# Topic 3 – Intellectual property

## Possible 1

## What is it?

Defined by WIPO as ‘the rights to, among other things, the results of intellectual activity in the industrial, scientific, literary or artistic fields’

There are 3 categories

* **Original literary, dramatic, musical and artistic**
* Sound records, films, broadcasts and cable tv programmes
* Typographical arrangement of published editions.

Only comes into effect when the work is recorded or written down in some manner.

## Protection of Computer Programs

Implements the Directive on the Legal Protection of Computer Programs (1991)

Software is concerned with the first category as the 1988 Copyright Design and Patents Act states that “literary work includes a table of complication, a computer program, design material for computer programs and certain databases. This only applies to original work so simple lines of code such as var x= 1 do not apply.

### Impact of Technology

* Storage in standardised formats
* High volume storage capacity
* Scanners
* Compression
* High quality of digital copies
* Ease of distribution
* Ease of finding and downloading material from the web
* P2P technology

Copyright is awarded to the author of the content, if the work is jointly written then they jointly own the copyright.

Indicated by placing the copyright symbol © at the bottom of the work to indicate the copyright status to anyone contemplating copying it.

One exception is if the author completed the work for a company as part of their job and is legally an employee, in this case the company owns the work unless there is written agreements to the contrary.

Extends to 70 years after the author dies.

## The rights of the copyright owner

* The right to make copies
* The right to issue copies
* The right to adapt the work
* The right to rent or lend the work to the public
* Right to perform play or show the work
* The right to broadcast the work.

No one can do these things without the consent of the copyright owner.

Balancing Competing Interests

* The creator of the property should be able to benefit from it financially – this encourages creativity and innovation.
* Society also benefits as the rewards will drive development
* However there is also a public interest in sharing ideas
* New developments need to build on prior innovation
* Intellectual property rules can be [exploited](https://www.theguardian.com/commentisfree/2016/aug/29/epipen-price-drug-monopolies-mylan)

## Copyright and Related Rights Acts 2000 -2007

* S17(1) Copyright is a property whereby, subject to this Act, the owner of the copyright in any work may undertake or authorise other persons in relation to that work to undertake certain acts in the State being acts which are designated by this Act as acts restricted by copyright in a work of that description
* Copyright is a property right which confers on the owner the exclusive rights to carry out certain restricted acts
* Copyright protects the expression of an idea rather than the idea itself

## S.I 59 of the EU (Copyright and related rights) Regulations

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.

## What can you do to copyrighted work?

Ok to make a backup copy of work you are authorised to use.

You can decompile the software to correct errors in it or to obtain the information you need to write an interoperable program provided that the information needed is not available in any other way.

## Databases

Some databases apply when it is original work. So IMBD or other databases of hotels, songs, tv.

Regulations introduced in 1977 to encourage creation of useful databases as the above.

15 year duration.

## Copyright Infringement

Anyone who, without permission, does one of the things that are the exclusive right of the copyright owner is said to be infringe the copyright.

2 Types

* Primary
  + Whenever any of the exclusive right of the copyright owner is breached
  + Matter for the civil courts
  + Claim for damages
  + Injunction to refrain from infringement
* Secondary
  + Trading Pirated software
  + Using pirated software in a business
  + Criminal proceedings leading to fine or imprisonment as well as civil damages.

Publishing information about how to circumvent digital rights protections (DRM) is also treaded as copyright infringement.

## File Sharing and Copyright

* Sharing of copyright protected files without authorisation is an infringement of Copyright Law
* Napster started in early 200s by Shawn Fanning
  + Legal action by Lars Ulrich and Dr. Dre
  + RIAA (Recording industry association of ameria) went after individual file sharers as did the BPI (British Phonographic industry)
  + By 2004 the US music industry had started legal action against 500+ users.
  + By Mid 200s music industry was fighint Pirate bay which ended in founders being jailed for a year and ordered to pay damages
  + 2008 to present
    - 95% of all digital music was downloaded illegally
    - Digital economy act 2010 which was designed to bring laws up to date on downloading music.

## Enforcement Measures

* Criminal Offences – carrying out certain acts without the consent of the owner – e.g. sells, rents or loans
* Fine €127,500 or max 5 Year sentence
* Minister for Justice v Hogyi (2006)
* Order as to disposal
* Provision for preventing importation

## Licensing and assignment

Licence people or organisations to carry out some of the activities that are otherwise the right of the copyright holder such as the sale or copy of the work.

Owner can transfer rights completely (Assignment)

## Cases involving Software Copyright

### Perreira and Oroyan V US Federal Government

Buying Xboxes, modifying them and installing hundreds of games as well as music and video without the permission of the copyright holders.

In exchange for cooperation one got 4 months jail, 4 months house arrest and 3 years supervised release while the other got 300 hours community service and 5 years’ probation.

### Cantor Fitzgerals V Tradition Ltd

Wales 1999. Developed a financial system for Tradition which was extremely similar to ones they had worked on at CF. Alleged copy of their system.

When the staff left they took the source code

Logged into CF after he left and took data relating to this.

Final system contained only 4% of CF code

Copy they took was only used for reference and testing.

Judge rules that programmers had infringed on copyright and Tradition was liable. However, the extent of the liability was limited as only a small portion of the system was copied. Tradition had to defend against action started by CF at a cost. Programmers were obliged to pay damages and costs for not telling Tradition about the copy.

## Confidential information

Information cannot be stolen. Never the less it is possible to take action in a civil court to prevent someone from using confidential information. The information must have been given in confidence and is protected by the obligation of confidence.

Commonly used in contracts, NDA. Trade secrets etc (soft drink)

Breach of confidence evident in Cantor Fitzgerald vs Tradition case.

## Trademarks

* A sign which distinguishes the product of service of manufacturer/provider from another
* It is distinctive and serves as a guarantee of origin
* Regulated by the Trademarks Act 1996
* Any distinctive sign can be registered if it is capable of graphical representation
* Registration may be made through the Irish Patents Office or through the Community Trademark system
* Unauthorised acts can result in infringement proceedings

## Domain names

* Domain name [disputes](http://paleofuture.gizmodo.com/5-domain-name-battles-of-the-early-web-1660616980)
* Cybersquatting - [examples](http://www.telegraph.co.uk/technology/internet/10619203/British-businesses-fall-victim-to-cybersquatters-amid-domain-name-rollout.html)
* Typosquatting – [examples](http://www.searchenginepeople.com/blog/tposquatting.html)
* Gripesites - [case](http://www.telegraph.co.uk/travel/travelnews/8060095/Disgruntled-airline-passenger-ordered-to-forfeit-I-Hate-Ryanair-website.html)
* Uniform Domain Name Dispute Resolution Policy (UDRP)
* WIPO [Resolution](http://www.wipo.int/amc/en/domains/)
* Standing – who can bring complaint
* Bad faith
* Confusing similarity
* ICANN (Internet corporation for assigned names and numbers)

The **Uniform Domain-Name Dispute-Resolution Policy** (**UDRP**) is a process established by the Internet Corporation for Assigned Names and Numbers ([ICANN](https://en.wikipedia.org/wiki/ICANN)) for the resolution of disputes regarding the registration of internet [domain names](https://en.wikipedia.org/wiki/Domain_names).

Many domain names such as MTV.com and McDonalds.com were bought in the early to mid-90’s when companies had little interest in having an online presence as the internet was considered by some to be just hype.

### Case

Telstra Corporation Limited v. Nuclear Marshmallows

Telstra.org owned by unregistered business called Nuclear Marshmallows. Telstra is a registered corporation in Autstralia.

Complaint registered and was found to satisfy the formal requirements of the Uniform Policy and Uniform rules. The WIPO center issued notification of commencement of administrative proceedings which Nuclear Marshmallow did not respond to.

Panel found that Telstra, being the relevant part of the domain, is identical to the numerous registered trademarks held by the complainant. And that the domain name be transferred.

### Defamation

Peta (People eating tasty animals) in 1995

**How do domain names. We must have a system to allocate domain names. What is the system, how did it develop, what happens if there is a dispute? Does the system work well?**

## EU Copyright Law

Outdated.

Patchwork of laws in various countries which is stifling freedom of expression online made at the time when sending postcards are the preferred form of casual communication.

Digital Single Market Strategy May 2015

Proposed regulation on portability of legal content December 2015

Audio-visual media and services directive on online platforms May 2016

State of the Union 2016 proposes to implement regulations contained within the above.

Impact of EU

* Aim is to harmonise the Copyright laws to achieve the single market
* Without EU intervention the market could become segregated along national lines allowing monopolies and anti-competitive practices to develop
* Initiatives come from the Internal Market and Services Directorate of the European Commission
* Recent developments - [here](http://ec.europa.eu/internal_market/copyright/copyright-infso/index_en.htm)

## Proposed 2016 Reform

* Better choice and access to content online and across borders.
  + In December 2015 customers were given the right to use their online subscriptions (Netflix) while they were abroad which was the first step
  + In 2016 they proposed a way for broadcasters to object permissions to legally transmit programmes online in other EU states giving more choice to customers.
  + In parallel the EU commission will use its 1.4 billion Creative Europe MEDIA program to further support the circulation of creative content across borders including more funding for dubbing and online tools (streaming).
* Improved copyright rules on education, research, and cultural heritage
  + 1 in 4 educators encounter copyright related restrictions in their digital learning activities.
  + Proposed new exception for teaching and online courses across borders.
  + Easier for researcher across the EU to use text and data mining to analyse large data sets (cloud services for big data, stored in other regions)
  + Mantatory exception that will allow cultural heritage institutions to preserve words digitally.
  + Implement Marrakesh treaty to facilitate access to published works for persons who are blind or have other impairments.
* Fairer sustainable marketplace for creators and the press.
  + Reinforce the position of right holders to negotiate and be remunerated for the online exploitation of their content (youtube)
  + Platforms will have the obligation to deploy effective means such as automated detection systems (youtube contentID)
    - Youtube spent €53 million on this.
  + Recognises the role of press publishers and they will be legally recognised as right holders for the first time enabling them to be in a better position when negotiating for and licencing content for digital uses.
  + Puts in place a mechanism to help authors and performers obtain a fair share when negotiating with producers and publishers.