**The Copyright and Related Rights Acts 2000 to 2007 aim to protect the rights of the copyright holder. Explain what is meant by copyright and discuss how the current law applies in the context of software development.**

## General

Copyright, as defined by WIPO is the right to, among other things, the results of intellectual activity in the industrial, scientific, literary, or artistic fields. Of the three types of copyright, computer software copyright falls under the literary section as the Directive on Legal Protection of Computer Programs 1991 states that literary work includes computer programs and design documents for computer programs and certain databases.

Copyright is awarded to the author of the content in most situations and, if authored by multiple people, join copyright is awarded. The exception to this is if the work was completed for a company as part of their job where they were legally employed, in this case the copyright is owned by the company.

The law gives certain rights to the copyright holders, enabling them to copy the work, issue copies, adapt, rent and display the work in public or otherwise. This is to ensure that the author can benefit from the work financially if they wish or share it with the world if they are so inclined. This can be seen with open source software being offered for free online, this results in many more people having access to the software and makes it more robust as a larger community can work on it and have a personal stake in improving it. However, should the copyright holders not wish to freely share their work they must be protected.

## Question specific

The Copyright and Related acts 2000-2007 state that copyright is a property whereby, subject to this act, the copyright owner may allow other parties to undertake acts usually restricted for the copyright owner and protects them as being the only one allowed to perform these acts. Anyone undertaking restricted acts is seem to be infringing on the copyright.

Copyright infringement occurs when anyone does the things that the exclusive right of the copyright holder and comes in two forms. Primary, where the rights of the copyright holder are breached and secondary where their work is being traded by another party. Both forms of copyright infringement can incur civil damages but secondary, especially in cases when pirated software is involved, can bring criminal proceedings.

An clear cut example of copyright infringement relating to software is the case of Perreira & Oroyan V US Federal government in which the defendants where buying Xbox console, loading 100s of games, usually sold for upwards of €60 per, onto them and selling them on to customers at a profit. The case for copyright infringement here is clear as they had sold copies of 100s of games which they did not have the rights to and resulted in jail time and community service for the defendants.

In the above case, the software was merely copies from one place to another and no software development was involved. In a less clear cut case of Cantor Fitzgerald V Tradition Ltd, former employees of CF were hired by Tradition to create a financial system for them. Having worked on a similar system in CF and having taken a copy of the source code for that system with them when they left, they created a new financial system using it as a reference. Ultimately only 4% of the code was copied but the ruling was that there had been a copyright infringement and both the individuals and Tradition were liable.

**The European Union (Copyright and Related Rights) Regulations 2012 - S.I No. 59/2012 were introduced in 2012.  Explain why this new law was introduced and discuss whether the rights of copyright holders will be sufficiently protected under these new rules.**

S.I 59 of the EU (Copyright and related rights) Regulations 2012 was implemented to provide a mechanism to enable copyright holders to seek an injunction against a service provider which provides facilities whom infringe their copyright.

?????? Same as question 4?

**Describe and critically analyse the current system for the regulation of domain names.**

The Uniform domain name dispute and resolution policy (UDRP) is a process for the resolution of disputes regarding domain name registration. This system arose from issues early in the life of the internet, a time when companies and individuals did not see the value in the emergent technology, but some did and exploited it.

In several prominent cases many domain names such as MTV.com and McDonalds.com were registered by people long before the companies which traded under these names wanted or needed an online presence. When these companies came to set up their websites they found that the names were already taken. This led to many incidents of extortionate prices being charged for the sale of said domain names and the trend of buying up potentially valuable domain names (squatting) with the intention of selling them to the potential buyers are a high rate.

In the cases listed above it was merely a matter of money, of purchasing the domain names from the current owner, however, in the case of PETA.com the owner of the name did not merely own the name, he was using it to defame the organisaiton bearing the same name. PETA stands for the People for the ethical treatment of animals but the owner of PETA.com had a website titled People Eating Tasty Animals. Before the UDRP this would have been a case of tough luck but with this system the perceived rightful owner of the domain can seize control, especially in circumstances like this.

I complain is registered to the UDRP stating that someone is either misusing or, is not as deserving of, the domain name in question. This will then be investigated by the ICANN and, should they determine that the complainant is the rightful owner of the domain they have the power to start proceedings to transfer ownership.

This can be seen in the case of Telstra V Nuclear Marshmallows whereby the unregistered company Nuclear Marshmallows owned the domain name Telstra.org. Telstra registered a complaint and the issue was investigating. Seeing that the domain name did not point to any web site and that it has no bearing on their business while it was identical to several trademarks registered to Telstra, Nuclear Marshmallows were contacted to resolve the issue. They did not reply to notifications and ultimately the domain name was transferred to Telstra.

With the UDRP in place it allows for businesses to claim domain name that people are squatting on or public figures to prevent defamatory websites being placed on domains bearing their name, however, in cases that are not so clear cut the system is not so great. If a company called McDonalds, say a small-town convenience store, owns the domain name relating to this, they can be force to hand over the domain if McDonalds, the global corporation, requests it as they may be deemed more deserving on the name.

It is only on a case by case basis that issues like this can be resolved and one would hope that correct judgement is passed in the majority of cases but, no doubt some have fallen foul of the system in its current implementation.

**The Report of the Copyright Review Committee 2013 made a number of recommendations with regard to copyright in Ireland. Explain what is meant by ‘copyright’ and outline how it is protected in Irish Law (10 marks) and Discuss your views on two of the recommendations made in the above-mentioned report.**

The main focus o the CRC 2013 recommendations is to establish a specialist intellectual property tracks in the district and circuit courts and to introduce focused exceptions for innovation and fair use of content in the context of online links.

The position of copyright holders will be improved via technological protection and rights management information.

The position of copyright holders will also be improved by implementing the full range of exceptions permitted by EU law and the coming propositions from the State of the Union 2016. These recommendations propose a number of improvements for the use of copyrighted work across EU borders, a fairer marketplace for creators and the press and improvements to rules in education, research and cultural heritage.

Prior to a ruling in December 2015 where users were given the rights to use their online subscriptions while abroad, many users of such services were unknowingly using their services illegally. The new recommendations will extend this by allowing legal transmissions of content outside of the originating EU state to other member states aswell as more funding for dubbing and online streaming tools for televisual content.

Improvements to education were recommended after 1 in 4 educators reported difficulty with copyright related restrictions in their learning activities, new exceptions for teaching and online learning.

Exceptions for researchers to carry out data mining and analysis of large data sets making it simpler to carry out distributed big data analysis using cloud services where data is decentralised across multiple EU states.

Exceptions to allow cultural heritage institutions will also be made and the Marrakesh treaty will be implemented to facilitate access to published works for persons with impairment.

For content creators and publishers, improvements are recommended to improve the position of copyright holders (content creators) to negotiate with publishers such as Youtube to ensure that they are sufficiently remunerated. Furthermore, publishing platforms such as Youtube will be required to deploy an effective means of protecting copyrighted content from infringement. Youtbe spent 53 million on the contentID system which automatically detects the use of copyrighted content within YouTube videos and prevents the uploader from monetising it. It also provides an avenue for copyright holders to “flag” content manually which they deem to be infringing on their rights.

The publishers themselves will also be clarified and they will be recognised as right holders for the first time, enabling them to negotiate better for licencing digital content.

## My views

With the rise of cloud technology and the rate at this we are consuming digital media, copyrighted data is being distributed around the world more than ever. This has opened up a world of benefits to users and to content creators who have a wide range of content available to them and who have a massive potential audience respectively. With these substantial benefits though comes substantial risk to copyright holders and protection must be put in place.

With the above mentioned contentID system of YouTube being intended to protect copyright holders rights, either in it’s automated for or via a copyright holder flagging a video manually has some serious problems. As can be seen in a recent trend of Youtube content creators moving their business model away from Youtube ad revenue to crow funding platforms like Patreon where users opt to give money directly to the creator instead of relying on their users watching the ads youtube places on their content. This is largely due to the contentID system which is being abused by headstrong publishers such as Sony and UniSoft. These companies are flagging any content which contains their copyrighted material such that the creator cannot monetise it. This is the intended use of the system but what happens when the content is being used lawfully? If the content is used for the purpose of review or satire, then it is allowed under copyright law in the EU copyright directive Article 5. In these cases content creators are not being protected so the system is flawed.