's been created by you or perhaps your company instead? And one way that you can establish exclusive ownership is by a patent. But it's not by any means exhaustive. Again, if you haven't protected by some other means, such as copyright or non disclosure agreement, then it's proprietary technology. But you don't even need to have a formal level of protection for it to be proprietary technology. As long as there's something that you own, and you can say that you own it, then it's going to be considered to be proprietary technology as well.

Matthew Lee: Which actually is a good segue into the next topic, which is going to be all about ownership and the types of issues that you can face in a digital business as well. We talked a little bit about patents and some of the ways that you can protect an idea using a patent and some of the difficulties of that too. But that's only a part of the story because let's say that you've got your idea, you said that, "Okay, I've tested it in the market. I know that I want to develop it and make something of it as well." The chances are, you're going to bring other people on board, that can be in different forms, such as bringing more employees into the business or maybe getting some contractors to help you build your website, work on your software code and the like as well. Or perhaps you might even want to bring in some other people as partners instead, or perhaps investors who might form part of your board.

Matthew Lee: You're going to run into other people in various capacities. You need to have some level of protection in place or have some consideration as to what are the implications is going to be as you bring in other people into your organisation as well. The reason why you need to have such careful consideration about it is, depending on the way that these people coming to your company is going to be a different implications for you in such a property. Now by default under Australian law, if you have an employee during the course of their employment, who creates a piece of intellectual property whether based on a document which they're writing up in a word processor or something more involved than that. The intellectual property of that piece of work is going to be owned by the company or by the employer.

Matthew Lee: However, a contractor who's an independent contractor, in the absence of any other agreement, otherwise, if they create a piece of intellectual property, such as a website or take a photo for you, or something of that nature, the intellectual property is by default owned by the contractor. It's not owned by the company that they were doing it for. And this is a really important distinction to make. Because if you have a situation where you get somebody in and they start working on your software codes to help develop your product and you haven't got an agreement because maybe their family friends or maybe there's somebody that you were referred to and it's just a quick job and they were just working quite quickly and you didn't want to get the hassle of any paperwork.

Matthew Lee: By the time that you go to launch, the last thing that you want to happen is for them to say, "Hey, do you remember that piece of work that I did for you a few months ago? I'm not too comfortable with you launching your product anymore because I actually want to do the same thing myself. I have the intellectual property rights retains by myself. If it's all right with you, please don't launch it because I own the IP, and I'm going to launch a different product instead."

Casey Martone: What a pickle.

Matthew Lee: Yeah, that's not a good situation to be in. And again, by default, if there is no written agreements, then they will be the owners of the intellectual property.

Casey Martone: I suppose even a paperwork is fairly cumbersome sometimes. A quick and dirty kind of arrangement is probably not the way to do business.

Matthew Lee: No absolutely not.

Casey Martone: Keep it clean and document everything.

Matthew Lee: Absolutely. And again, at the early stages, it can be very, very tempting to have people come into your organisation, do a quick job for you and then not have any kind of paper trail as part of that process. But it is something that you want to, again mitigate the risk of something happening later down the track by having that paper trail in place. Now, it didn't come to the question of what do you need to have in that agreement or that piece of paper with those other people. Now, keep in mind that this also applies to partners and other people who are coming to your organisation on any capacity as well.

Matthew Lee: You can have it as part of that employment agreement, that contract you have with the independent contractor or even the partnership agreements as well. The types of things that you might want to consider is, first of all, if they're bringing in existing material, or you're bringing in an existing material to a product, acknowledge it, just lay it all out on the table. What is it that you're coming with? What is it that they're coming with? Just so that we can all be

clear on exactly what's happening and who's pulling their resources into this organisation.

Matthew Lee: What other uses of that pre existing material that you would like to authorise? Can they go off ... If they have another side hustle, can they go and use that material for that side hustle. Can you use it, etcetera, etcetera, as well. So make sure you're clear on exactly the usage restrictions or requirements of that pre existing material. What's going to happen to new material that you develop? If you work together on making code, and again, this happens a lot in the software industry where bits of code are combined together to a single product, it's all going to be mixed together.

Matthew Lee: So have an idea of who's going to own that newly developed material. And generally speaking, that's going to be within the organisation that the person's coming into as well, but you might have some exceptions to that. Can either party do with the new material and does it include future updates and work? And think a little bit of a head such as if a party leaves the organisation but that product is still in the marketplace and it's still being supported? Is there going to be any ownership implications about supporting that particular products going forward?

Matthew Lee: Can the parties use the know how from the relationship on other outside projects? So again, think a little bit ahead for the exit strategy, even for yourself. If you decide to go off and do another venture in a similar type of marketplace, can you then say that, "Okay, the information I've been exposed to, I can still utilise that for my own purposes, and possibly even work for a competitor." This is getting into a little bit of the space of non compete clauses, and the like, as well. Finally, who's responsible if third party rights are infringed, as following that what are the limitations on liability?

Matthew Lee: You want to make sure that again, especially for that pre existing material, as well as the newly developed material, who's going to be responsible if a mistake happens, and you happen to have an impact on some existing piece of intellectual property of a competitor or someone else who's got an issue with what you've developed too? If you have all of these things as part of that written agreement, again, it's going to sort out some of the issues that you might face later on and be much less hassle. Because at this particular point when you're first getting somebody and on boarding them onto your organisation, by having all of these things sorted out, it just means when an issue arises, you can just refer back to that piece of paper to what you agreed to and stick to that without having to wrangle, argue and some otherwise negotiate an outcome, which is going to take up much more of your time and resources.

Casey Martone: Obviously, there's a lot of detail in that. And obviously, collaboration agreements and IP projects and the like do require legal advice. And so we would definitely recommend that you would work with either an IP attorney or

an IP lawyer to help you navigate and draft appropriate agreements around particularly the ownership out of what happens once something is created and also to how something is used following maybe a dissolution of that partnership. All right, let's kick along.

Matthew Lee: I also mentioned that a copy of these slides are available in the handout section of the interface as well. You will be able to get a copy of those points. You don't need to be furiously jotting down notes to see what's on screen there as well. You will be getting copy of that as well as the URL which was at the beginning and we will also show at the end which has all of this information which is ipaustralia.gov.au/digital which has the same information on our websites too. Okay, so moving on now. You've got your product, you've thought about the idea, you've developed your idea and built it with some other people as well and then you've gone to market and it's been a great success.

Matthew Lee: Hurray! You're out there customers are coming into your business. You're generating revenue, but with that comes the risk that other people have identified your particular product and said, "Hey, that's a great idea. I'm going to jump on that bandwagon and possibly take that idea and make my own copycat product or service." And will take some of the elements that you've created and run off with it themselves. Online infringement is a real possibility nowadays, especially considering the amount of e-commerce and other types of digital services that we provide too. And not only that, it becomes quite tricky because a lot of this online infringement, if it does occur, can occur in other jurisdictions outside of Australia, making enforcement a little bit of a tricky thing to do.

Matthew Lee: What we wanted to cover in this section is that what can other steps that you can take if you happen to have somebody infringing your IP online? And it's not always going to be the case where you press the button and go nuclear straight away and start suing people left, right, centre because there are a number of steps that you can take before you get to that particular stage that you should consider taking in some cases that you should have to take before you press that nuclear button instead.

Matthew Lee: Let's go through some of the things that you should consider. The first thing to do is to get the facts. You need to figure out exactly what has happened. What is the IP that has been allegedly stolen? Do you even own the IP? Is it something that you have some level of protection on? Say, for example, a trademark or registered patent? Or maybe you haven't got a registered patent or trademark, instead. Then also find out that some of the facts about the person who's allegedly infringing you and maybe how they might have the infringing line of the code.

Matthew Lee: Is it something that looks like they've deliberately copied or could it have been a mistake? And who is the person who might be behind the alleged infringement too? I've got a picture here of a logo which is called siege sloth games, which is a camera based games company and today a video game producer and they had

an issue recently where they had their logo which is displayed here for you instead on the screen, taken almost exactly and its placed on the YouTube channel. And they said that's unusual because they haven't really encountered many patents who had said that they wanted to get their logo and use it for other purposes.

Matthew Lee: And they decided to do a little bit investigating before they started contacting the lawyers and it was a good thing that they did because the YouTube channel which had the logo placed as the official logo on that particular channel, was run by a kid who just wanted to start up his own streaming sort of videos on YouTube. I just really liked the logo, just the look of it. It wasn't anything to do with Siege Sloth Games or as a gaming stream. It was just that he'd like the logo, was looking around for sloths and then came across this one and said, "Yep, this is a good logo to use."

Casey Martone: It's free on Google Images. Sure, you can use that.

Matthew Lee: A lot of people will do that. They'll do a google image search and then think that it's all freely available to use. So instead they sent a ... And tried again contact with this kid to try and get the logo and said, "Hey it's good that you like our logo but we don't really want you to use it in this particular manner as well." They were able to get a resolution to that particular situation, I think that they may have actually had to contact YouTube in the end as well but again it just doesn't hurt to look at the facts of the situation because there's also other aspects involved outside of just general IP protection.

Matthew Lee: If I happens to be a kid or maybe a family or some innocuous use as well, you also have to think about the marketing and PR perspective of absolutely laying down a ton of bricks on the person who might have been innocuously using your particular image because they're just did a google image search for sloth or something of that nature as well. It's important to get the facts straight before you take any further steps.

Matthew Lee: Next, ask yourself is it worth enforcing? Enforcement is generally going to be a long and involved process, especially if you go through the courts. Similarly, though, you also have to ask yourself, what is the IP that's being infringed in the first place?

Matthew Lee: Sometimes you might have something which is copied, which is something which isn't particularly valuable to you in the first place. And so therefore, is it really worth your time and effort to actually go and take these steps to hunt down people who might have infringed on your product. So if it's something which you can let slide as unfortunate or as a may be, sometimes it might be the best thing to do for your business. And other times, you may decide that, yes, it's valuable, or you want to pursue it for the principle of the matter instead, and to take action as well. But again, it's something that you need to consider at this early stage too.

Matthew Lee: Next, contact the other party. There is a rule in Australia that you cannot launch online infringement proceedings without first getting in touch with the other party and the way that you normally do that is via what's known as a cease and desist letter. So the way that you would do that in online infringement cases though, is that you'd have to try and find the contact details in some way, shape or form and that can be a bit of a tricky process. If you can't readily find the contact details of the other party, especially if they happen to be overseas, some of the things that you can do is that, you can actually go to the web provider of that particular website and also assuming that they have their own website established which is the way the infringing product is currently being hosted or sold is that, you can contact the web domain name provider, define that who registered the domain name and then find the contact details there.

Matthew Lee: The other option that you can use as well is to try and contact the ISP or host of their particular website which you can sometimes just simply put in the request to get their contact details for and then the ISP will comply with that and then forward it on to you. Obviously, you need to demonstrate the fact that you are an intellectual property holder and the possible infringement has occurred so backup your request. In some instances, you can also get us a subpoena to force the ISP or host to tell you who exactly is behind that particular website as well.

Matthew Lee: Otherwise, there are some other things that you can do, which is to take action through third parties. Well, I've got some screenshots here of Amazon Brand Registry, the Apple iTunes Store, and also of Google and a page that you can launch some inquiries there that can search your property. Now, in the case where you can't readily get in contact with the infringing party, especially again, if they're overseas and you haven't been successful with finding their contact details through other means. You can take action if they happen to have their product hosted on a third party website such as Amazon, Google or iTunes.

Matthew Lee: So what you can do is that they have facilities where you can say that I'm the registered trademark holder or the intellectual property holder of a particular piece of IP. It's being infringed by this product, which is being hosted on your service and could you please take it down? Amazon Brand Registry actually is a bit of a proactive service where you can preemptively register your trademark. And they will then use the system to monitor for instances of trademark infringement and they like to better help you have your goods to prevent infringement of your goods and services on Amazon itself as well.

Matthew Lee: But those are the options and again, there's other instances of other platforms such as YouTube and Twitch, etcetera, etcetera, where if you have copyright material, then you can also get that taken down through that particular process. So think about some of the third parties you can contact. The other option that you can use outside of the hosting platforms here, is that you can also in some instances, contact the merchant services such as PayPal and the like and say that again, this particular website is using PayPal. It's infringing my intellectual property, can you please stop receiving payments or facilitating payments to

this particular domain or websites. And in some cases, they'll also comply with that as well. If you can't necessarily get the website taken down, it's almost the same thing. And it's almost as effective because they won't be able to receive payments anymore through those third party merchant services too, so that's another option that you can take.

Casey Martone: We have a question Matt, what do you do when someone infringes your copyright? And I suppose we're talking very generally about intellectual property of which copyright isn't one. But you would obviously apply each of these steps as much as you possibly can for patents, trademarks, designs, and some instance, patents, probably are little bit hard and copyright.

Matthew Lee: That's right. I think actually probably the more common types of infringements, online infringements I would say would be on the trademark and copyright spaces. So exactly the same for copyright, do all of these steps and for potential copyright infringement. So again, find out what the situation is and with that Siege Sloth Games example before, that was partly a copyright type of case as partly a trademark case because it's a logo as well. But it's very, very much a similar situation. So if somebody has got, say a piece of artwork and they've reproduced it on their website, get the facts, think about when you want to pursue it, contact them because sometimes it's maybe an innocuous case of copying, and they'll take it down immediately.

Matthew Lee: And again, that's the best outcome for you because the infringing material is no longer online. And then if they don't necessarily, I guess acquiesce to your request, then you can start to take those other steps, such as contacting the third parties to get them take it down or actually launching some kind of formal infringement action instead, through legal mechanisms too. It's exactly the same for copyrights as opposed to the other types of intellectual property. Thanks for that question.

Casey Martone: Just the other thing I just want to touch on briefly before we move on Matt is, copyright and trademark content coming into the country. You and I had the opportunity to meet with the Australian Border Force team a few months back. And they also have a register and that if you're noticing that you have a trademark in Australia, and you're doing obviously very well, you can actually register that trademark with the Austrian Border Force. If you are noticing infringing products being bought into the country, there are steps in which Border Force can take to seize those goods and then just drop that infringing content or assets coming into the country. There's a bit of information on our website about that also.

Matthew Lee: Yeah, so again, this will be a little bit I guess, more applicable to those people I guess in this session, if you might be working on a particular piece of artwork or copyrighted or a digital piece of IP which is applied to a product say a t-shirt and the like and people happen to be selling that back into Australia as well. As Casey mentioned, again, you can contact Border Force to say that you are the

registered intellectual property holder or the intellectual property holder. If you notice any of these infringing articles coming through, they'll be able to seize those at the border as well.

Casey Martone: We've also just had one other quick question which we are unable to answer with any definitive response at this point. What are the costs involved to register with the Australian Boarder Force? If you search on the Board Force website, intellectual property, I think there is a registration fee from memory, it may only be approximately \$100, but do check with them. The border force website will have that information available for you. Let's press forward.

Matthew Lee: All right. So the last thing that you've got is that again you've launched your product, you've dealt with the copycat people who have tried to steal your success and now you want to actually go ahead and actually sell into those other overseas markets instead as well. You want to go and take your technology overseas, there's some things to consider before you actually go and break into this market. Now all of the things that we've been talking about before are generally applicable under Australian law. And unfortunately, there's no such thing as a global IP legal system.

Matthew Lee: However, we do have plenty of similarities with a lot of countries overseas due to some of the treaties that we've negotiated. So things like copyright, for example, are going to be recognised in much the similar manner in most jurisdictions all over the world. Where you just simply create the copyrighted work and it's applied automatically without a registration process. However, there are some subtle differences depending on where you decide to go and the way that they treat technology in particular digital technology as well. We just want to highlight a few of these differences just so that you can be aware.

Matthew Lee: And again, this is not by no means a comprehensive list. We encourage you that if you decide to go to a particular market to export your technology or take it into ... And customers or perhaps maybe look for other expertise in your development and you want to expand your operations, you find the legal advice to give you the exact situation on the ground as well. So the three major markets we want to have a look at briefly is China, United States and European Union, which is going to be having a focus on Germany as well.

Matthew Lee: China is a big market for Australian exporters to go into and break into Asia as well as being a big market by itself as well. They have particular restrictions on technology and the way that it's handled. One example is that with copyrights and this also applies similar to the United States as well. As we mentioned before, there's no requirement for you to register copyright. However, there is a registration process for copyrights in both of these jurisdictions. And the reason they have that is that if you want to actually enforce copyright and in the Chinese example, if you wish you want a license, your technology or license that copyright out, it's often a good idea to go get that copyright registered.

Matthew Lee: Because it makes it impossible and just allows you, it opens up the possibility of much higher damages, if you want to take action later on for copyright infringement. It also provides us an evidentiary base because you register the copyright, it's given a date at the point of registration. And if infringement happens after that particular date it's very easy to prove that say, "Look, I've got an official date of when my copyright existed." This infringement that code later on, it's much easier to demonstrate that you are the owner of that particular copyright and therefore get it through the courts in a much more efficient manner too. Also with China, they have some funny restrictions we can say that, but they have some unusual restrictions with technology importation, when it comes to digital services as well. These are fairly new laws and again, this is something that people were trying to work with at the moment. And it revolves around the way that you deal with technology import contracts.

Matthew Lee: If you happen to take some intellectual property with saying a software product into China, and you have a patent over there, which you want to license to as well, is that if the licensee which is the person on the ground in China makes improvements to that technology, then they will own the improvements so that technology themselves under these provisions as the way it stands at the moment. There aren't any cases to actually say that this is going to be the case, which is why I said that it's an unusual situation, and people are still trying to work out the effect of it. But on paper, that seems to be what it suggests too.

Matthew Lee: And that's a pretty tricky situation to go around, because, again, if you want to have technology and have it developed, the last thing you want to do is to lose control over that. But it seems to be what this law is suggesting that will happen to those in particular improvements as well. And if you have a contract which tries to prevent this from happening, in some cases that contract may not be enforceable. It may actually be void because that law will actually surpass the contract agreement that you have as well. So again, it's something that you might want to seek advice with, if you happen to go down that route.

Matthew Lee: Turning to the United States, we have the concept for digital platforms called Safe Harbour Provisions. Now, when we talk about safe harbour, we're talking about platforms such as YouTube, or Twitch or the like, which allow people to upload third party content to a particular platform, host their content, and it is as given out to other people as well. So when you're watching the video, again, on YouTube, you're all generally watching something that somebody has uploaded, even though you're going to the YouTube website to have a look at it.

Matthew Lee: Now, if somebody uploads intellectual property infringing content, say for example, it breaches copyright, if I upload the latest episodes of Game of Thrones to YouTube, for example, then technically speaking, YouTube is the one that's providing that copyright, content to you as the host provider. Now, is YouTube the one at fault here? Well, arguably, it's really the person who uploaded that video in the first place. But again, in terms of the eyes of the law, it's the person who's actually providing the content. However, there are

exceptions to this to protect platform providers, and those are called Safe Harbour Provisions.

Matthew Lee: In Australia, if you happen to be a cultural institution and educational institution or something of a similar ilk, then you are exempt from being liable for those third party infringement, which are uploaded as well as if you take the necessary steps to take it down. Similarly, YouTube, if we mentioned before, has the ability to take down infringing content as well. The big difference with the United States is that in Australia we do not provide an exception to people using the platform for commercial purposes. In the United States, they do which is why YouTube and quite a few of those other services are hosted in the United States with their servers as well, because they have the exception and they can't be prosecuted for having that third party content uploaded to their system as well.

Matthew Lee: So again, it's an interesting difference to note. Finally, if you go over to the, to the European side, and Germany in particular, they have a slightly different way of treating copyright. Copyright is intrinsically linked to the author in Germany under their particular copyright law too. The situation is that if you go to Germany and use a developer to help you with your software development there, as we mentioned earlier in the piece, if you are on their employment contract, the employment contract means that the IP would normally resolve and go straight to the company and the company would own the IP.

Matthew Lee: It's not the case when you use German developers, because the German developer will always be tied as the owner of the IP and that can be never taken away under German copyright law. Instead, what happened is that the employer gets an exclusive license to use the software. But it's, again, something that you need to consider, especially if you want to then transfer that technology to another company as part of an acquisition process or some other type of thing that you might want to do too. And one of the ownership considerations as part of that particular development arrangements. It just shows you that the way that you actually take your technology overseas and the types of actions you have, can be different depending on the country you go to and the particular laws that they have in each of those countries.

Matthew Lee: Okay, so that basically brings us to the end of the session today as well. I know that there's just a few minutes left before we have to wrap up. I just want to highlight that all the information that I've presented today is part of a resource on our website called IP for Digital Business. Basically the same as the session. So it's all hosted the ipaustalia.gov.au/digital.

Matthew Lee: There are a number of different topics here all split up into the different stages of your business, whether you will be starting out with an idea developing and growing it and take it to the market. And there's also plenty of other topics which we haven't covered such as how domain names are treated in relation to trademarks, things about cyber security and physical security as well to protect

your IP and the like as well. I encourage you to have a look at that domain and our website for more information on how to protect your digital intellectual property as products and services too.

Casey Martone: Before we close out this session, we do have a few questions which I'll ask you. But for anyone who obviously didn't want to hang around, maybe a lunch break is up and you've listened to us for half an hour, we will be sending those resources that Matt sent. That Matt mentioned earlier and we'll also have a short survey and that will be emailed to you. We'll be so grateful if you could please give us your honest feedback. And if you like what we did tell us. If you feel that there's some spaces that we can improve, we'd love to know. A large portion of what we do here at IP Australia is try and develop educational resources to help Australian business, understand, apply and manage their IP. And so if we can in any way help you do that better, we'd love to know about it so we can build that into our future work program.

Casey Martone: Okay, just before we close out session, I've got a question here. Can IP infringement be applied to basic things like HTML code or even layouts on your website or an app?

Matthew Lee: Yes, it can. So copyright is as an area which will apply to these particular types of things. As I mentioned before, code and that includes HTML code is protected by copyright. However, if it's only specifically about HTML code, again, it's going to be the way that the code is actually written out which should be protected and then it's quite easy to get around, simply because there's many different ways to have the same look and feel of a web page written in slightly different HTML code, or perhaps as slightly written in different way, as well. The code is protected by copyright.

Matthew Lee: Now, in terms of the actual layout, again, if it has a particular visual, if it can be characterised an artistic work, then that can also be predicted by copyright. But what is interesting in these instances is that in some jurisdictions, for example, the US is obviously the most popular markets for a lot of digital companies and services as well is that, you can get a thing over there called utility patents, which is slightly similar to the way that we have innovation patents here, but they protect user interfaces, and that includes the particular appearance of websites.

Matthew Lee: So I think Google phone memory has a patent on their search interface, which is that blank white screen, the Google logo and a single search bar in the middle of it with no other types of interfering text. Apple has some protections on its interface, especially on its iPhone products and the like as well. And so yes, you can have those interfaces actually protected by this utility patents in the US as well. So it's something to also keep in mind, even if you don't want to get protection for your own interfaces is to see whether there's something out there already, which has that protection there in the first place.

Casey Martone: Right. So Matt to another question has come through if someone decides to protect a software under patent or they have a software that is applicable to patent, are the updates on new versions of that particular software protected as an extension under the pre existing patent? Or would you have to update the patent or apply for a new patent? I'm fairly confident you can update patent, Sophie, with that I've said that.

Matthew Lee: Well, there are certain ways you can update patents up until a certain stage. So I guess the answer to this question is that depends. Generally speaking, the way that patents operate is that you have a section of the patent application called the claims, and the claims sets up the legal monopoly that you have for that particular patent. And that's generally an expression in words of saying I have a product or invention, which is a method of doing X, and that method involves this particular step followed by this particular step, such as retrieving data from a database, passing the database through a language filter, the language filter then sending the data to a hard drive doing a comparison step with something etcetera, etcetera, etcetera.

Matthew Lee: The way that your claims are written will determine exactly what level of protection that you have and what it covers. If you make an improvement to your particular product and it's covered under the scope of that original protection, then there's nothing else that you need to do, because it's already there. However, in many instances you'll come up with a new feature or a new improvement later down the track and it's not covered by that particular patent in which case there are a few other options that you can do. Sometimes, yes, it's worthwhile filing a new patent, and there might be strategic reasons for doing that as well. Otherwise, you can also file what's called a patent of edition, which allows you to have those features incorporated and basically extend the protection that you have with your original patent through what's called a patent of edition.

Matthew Lee: There are some details on the website, a little bit about that, it is a bit of a technical field, so I won't go into too much detail. But yes, you do have those options and probably a good idea to seek legal advice though because a lot of people will actually file a new patent because there are specific reasons for doing so, such as if you want to go and use that as a basis for taking your product into particular overseas markets and the like as well. So there's a lot of variables at play.

Casey Martone: I think the number one thing there is that when you are working with the patent attorney to draft that patent specification, is that you give your attorney as much information about what you're doing now, what you're doing in the next couple of months, and even the in next couple of years so they can actually help prepare that patent filing strategy for you and with you so that you can get the best, I suppose, baking your patent application.

Casey Martone: All right, gang, so that's where we're going to close out today. I want to thank everyone who obviously attended today's seminar. If anyone would like to obviously get in touch with us, and we've got our contact details on line. And we also have a fairly active Facebook page. And if you've got any further questions, you may certainly connect through our call centre. The number there is one 1300 65 1010 and the team will direct any inquiries that we receive and that we can answer through to our team.

Casey Martone: Thank you very much again, we will obviously email slides and a survey and we hope you will have a very enjoyable rest of your day. Thanks Matt, again, for hosting this seminar.

Matthew Lee: Now worries. Thanks for joining us.

Casey Martone: Goodbye everyone.