



# INTELLECTUAL PROPERTY AND COPYRIGHT

SUBMISSION 1

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## Introduction

For the purpose of this assignment, I am working for Gumtree Australia and will be reviewing their policies in order to answer the questions.

## Legislation Related to Intellectual Property and Copyright

The following is the legislation that seemed most relevant, and is not an entirely exhaustive list as the amount of related legislation seemed inappropriately long for this assignment.

### Copyright Act 1968

This act outlines who copyright is assigned to, and what those rights entitle that person or persons to. It defines what is covered under copyright law, and what the criteria is for something to be copyrighted.

It also covers what determines what use of a copyrighted material is considered copyright infringement and what use is *not* considered copyright infringement.

### Copyright Amendment (Online Infringement) Act 2018

This amendment to the Copyright Act 1968 grants copyright owners the right to request that a service provider be disabled in the event that they are infringing or facilitating infringement of the copyright.

### Copyright Amendment (Service Providers) Act 2018

This amendment to the Copyright Act 1968 defines what a “service provider” is, within the context of the act.

### Patents Act 1990

The Patents Act intends to provide a system that balances the interests of the owners, the users and the public. It defines what may qualify for a patent, who is assigned the rights. It also covers infringements. This is quite an extensive and thorough act with a lot of detail.

### Trade Marks Act 1995

This act defines what a trade mark is and what may not be used as a trade mark. It contains the criteria for application of trademark registration as well as cancellation and revocation.

## Designs Act 2003

This act specifies the rights of a registered design owner and what the criteria for becoming a registered design owner may be. It contains a list of criteria to determine the validity of a design to be registrable as well as details for what constitutes an infringement.

## Application of “An Introduction to Copyright in Australia”

An Introduction to copyright sets out who owns copyright. If Gumtree were to receive notice that a user has posted something which infringes upon a copyright, then Gumtree may refer to this document to check whether it meets the conditions for infringement.

It is also possible that a Gumtree user may post an item for sale which facilitates the circumvention of copyright, and in this case the document may be referred to as in most cases this will be considered illegal and Gumtree will be required to remove the listing.

## Copyright Legislation and Gumtree

### Infringement

- i. Gumtree’s copyright policy states that if a copyright infringement has been noticed by someone, they may report this and the listing will be removed by Gumtree. Infringement is also covered in the posting policy which states that it is the responsibility of the advertiser to ensure that content not only adheres to posting policy but also to Australian law. It is also covered in the Terms of Use.
- ii. In day to day work at Gumtree there are many listings created and removed. Generally speaking, most listings are perfectly legal and are people looking to make an honest dollar on items that they no longer have use for. Occasionally there will be users who attempt to sell pirated goods such as DVD’s and CD’s. These illegal transactions can often be difficult to detect at the time of the initial posting unless the images display very obviously looking counterfeit goods, however a lot of buyers often find that the goods may not function as intended and we encourage those buyers to contact Gumtree so that we can notify the offending user and suspend their account activity.

### Trademark Rights

- i. Gumtree’s copyright and IP policy covers trademark rights and recognizes the rights of trademark owners; allowing them to report a trademark infringement to Gumtree. It is also covered in the Terms of Use.
- ii. When Gumtree receive notification that a trademark has been infringed upon, we first check whether or not an infringement has actually occurred. We will search IPAustralia.gov.au to check that the trademark is registered and does not

belong to the advertiser. If it does not, we conclude that infringement has occurred and remove the item listing.

### Intellectual Property Owned by Gumtree

- i. Gumtree's Terms of Use express that Gumtree owns all rights to its own applications and that users may not attempt to alter Gumtree applications.
- ii. In day to day work, this generally isn't going to come up. If a user is found to be attempting to reverse-engineer Gumtree software or is infringing upon the rights of Gumtree in any way, legal action may be sought upon the offender.

### Recommended Changes to Gumtree's Copyright Policy

Gumtree does state very clearly that it recognizes the rights of copyright holders and will take action to enforce those rights. From the Copyright Policy is a link to a list on what may not be sold on Gumtree which includes many items which would infringe upon copyright law.

The problem as I see it is that the sale of counterfeit goods and otherwise infringing material is still always going to be a step behind because it is most likely going to go unnoticed until an unsatisfied buyer reports the sale, or someone recognizes the image of the product to be counterfeit or an infringement of some other kind.

I propose that extra user verification is to be performed where large amounts of similar items are being listed, for example a user who sells large amounts of DVD's. More personally identifiable information ought to be required and verified, so that if an infringement occurs, it is much more difficult for the offender to create another account and repeat the process. By requiring the extra verification up front, it will also deter anyone who is intending to use the service for illegal activity.

By enforcing some account restrictions in this way it will definitely reduce the opportunity for the sale of counterfeit and otherwise infringing goods.

### Procedure for a Reported Infringement

Where an infringement is reported to have occurred, Gumtree is required to take steps to verify the validity of the claim and determine that the advertiser is *not* the copyright holder. The following steps will be taken to check this.

- Receive infringement report
- Ensure that the Notice of Infringement Form has been correctly completed and signed
- Ensure that the Notice of Infringement Form has been completed by the owner(s) of the property rights

- Check the advertisement for possible infringement
- Check IPAustralia.gov.au for trademark and patent infringement

If it is determined that an infringement *has* occurred, the following steps will need to be taken by Gumtree

- The advertisement will be taken down
- The offending user needs to be notified of the infringement
- If it is not the users first offence, the account needs to be deleted or suspended
- All personally identifiable information for the user needs to be flagged and stored (to prevent another account being created)
- The person(s) responsible for the initial report needs to be notified that Gumtree has taken action
- Depending on the severity of the infringement, relevant authorities may be contacted within accordance of Gumtree's Privacy Policy

## Distribution of Revised Policy and Procedures

### Existing Staff

A meeting for existing staff members will be held so that any questions that may arise can be answered. Copies of the revised policy and procedures will be emailed ahead of time so that each staff member can take their own time to familiarise themselves with the changes and consider how the changed may impact them and give them time to formulate questions.

### New Staff

New staff members are taken through the policies and procedures that are already in place and the revised versions will simply take the place of the old ones. New staff members often have questions, so the opportunity for them to ask them needs to be considered.

### Management

Copies of the revised policy and procedures will be emailed to management, where they may familiarise themselves with the material and be given the opportunity to ask questions.

### External Stakeholders

Copies of the revised policies and procedures will be emailed to external stakeholders along with a brief description of what the changes might mean for them. Because not all stakeholders will be familiar with the language used in the documents, it is good to outline what those changes mean more specifically for them.