Intellectual Property rights and Computer Technology

CYBERSQUATTING: IS IT ENTREPRENEURSHIP OR INTELLECTUAL THEFT?

Just before the 2000 New York senatorial campaign, Chris Hayden paid $70 each for the exclusive two-year rights to the following Internet addresses: www.hillary2000.com, www.hillaryclinton 2000.com, and www.clinton2000.com. A few weeks later, Mrs. Hillary Clinton, then the U.S. first lady, declared her candidacy for the state of New York senatorial race. The Clinton campaign team wanted her presence on the web, but they could not use any of the three names, though they rightly belonged to Mrs. Clinton. Deciding not to challenge Mr. Hayden in the middle of an election campaign, the team opted to buy the rights for www.hillary2000.com from Mr. Hayden. However, Mr. Hayden decided to engage a broker to demand $15,000 for the use of the name

Cybersquatting, as the practice of grabbing somebody's name and registering it with an Internet registration company in anticipation of reaping huge rewards, is becoming widespread.

DISCUSSION QUESTIONS

1. Is Mr. Hayden violating Mrs. Clinton's intellectual rights?

2. Can Mr. Hayden claim free speech protection for the use of the names?

3. Should there be laws to make the practice illegal?

Intellectual Property

- According to the United Nations' World Intellectual Property Organization (WIPO), intellectual property is defined as: 'the rights to, among other things, the results of intellectual activity in the industrial, scientific, literary or artistic fields'.

- Intellectual property takes the form of 'intellectual objects', such as original musical compositions, poems, novels, inventions, and product formulas.

- So the individuals who do all these works should reap financial rewards for their efforts for a specified duration of time depending on the form of IP.

Have you

- Used other people's music while creating a video of an event you had?
- Have you recorded a movie or a tv episode to watch later in the week?
- Downloaded music from the Web and not paid for it?
- Have you made copies of a course textbook?

Have you ever stopped to care of the hard work the authors or creators of these content put in place?

Which ones are legal and which are illegal? What does the data protection act in Kenya say about IP?

IP and challenges of New technologies

- In the past mostly businesses and professionals owned copyrights; therefore they had to deal with copyright law.

- With the digital technology and the Internet, we are all empowered to be publishers therefore becoming copyright owners of the photos takes, blogs, vlogs etc. which has seen most of them being copied, therefore infringing copyrights

- Photocopier was a threat then, yet bulky but now new technologies are a real threat to IP

Examples

- Storage of all sorts of information (e.g., text, sound, graphics, and video) in standard digitized formats; the ease of copying digitized material and the fact that each copy is a “perfect” copy.
- High-volume, relatively inexpensive digital storage systems, including hard disks for servers, cloudbased storage, and small portable media such as DVDs, memory sticks, flash drives.
- Compression formats (such as MP3 for music, which reduced the size of audio files by a factor of about 10–12) making music and movie files small enough to download, copy, and store.
- Search engines, which make it easy to find material, and the Web itself.

Examples

- Peer-to-peer technology, which permits easy transfer of files over the Internet by large numbers of strangers without a centralized system or service; and later, file-hosting services that enable storage and sharing of large files (e.g., movies).
- Broadband (high speed) Internet connections that make transfer of huge files quick and enable streaming video.
- Miniaturization of cameras and other equipment that enable audience members to record and transmit movies and sports events; and, before that, scanners, which simplify converting printed text, photos, and artwork to digitized electronic form.
- Software tools for manipulating video and sound, enabling and encouraging nonprofessionals to create new works using the works of others.
- Social media, where it is easy and common to share photos and videos.

- Copying software is a common practice that infringes the IP rights. People make copies of programs, games, business software etc.
- This coined the term Software piracy for high volume, unauthorized copying of software

  Recently, an eBook by the Former First lady, Michelle Obama was released even before the official release.
- The software industry estimated the value of pirated software in billions and billions of dollars.
- In the earlier years, large sizes of files made it difficult to share but with the advent of compression techniques in the early 2000s, one is able to transfer files through the internet

The scope of piracy was expanded to include:

- High-volume, unauthorized copying of any form of intellectual property,
- Individuals posting unauthorized files to legitimate file-sharing sites, and
- Underground groups trading unauthorized copies

The improved technologies gave rise to highly profitable, multimillion-dollar businesses that encourage users to upload and share files, knowing that most of the files are unauthorized copies.

We should also not that piracy looks different from different perspectives; depending on countries Data Protection law and the adherence to it.

Let us look at the different users of IP and how IP is a problem to them and why they seek solutions.

- To consumers, the problem is to get entertainment cheaply and conveniently.
- To writers, singers, artists, actors—and to the people who work in production, marketing, and management—the problem is to ensure that they are paid for the time and effort they put in to create the intangible intellectual property products we enjoy.
- To the entertainment industry, publishers, and software companies, the problem is to protect their
- investment and expected, or hoped-for, revenues.
- To the millions who post amateur works using the works of others, the problem is to continue to create without unreasonably burdensome requirements and threats of lawsuits.
- To scholars and various advocates, the problem is how to protect intellectual property while also protecting fair use, reasonable public access, and the opportunity to use new technologies to the fullest to provide new services and creative work.

Ethical Arguments about copying

Is it right or wrong for one to copyright other peoples works? Let us look at some of the arguments people make in support of personal copying or posting content on the web without authorization. Brief suggest to analyze the arguments follow in each case presented

- **I cannot afford to buy the software or movie or pay the royalty for use of a song in my video.**
- There are many things we cannot afford. Not being able to afford something does not justify taking it.
- **The company is a large, wealthy corporation. The size and success of the company do not justify taking from it**. Programmers, writers, and performing artists also lose income when works are copied.
- **I wouldn’t buy it at the retail price (or pay the required fee) anyway. The company is not really losing a sale or losing revenue**. The person is taking something of value without paying for it, even if the value to that person is less than the price the copyright owner would charge. There are times when we get things of value without paying. For example, people do us favors and many people put valuable information on the Web for free. It can be easy to ignore a crucial distinction: Who makes the decision?

Ethical Arguments about copying

- **Making a copy for a friend is just an act of generosity.** someone who copies software for a friend has a countervailing claim against the programmer's right to prohibit making the copy: the "freedom to pursue the virtue of generosity." Surely we have a liberty (i.e., a negative right) to be generous, and we can exercise it by making or buying a gift for a friend. It is less clear that we have a claim right (a positive right) to be generous. Is copying the software an act of generosity on our part or an act that compels involuntary generosity from the copyright owner?
- **This violation is insignificant compared to the billions of dollars lost to piracy by dishonest people making big profits.** Yes, large-scale commercial piracy is worse. That does not imply that individual copying is ethical. And, if the practice is widespread, the losses do become significant.
- **Everyone does it. You would be foolish not to.** The number of people doing something does not determine whether it is right. A large number of people in one peer group could share similar incentives and experiences (or lack thereof) that affect their point of view.
- **I want to use a song or video clip in my video, but I have no idea how to get permission.** This is a better argument than many others since technology has outrun the business mechanisms for easily making agreements. The "transaction costs," as economists call them, may be so high that a strict requirement for obtaining permission slows development and distribution of new intellectual property.

Plagiarism and copyright

- Copying and pasting paragraphs of other people's work without giving them credit of their work is what we call plagiarism. What you are communicating is that the stolen work is your own.
- Plagiarism is dishonest as it misappropriates someone else's work without permission (usually) and without credit. In academia, plagiarism is a lie to the instructor, a false claim to have done an assignment oneself/project report.
- Among students, it typically means copying paragraphs (perhaps with small changes) from websites, books, or magazines and incorporating them, without attribution, into a paper the student submits for a class assignment or school projects. Plagiarism also includes buying a term paper and submitting it as one's own work.

Plagiarism and copyright

- In Academia, different anti-plagiarism tools are used to check the similarity index to other authors.
- TurnItIn is the most common one. Once a project, a research paper is added to a repository accessible by TurnItIn, it is flagged and shows the details copied and the availability of the source.
- Plagiarism has costed high ranked people positions and shamed many

see: https://examples.yourdictionary.com/what-are-famous-examples-of-plagiarism.html

Different forms of IP

Copyright

- Copyright is a right, enforceable by law, accorded to an inventor or creator of an expression. Such expressions may include creative works (literary, dramatic, musical, pictorial, graphic, and artistic) together with audiovisual and architectural works and sound recordings.
- When the copyright on a work expires, that work goes into the public domain. Other works in public domain include those owned by governments, noncopyrightable items such as ideas, facts, and others, works intentionally put in the public domain by the owner of the copyright, and works that lost copyrights for various reasons before the copyrights expired.
- Works in public domain are not protected by the copyright law and can be used by any member of the public without prior permission from the owner of the work.

PART III – COPYRIGHT AND OTHER RELATED RIGHTS

22. Works eligible for copyright

(1) Subject to this section, the following works shall be eligible for copyright—

(a) literary works;
(b) musical works;
(c) artistic works;
(d) audio-visual works;
(e) sound recordings; and
(f) broadcasts.

(2) A broadcast shall not be eligible for copyright until it has been broadcast.

(3) A literary, musical or artistic work shall not be eligible for copyright unless—

(a) sufficient effort has been expended on making the work to give it an original character; and
(b) the work has been written down, recorded or otherwise reduced to material form.

(4) A work shall not be ineligible for copyright by reason only that the making of the work, or the doing of any act in relation to the work, involved an infringement of copyright in some other work.

(5) Rights protected by copyright shall accrue to the author automatically on affixation of a work subject to copyright in a material form, and non-registration of any copyright work or absence of either formalities shall not bar any claim from the author.

[Act No. 18 of 2014, Sch.]

23. Copyright by virtue of nationality or residence, and duration of copyright

(1) Copyright shall be conferred by this section on every work eligible for copyright of which the author, or, in the case of a work of joint authorship, any of the authors is, at the time when the work is made, a citizen of, or is domiciled or ordinarily resident in, Kenya or is a body corporate which is incorporated under or in accordance with the laws of Kenya.

(2) The term of a copyright conferred by this section shall be calculated according to the following table—

Type of Work	*Date of Expiration of Copyright*
1. Literary, musical or artistic work other than photographs	Fifty years after the end of the year in which the author dies.
2. Audio-visual works and photographs	Fifty years from the end of the year in which the work was either made, first made available to the public, or first published, whichever date is the latest.
3. Sound recordings	Fifty years after the end of the year in which the recording was made.
4. Broadcasts	Fifty years after the end of the year in which the broadcast took place.

Copyright

Part of the Copyright Act of Kenya

Upon receipt of the application by the Copyright Office, it is reviewed to make sure it meets the three criteria of originality, fixation, and expression for the issuing of a copyright.

Patent

- Patents protect inventions or discoveries
- Because of the disclosure requirement that every patent applicant must meet, the patent is more of a contract between the inventor or discoverer and the government.
- For this contract to be binding, each party to the contract must keep its part: the government’s part to protect the exclusive rights of the inventor or discoverer while such a person recovers his or her investments for a period of time.
- Patents in Kenya are registered with the Kenya Industrial Property Institute (KIPI) which is a Government department under the Ministry of Trade and Industry

Patent

The invention or discovery must satisfy the following four conditions and all must apply

1) **Utility**: An invention or discovery serves a basic and minimum useful purpose to the general public or to a large percentage of the public without being a danger to the public, illegal or immoral.
2) **Novelty**: The invention or discovery for which a patent is sought must be new, not used, known or published somewhere before.
3) **Non- obviousness**: The invention or discovery for which patent protection is sought must not have been obvious to anyone with ordinary skills to produce or invent in its disclosed form.
4) **Disclosure:** There must be adequate disclosure of the product for which a patent is sought. Such a disclosure is often used by the Patent Office in its review to seek and prove or disprove the claims on the application form and also to enable the public under the contract with the government to use the invention or discovery safely and gainfully.

Patent

- After the review process is completed—and this may take some time depending on the disclosure provided and the type of invention or discovery—the patent is then issued to the applicant for the invention, and only for that invention, not including its variations and derivatives.
- The protection must last for a number of years— the term of patent protection in Kenya is 20 years and seventeen years in the United States.
- During this time period, the patent law protects the inventor or discoverer from competition from others in the manufacture, use, and sale of the invention or discovery.
- This term is not renewable and once the term has expired, the invention is no longer protected and can be exploited by anyone.

Trade Secrets

- A trade secret is information that gives a company or business a competitive advantage over others in the field; It is a collection of information in a given static format with strategic importance.
- The format may be a design expressing the information, a formula representing the collection of information, a pattern, a symbol, or an insignia representing the information.

- It may be a formula, a design process, a device, or trade figures.

- Trade secrets have an indefinite life of protection as long as the secrets are not revealed.

Characteristics of Trade Secret

- The extent to which the information is known outside the business. If a lot of people outside the company or business know or have access to the collection of information that constitutes the trade secret, then it is no longer a trade secret.
- The extent of measures taken by individuals possessing the trade secret to guard the secrecy of the information. If the information is to remain known by as few people as possible, there must be a detailed plan to safeguard that information and prevent it from leaking.
- The value of the information to the owner and to the competitor. If the collection of information forming the trade secret has little or no value to the competitor, then it can no longer be a trade secret because it offers no definite advantage to the owner over the competitor. It does not matter whether the owner values the information; as long as it is not valued in the same way by the competitor, it is not regarded as a trade secret.
- The amount of effort or money spent by the owner to develop or gather the information. The logic here is usually the more money the developer puts in a project, the more value is placed on the outcome. Because there are some information or project outcomes that do not require substantial initial investments, the effort here is what counts.
- The ease or difficulty with which the information could be properly acquired or duplicated by others. If it will take a lot of effort and money to duplicate the product or the information, then its value and therefore advantage to the competitor diminishes.

Trademarks

- A trademark is a product or service-identifying label; It is a mark that attempts to distinguish a service or a product in the minds of the consumers.
- The label may be any word, name, picture, or symbol. It is very well known that consumers tend to choose between products through association with the product’s brand name.
- Unlike patents and copyrights, however, trademarks are not so protected and enshrined in constitutions.
- Whereas the patent gives owners the exclusive right to use, sell, and make use of the invention or discovery, and the copyright law gives owners the exclusive rights to copying their works, the trademark gives its owner the right to prevent others, mostly competitors, from using the same or similar symbol to market their products.

Categories of Trademarks

- A service mark is usually used in the sale or advertising of a service. It is supposed to uniquely identify that service.
- A certification mark is used as a verifier or to authenticate the characteristics of a product, a service, or group of people who offer a certain service.
- For example, colleges attach seals to diplomas as marks to certify the educational attainment of the holders.
- A collective mark is mainly used by a group of people to indicate membership in an organization or association. For example, people who take and pass certain specialty examinations can use a mark like CPA, PhD, or MD to indicate their belonging to those groups.

Trademarks

- It is said that a picture is worth a thousand words. So, it is assumed by trademark owners that a symbol is worth a thousand words and, therefore, their marks are always saying something to the customers, at least in theory

Trademarks

Arbitrary marks: trademark symbols that say nothing about the product or service. They are usually used arbitrarily with a product or service, but over time they begin to get associated with that product or service. The majority of arbitrary marks are usually one or more words or a collection of letters already in linguistic use but with no associated meaning at all. Many established trademarks start as arbitrary marks and consumers eventually come to associate them with the product or service.

Suggestive marks: symbols or writings that are usually in the public domain, but people twist them to say something about their products or services. They may suggest to the customer the features, qualities, and other characteristics of the product or service. A good example here would be a mark like “GolfRight” as a trademark for a company manufacturing a new brand of golf balls. It took out of the public domain the two words “golf” and “right” and combined them to describe the product with the creation of a new word “GolfRight.”

Descriptive marks: usually contain a description of the intended purpose of the mark but say nothing about the product or service. For example, if you create a program that you think simplifies the tax-preparing process you may use a trademark called “Easy-Tax.”

General marks: new marks, unrelated and with no suggestive features, qualities, and characteristics of the products or services they are said to represent. Unlike the arbitrary marks, general marks are not linguistically bound. A general mark could be any symbol. General marks are desirable because they are easy to register, since the likelihood of the existence of a similar mark is minimal. Example of such a mark is the use of a graphic symbol like an arrow for a product or service.

Course Books

1. Sara Baase, Timothy M. Henry (2017). A Gift of Fire_ Social, Legal, and Ethical Issues for Computing Technolog.Pearson Publishers

2. Jones, Simon_Blundell, Barry_Duquenoy, Penny. (2008). Ethical, legal and professional issues in computing. Thomson Publishers