



UNIVERSITI TEKNIKAL MALAYSIA MELAKA

UTeM

# BITS 2523

## Cyberlaw & Security Policy

### Lecture 7

By

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# Copyright, Trademark, Patents, and Trade secrets

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Topics covered:

- Copyright
- Trademark
- Patents
- Trade secrets

# Copyright (Amendment) Act 1997

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- The Copyright Act generally protects copyrights, including trade secrets, intellectual property in devices or data, etc.
- The Copyright (Amendment) Act 1997, which amended the Copyright Act 1987, came into force on the 1st of April 1999.
- There are **3 objectives** of the Copyright (Amendment) Act 1997:
  - to make **unauthorised transmission of copyright works over the Internet** an **infringement** of copyright.
  - It is also an infringement of copyright to **circumvent any effective technological measures** aimed at restricting access to copyright works.
  - These provisions are aimed at ensuring adequate protection of intellectual property rights for companies involved in content creation in the ICT and multimedia environment.

# Copyright (Amendment) Act 2012

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The Copyright (Amendment) Act 2012 aims to fulfil the requirements that allows Malaysia to comply to the WIPO Copyright Treaty and WIPO Phonograms and Performance Treaty as well as to keep the Copyright Act 1987 abreast with new developments and international standards.

## (1) Notification of copyright

- Under the Amendment Act, the owner or licensee of a copyright work may notify the Controller of Copyright (controller) of the copyright in the work by providing the prescribed particulars and paying a fee.
- **Notification is not mandatory. Upon notification**, the particulars of the work such as the personal particulars of the copyright owner, a statutory declaration that the applicant is the owner, the category, title, name of the owner, date and place of the first publication of the work, **will be recorded and maintained on the Register of Copyright.**

# Copyright (Amendment) Act 2012 (cont..)

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- An advantage of notifying the copyright to the controller is that the certificate of notification issued by the controller **constitutes prima facie evidence of the owner's claim to the copyright** and is **admissible in court**. This will assist copyright owners in discharging the burden of establishing their claim of copyright in a work, which is often a daunting task.

## (2) Anti-camcording

- It is now an offence for any person who operates an audiovisual recording device in a **screening room** (such as **cinema** or **theatre**) to record any film in whole or in part. Anyone who attempts to do so commits an offence.

## (3) Circumvention of technological protection measures

- The Amendment Act **makes it an offence** for anyone to circumvent, or cause or authorise anyone to **circumvent, technological protection measures** used by copyright owners to protect their works, such as passwords, encryption, access codes, and watermarking.
- “**Technological protection measure**” is defined to mean any technology which prevents or limits the doing of any act that results in an infringement of copyright.
- Examples of technological protection measures include: **verifications** (product keys, limited install activations, persistent online authentication), **encryption** (CSS, ADEPT), **copying restriction** (Adobe DRM for EPUBS and PDF), **anti-tampering** (Microsoft’s Protected Media Path), **regional lockout** (MS Windows Media DRM), **tracking** (watermarks, metadata)
- Such technological protection measures are **necessary to prevent copying and restrict accessing to copyright works**. It is also an offence for anyone to manufacture, import, distribute or possess any technology, device or component which is used, designed or produced for the purpose of enabling or facilitating the circumvention of technological protection measures.

# Copyright (Amendment) Act 2012 (cont..)

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- Section 36B of the Act prohibits any person from removing or altering any electronic rights management information or distributing any works or copies of works knowing that electronic rights management information has been removed or altered.
- “Rights management information” means information which identifies the work, the author, the owner of any right of the work, the terms and conditions of use of the work, numbers/codes that represent such information, when any of these items is attached to a copy of a work or appears in connection with the communication of the work to the public.
- However, there are some exceptions to such cases where the circumvention of the technological protection measure is done for a sole purpose of:
  - achieving interoperability of an independently created computer program with the original program.
  - identifying and analysing flaws and vulnerabilities of encryption technology.
  - testing, investigating or correcting the security of a computer, computer system or computer network.



# Copyright (Amendment) Act 2012 (cont..)

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- **identifying and disabling an undisclosed capability** to collect personally identifying information about online activities of a natural person.
- performing on **law enforcement activities**, national security and a statutory function.
- by a **library, an archive or an educational institution** for a sole purpose of making acquisition decision.

## (4) Liabilities of service providers

- The Amendment Act also introduces **new liabilities for service providers**. “Service providers” are persons who provide services relating to, or connection for the access, transmission or routing of, data. It includes providers and operators of facilities for online services and network access, and is arguably wide enough to cover Internet service providers and website operators.
- The Amendment Act **exempts a service provider from liability for copyright infringement for certain activities** such as **transmitting, routing or providing connections of an electronic copy of the work through its primary networks or system caching**, as parliament recognises that these activities are necessary to provide efficient access to data.
- A copyright owner whose work has been infringed on a network may request the service provider to remove or disable access to the infringing electronic copy on the network. The service provider must then remove or disable access to the infringing copy within 48 hours.

# Copyright (Amendment) Act 2012 (cont..)

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- The **person whose electronic copy of the work was removed** or to **which access has been disabled** may **issue a counter notification** to the service provider to request that the copy or access to it is restored on the network.
- The service provider must promptly provide the owner with a copy of the counter notification and inform him that the removed copy or access to it will be restored in 10 days unless confirmation is given by the owner that he has filed an injunction against the issuer of the counter notification stopping him from infringing activity on the network. The Amendment Act requires the copyright owner and the issuer of the counter notification to compensate the service provider for any loss incurred by complying with their notifications.

## Section 43D –System Caching

- Caching generally refers to the storage of a copy of data of an electronic platform on another computer. It is for the purpose of decreasing network latency and minimising unnecessary bandwidth usage. Certain popular content which originates from foreign servers may put a strain on local servers if it is repeatedly requested by end-users. For cheap and speedy retrieval of information, a copy of such content is placed in domestic caching servers for subsequent retrievals.
- There are **3 situations where a service provider is not liable to infringement of copyright** for making an electronic copy of the work on its primary network:
  - the electronic copy of the work is **passing through an automatic process.**
  - the electronic copy of the work is **made available in response to an action by a user of its primary network.**
  - the electronic copy of the work is **made available in order to facilitate an efficient access to the work by a user** provided that the service provider does not make any modification to the content of the electronic copy during transmission.

## Electronic theft (e.g. breach of confidence by a current or former employee, or criminal copyright infringement)

Under Malaysian law, the right to bring an action for breach of confidence stems from common law, or pursuant to the contracts of employment, which generally contain confidentiality clauses and as such would not constitute a criminal offence.

Copyright owners have the **right to bring an action for copyright infringement either as a civil or criminal offence**. Section 41 of the Copyright Act 1987 sets out a range of offences for copyright infringement, which include making for sale or hire, distributing, and exhibiting in public any infringing copy during the subsistence of copyright in a work or performers' right.

### ***Chuah Gim Seng & More Again v. SO [2009] 10 CLJ 65***

The appellants were found guilty and convicted for the **sale of pirated copy films**. The penalty imposed was RM2,000 for the sale of each copy and in default a four-month jail term for failure to pay each charge.

# Trademark: Identify goods & product

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# Trademark: Identify services

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 **amazon.com.**

 **Grab**

 **FedEx**®

 **maxis**

 **STARBUCKS**®

 **citi**®

# Trademark: Slogans

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DE BEERS  
A DIAMOND IS FOREVER



The Ultimate  
Driving Machine



i'm lovin' it®



JUST DO IT

**SUBWAY**  
eat fresh.®



# Trademark: Colors and Scents

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Tiffany “blue”  
Pantone 1837



Barbie “pink”  
Pantone 219



UPS “brown”  
Pantone 462C



Target “red”  
Pantone 186C

# Trademark: Sounds

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MGM  
Entertainment



Twentieth  
Century Fox



LUCASFILM  
THX



Intel



Golden Harvest



Microsoft



Times Warner

# Trademark: Marks

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- Marks can be owned by:
  - Individuals
  - Corporations or companies
  - groups of people (collective marks)



\*<https://johorsoutherntigers.my/>

\*<https://www.liverpoolecho.co.uk/news/liverpool-news/liverpool-fc-trademarks-liver-bird-3395391>

# Non-registrable trademark

The following are non-registrable as a trademark:

1. Prohibited marks

If the use of which is likely to confuse or deceive the public or contrary to law.

2. Scandalous or offensive matter

If it contains or comprises any scandalous or offensive matter or would not otherwise be entitled to protection in any court of law.

3. Prejudicial to the interest or security of the nation

Registrar bears the responsibility of determining the trademark, whether it might be prejudicial to the interest or security of the nation. It may be that a mark contains an inflammatory statement or words.

# Trademark

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- Trademarks are identifiers which businesses use to identify their products to consumers. This source can be either a business, person or geographical location. Traditionally this involves things such as logos, key sounds, symbols and words.
- The identifiers that make up trademarks acquire value through the labour, money, knowledge, and the skills of the trademark owners. The value acquired is based on the characteristics, quality and/or reliability of the good or service.
- Trademarks protect owners of the trademark from unfair competition practices that seek to profit from the owner's investment in the development and/or provision of the good or service (WIPO, 1993). Trademarks also protect consumers by helping them recognize the source of a good or service.
- Trademark law protects these marks against situations where consumer confusion may arise (misappropriation), or where the economic value of a mark is diluted (dilution).

# Functions of trademark

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1. **Origin:** A trademark helps to identify the source and those linked for the products and services trade in the market.
2. **Choice:** A trademark assists consumers to choose goods and services with ease.
3. **Quality:** Consumers define a certain trademark for its known quality.
4. **Marketing:** Trademark plays a significant role in promoting. Its common for consumers to make purchases based on continuous effect of advertising.
5. **Economic:** Recognised trademark is a valuable asset. Trademarks may be licensed or franchised.

\*Trademark registration is valid for 10 years from the date of application and may be renewed every 10 years.

# Trademark (cont...)

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- The rights of a trademark owner:
  - Exclusive rights to use
  - To obtain relief in respect of infringement of trademark
  - Power to assign trademark for consideration
- Recently, trademarks have become a topic of specific attention in the context of today's online environment.
- Areas such as internet domain names, hyperlinks, keyword searches, and trademark counterfeiting have forced us to rethink what trademark is and how it should be enforced.

# Trademarks Act 2019


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- The provision for trade mark infringement in the Trademarks Act 2019 is different from the former Trade Marks Act 1976. The definition of “use” under the Trademarks Act 2019 is set out in section 54(3) and provides for specific acts which are an infringement. The definition is similar to Singapore’s Trade Marks Act (Chapter 332) and the United Kingdom’s Trade Marks Act 1994.
- Section 48 of the Trademarks Act 2019 provides that the registered proprietor of a trade mark has the exclusive rights:
  1. to use the trade mark; and
  2. to authorise other persons to use the trade mark, in relation to the goods or services for which the trade mark is registered.
- Section 54 sets out the acts amounting to infringement. From a reading of section 48 and section 54, it is clear that an action for trade mark infringement is not limited to the sale of counterfeit products only. Section 54(3) lists the type of “uses” that constitute infringement. In this regard, section 54(3)(b) (offers or exposes goods for sale under the sign) and section 54(3)(c) (puts goods on the market under the sign) are relevant as the publication of the infringing goods basically exposes or put the goods on the market.



# Trademark (cont...)

## Practice tips:

- Use <sup>TM</sup> for marks in use prior to registration.
- Search before filing trademark application
  - Look for the likelihood of confusion
- File for broadest protection:  
NASCAR or 
- Use <sup>®</sup> after registration

# Trademark (cont...)

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- Among the issues related to trademark in cyberspace are:
  - Cybersquatting
  - Typosquatting
  - Linking
  - Meta-tagging
  - Framing
  - Renewal snatching
  - Counterfeiting

Is the use of a domain name to make a profit off a trademark belonging to someone else or registering a domain name of a famous company or a celebrity and then selling it at an inflated price.

Sample case:

## **Yahoo Inc vs. Akash Arora**

*where the plaintiff, who is the registered owner of the domain name “yahoo.com” succeeded in obtaining an interim order restraining the defendants and agents from dealing in service or goods on the Internet or otherwise under the domain name “yahooindia.com” or any other trademark/domain name which is deceptively similar to the plaintiff’s trademark.*

(<https://www.bananaip.com/ip-news-center/yahoo-inc-akash-arora/>)

## **Tom Cruise vs. Jeff Bugar**

Domain name arbitrator WIPO ruled that tomcruise.com belongs to Cruise and not Bugar, who has registered the domain names of hundreds of celebrities. The domain names of these celebrities which he registered point to Bugar's Celebrity1000.com.

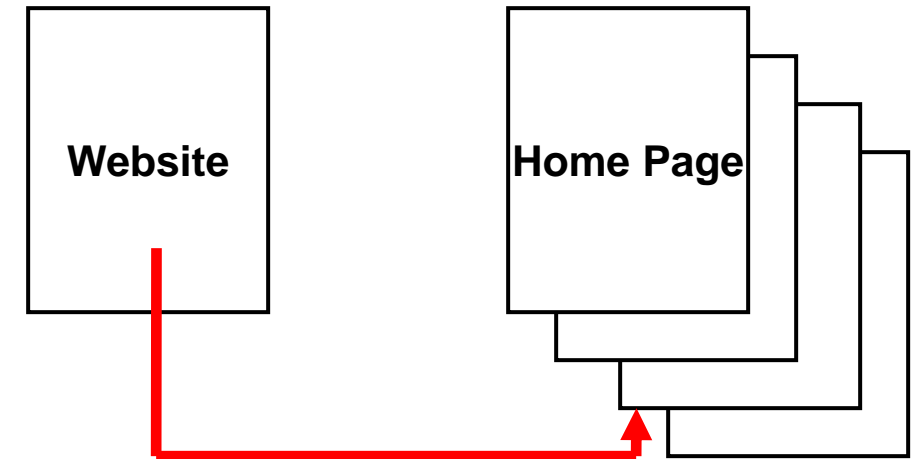
(<https://www.networkworld.com/article/2352981/tom-cruise-wins-domain-battle.html>)

# Typosquatting

- When a cyber squatter registers domain names containing variants of popular trademarks. Typo squatters rely on the fact that Internet users will make typographical errors when entering domain names into their web browsers.
- Examples:
  - Facebook.com → facebooke.com
  - Sony.com → soni.com
  - Airasia.com → airasian.com
  - Malaysiaairlines.com → malaysianairlines.com

## Hypertext reference link

- Hypertext reference link instantly transports the user to another location.
- The link may lead simply to a particular point within the same website or allow the user to leap from one site to a completely different, unrelated site provided by a different source.
- This form of linking is called: **linking out**
- **Example:**
- Appliance manufacturer links directly to internal page of non-profit consumer reviewing agency



# Linking (cont...)

- Results in target website potentially losing advertising revenue (number of hits to the homepage site).
- Some deep links incorporate trademarks.
- No law prohibiting deep linking, but actions brought for:
  - Unfair competition
  - Deceptive practices
  - Trademark infringement
  - False Advertising

# Linking (cont...)

## Image linking

- Image links bring an image contained in a separate file onto the page being viewed.
- The separate file may be an image file stored on the same server as the link or an image file stored on a separate, unrelated site, which is known as “**linking in**” (also known as inline linking, hotlinking, leeching, piggy-backing, direct linking, offsite image grabs)
- For example, inlining occurs if a user at site A can, without leaving site A, view a "cartoon of the day" featured on site B. IMG links -- a special type of link -- can be used to display graphic files on one site that are stored on another.
- **Example:**
  - Website A imports graphic files (using IMG links) from website B
  - The user remains at website A and can view content from website A and the graphic files
  - \*Dilbert case (Dan Wallach)

Imported cartoon files from  
real Dilbert website

Website A  
(Dilbert Hack Page)



\*<https://www.cs.rice.edu/~dwallach/dilbert/>

# Linking (cont...)

- Potential for confusion:
  - If user is unaware imported content is from another website
  - If imported content is surrounded by advertising for website A
  - Website A may create the impression that the owner of website B endorses or supports website A
- **Example Case:** In 2002, a federal court of appeals ruled that it was not an infringement to provide inlined links to "thumbnail" reproductions, based on fair use principles (Kelly v. Arriba Soft, 280 F.3d 934 (9th Cir. 2002)). It is not clear, however, whether inlined links to full-sized reproductions constitute an infringement and -- until there is a clear ruling on that issue -- you should presume that inlined links to full sized reproductions are not automatically excused as a fair use. In 2007, a federal appeals court again permitted the use inlined links for thumbnail reproductions ( Perfect 10, Inc. v. Amazon.com, Inc. CV-05-04753-AHM (9th Cir., May 16, 2007)).



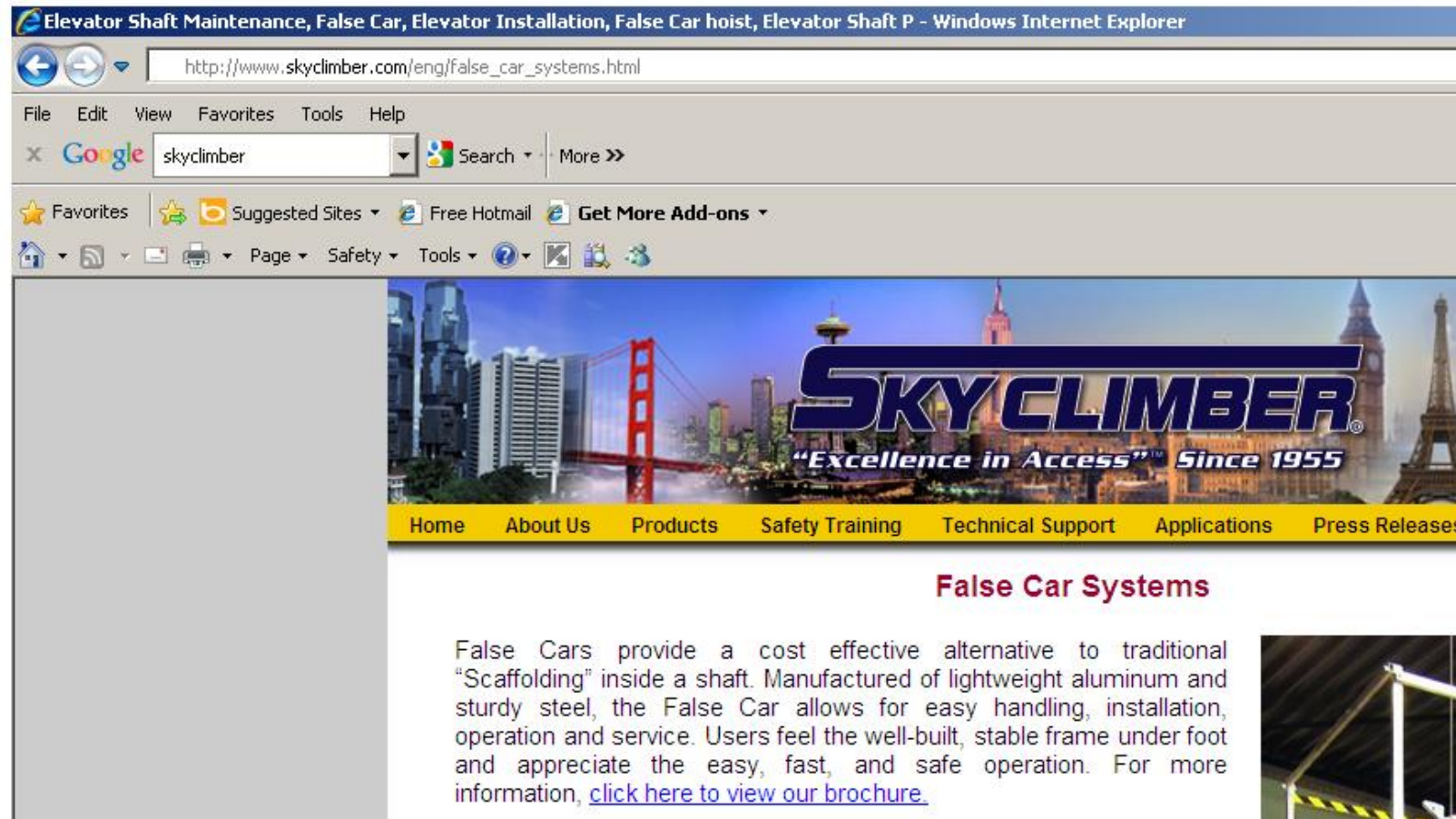
# Meta-tagging

- **Meta tags** are small blocks of text that are attached to web page and serve as a code to provide information about the web page, such as when was it last updated. While they are not part of the visible portions of the web pages they are read by the search engines.
- Generally speaking, it can be said that search engines look at three major meta tags:
  - Title Tag
  - Description Tag
  - Keyword Tag
- Meta tag issue occurs when a company uses another company's trademark as a meta tag (such as in the keyword tag) in order to trick a search engine into directing traffic to a web site by tacking a free ride on the popularity of the trademark. Such use can be enjoined as trademark infringement.

# Meta-tagging

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metatags



Elevator Shaft Maintenance, False Car, Elevator Installation, False Car hoist, Elevator Shaft P - Windows Internet Explorer

http://www.skyclimber.com/eng/false\_car\_systems.html

File Edit View Favorites Tools Help

Google skyclimber Search More >>

Favorites Suggested Sites Free Hotmail Get More Add-ons


Page Safety Tools

**SKYCLIMBER**  
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Home About Us Products Safety Training Technical Support Applications Press Releases

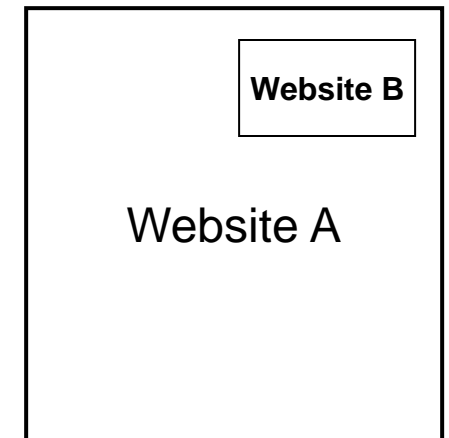
### False Car Systems

False Cars provide a cost effective alternative to traditional "Scaffolding" inside a shaft. Manufactured of lightweight aluminum and sturdy steel, the False Car allows for easy handling, installation, operation and service. Users feel the well-built, stable frame under foot and appreciate the easy, fast, and safe operation. For more information, [click here to view our brochure](#).



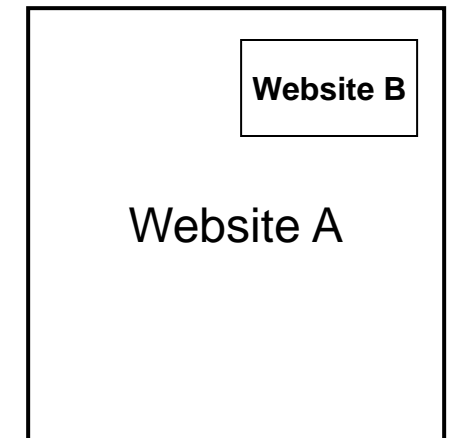
# Framing

- "Framing" is the process of allowing a user to view the contents of one website while it is framed by information from another site, similar to the "picture-in-picture" feature offered on some televisions.
- For example, Website A displays content from website B, usually within a window or frame. The user remains at website A and can view content from both websites.
- Framing may trigger a dispute under copyright and trademark law theories, because a framed site arguably alters the appearance of the content and creates the impression that its owner endorses or voluntarily chooses to associate with the framer.
- Potential for confusion:
  - If user is unaware content in frame is from another website
  - If frame is surrounded by advertising for website A
  - Website A may create the impression that the owner of website B endorses or supports website A



# Framing

- Example case: A dental website, Applied Anagramic, Inc. framed the content of a competing site. The frames included information about Applied Anagramic as well as its trademark and links to all of its Web pages. A district court ruled that the addition of the frame modified the appearance of the linked site and such modifications could, without authorization, amount to infringement. *Futuredontics Inc. v. Applied Anagramic Inc.*, 1997 46 USPQ 2d 2005 (C.D. Calif. 1997).
- In another case, The Washington Post, CNN, and several other news companies sued a website, TotalNews, which framed their news content. Under the terms of a settlement agreement, TotalNews agreed to stop framing and agreed to use text-only links.
- While case law hasn't developed definitive rules on the issue, a framer is more likely to be found liable for copyright (or trademark) infringement if copyrighted material is modified without authorization or if customers are confused about the association between the two sites or the source of a product or service.
- Framing is often used in conjunction with inlining to deliver search engine results. Courts have held in two cases, discussed previously, that such uses are permitted as fair use



# Possible solution: Getting permission

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- The simplest method of avoiding linking, framing, and inlining problems is to seek permission, especially for these types of links:
  - deep links that bypass a linked site's home page
  - graphic links comprised of trademarks from the linked site
  - links that result in framing, and
  - IMG links that pull full-sized images from a site.
- Once permission is obtained, you can sign a linking agreement. A linking agreement can be as informal as an email authorization stating, "You have permission to link to our website's home page using the words [insert the words in the link]."

# Possible solution: using disclaimers

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- If a website owner is concerned about liability for links but is unable to obtain, or unwilling to seek, permission from the linked site, a prominently placed disclaimer may reduce the likelihood of legal problems. A disclaimer is a statement denying an endorsement for or from another site or waiving liability for a potentially unauthorized activity.
- A disclaimer is rarely a cure-all for legal claims, but, if a disclaimer is prominently displayed and clearly written, a court may take it into consideration as a factor limiting damages.
- To minimize liability for any activities that occur when a visitor is taken to a linked website, a webmaster may want to include a linking disclaimer on its home page or on any pages with otherwise troublesome links.
  - Example wording for disclaimers:
    - *\*“This link will take you directly to another company’s website.”*

\*<https://www.legislation.gov.au/content/disclaimer>

# Renewal snatching

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- Usually, domain name registration is for a fixed period and if the owner does not re-register the domain name prior to expiration, then the domain name can be purchased by anybody.
- Cyber squatters will snatch up a domain name as it becomes available. This process is often referred to as “**renewal snatching**”.

# Counterfeiting

- *Trademark counterfeiting* (i.e., a good or service that carries the trademark of the owner but is not a legitimate good or service of the owner) is a global issue and concerns have been raised that this form of counterfeiting funds organized crime, terrorism, and other forms of serious crime.
- Trademark products that are counterfeit include jewellery, accessories, clothing, shoes, electronics, toys, appliances, manufacturing parts, food and (alcoholic and non-alcoholic) beverages, personal care and hygiene products, and pharmaceuticals, to name a few.
- These counterfeit products raise serious health, safety, labour and environmental issues (UNODC, 2014). These counterfeit trademark products are bought and sold in person and online. Even the logos, packing, and other identifying industrial designs of the counterfeit goods could be purchased offline and online.



# Counterfeiting (cont...)

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- If a manufacturer produces unauthorized goods so that they very closely resemble the brand-name goods, it is likely **trademark counterfeiting**. Trademark counterfeiting also occurs when services are presented or advertised to trick consumers into thinking that they come from a legitimate source.
- Trademark counterfeiting is always considered **infringement**, and is a common type of **trademark infringement**. However, not all infringements qualify as counterfeits. A counterfeit trademark includes marks that are largely identical to the real mark. Infringements include marks that are similar but not identical to the genuine mark. A similar mark is more likely to qualify as an infringement than as counterfeiting.



# Counterfeiting (cont...)

## Example Case: Whether a listing offering the sale of a product on an online marketplace is considered as advertising?

- The **sale** of counterfeit products by any person through his or her social media accounts would amount to trade mark infringement under section 54 of the Trademarks Act 2019. Infringement can also be committed to **advertising** counterfeit products. Section 54(3)(h) of the Trademarks Act 2019 states that a “sign” is used by a person if he uses the sign in advertising. “Advertising” is not statutorily defined in the Trademarks Act 2019.
- Section 54(1) read together with section 54(3)(h) of the Trademarks Act 2019 provide that a registered trade mark can be infringed if a person **uses** a sign, which is an infringement of a registered trade mark, in advertising. The word “advertising” is not statutorily defined in the Trademarks Act 2019.
- Nevertheless, the case of Maple Sdn Bhd v Siti Safiyyah Mohd Firdaus Chew decided under the old Trade Marks Act 1976 (now repealed and replaced) is relevant. The words “advertising circular” and “advertisement” used in section 38(1)(b) and (c) of the Trade Marks Act 1976 were also not statutorily defined. In this regard, the High Court held that the ordinary meaning ascribed to the verb “advertising” such as that described in the Black’s Law Dictionary was applicable to interpret the provision, viz.: (1) the action of drawing the public’s attention to something to promote its sale; and (2) the business of producing and circulating advertisements.
- In that case, the defendant was found to have infringed the plaintiff’s registered trade marks for selling counterfeit dUCk products on her social media accounts such as Instagram, Instatories, Facebook, etc.

- A patent is an exclusive right granted for an invention, which is a product or a process that provides in general, a new way for doing something, or offer a new technical solution to a problem.
- *Patents* are novel and unique creations, innovations, and inventions that have been registered with a governing body, which may extend protections nationally and/or internationally. Patents proscribe the use and exploitation of innovations without the authorization (i.e., explicit consent or permission) of the patent owner.
- Computer programs enjoy copyright protection, but these will only protect them against copying.
- Patent protection, on the other hand, prevents competitors from copying, reverse engineering or independently inventing a system that embodies the same inventive concept.

# Software Patents

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- Initially, most jurisdictions around the world expressly prohibited software from being patented.
- Nevertheless, advances in computer-related systems have resulted in some countries realising that software needs patent protection and a more liberal interpretation has ensued.
- The English Court of Appeal case of Symbian Ltd's Application [2008] EWCA Civ 1066 ('Symbian') highlights the willingness of the English courts to accept certain computer software as patents, in line with the current developments in technology, although the law prima facie denies computer software in general from being patentable.

# Software Patents (cont...)

- The patent application in Symbian is about how a library of functions (a “Dynamic Link Library”), useable by multiple application programs running on a computer, is accessed. It provides a way of indexing the library functions so that the computer will continue to work reliably even after making changes to the library.
- The Court of Appeal took the view that the contribution made by Symbian was not merely a computer program because “it has the knock-on effect of the computer working better as a matter of practical reality”.
- The Court concluded that a program that results in a computer running faster or more reliably **may be considered to provide a technical contribution** even if the invention solely addresses a problem in the programming.
- Thus, **it satisfies the requirement of a patent as it consists of a technical contribution**, in line of Section 1 of the Patents Act 1977.

# Software Patents (cont...)

- In Malaysia Section 13(1)(a) of the Malaysian Patents Act 1983 specifically excludes from patentable subject material “discoveries, scientific theories and mathematical methods” and paragraph (c) **excludes “schemes, rules or methods for doing business, performing purely mental acts or playing games”**.
- A computer program claimed by itself or as a record on a carrier is not patentable, irrespective of its content. This typically remains true where a computer program is loaded onto a known computer. However, if the subject matter as claimed makes a technical contribution to the prior art, patentability should not be denied merely on the ground that a computer program is involved in its implementation. This means, for example, that program-controlled machines and program-controlled manufacturing and control processes should normally be regarded as patentable subject matter. Further, it follows that, where the claimed subject matter is concerned only with the program-controlled internal working of a known computer, the subject matter could be patentable if it provides a technical effect.
- Those seeking patent-protection for software-related inventions have sought to lay as much emphasis as possible on the task performed by the invention, and as little as possible on the contribution made by computer programs. The criterion applied is to require that the claimed invention produced a **‘technical contribution’** to the state of the art (also referred to as a ‘technical effect’ or ‘technical application’).

# Trade secrets

- Trade secrets are valuable information about business processes and practices that are secret and protect the business' competitive advantage.
- Trade secrets can include secret strategies, techniques, processes and formulas that enable businesses to maintain a competitive advantage, such as all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing.
- Unlike other forms of intellectual property, "trade secrets are protected without registration" (i.e., "without any procedural formalities") and thus "can be protected for an unlimited period of time".

# Trade secrets (cont...)

- The criteria and standards for the protection of trade secrets (or protection of undisclosed information) are prescribed under Article 39 of the TRIPS Agreement. Specifically, under Article 39(2):

*Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices...so long as such information:*

- a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
- b) has commercial value because it is secret; and
- c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.



# Thank You



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