Rights and Ownership online

COMP1205 W9
Su White

http://www.edshare.soton.ac.uk/9939/
Acknowledgements

• Sarosh Kahn and Laura German provided some of the basic material for this set, along with some structure.

• Those slides have been modified and various additions and alterations made

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Indicative content

• This material is designed to act as a guide
• Further independent research will be triggered by:

1. The contents of the case study exam
2. The outline of the legal stage test

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Some parts of the law

• Are sufficiently dry, that they are best studied by yourself
• They do not make good lecture material!
Why this matters

• Its part of the syllabus
• We expect you to become ‘educated’ and well informed
• We will test you
  – MCQ test after Christmas
  – Open Book exam
• You may want to have the edge in a competitive interview
• You may find it interesting!
• Your degree is accredited by the BCS – ref code of practice

http://www.edshare.soton.ac.uk/9939/
Topics:

Defamation
Hate Speech
Harassment

Licensing,
Criminality,
Copyright and patent

http://www.edshare.soton.ac.uk/9939/
Topics to consider

1. Should Web Access be a Human Right?
3. Copyright Infringement.
Defamation

Publication by which other persons are likely to be induced to shun, avoid, ridicule or despise him

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Berezovsky v Forbes, Inc 2000

One of the most important cases in the UK tackling the issue of online defamation involved Russian businessman, Boris Berezovsky.

He wanted to bring proceedings against US magazine Forbes in the UK.

- The publication made remarks about his links to the mafia in Russia.
- The vast majority of copies sold were sold in the US (only 0.25% in the UK).
- The claimant lived primarily in Russia but he wanted to bring his case in the UK.

‘Publication a two way process’.

‘Lex loci delicti... wherever harm has occurred those who are victims of the harm may raise an action’.

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Godfrey v Demon Internet Services
2001

Despite takedown request defamatory remarks remained accessible for two week period

Although Demon not publishers, liable for negligence in failing to remove content after notice of its existence wrt Defamation Act 1996

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Defamation Act 1996, s1(1)(b) & (c)

Responsibility for publication.

1. In defamation proceedings a person has a defence if he shows that —

   - (a) he was not the author, editor or publisher of the statement complained of,
   - (b) he took reasonable care in relation to its publication, and
   - (c) he did not know, and had no reason to believe, that what he did caused or contributed to the publication of a defamatory statement.

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We need to be aware of EU as well as UK Legislation

Most large companies have legal departments
- As a BCS member you are entitled to legal advice

But...
- Also sign up to a code of professional conduct

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EU E-Commerce Regulations

• Developed 2002
• Means of harmonising
  – The approach with respect to intermediary liability
  – For materials hosted and passed over them
    European Directive measures would
    Be harmonised all across Europe
    and in turn
    Bring confidence to all individuals across Europe

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EU regulations – where do they impact on the UK perspective?

EXAMPLES..
Mere conduit

(1) Where an information society service is provided which consists of the transmission in a communication network of information provided by a recipient of the service or the provision of access to a communication network, the service provider (if he otherwise would) shall not be liable for damages or for any other pecuniary remedy or for any criminal sanction as a result of that transmission where the service provider—

(a) did not initiate the transmission;
(b) did not select the receiver of the transmission; and
(c) did not select or modify the information contained in the transmission.

(2) The acts of transmission and of provision of access referred to in paragraph (1) include the automatic, intermediate and transient storage of the information transmitted where:
   (a) this takes place for the sole purpose of carrying out the transmission in the communication network, and
   (b) the information is not stored for any period longer than is reasonably necessary for the transmission.
Caching

Where an information society service is provided which consists of the transmission in a communication network of information provided by a recipient of the service, the service provider (if he otherwise would) shall not be liable for damages or for any other pecuniary remedy or for any criminal sanction as a result of that transmission where—

(a) the information is the subject of automatic, intermediate and temporary storage where that storage is for the sole purpose of making more efficient onward transmission of the information to other recipients of the service upon their request, and

(b) the service provider—
   (i) does not modify the information;
   (ii) complies with conditions on access to the information;
   (iii) complies with any rules regarding the updating of the information, specified in a manner widely recognised and used by industry;
   (iv) does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information; and
   (v) acts expeditiously to remove or to disable access to the information he has stored upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a court or an administrative authority has ordered such removal or disablement.

Hosting
Where an information society service is provided which consists of the storage of information provided by a recipient of the service, the service provider (if he otherwise would) shall not be liable for damages or for any other pecuniary remedy or for any criminal sanction as a result of that storage where—

a) the service provider—

(i) does not have actual knowledge of unlawful activity or information and, where a claim for damages is made, is not aware of facts or circumstances from which it would have been apparent to the service provider that the activity or information was unlawful; or

(ii) upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information, and

(b) the recipient of the service was not acting under the authority or the control of the service provider.
CyberPaternalism

- Berezovsky – ‘No reason why cyberspace should be treated differently’.

- Dow Jones – Would be wrong to treat dissemination via the Web differently to traditional publishing.

- Murray – Lack of understanding as to the Internet.

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What do you think?

- E.g. super injunctions
- Twitter ‘defamation’ or harmless/inevitable gossip?
- Lord McAlpine?

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Harassment (I)

Offence of harassment.

(1) A person **who pursues a course of conduct** in breach of section 1 is guilty of an offence.

(2) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding level 5 on the standard scale, or both.
Harassment (II)

STALKING

IN REAL LIFE

ON FACEBOOK

VIEW SARAH'S POOL PARTY ALBUM...

CREEPY

SOCIALLY ACCEPTABLE

endlessorigami.blogspot.com

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New law to tackle stalking introduced

Stalking has become a specific criminal offence in England and Wales in a move to improve victims' safety.

The government has introduced two offences, stalking and stalking involving a fear of violence.

Campaigners had long claimed dealing with stalking under existing harassment laws was inadequate. In Scotland stalking was made an offence in 2010.

A parliamentary inquiry earlier this year found that about 120,000 victims, mostly women, were stalked every year.

However only 53,000 incidents are recorded as crimes by police - and only one in 50 of these reports leads to an offender being jailed.

Lorna Smith was killed on 2 February last year.

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The Intellectual Property Office can help you get the right type of protection for your creation or invention.

Intellectual Property (IP) results from the expression of an idea. So IP might be a brand, an invention, a design, a song or another intellectual creation. IP can be owned, bought and sold. But how can that help you? See Why use IP?

The Intellectual Property Office is part of the Department for Business, Innovation & Skills.
Copyright, Designs and Patents Act 1988

• The Copyright, Designs and Patents Act 1988 is the current UK copyright law. This act gives the creators of literary, dramatic, musical and artistic works the right to control how their material may be used.

• The Act details what types of work can be protected and the rights that a person has.

• This Act is an extension to the previous copyright laws covered by the Copyright Act 1956, to encompass a larger scope of work.

• Since 1988 the Act has had several amendments made to it.

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What is copyright?

• Copyright, unlike patents or trademarking is an automatic legal process which comes into effect as soon as a product or piece of work is created.

• To qualify, said product or piece of work must be original and 'exhibit a degree of labour, skill or judgement.'

• It is interesting to note that copyright comes into effect UPON PUBLICATION of the work, so if someone steals your idea and gets it published before you, you would be in breach of copyrighted work. (Copyright does not protect intangible things such as ideas, and there is no way to prove something ownership of something intangible).

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What is copyright?

• Copyright is a law that gives the author of certain types of work exclusive rights for a period of time.

• It automatically covers your work, no need for registration

• Copyright belongs to its author, but it can be sold or licensed to anyone.
  • Once sold, the owner loses all rights
  • Licensing gives certain rights to the licensees, even though the copyright is still the property of the owner.
  • Licensees can also grant licenses to other people. Licences can be granted forever or for some fixed period.

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The Copyright, Designs and Patents Act 1988 section 1(1) states that copyright subsists in accordance with Part one of the Act in eight categories of works.

- Original Literary Works
- Computer Programs/ Databases
- Original Dramatic Works
- Original Musical Works
- Original Artistic Works
- Original Films
- Sound Recordings
- The Typographical Arrangement of Published Editions

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On the Web we are all used to hearing about widespread copyright infringement, particularly of music and films … But piracy is not new!

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Copyright Law

• Under official government legislation:

  – "Where a literary, dramatic, musical or artistic work [or a film,] is made by an employee in the course of his employment, his employer is the first owner of any copyright in the work subject to any agreement to the contrary."

• THIS INCLUDES SOFTWARE. This is very important for people with a future career in the IT industry, as if you create an original program under the instructions of your employer, you have NO claim in regard to the copyright of the work. This can, however, be re-negotiated before you start your employment.

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Software copyright

• UK copyright law was amended in 1992 to include computer programs under the category of literacy work.

• Although there is no formal definition of what constitutes as a computer program, the following are covered under UK law:
  
  – Source code
  – Machine code
  – Firmware
  – Design materials
  – Functional specification
Software copyright

• A license to use a program is implied in the normal contract of sale, if no express provision is otherwise made.

• Stature promises certain acts with regards to computer software as a basic right, which cannot be overwritten by any agreement, and includes:

  – Back-up of licensed software
  – Decompiling software (reversing the process of compiling)
  – Observing and testing software to determines idea, principles and functionality
  – Editing software for the purpose of bug fixing
Copyright Infringement

Copyright can be infringed in two ways:

• Primary Infringement
  – Anyone who performs an exclusive right of the owner, without permission.

• Secondary Infringement
  – Possessing, spreading or making copies
  – Willingly permitting people to make copies

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Copyright Infringement

CDPA 1988, s.16(2): “Copyright in a work is infringed by a person who without the licence of the copyright owner does, or authorises another to do, any of the acts restricted by the copyright.”

Online Proclamations:

“I don’t own the rights to this – all credit goes to the author 😊！！！”

- That’s nice, but it’s still infringement!

Permitted Acts

http://www.edshare.soton.ac.uk/9939/
The UK Copyright Service website

http://www.copyrightservice.co.uk

http://www.edshare.soton.ac.uk/9939/
“The Honest Musician's Fear of Accidental Plagiarism”

Available on BBC iPlayer
http://www.bbc.co.uk/programmes/b00xw21s

“As Noel Gallagher put it rather bluntly when confronted about his musical influences: "There's twelve notes in a scale and 36 chords and that's the end of it. All the configurations have been done before."

Singer and songwriter Guy Garvey [from Elbow], with the help of fellow songwriters Sir Tim Rice, Paul Heaton and John Bramwell, explores the legal pitfalls that can befall the honest musician and how to avoid them.”

(- BBC http://www.bbc.co.uk/programmes/b00xw21s.)
Still available – thank you BBC!

http://www.bbc.co.uk/programmes/b00xw21s
http://www.edshare.soton.ac.uk/9939/
SOLUTIONS?
Creative Commons

“Share, Remix, Reuse – Legally”

(http://www.creativecommons.org.uk/)

• Creative Commons licensing is not an alternative to copyright law, but is compliant with the law!
About The Licenses

What our licenses do

The Creative Commons copyright licenses and tools forge a balance inside the traditional “all rights reserved” setting that copyright law creates. Our tools give everyone from individual creators to large companies and institutions a simple, standardized way to grant copyright permissions to their creative work. The combination of our tools and our users is a vast and growing digital commons, a pool of content that can be copied, distributed, edited, remixed, and built upon, all within the boundaries of copyright law.

License design and rationale

All Creative Commons licenses have many important features in common. Every license helps creators — we call them licensors if they use our tools — retain copyright while allowing others to copy, distribute, and make some uses of their work — at least non-commercially. Every Creative Commons license also ensures licensors get the credit for their work they deserve. Every Creative Commons license works around the world and lasts as long as applicable copyright lasts (because they are built on copyright). These common features serve as the baseline, on top of which licensors can choose to grant additional permissions when deciding how they want their work to be used.

A Creative Commons licensor answers a few simple questions on the path to choosing a license — first, do I want to allow commercial use or not, and then

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Creative Commons

- What is it?
  - A non-profit organisation devoted to “expanding the range of creative works available for others to build upon legally and share”.

- What does it do?
  - The organisation has released a number of copyright-licences known as “Creative Commons licences” for free public use.

- Who uses these licences?
  - Wikipedia is the most well known user.
  - Flickr, DeviantArt, xkcd and even Nine Inch Nails are also all users of Creative Commons licences.
The Licences

There are 4 original licenses:

**Attribution (by)** – “You let others copy, distribute, display, and perform your copyrighted work - and derivative works based upon it — but only if they give credit the way you request.”

**NonCommercial (nc)** – “You let others copy, distribute, display, and perform your work - and derivative works based upon it - but for noncommercial purposes only. “

**ShareAlike (sa)** – “You allow others to distribute derivative works only under a license identical to the license that governs your work.”

**No Derivatives (nd)** – “You let others copy, distribute, display, and perform only verbatim copies of your work, not derivative works based upon it.”

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Combination Licenses

- These licences can be combined to create different licenses:
- Since NoDerivatives and ShareAlike licenses are mutually exclusive, that means there are 11 valid licenses.
- CC found that 98% of users wanted Attribution, so they restricted it to six main licenses:

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What can they apply to?

- A creative commons license can apply to anything that is protected by copyright law.
- Therefore a CC license can be applied to books, websites, blogs, photographs, films, videos, songs and any other audio and visual recordings, for example.
- The licenses *can* theoretically be applied to Software or source code, but this is not recommended by CC since the licenses were not designed to apply to them.

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Embedding creative commons licences into digital resources - SCA briefing paper

Creative Commons licences (also referred to as CC licences) can facilitate the copying, reuse, distribution, and in some cases, the modification of the original owner’s creative work without needing to get permission each time from the rights holder.

Overview of creative commons licences

There are a number of different types of these licences. Across the UK’s public sector, CC licences are increasingly used to provide access to cultural heritage and teaching, learning and research outputs. Creative Commons licenses are also helpful for public sector bodies who wish to use third party resources which place the least restrictive licensing terms on the user.

This briefing paper accompanies further information on Creative Commons licences (PDF), produced by the Strategic Content Alliance, which demonstrates how the terms of Creative Commons licences can be embedded into a variety of resources, such as PowerPoint, images, Word docs, elearning resources, podcasts and other audio visual resources.

Benefits of embedding CC licences

http://www.edshare.soton.ac.uk/9939/
http://www.behold.cc

Find images tagged with [], that are free to use [and modify] [commercially].

E.g. eagle, rain, beetle, san francisco fog, smile, sunflower, mercedes, polar bear, skyscraper

New free tool! Safeguard your use of free images with ImageStamper

Searching 1,040,000 high quality images from Flickr

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PATENTS
What is a patent?

- A patent is a license granted to an inventor, which gives the inventor the legal right to stop anyone else from making, using or selling the invention without his or her permission.[1]

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Patents

Give the inventor the right to stop others from
• exploiting their invention
• without prior permission
• for a fixed period of time typically
  – 20 years in the UK
  – 17 years in the USA.

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The Patent Office, the administrator of patents and trademarks in the UK, was established in 1852 by the Patent Law Amendment Act.

Originally it was established to handle only patents however later in 1875 it was expanded to include industrial designs.

The Patent Act of 1977 updated these standards of the patent process.
What can be patented?

• For an invention or idea to be patented it must
  
  – Be capable of industrial application (invention that “can be made or used in any kind of industry, including agriculture”)

  – Must involve an inventive step (one which “is not obvious to a person skilled in the art”)

  – Be an invention that is unique
What cannot be patented?

• In comparison, there are a number of forms of invention that cannot be patented:
  
  – Mathematical or scientific theories, methods or discoveries
  
  – A way of doing business
  
  – Method of medical diagnosis or treatment
  
  – Computer programs or a presentation of information or an artistic work
  
  – Any inventions that are “against public policy or morality”

• The validity of a patent lasts for 5 years, after this time it must be renewed annually allowing a patent to stay active for a maximum of 20 years[1]


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Patents

So...Invention

• Can only be patented if
  – it is new and demonstrates an inventive step
  – has a practical application
  – Isn’t in an excluded area.

Patent office will search

• Existing patents and documentation
If anything is found

• The application will be rejected.
Patents do not

• Patents do not automatically cover inventions in the way copyright covers works.

Patents are issued by the state

Each patent only covers the country it was issued in

In every country that the inventor wants protection

It must be applied for

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Patent Infringement

• similar penalties to copyright infringement
• Compensation needs to be paid to the owner.
• The fine will usually take into consideration
  – The amount the infringer would have paid to patent the design himself.
  – If it can be proved that the person knew of an existing patent they will have to pay treble the amount.
PERSPECTIVES

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Licences

• “Click-wrap” licences;
• unequal bargaining power;
• Does anyone actually read them?
• Can terms be changed unilaterally?

http://www.edshare.soton.ac.uk/9939/
‘Hans Rosling’s New Insights on Poverty’


Available online – TED Talks.

Criminality

Some examples:

• Identity theft;
• Fraud;
• Organised Crime (i.e. paedophile rings);
• Extremist Groups;
• Malware ...

Serious Organised Crime Agency

http://www.soca.gov.uk/

‘Smart phone malware highlighted by Get Safe Online Week ‘

Further Info

- The UK Copyright Service website: http://www.copyriightservice.co.uk/