



IPR & Exam Prep

Copyright, Patents, Confidentiality & Licences

IPR: Intellectual Property Rights

- Intellectual Property Rights
 - Rights – legally protected ability to control ownership
- Protection for intangible, but valuable things
 - Writings, Inventions, Music, Drawings, Software
 - Things that can be duplicated easily
- Protected by
 - Copyright Law
 - Patent Law
 - Law of confidence
- Allow creators to benefit from their ideas but avoid monopoly

Copyright

- Need permission to perform restricted acts:
- Restricted Acts
 - Copying
 - Publishing
 - Adapting
 - Includes translation into other (computer) languages
- Key statutes:
 - Copyright, Designs and Patents Act 1988.
 - The Copyright (Computer Programs) Regulations 1992

What works does Copyright protect?

- Original works (i.e. created by author)
 - Literary, dramatic, music & artistic works.
 - Sound recordings, films, broadcasts
 - Typographical arrangements of published editions
 - Layouts, fonts
 - Software, software design materials & databases
- It is not meant to protect ideas themselves
 - But includes the detailed plot of a story as well as words
- It's EASY to get a COPYRIGHT, HARD to get a PATENT

Who Owns The Copyright?

- When is copyright granted?
 - Copyright exists from the creation of the work
 - No special action is necessary
 - © asserts a claim, but is not necessary
- Ownership
 - Usually the author of the work.
 - A work created during employment is owned by the employer not the author – unless agreed otherwise.
- Duration
 - 70 years after author's death for written works
 - 70 years after creation/release for film/sound
 - Varies for other types of work

Idea v Expression

- Copyright doesn't protect ideas, procedures, methods of operation or mathematical concepts
- Copyright protects the expression of an idea
 - Something has to be formulated and written down – or recorded
- Judges have spent long hours deciding whether or not something is an idea or the expression of an idea.
 - Idea – an attractive spy saves the world
 - Expression – Spectre, No Time to Die
 - Text and detailed plot are protected

CPDA Sections 28-76 Permitted Acts

- Fair Dealing
 - Non-commercial research, review, or criticism
 - Photocopies of work for students.
 - Studying a program to see what it does (without looking at code)
- Time-Shifting [Private/Domestic Use].
- Taking backup copies of computer programs
- Correction of errors in software
- Decompiling code for interoperability purposes (if no other way)
 - Mustn't use to create a similar program

Extracting Ideas and Principles

- It is NOT an infringement of copyright for a lawful user of a copy of a computer program to observe, study or test the functioning of the program in order to:
 - To determine the ideas and principles which underlie any element of the program
 - If s/he does so while performing any of the acts of loading, displaying, running, transmitting or storing the program which s/he is entitled to do.

What is a Patent?

- A monopoly right to stop others from making, using or selling an invention
 - Even if they think of it for themselves
- Lasts for up to 20 years
 - After this, it passes into the public domain
- The right can be sold or licensed to others
 - It can have a value
- The invention must be disclosed when creating the patent

Patent Law

- **UK Statutes**

- Patents Act 2004
- Patents Act 1977
- Copyright, Designs and Patents Act 1988
- Patents Designs and Marks Act 1986

- **Regulations / Statutory Instruments**

- Patents Rules (various years)

- Significant case law interpreting laws

What sort of inventions can be patented?

- Products or processes with new functional or technical aspects
 - Patents describe how things work, what they do, how they do it, what they are made of or how they are made.
- The invention must be new
- Must involve an inventive step.
- Must be capable of industrial application
- Must not be excluded

UK – Patent exclusions

- A discovery, scientific theory or mathematical method
- A literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever
- A scheme, rule or method for performing a mental act, playing a game or doing business, or **A COMPUTER PROGRAM**
- The presentation of information
- (These exclusions apply both in UK law – Patents Act 1977 and in EU law - European Patent Convention Art. 52)
- But this prevents these things from being treated as an invention only to the extent that a patent relates to that thing as such.

Law of Confidence

- A civil tort based on common law not statute law
 - Imposes a **duty of confidentiality**
- This can be used to protect new ideas before
 - A contract is written
 - They are expressed in copyrightable form
 - A patent is granted
- Only for confidential information
 - If information is published legitimately, the duty of confidentiality disappears

What does Confidentiality Protect?

- Any information that is
 - Not trivial or gossip
 - Not easily available by other means
- Need not be
 - Completely secret
 - Others can know as long as it is **clearly confidential**
 - Highly sensitive
- Wider scope than patent or copyright
 - Covers trade secrets, client lists, personal information, algorithms, intentions and plans

Breach of Confidence

- Information has the **necessary quality of confidence**
 - Something worth keeping secret
- Information was shared, **giving an obligation of confidence**
 - To a reasonable person
- Been used in an unauthorized way of **detriment to the originator**
- **Coco v AN Clark [Engineers] Ltd [1969]** - Coco, shared his moped engine design with AN Clark, for a potential joint venture. They fell out then the company produced its own moped. Coco couldn't clearly identify conf. inf. or show how it was misused
- **ConnectU v. Facebook, Inc.** – in 2004, the Winklevoss brothers sued Mark Zuckerberg, claiming he stole their concept and confidential information when he was hired to code their social networking site ConnectU. They settled in 2008 for \$65 million

Public Interest Defence

- Where disclosure is of significant benefit to society
 - Rare
 - Does not mean what the public is interested in!
 - Applies to information for police, taxman or public (where important)
- Public Interest Disclosure Act 1998
 - Protects workers from revealing information
 - About past, present or future malpractice in the workplace
 - Of the right type (a 'qualifying disclosure')
 - Excludes official secrets, disclosure to a lawyer
 - To the right person in the right way ('protected disclosure')

Employees & Confidentiality

- Employee cannot disclose an employer's confidential information
 - Has obligations of confidence and good faith
- After leaving employment
 - Can disclose and use general skill and knowledge acquired
 - Cannot disclose highly confidential information learnt while employed.
- Contract of employment
 - Can enforce confidentiality during employment
 - Can prevent an ex-employee from soliciting customers and working in a competing business (non-compete clauses) for a certain period of time
 - May be subject to reasonableness: courts can strike out
 - See USA non-compete clauses & recent changes
 - <https://leaddev.com/hiring/how-end-non-compete-agreements-impacts-engineers>

Faccenda Chicken v Fowler [1985]

- Identifying Trade Secrets
 - Has the information been given to only a limited number of employees
 - Has the employer impressed on the employee the confidentiality of the information
 - Can the confidential information be easily separated from other information acquired by the employee during the course of employment?
- Employees should not disclose trade secrets but less protection for confidential information.
- Ex-employees have fewer constraints than employees

Faccenda Chicken v Fowler [1985]

- Without express terms, implied terms cover only highly confidential information (e.g. trade secrets)
- Express terms would only be enforced if reasonably needed to protect trade secrets or to prevent customers being enticed away by abuse of personal influence.
- An employee must not deliberately copy a list of his employer's customers for use after he leaves.
- Judgement
 - Ex-employee could set up a rival chicken delivery business; knowledge of customer & price lists did not breach confidentiality

Does confidentiality benefit society?

- What are the advantages?
 - Prevent ideas from being "stolen", before other protection in place
 - Balanced protection for employees/employers
 - Trade Secrets (Enforcement, etc.) Regulations 2018
- What are the disadvantages?
 - Unethical decisions may be hidden (but protected by the Public Interest Disclosure Act 1998)
 - No time limit, so society can't benefit from improvements (compare with copyright/patent)
- On balance: confidentiality is useful

Exam Preparation

- Wednesday 10th December 13:30-14:30 in Boyd Orr labs
- No crib sheet, no notes
- 2 scenarios, each with 4 questions (5 marks each) /40
- Apply what you've learned to particular situations
- General approach to marking - 1 mark for each relevant & correct point made. Full marks for a strong answer with at least 5 good points, showing awareness of complexity, weighing competing arguments