Rights and Ownership online

COMP1205 W9
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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

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

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

Topics:

Defamation
Hate Speech
Harassment

Licensing,
Criminality,
Copyright and patent
Topics to consider

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

Berezovsky v Forbes, Inc 2000

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

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

- The publication made remarks about his links to the mafia in Russian.
- 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’.

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.

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
EU E-Commerce Regulations

• Developed 2002
• Means of harmonising
  – The approach with respect to intermediary liability
  – For materials hosted and passed over the network

European Directive measures would be harmonised all across Europe.

Bring confidence to all individuals across Europe.

E-Commerce (EC Directive) Regs 2002, Reg 17

Mere conduit

(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.

The acts of transmission and of provision of access referred to in paragraph (a) include the automatic, intermediate and transient storage of the information transmitted where:

(i) the acts take place for the sole purpose of carrying out the transmission in the communication network, and
(ii) the information is not stored for any period longer than is reasonably necessary for the transmission.

E-Commerce (EC Directive) Regs 2002, Reg 18

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:

(i) the information is the subject of automatic, intermediate and temporary storage where:
  (a) it was stored for the sole purpose of caching; and
  (b) the service provider:
    (a) 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

(ii) the service provider:

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

EXAMPLES...

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.
What do you think?

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

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)

New stalking legislation 2012

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.
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).

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.

Copyright Law

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.

<table>
<thead>
<tr>
<th>Original Literary Works</th>
<th>Original Dramatic Works</th>
<th>Original Musical Works</th>
<th>Original Artistic Works</th>
</tr>
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<tbody>
<tr>
<td>Broadcasts</td>
<td>Films</td>
<td>Sound Recordings</td>
<td>The Typographical Arrangement of Published Editions</td>
</tr>
</tbody>
</table>

Exclusive Rights of the Copyright Holder

The Copyright, Designs and Patents Act 1988, Section 16.

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

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.

Software copyright

• UK copyright law was amended in 1992 to include computer programs under the category of literary 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.
- Statute 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

Copyright Infringement

CDPA 1988, s 14(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.copyrightservice.co.uk

"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
Creative Commons

“Share, Remix, Reuse – Legally”

- Creative Commons licensing is not an alternative to copyright law, but is compliant with the law!

http://www.creativecommons.org/licenses/

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.”

Combination Licenses

- These licenses 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.

http://www.creativecommons.org/licenses/
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.

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

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


Mixter

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

http://www.behold.cc

PATENTS

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

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]
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

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

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.

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

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.

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

Criminality

- 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’

http://www.edshare.soton.ac.uk/9939/
Further Info

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