

National College of Ireland

Project Submission Sheet – 2021/2022

Student Name: Simon Lowry
Student ID: x21168938@student.ncirl.ie
Programme: Masters in Cyber Security – MSCCYBE_JANOL **Year:** 1 of 2
IT Law and Ethics
Module:
Lecturer: Kira Byrne
Submission Due Date: 4th April, 11pm
Project Title: Continuous Assessment Assignment
Word Count: 2872 words

I hereby certify that the information contained in this (my submission) is information pertaining to research I conducted for this project. All information other than my own contribution will be fully referenced and listed in the relevant bibliography section at the rear of the project.

ALL internet material must be referenced in the references section. Students are encouraged to use the Harvard Referencing Standard supplied by the Library. To use other author's written or electronic work is illegal (plagiarism) and may result in disciplinary action. Students may be required to undergo a viva (oral examination) if there is suspicion about the validity of their submitted work.

Signature: Simon Lowry
Date: 22/03/2022

Office Use Only	
Signature:	
Date:	
Penalty Applied (if applicable):	

Q1.

The creator of a given piece of work is protected from others looking to gain from their creations. Certain types of works are categorized under formal IP rights and would require registration for those pieces of work and this would include patents, trademarks and industrial designs. For a duration of time it would protect against others using, selling or otherwise making copies of this piece of work. As part of its process it requires proving a new and inventive step in the piece of work. It would need to not be part of what is already considered the state of the art in the field which already exists. Two tests could be applied to confirm this assertion of novelty which are the reverse-infringement test and the enabling-disclosure test.

In the scenarios whereby the individual who created the invention is in employment, this could lead to the rights belonging to the employer. The contract of the given individual would be important here and would need outline and infer that the company obtains the rights to anything that employee produces for the duration of their employment. The Intellectual Property Unit of the Department of Ireland is the body in charge of how rights are practised within Ireland and also in terms of how the policy for how patents are given. [1]

In relation to software for non-patentable cases it is categorized differently and treated differently from these formal kinds of IP. It's included alongside the creation of books, films, books, music, and medical patents for example. This is the kind of Intellectual Property which falls mainly in the areas of the arts, IT and culture. [2] The owner or owners of the software has exclusive rights to disclose the work for public consumption, to make copies of the software, and they can also have the option to create different adaptations of the work as well. [3] They have both the paternity right and also the integrity right to enable more protection as well. The paternity right asserts that the person who created the piece of work can be asserted as the owner or author of that given piece of work. The integrity right covers as mentioned to any kind of alteration, dispersal of the material, or any kind of negative action towards the work that could lead to negative affects to the reputation of the creator. Both of these rights have their own exceptions as well.

The rights of ownership could be transferred to another however this must be done in some kind of writing or contract. This gives proprietary rights to the individual prescribed in the contract or piece of writing. However, this is not the case when it comes to licensing. Licensing can be given through words but when the licensing is given through contractual means, this is binding for the length of that given copyright.

The author of the given work where it relates to software is the person or groups of people who created the software. [4]

Amendments brought into place by the 2019 Act that are relevant here include new court jurisdictions for the District and Circuit Courts to include some intellectual property cases. The District court can now hear cases with the value potentially being up to €15000 and the Circuit courts could also be able to receive and attend to cases that are going beyond €75000. [5]

Normally, whomever has created the software maintains the copyright for it. In Anita's case, since she is working for an employer, her company is claiming that anything created by her while working for them is owned by them. This would need to be something that is directly and clearly stated in her contract or otherwise inferred from the contract, otherwise the company maintains rights to what she has produced for them. She would need to reach an agreement with the organization and again the rights would be at this point belonging to the employer unless otherwise stated in her contract or some prior agreement. Any transfer of ownership that were to take place from the company to her would need be in writing and would also need to have someone signing the document on behalf of the company who has authority to do so. [6] If Anita were to fail to do this, she could end up being involved in very costly and time consuming legal issues. If she were to illegally infringe on the copyright of this software this could lead to facing a fine of amounting upwards to €1,905.00 or going to prison for one year and this would be resulting from a summary conviction. Alternatively she could be looking a fine that could be rising as high as €127,000 or 5 years in prison. [6]

This shows how important it is for Anita to ensure the proper course of action is taken firstly to ensure that she doesn't go down any path that could lead to grave consequences to her. She must pay careful consideration to what is in her contract and determine what is the best course of action from there.

Note, a patent is not available for software so this route would not open to her. The only circumstances that software may be included as part of a patent is where it's being used to run machinery. [7]

Q2

In the event that copyrighted material is being uploaded to the site whether it be in the form of protected textual subject matter or recordings of music as mentioned, these need to be subject to filtering and proper assessments to ascertain whether they breach the new Directive on Copyright in the single Market laws. If the proper mechanisms and processes are not in place, the company could be heavily liable to big lawsuits.

The company is also charged with placing preventative measures that leverage different filtering mechanisms and authorisation approaches. This can have a financial drawback for our company due to the nature of this content potentially providing revenue from ad sales. These technical controls would need to be scaled and effectively shown to remove the content deemed to be copyrighted recordings. The effectiveness of these solutions would need to be monitored to assess how many of these copyrighted recordings are being properly flagged and taken down with haste. Repeat user offenders could have their accounts banned. Terms and conditions ought to be clearly highlighting that it is not permitted to upload these kinds of recordings at any point to the website. There would also need to be an easy process in place for copyright holders to be able to raise issues to the company about any recordings that have not been filtered out and the company would need a responsive team in place to address these concerns and remove the content. Mechanisms could be put in place as well to recognise files that have been previously uploaded as well and were deemed to be copyrighted material. This could utilize some of the metadata surrounding the file to identify such instances and stop them from being uploaded again. They could be used as a distinctive marker for the file in these cases. As a result of these approaches, the copyrighted recordings mentioned could become less available on the site and the company less liable to these kinds of claims.

The other alternative otherwise the company could be left with facing the almost infeasible task of gaining the necessary licencing from the stakeholders from which it relates which. This would be in the event that the company was looking to maintain these recordings which are copyrighted, the company would be obligated to perform it's due diligence in order to comply with gaining the necessary permissions from the rightholder of the material involved. They need to have:

- performed to the best of their possible efforts to gain authorisation from the rightholder in question
- in the event where the rightholder has submitted notice about the materials on the site, they must have done all they can to prevent it from being viewed on the site and also
- removing any access to the material and stopping it from being further uploaded to the site.

Considering the scale at which this would be required and the workload it would need entail, this would not be possible.

Another consideration that would need to be taken into account would be the possibility of defamation cases. There is precedent with the case of Delfi vs Estonia, whereby the European Court of Human Rights ruled that the online news provider Delfi had not acted sufficiently to remove comments with enough haste and were subsequently charged to pay 320 euro to the plaintiff. The filtering that the company had in place was deemed insufficient, they had used a word based automatic filtering and it left comments like the ones which were deemed hate speech for this case on the website. This highlights the importance of preventative measures and responsiveness to complaints of abuse by users on the site. There would need to be the capacity to easily flag comments as abusive and have these both automatically and otherwise manually examined to ensure that this doesn't happen on their site. It shows also that more sophisticated filtering mechanisms are required and some natural language processing techniques could be of benefit here rather than using single word matching like was used by the Delfi company, more advanced mechanisms could be deployed to help here. [8]

Q3

The changes made to the copyright directive was the biggest overhaul for 20 years. It was brought about to catch the legal rights up with technological autoincrements and a drastic change in how business and individuals involved in copyright cases. One of the main objectives was to ensure that the financial remuneration for the media creators such as various musicians was flowing to them and not into the hands of others such as online providers so yes this could be a help for people like Mike. These online providers have been receiving significantly greater remuneration for facilitating the access of this copyrighted media than the actual creators of this media. Recital 61 looks to address this with attempting to create more balance how these finances are doled out. It attempts to have the original creators obtain greater amount of pay for the usage of their creations.

The Bugle platform in this case must get the permission of Mike to get the usage of the copyrighted work through a licensing arrangement especially since in this case they are being remunerated for use of Mike's music on their platform. The main way that these organisation as an online content-sharing service provider could avoid infringement of Mike's copyright rights are as follows:

- they tried as hard as they could to gain authorisation
- prevented the access to specific work for which the rightholders have given the relevant details and
- where they have received notice from the creator here (Mike) they have worked to stop the access to the given materials [9]

Mike may be served to provide notice to the Bugle platform of this infringement if he wishes to prevent them from continuing to serve his material. The Bugle platform will be expected to act with haste to remove the content to the best of their ability. They are also expected to have technical controls in place to prevent unauthorized content being displayed on their site.

In the event whereby Mike the rightholder here is to give licensing to the Bugle platform he is entitled to be properly and adequately paid for the usages of his work. Legal proceedings could also be an option to gain proper remuneration to redress the value gap gained from the exploitation of gaining money from the advertising going along with the servicing of this media on the Bugle platform. The value of that remuneration would likely involve an assessment to determine what value would constitute an "appropriate and proportionate" compensation. If there were any contracts already in place with the Bugle platform they may end up requiring additional renegotiations to assess whether they match other such cases. How long this utilization of the media in question was happening would also need to be under consideration. Also, what other means of resolving the dispute could be explored here. [10]

Q4

For Anita and Mike's software they may look to copy, sell or use the intellectual property belonging to them or their company or pass it off as their own. The unauthorized usage of the software would amount to losses in revenue, additionally if they are not up to date or they are an altered version of the software they could end up hurting the brand for these companies leading to substantial reputation damage. This would be an infringement on their copyrights and the ruling on this is particularly strict and can result in both civil and criminal charges being placed against the competitors. The copyright for computer generated works like theirs would last for 70 years after the work had been made public. For the case of being guilty of these charges they may be looking at summary convictions which could rise to the level of hitting 1875 euro as well as facing a potential spell in jail for 12 months for summary convictions and for conviction on indictment that could be as large as 125000 euro and also facing being placed in prison for 5 years. In the

event that they were looking to pass off the software as their own they could be brought into this being a tort case.

Competitors could also look to damage the reputation and good name of the company by doing something like having people leaving malicious comments on the site or spamming the comments section or linking to their own site and this could also lead to a loss of revenue and could also result in the competitors potentially facing some liability with the attempt to defame the good name of the company for competitive reasons.

There is a test that could take place in the courts to assess things like this:

- where there already exists a positive reputation and good will towards the company
- there ends being confusion between the two different companies
- damage of the plaintiffs reputation or goodwill had been demonstrated [11]

Not all of these conditions need to be met depending on the context as a case involving Galway Free Range Eggs limited case demonstrated. In this scenario it was shown that there was sufficient good will already built up for their company and that there was a case or their attempted injunction against another company for selling their eggs under the name Galway Free Range Eggs and it was eventually successful in their assertion at the Court of Appeal using survey data as their means of proving the confusion brought about.

In terms of how these different kinds of Intellectual Property cases can be dealt with, the circuit and district can handle some of these claims as well. they can also be dealt with the commercial courts. They don't have to be reaching the usual 5 million with an intellectual property case in order to be heard by the commercial courts in these cases. It's a fast tracked case management system. The judge takes over the running of the case. they try to get people to the table faster. they may take it to mediation first. It tries to reach for an earlier settlement sooner. Hi-tech types of dispute would be held here.

Some alternative routes that can be considered to resolve the dispute are mediation, conciliation, arbitration. They offer a route which is faster, easier, not going to cause the same level of legal fees for the parties involved and on top of that, you're not having the same level of reputational damage which can come to either or both parties from being involved in these kinds of disputes. Mediation offers a process which is looking to offer help in gaining an agreement between the parties concerned. Conciliation provides an analogous procedure but instead there is a more involved role of the third party. When an agreement is not found between the involved parties they provide a suggestion and that becomes the result other than in the case whereby one of the parties involved rejects it. Another route is arbitration whereby a third party is deemed to be in a more objective position and not involved and as a result are given the power to make binding decisions for the given issue.

References

- [1] - Department of Enterprise (2021) [online] <https://enterprise.gov.ie/en/What-We-Do/Innovation-Research-Development/Intellectual-Property/>
- [2] - Intellectual Property Office of Ireland (2000) [online] <https://www.ipoi.gov.ie/en/types-of-ip/copyright1/understanding-copyright/>
- [3] - Office of the Attorney General, Government of Ireland (2000) [online] <https://www.irishstatutebook.ie/eli/2000/act/28/section/37/enacted/en/html>
- [4] - Office of the Attorney General, Government of Ireland (2000) [online] <https://www.irishstatutebook.ie/eli/2000/act/28/section/22/enacted/en/html>
- [5] - Daly, M. (2019) [online] <https://beauchamps.ie/publications/761>
- [6] - Amory Solicitors (2012) [online] <https://amorysolicitors.com/who-owns-the-copyright-in-your-computer-software-programs/>
- [7] - Intellectual Property Office of Ireland (2000) [online] <https://www.ipoi.gov.ie/en/understanding-ip/help-guidance/faqs/patents/>
- [8] - Callewaert, J. (2015) [online] [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-155105%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-155105%22]})
- [9] - Department of Enterprise (2021) [online] <https://www.gov.ie/en/publication/4d0d7-eu-directive-2019790-copyright-and-related-rights-in-the-digital-single-market-information-note/>
- [10] - Mulloly, O. (2020) [online] <https://www.arthurcox.com/knowledge/dsm-directive-and-fair-remuneration-for-authors-and-performers/>
- [11] - Phelan, D. (2019) [online] <https://hayes-solicitors.ie/News/Court-of-Appeal-Decision-Provides-Clarity-on-Passing-Off-Claims>