6G5Z1008 Professional Development  
Intellectual Property Rights & Electronic Publishing  
   
Intellectual property arises from the creative effort of people. The level of originality required for legal protection to be available, and the extent of protection varies according to right. In the software industry IPR are often the most important assets a company owns.  
   
The area covers:  
   
\* copyright  
\* trademarks  
\* patents  
\* passing off  
\* law of confidence  
\* design rights  
   
The different laws give different rights over different time scales, and there is some overlap between them.  
   
The law covering IPR is principally civil law.  
   
Introduction to Copyright Law  
   
‘Copyright protects the independent skill, labour and effort which has been expended introducing work and prevents others from to too large a portion of that skill, labour and effort.’   
​(Abbott & Pendlebury)  
   
‘...what is worth copying is prima facie worth protecting.’ ​​Justice Peterson, 1916.  
   
Copyright is the most commonly applied form of intellectual property rights.  
   
May cover a wide range of areas associated with computing including: software, designs, lists from databases, manuals etc.  
   
The area is becoming more difficult because of the increasingly complex nature of software and the inclusion of multimedia elements.  
   
Basic Provisions of Copyright Law  
   
Section refers to Copyright, Designs and Patents Act 1988, & 1992 EC Directive on the Legal Protection of Computer Programs.  
   
Copyright is said to subsist (ie exist) in these works by virtue of the Act:  
   
\* original literary, dramatic, musical or artistic works  
\* sound recordings, films, broadcasts or cable programmes  
\* typographical arrangements of published editions  
   
Certain qualifications must be met eg, author of the literary work must be a British citizen or UK resident, or the work was first published in the UK.  
A computer program is treated as a literary work for purposes of the act.  
   
Copyright exists by virtue of creating the copyright work. There is no requirement to register such works. The owner of the copyright has exclusive rights on certain restricted acts.   
   
Fixation needed - must be recorded in writing or other means eg if a recording of a jazz musician’s solo is taken then the soloist has the copyright in that work.  
   
What is the situation if I take a copy of a program in RAM and then delete the program in memory?  
   
Ownership/Authorship of Work  
   
The owner of the copyright is usually the creator of the work. However where a copyright work has been created by an employee during the course of his/her employment, the ownership of the copyright will usually rest with the employer unless otherwise agreed.  
Authorship is important because it controls the duration of copyright protection.  
   
The Act has clarified the position of computer-generated literary, dramatic, musical or artistic work. In such cases where there is no human author to the work, the author is person who has made arrangements for the work to come into existence ie the person who operates the computer or who manages the computer facility.  
   
Duration  
   
Copyright lasts for 70 years from the end of the calendar year in which the author dies. In the case of joint authorship, the period start is determined by the death of the last co-author. (70 year rule applies to original literary, dramatic, musical and artistic works plus films.)  
   
(Exceptions typographical arrangements & commercially exploited artistic works.)  
   
Restricted Acts  
   
The owner of the copyright has the right to:  
   
\* copy the work  
\* issue copies of the work to the public (including rental of copies of sound recordings, films and software to the public  
\* perform, show or play the work in public  
\* broadcast the work or include in a cable TV service  
\* make an adaptation of the work or any of the above in relation to an adaptation  
   
Infringement  
   
Copyright is infringed if a person other than the copyright owner does one of the restricted acts.   
   
This so called primary infringement is regulated by civil law.  
   
What about if I inadvertently take a copy of a program and then start to use it?  
   
There are exceptions to these primary infringements - see acts permitted by copyright legislation later.  
   
Secondary infringement occurs when the person who is infringing knows or has reason to believe that his/her actions involve infringement and there is some commercial dealing in the infringing copies.   
   
Examples of secondary infringement include:  
   
\* a person who sells or lets for hire an infringing copy  
\* possesses an infringing copy in the course of a business  
\* imports an infringing copy other than for private or domestic use  
   
Persons committing a secondary infringement may be liable to prosecution under criminal law.  
   
Remedies for Infringement  
   
If an action against an infringer is successful the owner of the copyright has several remedies:  
   
Usually an account of profits or damages will be awarded.  
   
Damages are not available if the defendant did not know or had no reason to know that the work was protected by copyright.   
   
There is an objective test for this,‘would a reasonable man, having knowledge of the facts known to the defendant, would have believed that copyright subsisted in the work’ Bainbridge  
   
Other remedies:  
   
\* an injunction preventing continued or anticipated infringement  
\* delivering up  
   
Moral Rights  
   
\* paternity right - right to be identified as the author of the work  
\* integrity right - right to object to a derogatory treatment of a work  
   
Above do not apply to software or computer generated work. There is also a right to object to falsely being identified as the author of a work.  
   
Acts Permitted by Copyright Legislation  
   
\* fair dealing  
   
\* copying done for private research or study, for criticism or review or to report current events are allowed  
\* students of computing may not however copy computer programs or manuals for private study (section 29 of 1988 Act)  
\* it is necessary to how much may be copied under the fair dealing exception  
   
\* back up copies  
   
\* it is not an infringement for a lawful user to take a back up copy for lawful use  
\* a clause in a licence restricting this is void, but only one back up may be taken  
   
\* transfer of works in electronic form  
   
\* if an original purchaser of a piece of software, X, sells it on to another person, Y, then Y has the same rights that X had when s/he purchased the software  
\* X is not allowed to use any copies of the software retained once it has been sold  
   
\* decompilation of software for interoperability  
   
\* arose from the EC’s desire to build a strong software industry, it protects individuals’ IPR, but allows for development  
   
\* the Act states it is not fair dealing to convert programs from a low level language to a high level language or incidentally in so doing to copy it  
\* however the Act does allow decompilation ‘if it is necessary to decompile in order to obtain the information necessary to create an independent program which can be operated with the program decompiled or another program’ (Bott et al)  
\* the decompilation must not be used for anything other than the permitted objective  
\* the right cannot be excluded  
   
\* error correction  
   
\* a program may be copied or adapted by the lawful user provided it is necessary for his/her lawful use  
\* specifically includes error correction  
   
   
Licensing and Assignment  
   
Licensing is a way of allowing others (ie those apart from the copyright owner) use of the work for all or a limited range of activities.  
   
The owner of the copyright may want a third party market and distribute the copyright work eg a computer game.   
   
The most common way for this to operate is for the third party to be granted an exclusive licence in respect of marketing and distribution.  
   
The purchasers of the computer game will acquire non-exclusive user licences. This type of licence allows more than one person to use the game. This the way in which most off-the-shelf software is controlled.  
   
Assignment is the transfer of ownership. All or part of the rights may be transferred by assignment.  
   
Assignment and exclusive licences must be written and signed to be effective.  
   
Future copyright is dealt with by the legislation.  
   
Assignment of future copyright can be made when employing a self-employed contractor or freelancer. To ensure that copyright on works created by contractor rest with the organization, an agreement relating to future copyright should be signed by the contractor.  
   
International Aspects of Copyright  
   
Bainbridge notes that the UK is a signatory to two international conventions which give reciprocal protection between members’ ie the Berne Convention and the Universal Copyright Convention.   
   
Some countries require that the ã symbol or the word ‘copyright’ be used. To be valid it must also have the name of the copyright owner and year the work was created.  
   
Copyright and Software (from Bainbridge)  
   
1988 Act places computer programs in the same category as literary works, though there is no definition of what constitutes a program.  
   
It is important to note copyright does not give its owner a monopoly in ideas, rather copyright protects the expression of ideas not the ideas themselves  
   
It may be difficult to determine whether copyright or patent law applies.   
   
In the case of hardwiring programs on chips, the legal position seems to be settling; these cases are covered by copyright rather than patent law.  
   
originality and storage  
   
\* does not mean the program must be novel or unique  
\* program must originate from the author and must have been produced as a result of a modest amount of skill, labour or judgement  
\* the requirement for storage is drafted in a broad way, should cover all magnetic and optical forms  
\* may be different for information held in volatile memory eg passwords  
   
preparatory and ancillary materials  
   
\* eg design material, specification, notes  
\* these are protected explicitly by the 1992 amendments (deemed to be literary works)  
\* must satisfy requirement to be original  
\* manuals and other documentation are treated as literary works  
   
restricted acts for computer programs  
   
\* three of importance: copying, issuing copies, making adaptations  
   
copying  
   
\* this refers to reproducing the work in any material form  
\* the Act covers the transient or incidental use of a work  
   
literal copying  
\* refers to situation where exact copies are made  
\* easy to apply the law in cases where identical copies being used  
\* where there has been an attempt to disguise copying, three questions are considered: does copyright subsist in the plaintiff’s program?, has the defendant copied parts of the program?, are the parts copied substantial?  
   
Consider IBCOS Computers Ltd v Barclays Mercantile Highland Finance Ltd [1994]  
   
A programmer wrote a suite of programs to handle the accounts and payroll for agricultural machinery dealers. When he left the plaintiff’s employ he signed an agreement not to write competing software for two years. The programmer then wrote a similar package for the co-defendant which was not used until the two year period had elapsed. The programs were written in variants of COBOL. Plaintiff sued for copyright infringement and breach of confidence.  
   
The defendant argued that the similarities in code were as a result of programming style and the re-use of well known routines.  
   
Did the judge rule that copyright had been infringed?  
   
Issues to note from case:  
   
\* modifying a program could result in new copyright  
\* if a program (or part of it) is constrained by the program’s function, copyright protection is not compromised  
\* copyright can subsist in a suite of programs (treated as a compilation), file layouts & screen layouts  
\* if evidence suggests copying (eg common errors in spelling and punctuation in comments, redundant code, mistakes in same place), the court should infer that it is a result of copying (not programming style) in the absence of independent evidence suggesting otherwise  
   
If package x has similar functionality to package y but is created independently, will it infringe copyright laws?  
   
non-literal copying  
   
Program x has the same function, structure, flow and sequence as program y, but x is written in C and y is written in Pascal. Is copyright infringed?  
   
   
Consider Whelan Associates Inc v Jaslow Dental Laboratories [1987] a case from the States  
   
In this case a program which supported the admin functions of a dental lab was written by the same programmer for two companies, the first in EDL and the second in BASIC. There was no great similarity in the program listings. The purpose of the programs (ie the idea) in both cases was to help dental labs.   
   
The structure of the original program was not essential to the purpose (ie it was an expression of the purpose). However, the programs had the same structure and look and feel. In addition the fact that the same programmer wrote the program gave a strong presumption that copying had taken place.  
Consider Lotus Development Corp v Borland International 1995.  
   
Here the 1-2-3 menu command structure was used in the Quattro spreadsheet. The US Appeal Court ruled that copyright was not infringed since the menu system was viewed to be a ‘method of operation’ which is specifically excluded from copyright protection in US law.  
   
   
In the UK, the case of John Richardson Computers Ltd v Flanders [1993] has helped to establish case law.  
   
The plaintiff developed a computer program for use by pharmacists to print labels and monitor stock. Mr Richardson was employed by the firm as a contractor and wrote the original program in BASIC which was subsequently enhanced and re-written in assembler for the BBC computer by others. The defendant wrote a program to perform the same functions for the PC, but which also had additional functionality.  
   
The judge in the case said that court had to determine:  
   
\* if the plaintiff’s program as a whole was entitled to protection  
\* whether any similarity was due to copying, and whether the copying was substantial  
   
The court held that the defendant had infringed copyright even though the PC program was a significant enhancement over the BBC program and that, in fact, Mr Richardson was the owner of the copyright of part of the plaintiff’s program.  
   
   
Apple v Microsoft : GUI Wars  
(from article by J Myers in Richmond J of Law & Technology  
   
Apple developed a new GUI for their LISA and Macintosh computers in the early 80s (based on ideas first developed by Xerox). Microsoft announced plans to develop windows in 1983. Apple and Microsoft entered a secret agreement whereby Microsoft were granted a licence to use windows and icons in version 1 of Windows and in return for developing Windows for the Macintosh platform. Following the release of Windows 2.03, Apple filed for infringement of copyright, based on the fact the ‘look and feel’ of the works was substantially similar.  
   
Law in this area continued to develop. In the computer Assocs Intl Inc v Altai Inc case, the court devised a three part test:  
\* abstraction - separating the various layers of the program  
\* filtration - eliminating unprotectable elements  
\* comparison - the protected elements are compared to test for infringement  
   
The secret agreement between the companies left the elements covered by the licence unprotected. The doctrine of merger, the notion that it is difficult to separate the idea from expression, meant that standard for copying to occur is that the two expressions must be virtually identical eg the use of a page icon for a document.  
   
The court also found that where program features were essential or standard to the treatment of an idea then they (ie the features) should be treated as ideas. In this case there are only two ways of for displaying multiple windows. The court ruled that this ‘scene à faire’ doctrine should apply, hence substantial similarity could not be used.  
   
Apple contended that the court should look for originality in the work as a whole. The court however found that interface relied heavily on work by Xerox and IBM and not the required originality.  
   
The result was that practically all the elements not subject to protection using the substantial similarity standard. This left the option of arguing that the environments were virtually identical, which was not the case.  
   
Directed Study  
   
Read an introductory text on Business Law eg Abbott & Pendlebury to gain a background to the legal system - use lecture notes to guide reading.  
   
Read Bainbridge or similar to support the material covered on Copyright and Software.  
   
   
   
   
   
Electronic Publishing  
   
The explosion in the use of the internet and the growth in multimedia systems mean this is now an important area.  
   
Raises some important questions:  
   
If something exists on the web and is freely accessible, is it in the public domain and therefore permissible to copy it?  
   
If I produce a multimedia package do I need to obtain copyright permissions for works included in it even if I bought the original items and only extracts are included?  
   
Electronic publishing has no formal definition; Bainbridge suggests it includes publication with the following methods:  
   
\* sale, rental or loan of a physical product containing the work(s) eg using CD-ROM, disk or tape  
\* by way of network eg the internet, on-line services  
\* by means of a broadcast eg teletext  
   
Copyright subsistence can arise from all these forms.  
   
Multimedia  
   
\* a multimedia product may contain a range of works which are represented in different media:  
\* text  
\* spoken word  
\* video/film  
\* photographs  
\* music  
   
\* permission is required to use all works protected by copyright  
\* permission is obtained in the form of a licence or assignment  
\* moral rights in relation to acknowledging authorship apply  
   
the internet  
   
\* works on the internet have their own copyright  
\* some authors allow works they publish on the web to be freely copied   
   
Consider the case of Shetland Times v Wills (Zetnews ie Shetland News)  
   
Shetland Times operates a web site which presents news stories. Shetland News then began to insert hyperlinks to these stories next to their original reporting. In October 1996 the Times obtained an injunction stopping News from linking to the Shetland Times web site, pending a final decision. (New Scientist, 25 Jan 97)  
   
What do you think the outcome of this case was?  
   
A number of people inserted an inline link to the cartoon, which meant only the cartoon appeared on their page, and readers were not taken to United Media’s web site. United Media objected to the use inlines.  
   
Dan Wallach a computer science student at Princeton carried on using an inline link to Dilbert.  
   
What happened?  
Copyright Licensing Agency guidelines on copyright & the internet state:  
   
\* if you are authorised to make use of a page then browsing is OK (although this has not been tested!)  
\* you may not assume that printing or cutting and pasting is allowed - you need to check the terms of use or gain permission from the webmaster  
\* CLA suggest that by including a hyperlink you are not actually copying, but you may be authorising someone else to copy  
\* use of inlines images presents information out of context and appears to be close to theft  
\* always gain permission before hyperlinking  
   
Bainbridge suggests that owners of the copyright for works published on the internet clarify the position with respect to printing and downloading  
   
\* he also puts forward three problems associated with copyright in cyberspace:  
1. powerful copyright owners threatening injunctions against individuals or service providers  
2. control of copying  
3. the policing of copyright in the international domain  
   
licensing  
   
\* licensing is required because use of an electronic work will involve it being copied into computer memory  
   
\* the licence agreement will usually involve aspects of contract law  
\* licence may prevent duplication of a CD-ROM, printing/downloading, it may also require user to place notices on copyright near the terminal  
\* the person acquiring a multimedia product should satisfy themselves relevant permissions have been obtained and that the agreement contains an indemnity  
   
   
Databases and Copyright (from Bainbridge)  
   
Bainbridge states that ‘databases are generally protected by copyright, usually as literary works, being compilations’.  
   
1992 EC Directive defines a database as  
   
“a collection of works, data or other independent materials arranged in a systematic way or methodical way and capable of being individually accessed by electronic or other means.”  
   
This broad definition is necessary since the use of databases is becoming more extensive and the type of material stored is increasing in diversity eg still images, sound & video clips etc.  
   
There are two forms of copyright which may be associated with a database. There is the copyright attached to the database as a compilation of works, and there may in addition be copyright associated with the entries in the database.  
Bainbridge gives the example of the LEXIS database containing texts of legal cases and statutes. Copyright subsists in the database as a compilation, and in addition copyright subsists in each case and statute.  
   
In the UK there is a requirement that at least a small amount of skill, labour and judgement must be applied to produce the compilation in order for copyright protection to be established  
   
What about a computer database which lists postcodes and associated addresses in an area?  
   
database structure  
   
\* structure is potentially capable of being protected  
\* IBCOS Computers Ltd v Barclays Mercantile Highland Finance Ltd [1994] found that the data division of a program was protectable  
\* Bainbridge suggests that further clarification is required  
\* chance of protection increased by retaining design documentation since someone copying the structure is indirectly infringing the copyright subsisting in these materials  
   
EC Directive  
   
\* aim of the directive is to protect not only those databases produced as a result skill or judgement, but also those which do not meet stringent criteria in this area  
\* the provisions in terms of restricted acts, authorship and ownership are similar to UK law  
\* the main difference is the sui generis right, which prevents unauthorised extraction and reutilisation, in order for this to apply:  
\* the database creator has to show that a qualitative and/or quantitative investment has been involved in obtaining, verifying or presenting contents  
\* extraction means the permanent or temporary transfer of all or a substantial part of the contents to another medium by any means or in any form  
\* reutilisation means making available all or a substantial part of the contents to the public  
\* the directive indicates that protection will last for 15 years from the completion of the database  
   
   
Computer Generated Work and Copyright (from Bainbridge)  
   
The Act states that a computer generated work is one in which there is no human author of the work.  
   
As Bainbridge notes the human expertise in computer generated works resides in the programs which create the works.   
   
Authorship rests with the person who made arrangement for the work to come into being.  
   
To try to resolve the difficulties in interpreting this part of the Act, Bainbridge classifies the works in 3 ways.  
   
works created using computers  
   
\* examples include use of word processors, upper CASE tools, CAD systems, systems which assist music composition  
\* expertise is provided by the person using the computer, hence s/he is deemed to be the author  
\* programmer may influence the presentation of what is produced (ie the form), but has no control over content  
   
works created by computer  
   
\* examples include automatic generation of music based on algorithms in the program, national lottery numbers, simulation programs  
\* systems operator has little or no input in terms of effort or skill, also s/he has little control over the form and content of the output  
\* author of the work is the person who made the arrangement for the work to be produced, is this a company copyright protection subsists for 50 years from the creation of the work  
\* the Act ignores the expertise of the people who produced the software which generates the works, what do you think about this?  
   
intermediate works  
   
\* in some works the content is determined by a combination of the person using the software and the software developers  
\* examples include specialised accounting systems, expert systems  
\* consider an expert system which offers financial advice, the expertise used to generate advice comes from:  
   
\* the experts who provide the base knowledge  
\* knowledge engineers who captured the knowledge and input it to the inference engine  
\* the developers of the inference engine and user interface  
\* the user who has to interpret and respond to questions  
   
Who is the author and who owns the copyright?  
   
Bainbridge suggests that in cases of intermediate works, assignment of ownership of copyright on the output should be dealt with contractually  
   
Directed Study:  
   
Read Bainbridge or similar on copyright and the following: databases, the internet and multimedia  
   
Visit some web sites which provide information on internet and the law

6G5Z1008 Professional Development-  
Data Protection  
(from Bainbridge)  
   
There is a problem with the lack of control of organisations, who pass on personal information to others, resulting in many people having been inundated with unsolicited mail and emails. Powerful processing capacity of computers and the ability to target certain groups to build profiles about our preferences and spending habits raise concerns. Computers raise concerns about individuals & their privacy. The dangers posed by the processing of personal data, which may be unfairly processed, inaccurate, out-of-date or disclosed in a harmful way, are very serious.   
   
There are benefits to destroying inaccurate, irrelevant and out-of-date data.  
   
The Data Protection Act 1984  
The Data Protection Act 1984 only applied to automatically, processed personal data, providing rights to individuals about whom information was recorded. The Act was brought in to regulate the use of data and protect individuals whose personal details were stored. The Act placed obligations on those who record and used data: they had to be open about its use and follow proper and sound practices.   
   
The 1984 Act has been replaced by the Data Protection Act 1998 in line with the Strasbourg Convention, which is an updating in line with the Human Rights Convention. It extended data protection to forms of manual processing and the right to privacy under Article 8 and the right to freedom of expression Article 10. Balancing both these contradictory rights is difficult and can be suppressed in the interests of national security.  
   
The right of individuals are given more prominence and a key phrase is ‘transparency of processing’. Individuals should be better informed as to who is processing data relating to them, what the purpose of the processing is and what other processing activities are involved. They have the right to access to the control of processing activity.  
   
Anyone processing personal data must comply with the eight enforceable principles of good practice.  
   
1. fairly and lawfully processed;  
2. processed for limited purposes;  
3. adequate, relevant and not excessive;  
4. accurate;  
5. not kept longer than necessary;  
6. processed in accordance with the data subject's rights;  
7. secure;  
8. not transferred to countries without adequate protection.  
   
Personal data covers both facts and opinions about the individual. It also includes information regarding the intentions of the data controller towards the individual, although in some limited circumstances exemptions will apply.  
   
With processing, the definition is far wider than before. For example, it incorporates the concepts of 'obtaining', holding' and 'disclosing'.  
   
Sensitive personal data - explicit consent needs to be given and processing must be necessary for some specified reason eg., by reason of law, for medical reasons or to ensure/promote the equal treatment of racial/ethnic groups.  
   
• racial or ethnic origin of the data subject  
• political opinions  
• religious or other beliefs  
• trade union membership  
• physical or mental health  
• commission of any offence  
   
Notification under the Data Protection Act 1998  
Unless you're exempt (national security, taxation, crime, domestic purpose), the Data Protection Act requires all data controllers who process personal information to register with the Information Commissioners Officer (ICO)  
   
Your legal obligations  
If you handle personal information, you have a number of important legal obligations.  
   
The Data Controller is the person or body which determines the purpose and way in which data are processed. The term recognises that control may be shared and also the broad definition of processing.  
   
The Data Controller must provide:  
• Name & address  
• A description of the personal data and the categories of data subject to which they relate  
• A description of the purpose for which data is being processed  
• Description of the recipient to whom the data controller intends to disclose data  
• Names of countries outside EEC to which the controller wishes to transfer the data  
• General description of security features (BS7799, Information Security Standard and Certification Scheme)  
   
Data Processor is any person (not including those employed by the data controller) who process data on behalf of the data controller.  
   
Recipient is someone to whom the personal data are disclosed. Includes employees and agents of data controllers and processors  
   
The Information Commissioner  
The person responsible for data protection was known as the Data Protection Commissioner. Following the introduction of the Freedom of Information Act 2000, the position is known as the information Commissioner.  
   
The Commissioner is a UK independent supervisory authority reporting directly to the UK Parliament and has an international role as well as a national one.  
   
From data protection and electronic communications to freedom of information and environmental regulations - the ICO is the UK's independent public body set up to protect personal information and promote public access to official information.  
   
The ICO has legal powers, including the power to issue information and enforcement notices, conduct audits and prosecute offenders. In addition to its UK responsibilities, the ICO has an international role including cooperation with similar organisations in the rest of Europe and with the European Commission.  
   
The commissioner can be seen as being concerned with:  
   
• Consultation & dissemination of information  
• Investigation  
• Intervention  
• Enforcement &  
• Cooperation  
   
http://www.ico.co.uk  
   
The Data Protection Act 1998  
The Data Protection Act requires anyone who handles personal information to comply with a number of important principles (8). It also gives individuals rights over their personal information.  
   
See Ogle v Chief Constable of Thames Valley [2001] EWCA Civ 598.  
   
Your rights  
Individuals have a wide range of rights under the Data Protection Act, including access, compensation and the prevention of processing. They have a right to receive from data controllers: personal data held, purpose, and to whom it was disclosed.  
   
They also have the following rights:  
   
• to serve a notice to prevent processing which is likely to cause damage or distress to the data subject  
• to prevent processing for purposes of direct marketing  
• to ensure that no decision which significantly affects them is based solely on the processing by automatic means of personal data  
• to compensation for individuals who suffer damage or damage and distress as a result of a contravention of the Act  
• data subjects may obtain a court order for data controllers to rectify, erase or destroy inaccurate data held about them  
• any person may ask the Commissioner to assess whether or not processing is in accordance to act.  
   
   
   
   
   
6G5Z1008 Professional Development-  
Freedom of Information  
(from Bainbridge)  
   
Freedom of Information Act 2000  
The purpose is to provide access to information held by public authorities as part of open government. Exemptions apply to the right of access to personal data as the request can be made under the Data Protection Act.  
   
Section 7  
There is limited application to a small number of authorities, obligations apply only in respect of information relating to the provision of those services (medical, dental) and in the case of the BBC it is restricted to information held for the purposes of journalism, art and literature.  
   
Public authorities can confirm or deny whether they hold the information described in the request.  
   
Public authorities include:  
• Government departments  
• Local authorities  
• National Health Service Bodies (advisory boards & councils)  
• Maintained schools  
• Universities  
• Police authorities  
• BBC  
British library  
• The Commission for Racial equality  
• Financial Services Authority  
• Health & safety Executive  
• Intellectual Property Advisory Committee  
• National Museums…  
   
Publication Schemes  
Public authorities are required to have publication schemes which indicate their commitment to allowing public access to information and guidance as to how individuals may proceed to request information. Publication schemes must be approved by the Information Commissioner who has a number of powers and responsibilities under the Act.  
   
Section 19  
Under section 19 every public authority to which the Act applies to must adopt and maintain a publication scheme that specifies:  
   
• The classes of information which the authority publishes or intends to publish  
• The manner in which information in each class is, or is intended to be published, and  
• Whether the material is, or is intended to be available to the public free of charge or for payment  
   
Section 16  
The public authority has a duty to provide advice and assistance, so far as is reasonable, to persons making or proposing to make requests. The duty must satisfy codes of practice outlined below in section 45 of the Act.  
   
Section 20  
The Information Commissioner can prepare model publication schemes, schemes may only be approved by the Information Commissioner for a limited period, or be revoked with statement of reasons by the Information Commissioner subject to six months notice.  
   
Codes of Practice  
The Secretary of State provides desirable codes of practice for public authorities on performing their functions. Only making any such codes, the Secretary of State must consult with the Information Commissioner. Any code or revised code must be laid before each House of Parliament.  
   
Section 45  
The codes must provide guidance to:  
• The provision of advice and assistance to persons who propose to make, or have made, requests for information to them;  
• The transfer of requests by one public authority to another public authority by which the information requested is or may be held;  
• Consultation with persons to whom the information requested relates or persons whose interests are likely to be affected by the disclosure of information;  
• The inclusion in contracts entered into by public authorities of terms relating to the disclosure of information &  
• The provision by public authorities of procedures for dealing with complaints about the handling by them of requests for information  
   
Section 46  
This allows for the Lord Chancellor to make codes of practice providing guidance as to the keeping, management and destruction of records including in relation to public records. The Information Commissioner and the Secretary of State must be consulted and also in Northern Ireland, the Northern Ireland Minister. Again, the code shall be laid before each House of Parliament.  
   
   
   
   
Basic Right of Access  
There is a duty to confirm or deny that the public authority has information of the description specified in a request and must give the person, making the request access to it.  
   
Section 1  
This sets out the basic right of access, that any person may make a request to a public authority and is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and if so, to have the information communicated to her/him.  
   
The request must be made in writing, stating the name and address for correspondence of the applicant and describing the information requested. A public authority may within the period of compliance (20th working day following receipt of the request) with the request for information give the applicant a notice in writing stating a fee for compliance(‘fees notice’). The public authority is not obliged to comply unless the fee is paid within 3 months beginning with the date the fees notice is given to the applicant.  
   
Section 50  
If the person feels that the duty has not been dealt with in accordance with the relevant requirements of the Act, (s)he may apply to the Information Commissioner for a decision. This could result in an enforcement notice served on the public authority.   
   
Section 11  
This sets out the means by which the communication is to be made to the applicant, where the applicant expresses a preference for communication by:  
   
• Providing the applicant with a copy in permanent or another form acceptable to the applicant;  
• Providing the applicant a reasonable opportunity to inspect a record containing the information; or  
• Providing the applicant with a digest or summary of the information in permanent or another for acceptable to the applicant.  
   
Exemptions  
There are a number of exemptions to the duty to comply with a request for information (does not have to confirm or deny that it holds the information). Including security matters (absolute exemptions) and public interest (qualified exception)  
A public authority does not need to comply with a request for information if it is identical or similar to a request previously made by the same person  
   
See Attorney-General v Ebert (no2) [2005] EWHC 1254 (Admin)  
   
Ebert made more than 200 applications to set aside a bankruptcy order against him.  
5

6G571008 Professional Development  
- Trade Marks  
(from Bainbridge, Bott et al)  
   
Trademarks, trade names and distinctive get-up have significant commercial value.   
   
A mark is linked to a particular product or service and is an indication of its quality. It also acts to distinguish the product or service from its rivals.  
   
If trademarks are successful then they get copied; either by blatant duplication or by subtle imitation.  
   
The Trade Marks Act 1994 defines a trademark as:  
   
any sign capable of being represented graphically which is capable of distinguishing goods or services of one undertaking from those of other undertakings. A trademark may, in particular, consist of words (including personal names), designs, letters, numerals or the shape of goods or their packaging.  
   
The 1994 Act complies with an EC directive, and will allow the UK to join the Community trademark system and other international agreements.  
   
Trade Mark law aims to:  
   
\* protect the goodwill and reputation a trader builds up in their mark  
\* protect the public from being deceived about the origin of goods and services  
   
Trademarks are important in the computer industry where the pace of change is high and customers look for a well established and reliable brand. Marks like IBM, Microsoft and Lotus 1-2-3 have become important in the industry.  
   
Registration  
   
\* marks may be registered by a manufacturer, trader or person (may be better to use a trade mark or patent agent)  
\* registration is via the Trade Mark Registry at the Patents Office  
\* 34 classes under which a mark may be registered for products (eg electrical goods, chemicals etc) and 8 classes for services (eg advertising, financial etc)  
\* important classes: Class 9 - data processing equipment & computers, Class 42 - includes programming  
\* initial registration period is 10 years, renewal period 10 years  
\* no upper limit on period of registration  
\* registration gives the owner the monopoly use of the mark within the classes registered  
   
Unregisterable marks  
   
\* two basic grounds for refusal of registration: absolute or relative  
\* from section 3 of the Act, a mark may be refused on absolute grounds if it is:  
\* not capable of graphical representation or is not distinguishing  
\* has no distinctive character (what about International Business Machines?)  
\* exclusively descriptive or laudatory (what about Manchester Computers Ltd?)  
\* has bona fide trade use (What about Debugger Services?)  
\* contrary to public policy, principles of morality or is deceptive  
\* relative grounds apply when a mark is the same or sufficiently similar to cause confusion  
\* these grounds apply where the trade mark is used for a different class of products and the mark is well established and has built up a significant reputation (what about IBM Motors?)  
   
Infringement  
   
\* use of a trade mark will allow the owner to sue for infringement, remedies are: damages, account of profit, delivery up, erasure or destruction  
   
\* comparative advertising may infringe  
   
Consider Compaq Computer Corp v Dell Computer Corp [1992]. A Dell advert pictured a Compaq computer alongside a Dell with prices and names (Compaq is a registered trade mark). Was Compaq’s action against Dell successful?  
   
\* in 1994 Act ‘importing a reference’ is allowed, and there is greater freedom in using comparative advertising (however use must be consistent with honest practices and not detrimental to the reputation of the mark holder)  
   
\* other exceptions to infringement  
\* use of a person’s own name and address  
\* use of indications of quality, quantity, purpose, kind, geographical origin  
\* use in respect of accessories or spare parts (in accordance with honest practices)  
\* use of an earlier right in a locality (eg protected by passing off)  
   
Licensing of trademarks  
   
\* the 1994 Act provides for the licensing and sub-licensing of trade marks  
   
Trade Marks & Domain Names  
   
The arrival of the internet has created further opportunities for companies and individuals to deceive the public through the practice of ‘cyber-squatting’. This is where many domain names are registered by an individual or company with the express intention of selling on to a body who would have a more legitimate use for it.  
   
A company called One in a Million Ltd registered many well known names such as Sainsbury www.sainsburys.com and then offered them for sale. The brand owners took the company to court. The domain name owners argued that all they had done was to register the domain names and this was not unlawful. The trade mark owners argued that the domain names were being used to pass off their products. The case was not clear cut – the trade mark owners had to show there was possibility of commercial confusion.  
   
In the end the Court of Appeal ruled that domain names could be used as ‘instruments of deception’ and ordered the names to be returned to the trademark holders.  
   
The courts have been unwilling to order transfer of domain names where registration has been innocent.  
   
There have been some global initiatives to help deal with issues of registration and dispute with domain names. ICANN (The Internet Corporation for Assigned Names and Numbers) monitors the top level domain names. WIPO (World Intellectual Property Organisation) has introduced a Uniform Domain Name Dispute Resolution Policy) for dealing with domain name disputes.  
   
Trademarks can be used within keyword meta-tags, so the mark is not visible when the web page is viewed. Playboy Enterprises brought a case against Calvin Designer Labels in the US on these grounds. What happened?  
   
6G571008 Professional Development  
- Passing Off  
(from Bainbridge and Bott et al)  
   
The common law tort of passing off may be viewed as a method of trademark protection, but there are significant differences.  
   
Passing off is  
   
‘an action used by one trader against another who imitates the former’s trade mark, trade name, product get-up or trading style in a way which causes actual or potential loss, and which causes confusion among the consuming public as to the source of goods and services’ (Bott et al)  
   
X will commit a tort against Y if he passes off his goods or business as those of Y. (Abbot and Pendlebury)  
   
There is no requirement for proof that the act was intentional or with intent to deceive, or that damage actually occurred.  
   
Consider Ervin Warnink v J Townend & Sons Ltd [1979]  
   
The plaintiffs made a liqueur called advacaat, the defendant made an inferior but cheaper drink called ‘Keeling’s Old English Advocaat’  
   
The judge in this case found that the plaintiff’s product had gained a reputation and that it should be protected. It was held that there was a misrepresentation by the defendant which was designed to injure the plaintiff’s business or goodwill.  
   
An action of passing of can be brought where a product’s uniqueness is put in jeopardy.  
   
In Taittinger SA v Allbev Ltd [1993], the produced a non-alcoholic sparkling beverage called ‘Elderflower Champagne’. While it was thought that people would be unlikely to be deceived, it was held that the use would reduce the distinctiveness of the name champagne and damage the goodwill associated with the mark.  
   
In order to bring a successful action of passing off the plaintiff must show that the product has a reputation associated with goodwill. In order to do this he must have carried out sufficient trade to establish a reputation.  
   
Features of passing off  
   
\* wide range of material covered (can include material not encompassed by trade marks eg advertising material if this has become part of a product’s goodwill)  
\* may have a local effect (have to show that a trader’s business is affected)  
\* no formalities in terms of registration  
\* may be useful for traders or manufacturers who have not registered their trade marks, but who have built up a reputation  
Trade Marks v Passing Off  
   
Bainbridge advises that distinctive names or marks are registered as trademarks, rather than relying on protection through the law on passing off.  
   
Bott et al suggest a number of factors need to be considered:  
   
\* registered marks will allow rivals to find them and avoid their use  
\* trademarks are protected from the moment of registration, passing off requires time for a reputation to be acquired  
\* protection from passing off legislation may only be local  
\* protection via common law is cheaper, but weaker than the statutory protection  
   
   
6G571008 Professional Development  
- Patent Law  
   
A patent is a name given to a bundle of monopoly rights which give the patentee the exclusive right to exploit an invention for a given period of time.  
(Abbott & Pendlebury)  
   
It is a means of preventing others taking advantage of an inventor’s ideas.  
   
Its covered by the COPYRIGHT, DESIGNS AND PATENTS ACT 1988 and the PATENTS ACT 1977 (as amended.  
   
Patents must be applied for at Patent Office. The inventor provides a specification against which claims for infringement are tested.  
   
The Patent Office carry out tests for novelty, and if the application is approved the patent is in force for 4 years and then may be renewed annually for a further 16 years.  
   
Application may be made internationally through the Patent Co-Operation Treaty or the European Patent Convention.  
   
What must be fulfilled?  
   
\* must be a patentable invention capable of industrial exploitation  
\* exclusion on these grounds rare, Hiller’s application for a plan for improved provision of underground services  
\* must be novel  
\* must be new, not form part of the ‘state of the art’  
\* not in the public domain Windsurfing International Inc v Tabur marine (GB) Ltd [1985]  
   
\* must have an inventive step  
\* the inventive step must not be obvious to a person skilled in the art  
\* can apply well known technology to a particular problem  
   
Exclusions from patents:  
   
1. discoveries, scientific theories, mathematical models  
2. literary/musical/artistic works   
3. schemes/rules/methods for a mental act, doing business or a computer program (see later)  
4. presentation of information  
5.   
Employee Inventions  
   
\* an invention made during the course of employment belongs to the employee’s company  
\* Act provides for compensating employees for inventions made for a company  
   
A patent is owned by an individual or company, but may be assigned by mutual agreement or licensed.  
   
The type of patent affects the way it can be infringed. The main ways are given below.  
   
If the patent is for a product then it is infringed if a person:  
makes, disposes of, uses or imports the product or keeps it for disposal  
   
If the patent is for a process then it is infringed if a person:  
does the same things as for a product, but in addition if s/he uses it offers it for use, when s/he knows or should know that there would be an infringement  
   
If a patent is infringed the inventor it entitled to an injunction, delivering of the infringing articles and damages.  
   
Implications  
   
Software is excluded from patent law (but see later).  
   
However if there is a combination of hardware and software then the product may be patentable.  
   
As Bainbridge says,  
   
‘if the only novel and inventive step concerns the computer program then the machine as a whole is not patentable’  
   
   
Consider, re Merrill Lynch, Pierce Fenner & Smith’s Inc’s Application [1988]  
   
Here the invention related to a better system for implementing an automatic trading market for securities. The novelty claimed was that the system held best bids for a security and then executed orders automatically.  
   
There has to be a technical effect in improving the state of the art that does not involve items in the excluded categories. In this case of Merril Lynch the inventive step resided in excluded material and the judge held that the system was not patentable because of this.  
   
The view that has come from European Patent Office now seems to prevail. In this approach if the technical effect resulting from the operation of the program is novel, then the patent application is likely to be successful.  
   
Consider Vicom Systems Inc’s Application [1987]. Here an application was made for a new digital imaging system, in which the processing steps were based mathematically. It was held that the claim related to a new technical effect arising from a mathematical method and not the program itself. The application was successful.  
   
(Note the technical effect relates to something excluded from patentability eg a method of doing business, then the application will not be successful.)  
   
The guideline then is, a computer program is not excluded from patentability, if when it runs on a computer it produces a further technical effect which goes beyond the normal physical interaction between software and hardware.  
   
6G571008 Professional Development  
- Designs  
   
Designs are used in many aspects of computing and there is a need to consider under which law they are protected.  
   
There are three aspects which are covered:  
   
\* design rights  
\* registered designs  
\* semiconductor design rights  
   
Consider the case of Valeo Vision SA v Flexible Lamps Ltd [1995].  
   
Here the defendants made a light cluster for a lorry based on the drawings made by the plaintiff. Was copyright infringed?  
   
Registered Designs  
   
In order to be registerable, the design must be appealing to the eye and it must be new. Registration gives a monopoly right for exploiting the design. The designs are covered by the Registered Designs Act 1949, The Act states that registerable designs are,  
   
‘features of shape, configuration or ornament applied to an article by any industrial process, being features which in the finished article appeal to and are judged by the eye.’  
   
A design would not be registerable if the appearance of the article is not significant in the decision taken by a person in acquiring it.  
   
The Act may be used to protect designs for aesthetically pleasing computer hardware and accessories (including surface decoration).  
   
The design has to be registered at the Design Registry; initial registration lasts 5 years, but may be renewed in 5 year blocks to a maximum of 25 years.  
   
Designs which may not be registered include method or principle of construction or where the design is dictated by the function.  
   
Exclusive rights of the owner of the registered design and remedies for infringement are similar to that of copyright holders.  
   
Design Right  
   
The design right arises from the creation of a design; there is no requirement for registration. A further distinguishing characteristic is that there is no requirement for the design to be attractive to the eye.  
   
Design Rights are covered by the Copyright, Designs and Patent Act 1988. Section 213 of the Act defines a design as,  
   
‘the design of any aspect of the shape or configuration (whether external or internal) of the whole or part of the article.’  
The Act further specifies that the design must be original and also not commonplace in the field at the time it was created.  
There are some important exceptions. First, methods or principles of construction are not protected. The second relates principally to spare parts. The designs for following articles are excluded from protection:  
   
\* where the article is to be connected to, or place in and around another in order to perform its function (‘must fit’ exception)  
\* where the article is dependent on the appearance of another article which it will become a part of (‘must match’ exception)  
   
Is a design for a sound card likely to be protected by a design right?  
   
Design rights last for 15 years from the end of the calendar year in which they were recorded. However it the article is made available to the public for sale or hire the first five years, then the right lasts for a 10 year period from the date of sale or hire.  
   
Semiconductor Design Right  
The topography of semiconductor chips is protected by the Design Right (Semiconductor Topographies) Regulations 1989, which are an adaptation of the Copyright, Design and Patent Act 1988. The legislation in terms of duration and infringement is similar to design rights, however it is permissible to make a copy of a topography for analysis or evaluation.  
   
Directed Study:  
Read Bainbridge or similar to gain a deeper understanding of Patent Law and legislation covering design.

6G5Z1008 Professional Development  
- Computer Misuse  
(from Bott et al and Bainbridge)  
   
We are aware that the consequences of computer misuse are great eg viruses such as MyDoom, LoveBug etc and the growth in things like child pornography on the internet.   
   
There is therefore a need for legislation to address these issues, and there are several Acts which cover the area.  
The area covers everything from relatively benign hacking to computer fraud and software piracy. We are going to focus on the Computer Misuse Act, but also consider ather legislation related to computer misuse.  
   
Greatest threat to an organization comes from within.  
   
Evidence suggests that very few cases are brought under the Computer Misuse Act even though the problem is significant. In 2000 only 19 principal cases were brought and of those 15 resulted in successful prosecutions.  
   
One recent case has resulted in a two year jail sentence (Simon Vallor of Llandudno whoc was responsible for the GoKar, Admirer and Redesi viruses which were thought to have attacked more than 27,000 computers in 42 countries.)  
   
Categories of Misuse  
   
The Law Commission Report of 1989 defined the following categories of computer misuse:  
   
\* computer fraud  
\* unauthorized obtaining of information from a computer  
\* hacking  
\* computer eavesdropping  
\* unauthorized computer use for personal benefit  
   
\* unauthorized alteration/destruction of information stored on a computer  
\* denying access to an authorized user  
\* unauthorized removal of information stored on computer  
   
   
Computer Fraud  
   
Computer fraud ‘is the manipulation of a computer by whatever method in order to obtain dishonestly money, property, or some other advantage of value or to cause loss.  
   
Three types categorized by Audit Commission:  
   
\* input fraud (false data entered or false data suppressed or amended - the most common type)  
\* output fraud (suppression or amendment of data output)  
\* program fraud (dishonest alteration of a computer program - few such incidences reported)  
   
Audit Commission report of 1988 gives an example of program fraud. Two programmers wrote accounting software for video shops, secret routines were included to suppress the payment of VAT. (Each programmer was imprisoned for 9 months and they were fined a total of £34,000.)  
   
   
Fraud Offences  
   
obtaining by deception  
   
\* covered by section 15 of the Theft Act 1968  
\* requires a human to be deceived  
\* what about the situation where a person who instructs a computer to transfer money from one account to another dishonestly (assume he has the authority to transfer money)?  
   
conspiracy to defraud  
   
\* conspiracy is where two or more persons agree to carry out an unlawful act  
\* may be a statutory or common law offence  
\* in the common law offence there is no requirement for deceit, in the 1975 case of Scott v Metropolitan Police ruling defined to defraud as meaning ‘to deprive a person dishonestly of something which is his or would …. but for the perpetration of the fraud be entitled’.  
\* useful if fraud is not completed  
\* bank clerk sent down for 5 years after trying to transfer £31 million to a Swiss bank account  
   
theft  
   
\* Theft Act 1968 (section 1) states ‘A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it …’  
\* what about a person who transfers money into his account, retains the interest and then returns the original sums?  
   
Computer Misuse Act 1990  
   
There are three sections.  
   
Section 1(Basic Offence)  
   
Section 1 makes it an offence to obtain unauthorized access to a computer. An offence will be committed if a person:  
   
\* causes a computer to perform any function with intent to secure access to any program or data held in any computer;  
\* the access he intends to secure is unauthorized; and  
\* he knows at the time when he causes the computer to perform the function that that is the case  
   
The purpose of section 1 is to deter hackers. There is no requirement that there is an intent to commit a crime.  
   
Section 2 (Ulterior Intent)  
   
Section 2 covers the basic offence as stated in section 1, but in addition there must be the intent to commit or facilitate the commission of a serious crime. The further offence does not have to involve the use of a computer or indeed does not have to be committed.  
The Law Commission report gives two examples:  
\* hacking into a computer to gain information to blackmail another person  
\* gaining access to a computer to alter data which affects safety  
   
Section 3  
   
Section 3 is aimed at preventing damage to computer material.  
   
A person commits an offence if  
   
\* he does any act which causes unauthorized modifications of the contents of the computer; and  
\* at the time when he does the act he has the requisite intent and the requisite knowledge  
   
The requisite intent is the intent to cause a modification which would result in:  
\* the impairment of operation of the computer, prevention or hindering of access to a program or data, or  
\* the impairment of the operation of any such program or the reliability of any such data.  
   
The requisite knowledge is where the person committing the offence has the knowledge that the modification is unauthorized.  
   
Examples given by the Law Commission:  
   
\* a person intentionally and without authorization wipes data  
\* circulating disks infected with viruses  
\* unauthorized addition of a password which prevents an authorized user from gaining access  
Obtaining Unauthorized Access to a Computer  
   
Computer Hacking  
   
‘Computer hacking is the accessing of a computer system without the express or implied permission of the owner of the computer system.’ Bainbridge  
   
Hackers are often motivated by the excitement of the activity and they see it as intellectual challenge.  
   
There is a more ominous side to hacking, where access to safety critical systems is gained or where terrorism may be involved. Once access is gained the hacker may read or copy material, he may erase or modify data, he may instruct transfer of money or products.  
   
The case of R v Gold [1988] was a landmark. Two hackers gained access into the BT Prestel Gold network without permission, altered data and left the message ‘Good Afternoon. HRH Duke of Edinburgh,’ on the Duke of Edinburgh’s account.  
   
The accused were found guilty under the Forgery and Counterfeiting Act 1981 on the basis they had made a false instrument (ie the customer id no and password) and fined in the Crown Court. The Court of Appeal overturned the decision on the grounds that defendants had deceived a computer not a person. There is some evidence to suggest that juries are lenient. Paul Bedworth was acquitted when tried for conspiracy to commit offences under sections 1 and 3 of the Computer Misuse Act.   
   
Defence argued that Bedworth was addicted to hacking and was therefore not able of forming the necessary intent to commit the offence.  
   
Where the hacking offence involves misuse of the public telecommunications network, the Telecommunications Act 1984 or the Interception of Telecommunications Act 1985.  
   
   
Computers and Pornography  
   
There is a range of Acts aimed at protecting the public. These are increasingly important with growth of activity in this area that has come with the internet.  
   
The Obscene Publications Acts of 1959 and 1964 has been existence for some time.  
   
To secure a conviction user the Obscene Publications Act, the image must be found to deprave and corrupt and of course, publication must take place.  
   
Would it apply to a disk containing pornographic images?  
   
There is great concern over the increase in child pornography. Several pieces of legislation are relevant here. The Protection of Children Act 1978 and its amendment in the 1994 Criminal Justice and Public Order Act make it an offence to make, distribute and possess indecent images of children. Indecent would be viewed as involved in sexual activity or posed to be sexually provocative.  
   
The Sexual Offences Act 2003, though concerned largely with other activities further extends proection to children aged 16 and 17 in relation to indecent images.  
   
Section 43 of the Telecommunications Act makes it an offence to transmit material which is grossly offensive, indecent, obscene or menacing by means of the public network.  
   
   
Eavesdropping/Privacy  
   
This is where a person secretly watches or listens to something. Commercial espionage exists, Government also known to use these tactics. English Law did not for a long time recognize a right to privacy. No criminal offence was committed by electronic or other surveillance unless some other offence such as burglary or damage to property or injury to person is perpetrated.  
   
Action was possible under the Interception of Communications Act 1985. Section 1 of the Act makes it an offence to intercept a communication intentionally during its transmission through a public telecommunications network.  
   
The Human Rights Act 1998 contains the right to privacy. One of the rights enshrined in the Act is the ‘Right to Respect for Private and Family Life’. The original intention was for privacy from the state. There is increasingly a move to use the Act as protection from invasion of privacy. The law is still developing in this area.  
   
The Regulation of Investigatory Powers Act (RIPA) 2000 regulates the use of investigative powers that are available to public authorities. It can be seen as a measure which can be used against criminal elements making use of the internet. http://www.homeoffice.gov.uk/ripa/ripact.htm  
   
   
Unauthorized Use of a Computer for Personal Benefit  
   
No specific reforms were introduced as a result of the Law Commission’s review of computer misuse. Section 1 of the Computer Misuse Act may be used against the perpetrator of such an offence.  
   
It is likely that someone misusing a computer will be involved in some other legal relationship with computer owner and action would be brought as a result of that relationship.  
   
   
Unauthorized Alteration or Destruction of Information  
   
Information on a computer is a valuable resource. There are two main ways of dealing with these types of offences.  
   
Criminal Damage  
   
\* the criminal Damage Act 1971 may be used  
\* a person commits criminal damage if he intentionally or recklessly destroys or damages property belonging to another without lawful excuse  
\* consider the case of Cox v Riley [1986], here a disgruntled employee erased programs on a plastic circuit card which was used with a computer-operated circular saw. Was the action successful?  
   
Unauthorized Modification of Computer Material  
   
\* cases brought under section 3 of the Computer Misuse Act 1990  
\* deals with viruses, time-bombs, logic-bombs as well as straightforward modification  
\* see section of Act for examples  
\* people who publish details of how to write viruses may fall within the law of incitement (ie incitement to commit another offence), however prosecution must show the inciter intended to bring about a criminal act (this law can be used for other forms incitement if published on the internet)  
   
Denying Access to an Authorized User  
   
\* an example occurred in 1992 when a freelance typesetter altered a computer owned by a client (thereby denying him access) because the client owed him £2,000 pounds, was the typesetter convicted?  
\* another example would be if a legitimate user was denied access because all means of access were being used by unauthorized users (a number of actions can be taken in this instance)  
   
Unauthorized Removal of Information Stored on a Computer  
   
\* may be covered by aspects of Computer Misuse Act, eg to obtain information from a computer unauthorized access would be required  
\* data stored separately on disk may not be so protected, the Act refers specifically to data or programs held in a computer  
\* further the Law Commission did not address the issue of information as a commodity in its own right, believing it should be reviewed in a wider context  
\* the case of R v Absolum [1983] illustrates some of the difficulties, here a geologist tried to sell to a rival details of Esso’s oil exploration of the Irish coast valued at £50k to £100k, it was deemed that the owner of the information was not permanently deprived of a tangible asset  
\* Bott et al recommend that specific legislation should be enacted covering misappropriation of classes of information worthy of protection