Module: Web Development Issues
Unit: Legal Aspects of Web Development
Lesson: Intellectual Property Law (2)

Introduction

In this lesson and the previous one, we look at Intellectual Property Law, focussing mainly on **copyright**. In the last lesson, we will looked mainly at the theoretical side of IP law; in this lesson we will consider some of the detailed legislation that exists.

Intellectual Property Law - Copyright Legislation

THIS IS A **VERY** COMPLEX AREA; IF IN DOUBT SEEK LEGAL ADVICE.

The main piece of legislation is the Copyright Designs and Patents Act 1988 (CDPA), with some further cover provided by the Copyright and Rights in Databases Regulations 1997 (CRDR).

Copyright Designs and Patents Act 1988 (CDPA)

This Act covers original literary works, dramatic works (such as plays and ballet), musical works including sound recordings, films, videos, broadcasts (including satellite and cable broadcasts) and published editions, such as the typographical layout of a literary work such as a Shakespeare play.

For the web designer, the relevant element is the first one - original literary works. Whilst a database or computer program may not seem very "literary", the Copyright (Computer Programs) Regulations 1992 extended the rules covering literary works to include computer programs, providing it is "original". The meaning of "original" within this context is explained further below.

Preparatory design materials are also included, including specifications, logic diagrams and data flow diagrams.

Obviously some skill and judgement is required to determine how programs and databases may be included under the Act.

top tips

Originality

Under the CDPA, originality does not have the ordinary dictionary meaning. Courts have used a loose interpretation. Work does not have to be unique (one of a kind) or meritorious (it does not have to be any good!); work just has to originate from the author and not be copied from another's work. It should also require an element of skill and judgement to produce.

Copyright and Rights in Databases Regulations 1997 (CRDR)

CRDR covers an intellectual property right known as "Database Right". This is created in CRDR if there has been "a substantial investment in obtaining, verifying or presenting the contents of a database."

Database Right is infringed if someone "extracts or re-utilises all or a substantial part of the contents of the database."

my learning space activity

What examples can you think of databases which would be covered under CRDR?

Why might organisations want to extract information from or re-use such a database?

feedback

An example of a database that would be covered would be one created in a retail environment - for instance customer data collected through a loyalty card scheme. There would have been a substantial investment in setting up the loyalty card scheme - for example, in the hardware and software to read the cards and to store the information about the various transactions taking place.

Organisations could use such data for targeted marketing purposes, sales promotions, forecasting and planning. Data like this is expensive to collect, so some organisations may prefer to buy data which has been collected by others. This can be cost-effective, providing the data they buy is relevant to their business. Some companies make a lot of money selling mailing lists. If such data was extracted or re-utilised without permission, however, this would be an infringement under CRDR.

Duration of Copyright and Database Rights

How long does the protection offered by copyright and database rights last for?

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Copyright

Copyright subsists, in the majority of cases, for seventy years from the end of the calendar year in which the author dies (fifty years after publication for sound recordings and broadcasts). There are exceptions, so always check.

Computer generated works

Computer generated works are protected for fifty years

Database Rights

Database Rights subsist for fifteen years at the end of the calendar year in which the database was completed or was first made available to the public.

How does someone qualify for copyright protection?

If the author is a citizen or resident of the UK, then copyright is automatic, but it is good practice to put some sort of notice on the work, for example:

Copyright 2007 A.N. Other. All rights reserved.

my learning space activity

If you are not UK-resident, take this opportunity to investigate the law of copyright in your own country.

knowledge check

To complete this knowledge check activity, see the Knowledge Check section at the end of this lesson.

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Authorship and Ownership

Authorship and ownership are distinct concepts in copyright law.

Authorship - Moral Rights

The **author**, or creator, of a copyright work has **moral** rights over the work. These are:

- Paternity Rights - this is the right to be identified as the author of the work - but note that under section 79 (2), authors cannot assert paternity rights to computer programs.
- Integrity Rights - this is the right to object to "derogation" of the work (any distortion, mutilation or other modification to the work). This right protects the integrity of the work.

The copyright itself is regarded as property which can be sold, lent or given away like any other property, but moral rights remain with the author even if copyright ownership is transferred. This allows the author to retain some control over how their work is used. However, the author may be asked to waive their moral rights, and contracts which include such terms are common.

If you are the author of a copyright work, it is a good idea to claim your authorship rights. In books, for example, this is often done on a page near the front of the book:

The right of A.N. Other to be identified as the author of this work has been asserted by her in accordance with ss 77 and 78 of the Copyright, Designs and Patents Act 1988.

Ownership - Economic Rights

The **owner** of the copyright has **economic** rights over the work. As described above, the copyright itself is regarded as property which can be sold, lent or given away, just like any other property, so the owner of the copyright may not be the person that created the work.

Ownership can vest in:

- The author of a work created for their own pleasure
- Independent people not under contract of employment
- Employed people who have not created the work during their employment.

In the case of work created in the course of employment, usually the employer is the first owner of the copyright UNLESS there is an agreement to the contrary.

top tips

In law, when someone becomes the owner of some property, it is said that "ownership vests in" that person.

Copyright and Freelance/Consultancy

In the case of work created by a freelance author or a consultant, copyright resides with the freelance or consultant. However, many companies will ask for the copyright of the work to be ASSIGNED to them. This is a legal document and must be in writing and signed by the first copyright holder (i.e. the consultant). The owner of the copyright can also grant a license to a third party.

Rights and Infringements

Rights

Copyright ownership gives sole and exclusive rights to the work, in other words, how they can make the money by selling or licensing copies.

The owner of the copyright has various rights, including:

- copying the work
- issuing copies to the public
- performing, showing or playing the work to the public
- broadcasting the work
- adapting the work

Infringements and Remedies

The rights listed above are known as "restricted acts".

Infringement may be Primary or Secondary.

knowledge check

Primary Infringement

Primary infringement is when any of the restricted acts are carried out by someone without the authorisation of the copyright holder. The dispute is between the owner of the copyright and the person doing this (the primary infringer). This is dealt with under Civil Law.

Secondary Infringement

There are several separate acts which constitute secondary infringement under CDPA. These generally have a commercial aspect, and they are criminal offences:

- importing infringing copies
- possessing or dealing with such copies
- providing means for making such copies (including transmitting a copyright work over a telecommunications system)
- permitting premises to be used for an infringing performance
- providing apparatus for such infringement (including permitting such apparatus to be brought onto premises and supplying a sound recording or film for an infringing performance)

These secondary infringements generally require that the infringer has a reason to believe he is infringing copyright.

Example:

A is an author who issues a book to the public.

B buys a copy and makes a copy of that which he gives to C.

C uses that copy as a master copy and makes 100 copies, which he sells.

B is the primary infringer. A could take out a civil law suit against B.

C is the secondary infringer - this is potentially a criminal offence (but C must have reason to believe he is infringing copyright).

Under Section 107 of CDPA it is a criminal offence for a person to:

- make for sale or hire;
- import into the UK otherwise than for private and domestic use;
- possess in the course of a business with a view to committing an infringing act;
- in the course if a business to sell, hire, offer, expose for sale, exhibit in public or distribute;
- distribute otherwise than in the course of a business to such an extent as to affect prejudicially the copyright holder

any article which is an infringing copy **AND** which he knows or has reason to believe is an infringing copy.

Computer Software and Infringements

Areas of copyright which are particularly relevant to the web developer include:

1. Copying from the original disc to a new disc. This is an infringement of copyright.
2. Copying a computer program listing. This is an infringement because the program is a literary work and therefore copyrighted.
3. Look and Feel cases - these are very complex. Look and Feel is a term used to cover the main features of a product's appearance, the experience a person has using it, and its interfaces.

"Look and Feel"

For a website, "look and feel" could refer to the general appearance of the site, how the pages follow one another and how a user uses and navigates the site. It could even include the structure and architecture of the site.

The concept of literal and non-literal copying in computer programs is important in these cases. Literal copying is fairly straightforward - if part or all of a program has been copied as it stands this is literal copying. Non-literal copying is more complex - if the ideas and functions of a program have been copied, but the program is written in a different programming language, this could still infringe copyright.

The idea of non-literal copying is of fundamental importance in look and feel cases, but it is hard to define. Should copyright include protecting elements that are not easily definable? Similarity in look and feel of two websites may be attributable to copying, but it can also be explained in other ways - the two website designers may have worked independently, but used current standard design procedures, and drawn their material from similar or common sources.

There are several cases in this area, most of them from the US, but the legal principles are similar.

Whelan Associates Inc v Jaslow Dental Laboratory Inc (1987)

Two programs to assist in the running of a dental lab were written by the same person, but in two different programming languages. The purpose of the program was not protected by copyright, as any dental lab would have similar needs. The purpose was therefore an "**idea**" and ideas are not protected. However, the structure of the program was held to be "**expression**" of the idea, and expression is protected. In this case, the structure and the look and feel of the programs was similar, and as they had been written by the same person, they were presumed to have been copied, therefore copyright had been infringed.

Later cases weakened the findings of this case.

Apple Computer, Inc. v. Microsoft Corporation (1994)

Apple tried to prevent Microsoft Corporation (and Hewlett-Packard) from using aspects of a visual graphical user interface (GUI) that were similar to those in Apple's Macintosh operating system. Apple claimed the "look and feel" as a whole of the Macintosh operating system was protected by copyright. Eventually, the judge decided most of the elements of the interface had been licensed to Microsoft in an earlier agreement, and the rest were the only possible way of expressing a particular idea, and so were not copyrightable.

Lotus Development Corp. v Paperback Software International (1990)

This concerned two early spreadsheet programs. The judge held that the implementation of the menu system had infringed copyright, because there were other ways of achieving this purpose (as demonstrated by other spreadsheet programs), but the grid arrangement did not, as this was probably the only sensible way of achieving that function.

Lotus Development Corp. v Borland International Inc (1997)

This spreadsheet case covered the user interface. This was considered as a method of operation rather than a copyright work in US law. The judge held that even though the menu system employed could have been designed differently, it was irrelevant to the case, as it was a method of operation, similar to the buttons on a video recorder.

BlueNile v. Ice.com (2007)

In the US, a recent district court decision, BlueNile, Inc. v. Ice.com, Inc., (W.D. Wash. 2007) suggests that courts may be receptive to arguments that the "look and feel" of websites can be protected under trade dress law. (http://wistechnology.com/articles/4349/)

research activity

Read Bainbridge (2004) (4th Edition, pages 32-37, 6th edition page 103) to support your understanding of this complex area. If you do not have access to this book, there are several suitable sites available on the web, such as http://www.computerlaw.com/articles/lookandfeel.php

Make notes or a mind map on the key points.

my learning space activity

Choose three websites you use regularly - try and define the "look and feel" of the sites.

Does each site have a distinctive look and feel? What characteristics make it distinctive?

In what ways are the look and feel similar (or different) across the three sites?

Based on what you have discovered in your research, are there elements of the look and feel that you believe would be protected in law?

Updates to CDPA

Creative Commons

Copyright law has been seen by some to be restrictive and stifling, especially in creative activities. On 1st November 2004 a group of new copyright licences was released in the UK, arriving from the US under the umbrella of Creative Commons (CC), http://creativecommons.org. CC is a not-for-profit organisation which provides licences which allow artists to determine what, if any, parts of their work are actually copyrighted and what other artists are allowed to do with the work. The main idea behind it is to foster creativity.

Although CC originated in the US, the licences are now available in many languages, and have been adapted by Creative Commons International to be compatible with various local jurisdictions (34 at the start of 2007).

In effect, CC licences change "all rights reserved" into "some rights reserved" or "no rights reserved", as the artist wishes.

Copyright (Computer Programmes) Regulations 1992 (CCPR)

These regulations make amendments to the 1988 Act. In particular, CCPR creates an important exception to copyright law - "a lawful user of a copy of a computer program [i.e. the licensee] may make a back-up copy of it which is necessary for him to have for the purpose of lawful use". Only one back-up copy is allowed though.

EU Copyright Directive 2001

The directive was brought into law in the UK under the Copyright and Related Rights Regulations 2003.

The most important point covered is *Technological Protection Measures* (TPMs). A TPM is "any device, design or component which is designed...to protect a copyright work", e.g. encryption, or CDs that can't be played on a PC. It is now illegal to try and circumvent these technologies.

The directive also covers *Electronic Rights Management Information* (RMI), providing a civil remedy if someone "knowingly and without authority removes or alters the RMI". An example would be putting protected software on a peer-to-peer network.

Finally, the regulations state that research, which also includes educational materials, must now only be for non-commercial use and should always include an acknowledgement.

top tips

A number of different laws cover IPR. We have only covered copyright issues. Should you have any legal questions/issues concerning IPR you are **strongly** advised to seek legal advice.

knowledge check

To complete this knowledge check activity, see the Knowledge Check section at the end of this lesson.

End of Page 8

Knowledge Checks

Module: Web Development Issues
Unit: Legal Aspects of Web Development
Lesson: Intellectual Property Law (2)

You can contact us on
02476 765 15700
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Intellectual Property Law (2) - Page 3

knowledge check

How long does copyright last for literary, dramatic and musical works?

- Fifty years after publication
- Fifty years after the author's death
- Seventy years after publication
- Seventy years after the author's death

Please choose which of the answers above is correct.

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Intellectual Property Law (2) - Page 3

knowledge check

How long does copyright last for sound recordings and broadcasts?

- Fifty years after publication
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Please choose which of the answers above is correct.

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Intellectual Property Law (2) - Page 3

knowledge check

What does a copyright sign look like?

- TM
- ¢
- ©
- #
- ®

Please choose which of the answers above is correct.

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Intellectual Property Law (2) - Page 3

knowledge check

If no copyright sign is shown, you are free to copy as much as you like – true or false?

True

False

Please choose which of the answers above is correct.

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Intellectual Property Law (2) - Page 3

knowledge check

Which of the following is NOT an example of intellectual property?

- Copyright
- Patents
- Breach of Contract
- Database rights
- Law of Confidence

Please choose which of the answers above is correct.

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Intellectual Property Law (2) - Page 8

knowledge check

Select all the true statements.

- An author has the right to be identified as the author of a work.
- Moral rights can be assigned to a different owner
- Economic rights can be assigned to a different owner
- Freelance authors can assign copyright to another company
- Copyright owners have the right to copy but not adapt their work
- Primary infringement of copyright is a civil offence
- Selling illegal copies of a film is secondary infringement
- Look and feel of a computer program is never covered under copyright
- It is legal to remove copy protection on an MP3 song you have paid to download

Submit

Please choose which of the answers above are correct.
When you are happy with your choices press the submit button.

Knowledge Checks - Solutions

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Intellectual Property Law (2) - Page 3

knowledge check

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- ✗ Fifty years after the author's death
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- ✓ Seventy years after the author's death

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Intellectual Property Law (2) - Page 3

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Intellectual Property Law (2) - Page 3

knowledge check

If no copyright sign is shown, you are free to copy as much as you like – true or false?

- True
- False

Please choose which of the answers above is correct.

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Intellectual Property Law (2) - Page 3

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- Economic rights can be assigned to a different owner ✓
- Freelance authors can assign copyright to another company ✓
- Copyright owners have the right to copy but not adapt their work ✗
- Primary infringement of copyright is a civil offence ✓
- Selling illegal copies of a film is secondary infringement ✓
- Look and feel of a computer program is never covered under copyright ✗
- It is legal to remove copy protection on an MP3 song you have paid to download ✗

● Submit

Please choose which of the answers above are correct.
When you are happy with your choices press the submit button.