



MONASH
University

FIT1049- IT Professional Practice Week 8:

Intellectual Property



creations of the **mind**

http://www.esa.int/var/esa/storage/images/esa_multimedia/images/2004/10/intellectual_property_animation/1032692-3-eng-GB/Intellectual_Property_Animation_large.jpg

Last Week: Ethics

- Introduction to Ethics
- Ethics for the IT professional
- ACS Code of Ethics



is215classblog.blogspot.com/

Did you read the e-Pub for week 8

- A. Yes, It was good.
- B. Yes, It was bad
- C. No, I had technical difficulties
- D. No, I did not get around to it.

Intellectual Property



Introduction

Types of IP

- Trade Secrets
- Copyrights
- Patents
- Trademarks

Balance sheet

Contracts



Ethical \neq Legal

(Baltzan, 2009, p.386)

	Legal	Illegal
Ethical	I	II
Unethical	III	IV

What is Intellectual Property?

Intellectual property refers to **creations of the mind** for which owners are granted various **exclusive legal rights**

Source: Intellectual Property Licensing: Forms and Analysis, by Richard Raysman, Edward A. Pisacreta and Kenneth A. Adler. Law Journal Press, 1998–2008

Understanding IP:

'intellectual' vs 'real' property

- Intellectual property \neq physical manifestation
- Definitions of 'theft' always include 'depriving the owner' of the property
- How is IP infringement different? How is it similar?
- How do IP and technology interact? What are the ramifications for IT?

Intellectual Property

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Types of IP

- Copyrights
- Patents
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- Trade Secrets

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Four main classes of IP

Copyrights

Patents

Trademarks

Trade Secrets



<http://www.tradesecrets.org.au/media/img/main/logo.jpg>



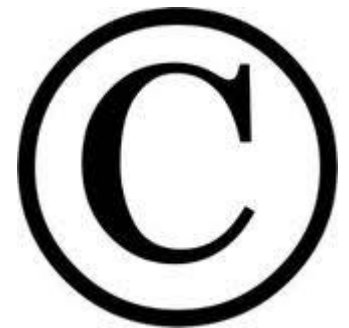
Note: each type of IP is transferrable like real property.

http://upload.wikimedia.org/wikipedia/commons/4/4f/Copyright-_all_rights_reserved.png



What is Copyright

- **Copyright** is a legal construct granting the creator of an **original work** a set of **exclusive rights** on that work for a **limited time**.
- Copyright covers the expression of an idea, not the idea itself

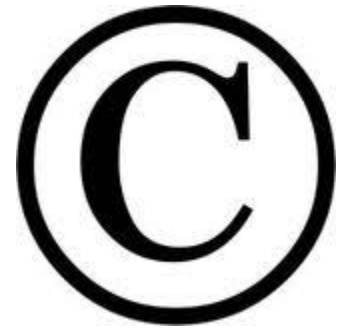


What can be copyrighted

- Books
- Poems
- Plays
- Theses etc.
- Photographs
- Films
- Dance choreography
- Musical compositions
- Audio recordings
- Drawings
- Sculptures
- Radio and TV broadcasts
- **Computer software**

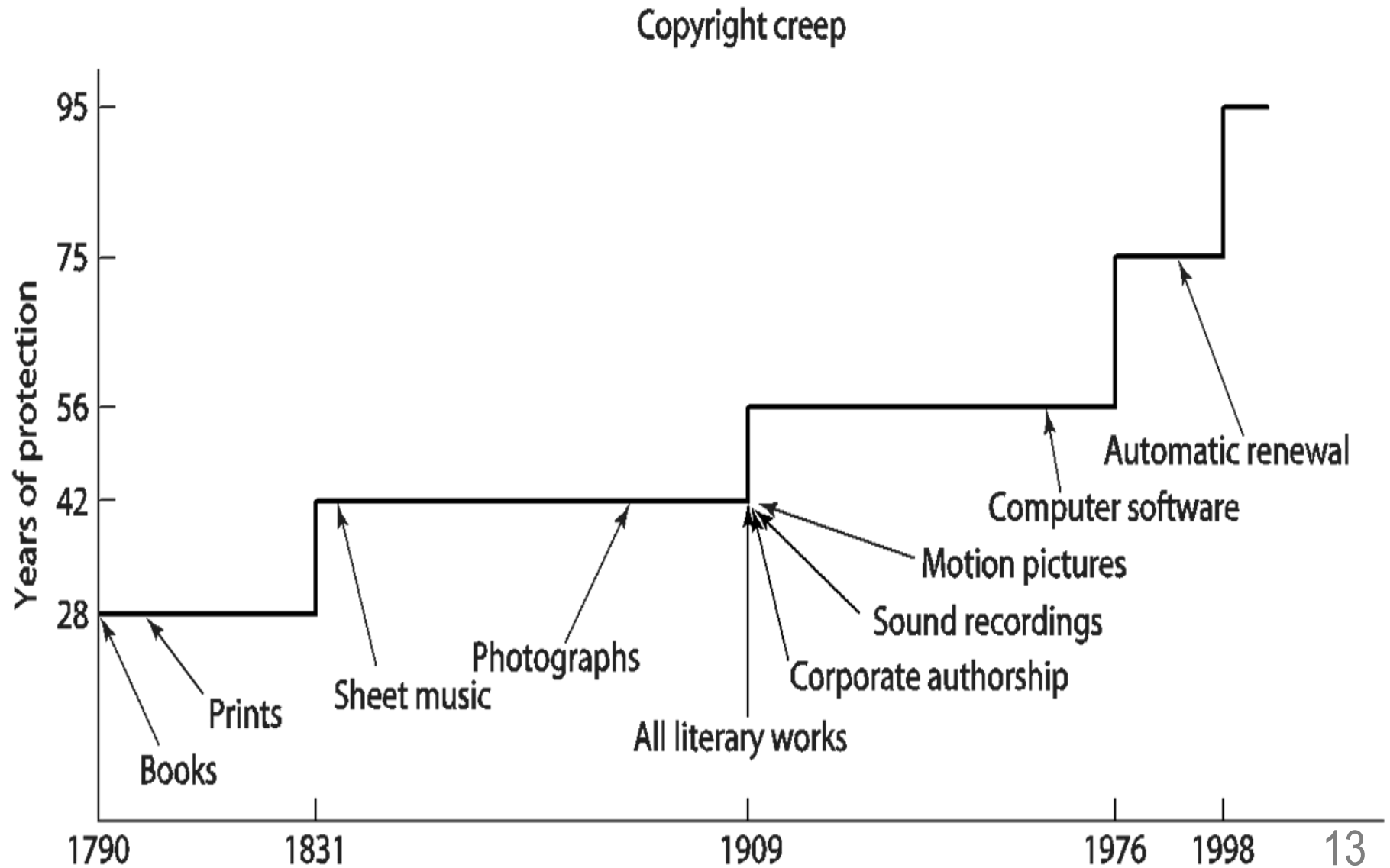
How is a creation copyrighted?

- Copyright is automatic
 - i.e. don't need to use copyright symbol:



- Copyright can also be registered to prove ownership – e.g. for:
 - Collecting royalties
 - Legal action for infringement
 - Transferring ownership

Copyright Creep



What is a Patent

A patent provides the owner with a set of **exclusive rights to prevent others from making, using, or selling the invention** for a **period of 20 years**, in exchange for **public disclosure** of the invention.



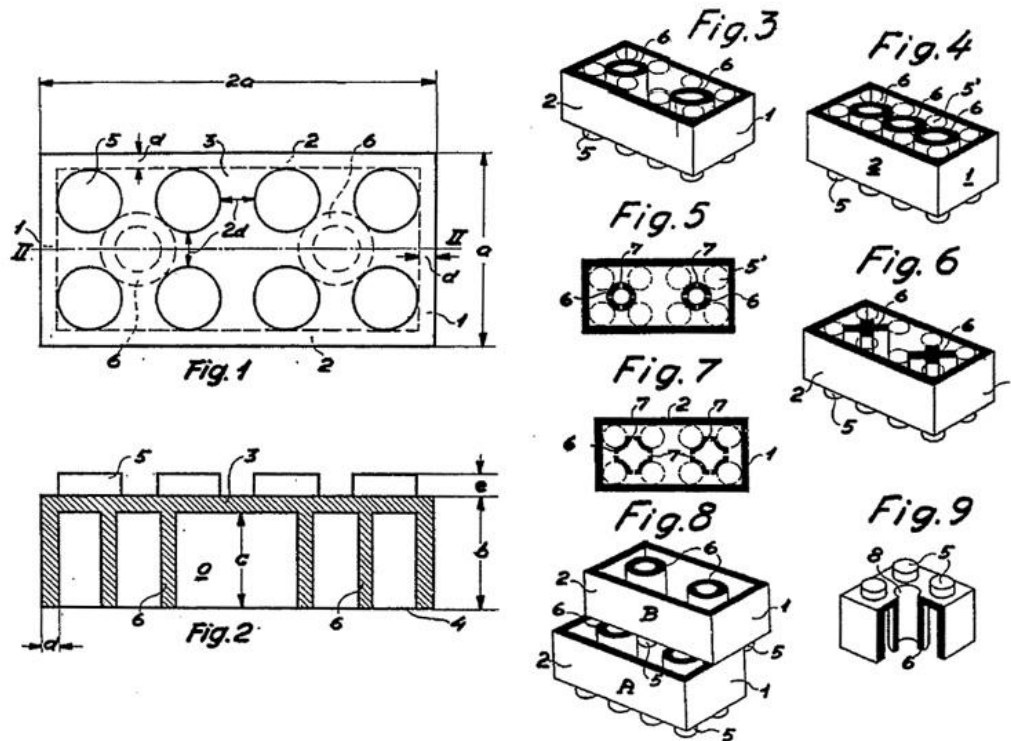
What can be Patented

- Governed in Australia by the *Patents Act* 1990 (Cth)
- Patents are granted by application
- Applications are expensive
- Cover inventions, not discoveries – must be functional
- Must be ‘novel’ – ‘prior art’ will invalidate
- Infringement does not require copying!

Examples: pharmaceutical formulas, mechanical inventions

Lego brick patent

Henhører til beskrivelsen til
 patent nr. 92683



Patents Duration

- 7 Years?
- 20 year?
- Depends on the jurisdiction
- Countries vary



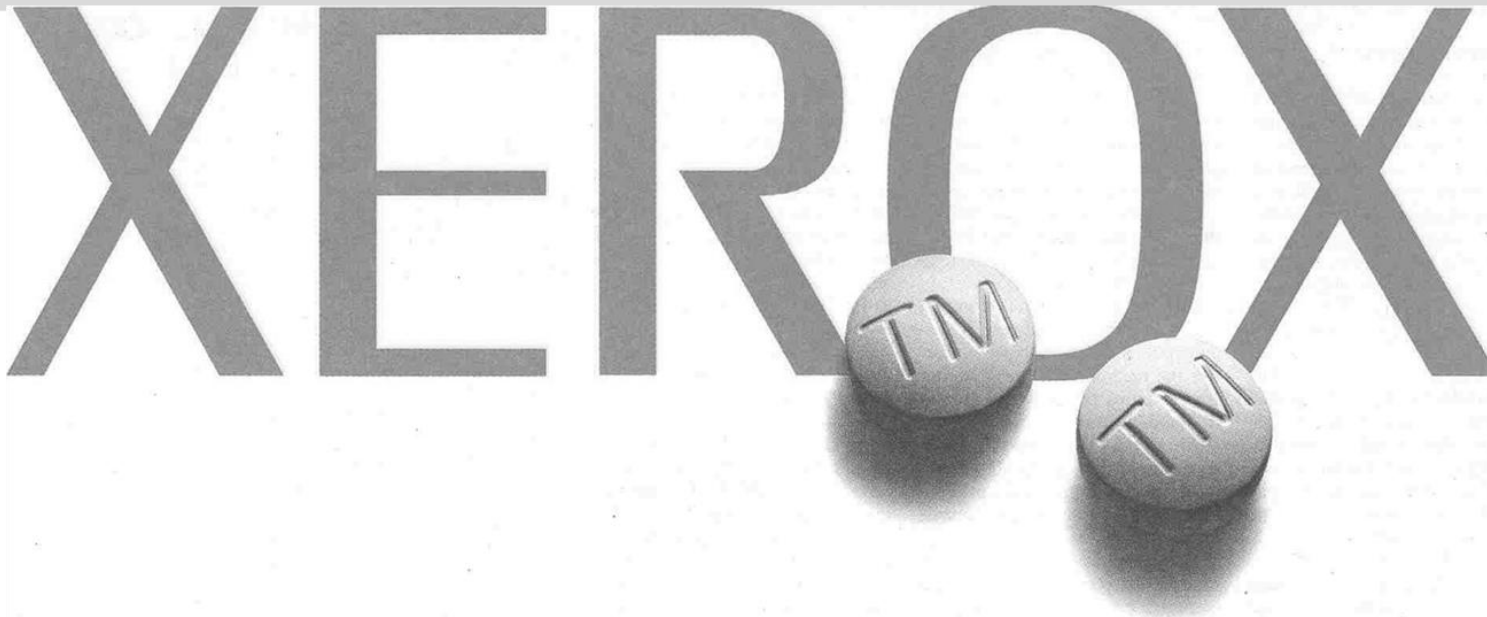
Trademarks

- Distinctive identifiers of goods or services restricted for use by the owner
- May take the form of
 - words,
 - phrases,
 - logos,
 - symbols,
 - photos
 - a combination

Duration of Trademarks



- Trademark protection lasts as long as the trademark is in use
- Non-use for a period of three years may invalidate the trademark (in Australia)
- Trademarks are granted in particular areas or business sectors



When you use “Xerox” the way you use “aspirin,” we get a headache.
There’s a new way to look at it.

Boy, what a headache! And all because some of you may be using our name in a generic manner. Which could cause it to lose its trademark status the way the name “aspirin” did years ago. So when you do use our name, please use it as an

adjective to identify our products and services, e.g., Xerox copiers. Never as a verb: “to Xerox” in place of “to copy,” or as a noun: “Xeroxes” in place of “copies.” Thank you. Now, could you excuse us, we’ve got to lie down for a few minutes.

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<http://www.tradesecrets.org.au/media/img/main/logo.jpg>

= “confidential business information”

3 main attributes:

1. Not publicly available;
2. May be used for financial gain
3. Holder must make efforts to sustain its **confidentiality**.



Examples: formulas, business processes or designs



<http://www.tradesecrets.org.au/media/img/main/logo.jpg>

What steps can be taken to ensure they remain secret?

- locking doors
- using passwords
- placing appropriate confidentiality blocks on documents
- clean desk policies
- employee badge policies
- employment agreements
- confidentiality or non-disclosure agreements with third parties
- Non-compete clauses for employees leaving



<http://www.tradesecrets.org.au/media/img/main/logo.jpg>

T
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Confidential piece of IP, gives competitive advantage
only commercially useful for limited types of
information

Never expires

Not appropriate for all IPs (e.g. inventions, art)

Reverse engineering allowed

Lost once they become public

- What happens when employees leave?
- Companies use NDAs and non-compete clauses



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Anti-piracy attitudes

- [Anti-piracy ad – accidental pirate](#)
- [Anti-piracy ad – demonising piracy](#)
- [IT Crowd anti-piracy parody](#)



"It is piracy, not overt online music stores,
which is our main competitor. "

Steve Jobs, Apple CEO

Do you think it's wrong to pirate content?

- A. Yes, it's important to pay people for their creative work
- B. Yes, but everyone pirates music/movies
- C. No, these things cost too much
- D. No, I don't think there is anything wrong with piracy

E-Folio Activity – IP balance sheet

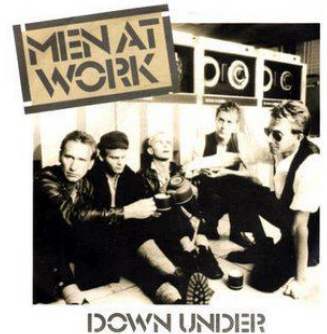
What are the advantages and disadvantages of intellectual property

- What was the original intention
- Who wins
- Who loses
- Why is it necessary
- Have you heard of unfair cases

Case Study:

Larrakin Records v Men at Work

- Men at Work sued based on alleged infringement of 'Kookaburra sits in the old gum-tree'



<http://routenote.com/blog/wp-content/uploads/2010/07/menatworkdownunder.jpg>

- Found to have infringed copyright based on the flute melody
- Ordered to pay past and future royalties



<http://www.k-3teacherresources.com/image-files/kookaburra-song-2.jpg>

Ramifications of software patents

*"If people had understood how patents would be granted when most of today's ideas were invented and had taken out patents, **the industry would be at a complete standstill today...***

*The solution is patenting as much as we can. **A future startup with no patents of its own will be forced to pay whatever price the giants choose to impose. That price might be high. Established companies have an interest in excluding future competitors.***"

- Bill Gates

[Bold added for FIT1049/FIT2003]

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Non-disclosure agreements ('NDAs')

NDAs restrict the sharing of confidential information

Specify what is confidential and for how long

A balanced NDA will not require confidentiality where:

- The information is public
- The information is discovered through another source
- The information was already known

Be prepared to sign NDAs!



http://4.bp.blogspot.com/_zpj8JJSLabc/TCepH5NHAgl/AAAAAAAAABc/aBdhs2scdZM/s1600/confidential.jpg

Contractual non-compete ('NC') clauses



NC clauses restrict an employee's ability to work for a direct competitor

- For a period of time and/or
- in geographic range

Must be reasonable

Generally un-enforceable

Do not remove your obligations under corresponding NDAs

Your employment contract may contain an NC clause – Be aware!



http://4.bp.blogspot.com/-9mKrDnFEAUk/TmiDr8pJ21I/AAAAAAAAAes/-PlhGa6oDKUs320/non_compete.jpg

Assignment of Copyright

In a contract that you sign you may be asked to assign copyright

- To your work place
- To publishing houses

Be careful the scope of the assignment

Corporate ownership

Copyright is most often owned by our employer

Never to take code, documents or other copyrighted material (i.e. the specific expression) to a new employer unless you are sure you own it – just take the knowledge you have gained (i.e. the ideas)

Try to avoid taking what appears to you a ‘substantial part’ of copyrighted work

Case study

You are working for a company that owns some software.
You are writing some of the code for the company

What is the best form of IP protection of for the code?

- A. Patent
- B. Copyright
- C. Trade mark
- D. Trade secret

How is that applied

- A. Registration process
- B. Automatic
- C. Must be kept secret

Who owns the IP

- A. The company
- B. You
- C. Depends

- You should now understand:
- What is IP, why it exists and the four types covered
- How IP and technology are linked together
- The role of NDAs and non-compete clauses
- How the expansion of copyright term, scope and enforcement has affected society and the IT industry
- How software patents are affecting society and the IT industry
- The role of Trademarks in commerce

Next Week

Communication modes I