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Practical Assessment Week 4

RMIT University - PCP/APD 2020 Semester 2

Consider the following questions, find and discuss the relevant issues, and write the answers. A “yes” or “no” answer is insufficient for the following questions. You need to show your thought process and use good arguments to justify your position.

*Mark: Each question has ¼ mark*

1. You have probably seen a lot of ‘graffiti’ on the walls near train stations, alleys and various places. How should photos of graffiti be licensed, if at all?  
   In the process of answering this question, you are expected to mention the common problems involved in such a scenario, such as:

* What is the best IP protection scheme for this scenario?
* Is there any limit on the protection that your chosen scheme offers?
* The ownership of graffiti
* The legality of this activity
* How/if the legality can affect the ownership
* What should the author do if their work is used for commercial purposes?
* What can the author do to prevent the destruction of their work?
* Any other related issue and you deem relevant.

If you’re wondering what graffiti means, check out [this link](https://www.timeout.com/melbourne/art/where-to-find-the-best-street-art-in-melbourne) to see some of the most beautiful ones in Melbourne.

**For graffiti the best IP protection scheme is likely copyright as it is a tangible piece of work. The limits on protection for copyright are mainly that the work can still be used for personal use (not commercial) and the fact that 70 years after the creators death the work becomes public domain.**

**The owner of the work may be unclear if no agreement is in place as there are 2 (or possibly 3 or more) main parties involved. The artist, the owner of the property and if the work is commissioned, the person paying for the work to be done. It becomes even less clear if the work itself uses copyrighted or trademarked material or if the work is commissioned through a third party company, which is becoming more common.**

**The legality of graffiti depends entirely on how it is conducted and on the owner of the property. If the work is completed on an unwilling parties property it is illegal, otherwise is generally fine.**

**If the work is used without the owner's permission, what they should do is dependent on how the work was carried out. If done legally with an agreement then the correct owner can report this to authorities and may be entitled to damages or compensation in court.**

**To protect their work, the author should conduct the actions legally, with a contract in place stating the life of the work. If it is done without permission of the property owner then the artist cannot protect their work from being destroyed.**

In order to answer this question, you will need to discuss the issues with your team members and conduct online research about the topics mentioned above. Provide reference (URLs at footnote or by other means) for the sources of your main claims.

1. Your cousin owns a deli shop. He asks you to write an inventory program for him. You are glad to help him and do not charge for the program. The program works pretty well, and you discover later that your cousin has given copies to several friends who operate similar or smaller deli shops.
2. Do you believe that your cousin should (or should not) have asked for your permission before sharing your software with other people? Explain why.

**Yes, before sharing the software he should have asked for permission. As the creator of the program I own the rights and therefore can authorise who uses the software. My cousin is not a copyright owner and does not have the rights to distribute the software to other merchants without first asking me. It is a copyright infringement to use material in a way reserved for the owner such as distribution without permission.**

1. Do you believe that other merchants should pay you for the copies?

**Other merchants should pay for the copies as they did not have authorised access to the software from me, the creator and owner of the software. These merchants infringed the copyright by using the software without permission.**

In the process of responding to the above questions, you are expected to justify your answers based on the intellectual property concepts that you have learned. A "yes or no" answer is insufficient. You should explain "why" you think an approach is good.

1. Does Australian copyright law restrict one from lending/renting their computer game? What if your friend borrows the game with the intention of copying the game?

In the process of answering this question, you are expected to find what the Copyright law says about this issue. As a starting point, your team can go through the document shared on Australian Copyright Council's website about this issue: [Lending Items Protected by Copyright](https://www.copyright.org.au/ACC_Prod/ACC/Information_Sheets/Lending_items_protected_by_copyright.aspx)

**Australian copyright law does not restrict one from lending their computer game, as lending is not a right reserved to the copyright owner. It does however restrict rental, as owners of computer software (in this case, a computer game) have the right to control rental of their copyrighted item. This is because rental would involve a charge for use of the computer game, which should go to the copyright owner as opposed to the renter in this case. This is compared to lending which does not involve a charge at all.**

**In this case where the friend borrows the computer game with the intention of copying it, using that copy would be an infringement on copyright law. If the lender was aware of the friend’s intention, they could be liable for infringement as it is essentially authorising it.**

1. Read the scenario and answer the questions that follow.

SCENARIO:

The two DJs, one based in Perth, and the other in San Francisco, remixed the Green Day album American Idiot with music from a variety of artists including Aerosmith and Eminem. When they posted their American Edit album into cyberspace for free, it became an instant hit and a copyright nightmare. It took just twelve days for the DJ team to receive a ['cease and desist' notice](https://en.wikipedia.org/wiki/Cease_and_desist) from Green Day's record label.

The notice sparked outrage. More than 400,000 people signed an online petition protesting against the record label's moves to stop the album, which was only available on the Internet. Green Day came out publicly to say they were flattered by the album, and liked it.

"We now inhabit a 'remix culture', a culture which is dominated by amateur creators – creators who are no longer willing to be passive recipients of content," recently wrote Australian lawyers from the Queensland University of Technology in their report Mashups, Remixes and Copyright Law.

"Instead, they are demanding a much broader right, a right to mashup and remix material – to take on the role of producers – to cut, paste, sample of jam with content, in order to produce something which is distinctive of their own social and creative innovation."

QUESTIONS TO BE ANSWERED:

1. Should people be able to access copyright-protected material in order to create something else/new? Why? Why not? Justify your answer.

* **In legal terms, as long as the copyright-protected material was obtained by legal means, the actual acquisition is completely allowed.**

**Furthermore, for the purpose of creating something new, for example remixes, builds on various acquired building blocks to build something new. Therefore, the remix does not derive from the original work.**

2. If they should, what rights do the original creators of the work have? Note that a remix of if effectively a ["derivative work"](https://en.wikipedia.org/wiki/Derivative_work) (i.e. a new work based upon an original work). Consider, for example, who owns the right to own the remix. What other rights are involved?

* **Obviously the original creators, whose content was used for a remix, have rights to their material. In a sense, they should have a say if the use of their content is ok in their eyes; like how Green Day was “flattered” by the remix. However, giving the original artists the be-all-end-all say on whether a remix/remake is ok is a flawed notion. A remix can be something new and separate from its source material if it is altered to the point that it can be defined as something new/else. The source artists judgement on this may be swayed by personal bias (Their feelings towards their work, their particular vision on how their content should be portrayed). A subjective criteria is usually created to check off remakes to see if they are too close to the original, if it is, then original creators have the right to take it down.**

**It can also be argued that the remix-er has a creative right to their work as well, since they constructed their own piece.**

**In a broad sense, every creation builds on the work of others; if everyone had the right to take down work that had any hint of their work as inspiration; then Thomas Eddison could claim the works of anything with light bulbs. There is a hypothetical scale from “exactly like the original” to “completely different” that must be established, and a point on that scale must be defined to signify when its new content and not stolen content.**