

Module:

**STW290COM – TECHNOLOGY AND ITS
LEGAL, SOCIAL AND ETHICAL CONTEXT**

Assignment Title:

COURSEWORK- INTELLECTUAL PROPERTY

Assessment Cycle:

MARCH 2021

Important notes

- Please refer to the Assignment Presentation Requirements for advice on how to set out your assignment. These can be found on the *Softwarica's Moodle Course Page*.
- You are expected to use the [CUHarvard](#) referencing format on any written work. For support and advice on how this students can contact [Centre for Academic Writing \(CAW\)](#).
- Please notify your registry course support team and module leader for disability support.
- Any student requiring an extension should follow the university process as outlined at [here](#)
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<p style="text-align: center;">Group work</p> <p>If group work ALL student names and IDs must be added below- on behalf of all members;</p> <p>Name..... ID.....</p> <p>Name..... ID.....</p> <p>Name..... ID.....</p> <p>Name..... ID.....</p> <p>Name..... ID.....</p>	<p>Surname: SANGRAULA</p> <hr/> <p>First Name: NIRAJ</p> <hr/> <p>Word Count: 2193</p>	
<p>Student number (ID): 10176391</p>	<p>Attempt:</p> <p style="text-align: center;">FIRST <input checked="" type="checkbox"/> RESIT <input type="checkbox"/></p>	
<p>Assignment Due Date: 12TH APRIL 2021</p>	<p>Module Code: STW290COM</p>	
<p>Programme Title: BSC(HONS) ETHICAL HACKING AND CYBERSECURITY</p>		
<p>Module Title: TECHNOLOGY AND ITS LEGAL, SOCIAL AND ETHICAL CONTEXT</p>		
<p>Name of Supervisor or Tutor (if applicable):</p> <p>ACHYUT TIMSINA</p>	<p>Individual Work:</p> <p style="text-align: center;"><input checked="" type="checkbox"/></p>	<p>Group Work:</p> <p style="text-align: center;"><input type="checkbox"/></p>
<p>Assessment Title and Type(ie essay, journal, CD, Dissertation)</p>	<p>INTELLECTUAL PROPERTY</p>	
<p><i>I have read the Softwarica College rules and regulations on the submission of academic work and in particular the sections concerning misconduct in assessment, including plagiarism, collusion and cheating. I certify that this assignment is the result of my ownS (or group) work and contains no unreferenced material from another source and does not contravene any part of the College's rules and regulations.</i></p> <p><i>I acknowledge that in submitting this work I am declaring that I (or my group) are fit to be assessed and that a deferral may not be requested following hand in.</i></p> <p><i>I confirm that an electronic version of the item to be assessed where appropriate) is available and will be made available to the College by the specified deadline via Moodle.</i></p> <p><i>In respect of group assignments, the submission of this work is made on the basis that all group members are jointly and severally responsible for the work presented for assessment and that by handing in this item for assessment, all group members acknowledge and confirm the statements above and that ALL student names and ID numbers for the group are listed.</i></p>		
<p>Student(s) Signature:</p>	<p>College Stamp</p>	

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Introduction

Intellectual property is a form of creation and innovation that comes from one's mind. There are many things that can be considered as intellectual property like: books, geographical indication, music, drawings, gadgets and so on. People often become confused about the difference between physical property and Intellectual property. This example can solve this issue: The television that you purchased from the market is your physical property but the different programs that come in your TV through cable connection isn't your property but intellectual property of the one who created those types of shows. Intellectual property is protected by law such as: patent law, copyright law, trademark law and so on.

Technology Ethics

Through human intellect technologies are advancing day to day. And this trend will continue to rise. But the major thing that innovators should consider when innovating intellectual properties is the term "technology ethics" as it plays a vital part in the modern society. So, when making creations the creator should always assume the worst case scenario that may be resulted by their created technology. Factors like: Does my creation maintain privacy? Will my creation affect human health? In case of failure, who is accountable me or the technology? These types of questions should be kept in mind when creating intellectual properties because technology will continue to evolve and one day we could even evolve to cyborgs. So, those creators need to simply evolve their ethics too.

Legal aspects of Intellectual property in Nepal

The history of intellectual property rights in Nepal began during the period of Rana regime by the name of [Patent, Design and Trade Mark Act, 1993 BS](#). And from then various international treaties like: Paris Convention for the Protection of Industrial Property, Trade-related Aspects of Intellectual Property Rights (TRIPS) and so on had been signed by Nepal for the protection of intellectual property. Furthermore, Nepal had formulated its own act and policies for the protection of Intellectual property. So, majorly Nepal has two separate legal frameworks regarding intellectual property protection: Patent, Design and Trade Mark Act, 1965 and Copyright Act, 2002. But these two legal frameworks were outdated and didn't cover the modern world issues such as: geographical indication, trade secrets, integrated circuits and so on in them and only included things like: Patent, Copyright, Design and Trademark. In order to solve this issue, the existing laws regarding intellectual property were reformed. So, Nepal formulated a new policy called Intellectual Property Policy, 2017 and it covered many issues related to the modern world. Prior to this policy, Nepal had also included intellectual property in the constitution of Nepal, 2015. Furthermore, with the lack of proper safeguarding techniques online a new policy called [National Information and Communication Technology \(ICT\), 2015](#) was also formulated.



Figure 1

1.1: Constitution of Nepal 2015

Intellectual property wasn't prioritized by the government of Nepal. But with the advancement of technology, growth of businesses, copyright issues, property disputes and so on intellectual property became a priority and the constitution of Nepal 2015 included Intellectual property under [Article 25](#) and a historical decision was made that day.

25. Right relating to property: (1) Every citizen shall, subject to law, have the right to acquire, own, sell, dispose, acquire business profits from, and otherwise deal with, property.

Provided that the State may levy tax on property of a person, and tax on income of a person in accordance with the concept of progressive taxation.

Explanation: For the purposes of this Article, "property" means any form of property including movable and immovable property, and includes an **intellectual** property right.

(2) The State shall not, except for public interest, requisition, acquire, or otherwise create any encumbrance on, property of a person.

Provided that this clause shall not apply to any property acquired by any person illicitly.

(3) The basis of compensation to be provided and procedures to be followed in the requisition by the State of property of any person for public interest in accordance with clause (3) shall be as provided for in the Act.

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(4) The provisions of clauses (2) and (3) shall not prevent the State from making land reforms, management and regulation in accordance with law for the purposes of enhancement of product and productivity of lands, modernization and commercialization of agriculture, environment protection and planned housing and urban development.

(5) Nothing shall prevent the State from using the property of any person, which it has requisitioned for public interest in accordance with clause (3), for any other public interest instead of such public interest.

Figure 2: Article 25 of Constitution of Nepal 2015

1.2: National Intellectual Property Policy, 2017

It aimed to uplift the economic standard of the country by protecting all the aspects of intellectual property like: patents, copyrights, trademark, geographical indication and so on. This policy primarily focused on three things:

- 1) Revise the existing legal framework and enact law on areas related to: integrated circuits, geographical indication, traditional knowledge and so on.
- 2) Aims to create awareness programs and educate people on intellectual property rights.
- 3) Control intellectual properties infringement and increase punishment period if somebody does so by revising the penal section on the existing framework.

Sadly, the intellectual property rights under national intellectual property policy is only at the nascent stage in Nepal. The policy came in 2017 but hasn't been implemented in Nepal till now and it's 2021 now. ([National Intellectual Property Policy 2017 2021](#))

1:3: National Information and Communication Technology (ICT), 2015

ICT relates to everything that results in technological advancement such as: mobile phones, apps, television, software, satellites and so on. Through ICT, the world becomes more digital. In Nepal ICT policies were created to achieve 'Digital Nepal' and implement ICT in health, education, military, agriculture and so on. This policy aimed to:

- 1) Protect intellectual property rights related to e-commerce.
- 2) Make a system that protects intellectual property rights on cyberspace.

This policy hasn't been properly implemented till now. But there are some sectors like e-commerce that have been developed a little bit through the use of mobile and internet banking. By introducing this ICT policy in 2015 the government intended to provide things like: National Identification card and Smart driving license to all Nepalese who fulfill the requirements to achieve those things but till now it hasn't been provided. Government disclosed that political instability and lockdown are the main reasons behind it. ([ICT 2015 2021](#))

Social aspect of Intellectual property in Nepal

Unlike western society, Nepalese society registration on patents is too low. In the last eight decades only 74 patents were registered in Nepal. Among those patents only 10-12 were valid. This is the case in Nepal because the technological creation, research and innovation in Nepalese is too poor. But, in foreign countries there are always ongoing legal battles between individuals and corporates in court on patent rights. Even though new policies on intellectual property like the intellectual property policy, 2017 came into effect in Nepal but it hasn't been implemented yet and there is a policy like Patent, Design and Trade Mark Act, 1965 which is still in effect. But this act has many loopholes so Nepalese register international brands trademark in Nepal as their own and do business under those marks and earn profit as international brands have higher value and recognition in Nepal. Furthermore, People in Nepal are beginning to understand copyright infringement because copyright activities on cinematographic works are increasing but people who create literary and academic works aren't aware about copyright and their creativity is freely used by other people. ([New Business Age 2018 2021](#))



Figure 3

2.1: Copyright and Mentality in Nepal

Compared to other Intellectual property rights status, Copyright status is satisfactory in Nepal due to strong enforcement of law in this sector. Also in case of copyright infringement police registration isn't compulsory and the owner who made the original content only needs to show the date of creation of his/her work and the perpetrator will be punished accordingly. Talking about mentality of people in Nepal, Bhuwan KC who is the producer of 'Dream' movie with his team filed a copyright case against those responsible for leaking it online and then the copyright dispute was settled after the perpetrators agreed to pay Rs2.5 million to the dream movie team. After two years his another film named 'Kri' was released and it was accused of copyright infringement for using Shambhu Pradhan's work without his permission and again the dispute was settled after the 'Kri' team paid Rs1.1 million to Shambhu Pradhan. But later on Bhuwan KC who has been demanding strong copyright laws against piracy after his 'Dream' movie was leaked online was furious at Pradhan for demanding compensation and even criticized him. This shows the mindset of [Bhuwan KC](#) and the film industry. Most of the Nepalese have a similar type of mentality as we always criticize others even if we are wrong to be a bigger person than them.

2.2: Positive steps taken in Nepalese Society

Nepal's orthodox tea had the logo of 'Darjeeling, India' and the tea was exported to other countries with its logo. But, this situation changed after Nepal received its own logo in 2074 BS with the longstanding efforts of Nepal Tea and Coffee development board. This logo has an image of mountains and below it there is '[Nepal Tea Quality from the Himalayas](#)' written. This was a historic day because Nepal began tea cultivation more than a century ago. With this logo the economic condition and employment opportunities of many tea farmers and traders of Nepal increased as the tea with this logo was sold out at a good price in the international market. This tea has nice aroma, taste, aftertaste and good quality so it is gaining more and more popularity in the international market. Not only this case, but there are also other cases where positive steps

were taken in Nepalese society like: In 2014 a licensing agreement was signed by Nepal telecom and again this same licensing agreement was signed by N-cell in 2016 to pay royalty to songwriters and musicians for the use of their music in caller ring back tone (CRBT).

Ethical aspect of Intellectual property in Nepal

In a country where intellectual property rights are only created and not implemented, a country where intellectual property activities are only limited to copyright, trademark, patent and design, a country where people are still unaware about current intellectual property policies, a country where some people find loopholes in intellectual property rights and violate it for their benefit and so on. So, the ethics of people here in Nepal when dealing with intellectual property is pretty much non-existent. And they continue to violate the intellectual property of others knowingly or unknowingly. So, it raises a very important ethical question.



Figure 4

3.1: Cybersquatting in Nepal

With the rise of the internet, cybersquatting is also becoming a problem nowadays in Nepal. Cyber squatters here in Nepal do domain registration by copying famous trademarks or company names as their own only by changing top level domain and later on they sell it to the highest bidder. Take for example: [Diwakar kanel](#) who is the owner of the Himalayan dot had been offered \$100,000 for its domain but he didn't sell it and hopes for higher profit. He too does cybersquatting and sells domains to the highest bidder. He isn't bothered by people calling him a modern day pirate and he only sees the internet as a way to make money whether ethically or unethically. Like him there are many unknown cyber squatters who have domain names like: amazonenepal.com, yahoonepal.com, bbcnepal.com and so on registered in their name. They don't have the right to own the ownership of these popular international company's domain and it isn't their intellectual property. But due to the lack of proper enforcement of law in Nepal, these types of domain name is pretty common in Nepal.

Is it ethical?

No it's not ethical to do cybersquatting whether in Nepal or in any country. Just because you are making profit by using internet of your own home or using your own computer to do such activities doesn't justify the use of other people's intellectual property as your own and making profit by doing so. Furthermore, strong action and new policies on cybersquatting should be taken and made respectively by Nepalese government with the help of ICANN.

3.2: Torrenting in Nepal

Many Nepalese download contents like: video, audio, pdf, and so on through illegally, most of them downloading from torrent and they aren't even aware of [ETA-2063](#) and don't even know it exists. They aren't aware that the original author of the content doesn't get profit if they get those contents illegally. Even if some Nepalese are aware of the consequences, they don't have the time to think about ethics due to the easy availability of those contents online. People also do pirating of films in Nepal before the release date and put it on social media sites and in torrent sites.

Is it ethical?

It isn't ethical to do torrenting as the original author of the content can't get enough recognition and enough money. Also it is a violation of other people's intellectual property. People should realize that just because it is online and freely available doesn't mean you have the right to take it and use it for personal benefit and even if there are contents like: music, pdf, and so on online and the author himself has provided rights to anyone wanting to use it for their benefit, we shouldn't be selfish and use it right away. Instead, we should address and give credit to the original creator or author and then use it for our purposes.

Conclusion

So, this report mainly focuses on legal, social and ethical aspects of intellectual property in Nepal, it can be said that the legal aspect in Nepal is actually improving as new policy like: Intellectual Property Policy, 2017 and National Information and Communication Technology (ICT), 2015 has been created. But these policies haven't been implemented properly as a result foreign companies are hesitating to invest in Nepal. So, the government is trying to implement those policies soon. Regarding the social aspects of intellectual property in Nepal, people are now becoming aware about the new policies related to copyright infringement as people are now claiming for compensation if somebody is stealing their content. Lastly on the ethical side, people aren't aware about what is ethical and what isn't and doing something that they shouldn't do. So, the policies created by the Nepalese government should be implemented soon.

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