



Module: Web Development Issues
Unit: Legal Aspects of Web Development
Lesson: Intellectual Property Law (1)

Intellectual Property Law (1)

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Introduction

In this lesson and the next, we will look at Intellectual Property Law, focussing mainly on **copyright**. However, this is a huge area, so we will only consider the main points, to provide an insight into the way the law works in this area.

In the first lesson, we will look mainly at the theoretical side of IP law, and then in the second lesson we will consider some of the detailed legislation that exists.

Broadly speaking, intellectual property is work - artistic, scientific, industrial or literary - that is the product of human creativity. Intellectual Property Rights (IPR) are the rights granted to the creator or owner of the work. Generally, the aim of IPR is to protect the author or creator, within certain time limits.

The Nature of "Information"

think about it

Information is unique as a commodity, compared with more traditional "goods". Why do you think this is?

feedback

There are several reasons why information is valuable:

1. The same piece of information can be sold or traded over and over again! This makes trading in information very lucrative.
2. Information does not need big warehouses for storage
3. Shipping tangible goods involves high shipping costs. Shipping information is relatively inexpensive.

It is clear that information has value - often a very high value. But information is not worth the same to every individual or organisation. The value of a particular piece of information to a particular person will vary depending on what they can use it for. An electronics company with timely information about a competitor will potentially find it very valuable. But the same information will be much less relevant to an organisation in an unrelated sector, such as a clothing manufacturer, and so will be of much less value to them.

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Can information be stolen?

Who "owns" information? Can it be owned? Is it property? The term "property" implies something that can be owned, and therefore stolen. The law relating to theft is clear about what theft is:

The Theft Act, 1968, 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."

(Note: some of the words above have been underlined. You should be aware that there are a number of tests or rules that define the underlined words in legal terms.)

In *Oxford v Moss* 1978 CA, a student 'borrowed' an examination paper to cheat in an exam, copied the questions and returned the paper (he was actually caught doing this). He couldn't be charged with conspiracy to defraud, because he was acting alone, so he was charged under the Theft Act 1968 for stealing the exam questions.

The case was dismissed by the Court of Appeal who stated that the confidential information on the paper was not property falling within section 4 of the act. The University had not been permanently deprived of the questions. For the purposes of the Theft Act information is not property, and only property can be stolen. Information is known as intangible property.

So... if information cannot be stolen in terms of the Theft Act, what can be done to protect information about ourselves, our clients and even any work (data etc.) that we might produce?

Intellectual property law

Intellectual property law covers a number of different areas:

- Copyright Law,
- Patent Law, which is concerned with new inventions (such as hardware),
- Law of Confidence, which is based in case law, and protects trade secrets, business know-how and information such as lists of clients and contacts,
- Trade marks and passing off,
- Semiconductor Regulations.

In common with the rest of this unit, this lesson does not give a definitive statement of the law. IP law is very complex - if in doubt, you should seek professional advice.

Before we look in specific detail at the law, we will look at the theoretical issues around copyright and IPR.

Why do we have IPR? Do we need IPR? Should we have IPR laws?

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What is IPR?

Intellectual Property Rights - IPR - provide a way of protecting "intangible" property and allowing the owner of it to make money from it.

think about it

Society has certain moral "codes" which embody what is considered acceptable behaviour. In general, society has encouraged integrity when using other people's property, and this is at the heart of intellectual property.

Are these ideas changing in the face of the 'information society'? What is your view of, for instance, downloading music for free, or using unlicensed software?

Intellectual Property Rights normally refer to legislation passed to protect intangible property. IP law is not international legislation, but there are international codes which countries are expected to sign up for, including, for example, the European Copyright Directive. The World Intellectual Property Organisation promotes such treaties and codes (<http://www.wipo.int/>).

There is more detail on the legislation later in the lesson.

Justification for copyright

Simon Stokes (2005) gives the following as common justifications for the existence of copyright protection:

1. There would be no incentive for authors to create or innovate unless they are granted rights to exploit their work;
2. The efforts of the creative artist deserve to be rewarded in their own right, regardless of any economic basis;
3. The fruits of intellectual labour should be classed as property in the same way as products of industry are;
4. "It is unjust to reap where others have sown" (known as "unjust enrichment";
5. "Thou shalt not steal" - referring to the Ten Commandments laid out in the Bible.

Think about these points. How far do you agree or disagree with them?

Who owns the Intellectual Property Rights?

"A man should own what he produces, that is, what he brings into being. If what he produces can be taken away from him, he is no better than a slave. Intellectual property is, therefore, the most basic form of property because a man uses nothing to produce it other than his mind." (Professor Niblett)

The other side of the argument - "Copyleft"

Not everyone subscribes to these views. The open source software movement and advocates of free software and "copyleft" are examples. Copyleft is a play on words, and is "a general method for making a program or other work free, and requiring all modified and extended versions of the program to be free as well." (<http://www.gnu.org/copyleft/>)

Case Study - the GNU/Linux free operating system

Richard Stallman was a student at the Massachusetts Institute of Technology (MIT) in the 70s, and was later employed in their Artificial Intelligence Lab. Collaboration and the sharing of ideas (and source code) were embedded in the culture there and were encouraged.

Later, in the 1980s, and in the same spirit of collaboration and sharing, Stallman started the GNU project to produce and share software freely. He believed that proprietary software was contrary to the spirit of freedom to share and he set about creating an entirely new operating system where the source code could be freely modified, shared and distributed.

The kernel of GNU was never completed, but this gap was filled by Linux, written by Finnish student Linus Torvalds. The resulting OS, called GNU/Linux, was released under a software license called the General Public License (GPL). The GPL ensured that certain rights were maintained as the software was distributed.

The GPL gives these freedoms:

1. Freedom to run the licensed program as the user wishes
2. Freedom to replicate and distribute the program
3. Freedom to study and change the source code
4. Freedom to distribute changed copies of the program

The GPL uses copyright to ensure that the software remains free - rather than to restrict its use and distribution - by saying that anyone who redistributes the software, with or without changes, must pass along the freedom to further copy and change it.

my learning space activity

Read more about GNU, copyleft and free software at <http://www.gnu.org/>.

Supporters of the free software viewpoint believe that "the availability of free software is a moral right and that attempts by commercial software houses to charge for commercial programmes is a moral wrong". Spiers (2007).

"Free" in this context refers to freedom rather than financial cost.

The Argument against Copyright

The following arguments are often proposed against copyright:

1. Information cannot be treated in same way as other property;
2. Copyright does not achieve what it is intended to - often the *author* does not gain much economic benefit from copyright - the *owner* does;
3. Some believe that copyright restricts creativity and innovation - how can society advance if we are not allowed to build on and develop the work of others?
4. Creativity and production of "copyrightable" works existed long before legislation with no ill-effect - consider the European Renaissance of the 14th-17th centuries - a time when creativity and innovation blossomed;
5. Copyright legislation does not protect the ordinary person - usually only large commercial organisations sue for breach of copyright, it is too costly for the ordinary person;
6. It is no longer effective - how do you stop it?

Technology has caused a big shake-up in the music industry. Instead of listeners having to buy CDs (or vinyls) of their favourite music, they have instant access to it through the internet, in a variety of ways. This has big implications for copyright in music. Musicians and record companies are having to rethink their approach.

1. In 2007, the English rock group Radiohead released their album "In Rainbows" solely for download from their website, with users free to pay whatever they want - or nothing at all - for it.
2. Also in 2007, Prince gave away his CD "Planet Earth" free with a UK national newspaper before it was generally released, to publicise his forthcoming concerts.

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Implications of copyright - hyperlinking

Hyperlinks are really the essence of the worldwide web. This raises particular issues:

1. To link to a site, you have to include the relevant HTML code in your site e.g. University of Teesside. This could include a name or phrase which "belongs" to another organisation or individual. Domain names are generally considered too small to be protected by copyright. Icons or other images may be protected, however.
2. Linking could be said to amount to "passing off" or trade mark infringement. When a user clicks a link, do they know they are going to a different site or might they still think they are on the original website? (Passing off "derives from common law and occurs when someone 'passes off' his goods or services as being those of someone else." (Bainbridge 2008).
3. Does placing a link to another site make it appear that the linked site is somehow associated with or endorses the original site?
4. Deep linking - when a link is included which bypasses the home page, going straight to the linked page, so missing out copyright notices, terms and conditions etc. Owners of the linked site may also object because deep linking will bypass any advertising on the home page.

my learning space activity

Relevant cases on deep linking are Shetland Times v Wills (1997) and a US Case - Ticketmaster Corp v Tickets.com Inc (2000). Information on both these cases is available on the web - investigate these cases and make appropriate notes on them.

Hyperlinks and framing

Websites sometimes use "frames" (although these are now going out of favour). With frames it is possible to have third party content appear within a frame on the original site. This can cause confusion for users - whose site are they actually on?

Click See **here** at the back of this lesson booklet. for Figure 05.04.01 - Example framed website

An example from case law is the US case, Washington Post v The Total News (1997). Total News provided a news hub linking to stories on various other news organisations' sites. The linked stories were displayed within a frame on Total News' own site. The case was settled out of court. Again, research this case on the web for a better understanding of the issues involved.

top tips

It has been suggested that when you set up a website you are giving an implied licence for another to link to your site, at least to the homepage. Note, however, that any implied terms are overridden by any express licence terms given. For an example, take a look at the terms and conditions relating to the website, copyright, IP and hyperlinking on the British Gas site <https://www.britishgas.co.uk/>

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Intellectual Property - which view is correct?

IPR and copyright are not simple issues, they are very complex and have implications for the very functioning of the WWW and e-commerce. There are clearly two sides to the argument. Some people consider the term "intellectual property" itself to be biased and presumptive. You will need to make up your own mind which side you favour - after further investigation and reading.

A chance to think about the issues is given in the following My Learning Space activities.

After that, in the rest of the lesson we will be looking at the law as it stands in England.

my learning space activity

Further information and perspectives are available:

Tim Lee "A Practical Argument against Copyright Protection" November 22, 2006:
<http://www.techliberation.com/archives/041265.php>

A bit of fun: http://www.youtube.com/watch?v=CJn_jC4FNDo

A good US perspective by a copyright lawyer (focuses on issue of video on YouTube):
<http://www.youtube.com/watch?v=rr9SQ4qkMMk>

Two e-books available from Teesside LRC:

Copyright and Multimedia Products by Irini A. Stamatoudi, 2002

Open source licensing : Software freedom and intellectual property law by Lawrence Rosen.

Consider the following fictitious scenario:

Due to the increasing complexity and rapid growth of all aspects of digital media the government has decided to review the current legislation and proposes introducing a new act during its term of office called the "Digital Copyright Act". They want to "go back to the drawing board" with this piece of legislation, producing an innovative and manageable law that meets the needs of the 'information society'.

As is common practice, they have invited experts and interested parties to comment and make suggestions about what should be covered and included in the new act. You are one of these interested parties.

Consider the following issues so that you will be prepared to discuss, argue and support your case:

1. Should the government actually introduce a new copyright act, or abolish copyright protection totally? (support your argument with clear reasons)
2. Assuming that you (and other experts) have decided that some form of copyright protection is necessary you need to consider the following:
3. What type of material should be covered by the new act?
4. What criteria should be there be to qualify an artefact for copyright (i.e. what determines if something should be copyright?)?
5. How long should copyright last?
6. What should the law allow you, as the holder of the copyright, to do?
7. What should the law allow you, as the user of the copyright material, to do?
8. What remedies should there be for you if someone breaches your copyright?
9. Should there be an exceptions to copyright - if so what and why?

You may also wish to discuss this with your fellow learners on the discussion forum and/or your tutor.

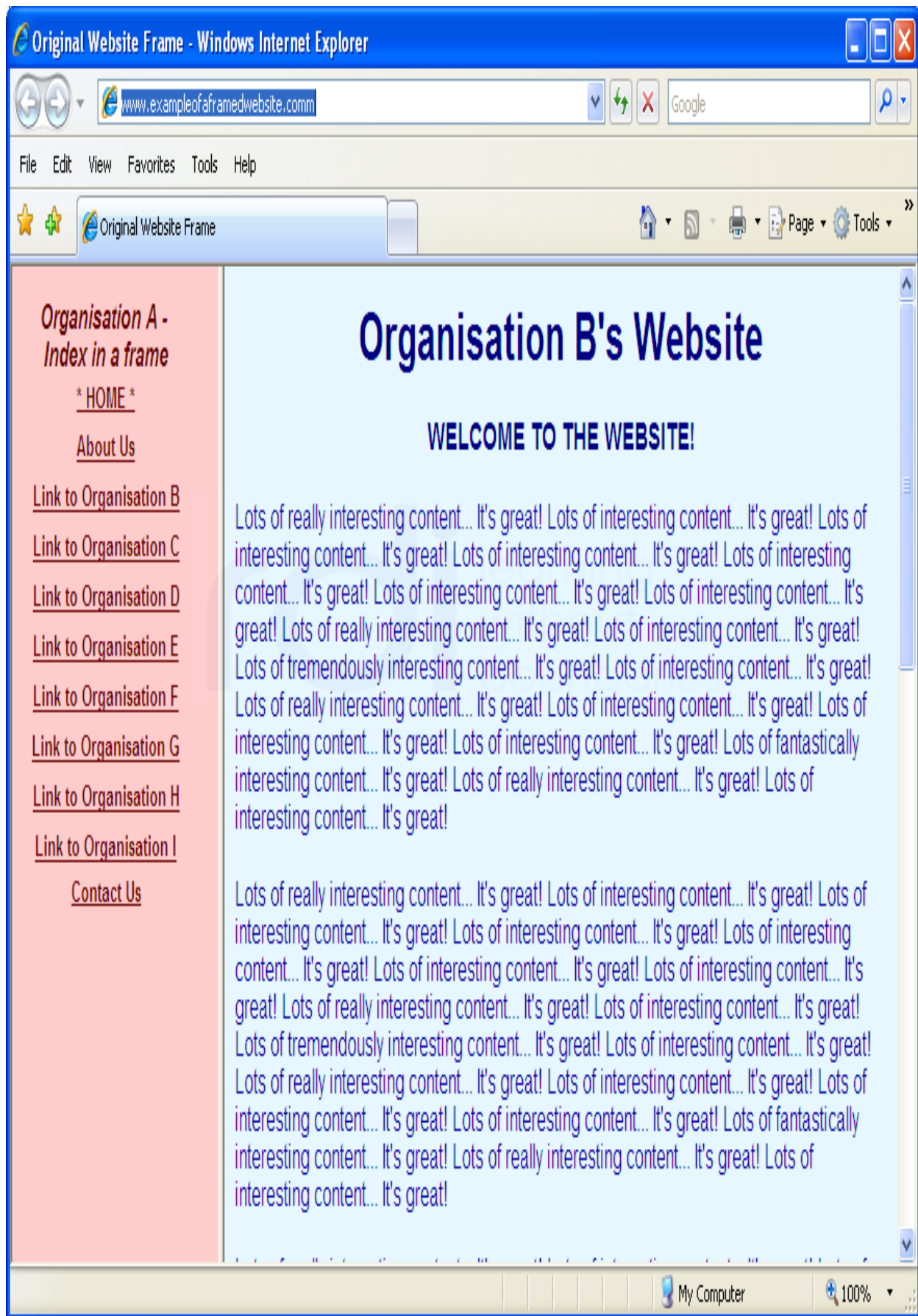


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Knowledge Checks

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Knowledge Checks - Solutions

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