

Research Skills

Lecture 16: Intellectual Property Rights

<http://www.cs.bham.ac.uk/~jxb/rs.html>

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(Including material from Peter Hancox and Wikipedia)

Important IPR Issues

What is an Intellectual Property Right (IPR)?

IPR Legislation

The four main types of IPR:

- Copyright

- Moral rights

- Patents

- Trademarks

Plagiarism

Issues specific to the “digital age”:

- WWW content

- Digital copying

Valuation of Intellectual Property

What is Intellectual Property?

An intellectual property is any product of the human intellect that is unique, novel, and unobvious (and has some value in the marketplace).

Intellectual Property Rights (IPR) are concerned with the ownership and control of such ideas - the “intellectual output”.

Examples: ideas, inventions, expressions or literary creations, unique names, business methods, industrial processes, chemical formulae, computer programs, ...

It is an important issue in research, both because you must avoid infringing others' IPRs, while protecting your own rights.

There are controversial aspects, for example, patenting AI algorithms, patenting pieces of the human genome, trade-marking a colour (e.g., orange), trade-marking slogans, creating monopolies, ...

IPR Legislation

The idea of IPR legislation is to protect all owners of Intellectual Property.

It is a complex area, that is not always consistent across countries.

It is covered by both international and national laws. For example, the International Berne Convention for the Protection of Literary and Artistic Works (1886 onwards), and the UK Copyright, Designs and Patents Act (1988).

IPR can generally only be enforced through civil lawsuits, though some countries (e.g., France) have criminal penalties for “wanton infringement”.

Typically, IPR owners will sue for monetary compensation for past infringements, and seek injunctions preventing the defendant from engaging in future acts of infringement. Often the best defence is to challenge the validity of the claimed IPR (e.g., by showing that a patent does not satisfy the relevant requirements).

Copyright

The idea of copyright is that it provides protection to the authors of “original works of authorship” including literary, dramatic, musical, artistic, and certain other intellectual works, both published and unpublished.

Copyright is a commodity - you can own it and trade it.

It is initially owned by the author or creator. It usually lasts a long time, e.g. 75 years after the death of the author.

It can be transferred or traded, e.g. immediately passed to an employer, or given to a publisher in return for publishing it.

You may still be able to copy if you are careful. For example, the Copyright, Designs and Patents Act (1988) allows defences for using copyrighted material, such as “fair use for the purposes of criticism and review” and “insubstantiality”.

Copyright For WWW Pages

Everything has a copyright owner irrespective of whether or not there is a copyright notice attached.

The only absolutely infallible way to remove the copyright is to write something like: “I grant this work to the public domain”. (But if you do that, don’t complain when someone makes a minute change and sells your work for their profit.)

The main difficulties for copyright come with

- ease of copying
- speed of copying

Now communication is no longer largely paper-based, and old approaches to copyright are breaking down - but we don’t have new approaches in place.

If someone breaks your copyright, you could sue them - it could be expensive, but even if you don’t win, some mud tends to stick.

Technology is Faster Than Legislation

Some of you may have unwittingly broken copyright laws in recent days ...



Source: *Metro*. 30 October 2006, page 4.

How likely is it for individuals to be sued for such violations?

Moral Rights

In publishing, moral rights are:

- the right to have your name associated with something you write or produce
- the right to not have unauthorized changes made to your work
- the right to publish your work anonymously or pseudonymously

Preserving of your moral rights ensures that the integrity of your work is preserved, but some jurisdictions allow for the waiver of moral rights.

Moral rights are similar to copyrights. However, the United States does still not recognize moral rights as part of copyright law. Instead it considers them under other laws, such as defamation or unfair competition.

Moral rights are distinct from the economic rights tied to copyright. Even if an individual has assigned the copyrights to a work to a third party, they still maintain their moral rights to the work.

Patents

The idea of a patent is that it grants the owner the right to exclude others from making, using, offering for sale, or selling a particular new, useful, and non-obvious invention for a certain period of time (typically 20 years from the date of filing the patent application).

As with most other property rights, patents may be sold, mortgaged, assigned or transferred, licensed, given away, or simply abandoned.

Licenses can be sold to allow others to exploit the patented invention, e.g. by building and selling a patented device. The same patent licence can be sold to many other bodies, or (usually for a higher price) to a single body.

Often a new patent will build upon earlier patents. Having the right to patented improvement A of patented device D, does not give you the right to build the improved device D+A unless you also have the right to the unimproved device D.

Trademarks

The idea of a trademark right is that it prevents others from using a confusingly similar mark, but not to prevent others from making the same goods or from selling the same goods or services under a clearly different mark.

Trademarks are usually a name, word, phrase, logo, symbol, design, image, or a combination of these elements. There are also “non-conventional trademarks”, for example, a particular colour that identifies a brand (such as the particular shade of turquoise used on cans of Heinz baked beans).

Owners of trademarks that have been registered may commence legal proceedings for trademark infringement to prevent unauthorized use of that trademark.

Trademark registration is not required. However, an unregistered mark, or common law trademark, is protectable only within the geographical area it has been used, or areas into which its use may be reasonably expected to expand.

Plagiarism

“Imitation is the sincerest form of flattery”, but it is still plagiarism!

Plagiarism (from the Latin *plagiare*, “to kidnap”) is the practice of claiming, or implying, original authorship of (or incorporating material from) someone else’s written or creative work, in whole or in part, into one’s own without adequate acknowledgement.

The previous sentence was copied exactly from Wikipedia. Is it plagiarised?

Plagiarism is more than copyright infringement. In addition to violating the right of the copyright holder, it is dishonestly claiming credit for others’ work. In academia, plagiarism can result in severe penalties.

The obvious way to avoid plagiarism is to clearly cite your sources, for example by correct referencing.

Valuation of Intellectual Property

If Intellectual Property did not have a “value”, the whole issue of IPR would be irrelevant.

The obvious value of an IPR is the price someone is willing to pay for it.

Determining a sensible price involves estimating the likely income the IP will produce in the future. For example, how much profit you can expect to make by selling an item that involves a patented idea, compared with a similar item which does not incorporate that patented idea.

There are various risks and costs involved that complicate the valuation. The IPR may need to be defended, and that can be costly, e.g. in legal fees. The IPR may be judged invalid (e.g., in the process of defending it) or become obsolete (e.g., due to a better newer invention), rendering it worthless.