

Intellectual Property Issues

Creative Technologies Professionalism

(COMP09096)

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ACKNOWLEDGMENT

- ❑ Acknowledgement: The slides in this lecture are based on Chapter 1 of Bainbridge, D.I. (2012) Intellectual Property. (9th ed.) Harlow: Longman.
- ❑ The book is a standard legal textbook on Intellectual Property and the current edition is available in the third floor of UWS library.

DISTINCTIONS BETWEEN THE RIGHTS

- ❑ Rights are not necessarily mutually exclusive
e.g. copyright and rights in performance may both apply to a piece of music
- ❑ Not all rights are registered
- ❑ Some arise automatically at a specified time
- ❑ Some rights are creative in that they relate to the artistic/aesthetic sense
- ❑ Others relate to inventions such as machinery

REQUIREMENT FOR FORMALITIES

- ❑ Some rights relating to ideas, works or objects, depend on a process of formal application and registration The official registration process has to be formally completed before the grant of such rights
- ❑ The rights are onerous since the owner (or other person having rights under the IP law e.g. licensee) can exploit the right while at the same time restraining others from certain actions relating to those rights

TYPES OF RIGHTS

Copyright

- ❑ Property right relating to certain works: literary, artistic, sound recordings, films and broadcasts.
- ❑ Author is the person who created the work or his/her employer (if the work was created in the course of employment) and the author (or his/her employer) is normally the first owner of the copyright
- ❑ Rights - copying, broadcasting or giving a public performance

TYPES OF RIGHTS

Copyright

- ❑ Copyright is alienable so it can be transferred to another person or the owner can grant a licence allowing the licensee to do acts specified in the licence
- ❑ Copyright protects the expression of ideas not the idea itself
- ❑ As such other people can create similar works provided they do so independently and by their own endeavours

TYPES OF RIGHTS

Copyright

Permitted acts relating to copyright works include making a copy for private study, review, criticism and non-commercial research.

Copyright involves:

- ☐ economic or proprietary rights e.g. the right to control copying
- ☐ moral rights which give the author some rights to control how the work is used in the future

TYPES OF RIGHTS

Rights in Performance

❑ Live performance rights are twofold:

❑ the performer's right relates to making and issuing copies and renting and lending of recordings of his performance. These rights are assignable and licensable.

❑ the recording right – protects the performer and record company against bootleg recordings of live performances. Not restricted to music but covers dramatic performances and recitals of poetry or literature

TYPES OF RIGHTS

Patents

- ❑ Restrictive rights because they give the patent owner protection for up to 20 years.
- ❑ Patents granted for inventions that are new and non-obvious so there has to be an element of novelty and inventiveness.
- ❑ Patent applications are precise documents detailing the scope of the invention and stating it's novel qualities.

TYPES OF RIGHTS

Patents

- ☐ Patents can be assigned and licensed.
- ☐ Patent owner is the registered proprietor.
- ☐ Patent rights are restrictive and they protect ideas as set out in the patent document's description and claims.

TYPES OF RIGHTS

Trade Marks

- ❑ Trade marks are indicators of a brand and they indicate a product's badge or origin
- ❑ They are registered for classes of goods or services
- ❑ Trade mark registrations can be renewed indefinitely

INTELLECTUAL PROPERTY IS PROPERTY

- ❑ IP rights are property rights which can be dealt with in the same way as other types of property
- ❑ IP rights can be owned and dealt with via assignation or licence
- ❑ IP rights are positive and negative:
 - ❑ owners have the right to allow others to copy their work
 - ❑ owners have the right to prevent others from copying their work

INTELLECTUAL PROPERTY IS PROPERTY

- ❑ IP rights are restrictive giving the owners the right to exploit their IP but restricting what others can do.
- ❑ A balance has to be struck so there are exceptions to copyright infringement such as, fair dealing provisions.
- ❑ Another example is lending. By lending a CD/book to a friend to listen to, are you infringing copyright?
- ❑ Also duration of IP rights as a limitation on restrictiveness

CONSUMERS' RIGHTS

What rights do consumer's have when they purchase an item in which IP rights subsist?

- ☐ If I buy a CD and I do not think the music is very good can I ask for my money back from the band or the record company (depending on who owns the copyright)?
- ☐ If I buy a book and I think it contains offensive content, can I burn it publically?

EXPLOITING IP COMMERCIALY

For creative technology workers, IP is a valuable asset which can be exploited commercially.

Assignment:

- ☐ the ownership of whole or part of the right is transferred
- ☐ must be in writing and signed by the assignor

Licence:

- ☐ may cover all or part of the right
- ☐ can be exclusive or non-exclusive

ADDITIONAL READING

- ❑ Bently, L. and Sherman, B. (2014). Intellectual Property Law. (4th ed.) Oxford: Oxford University Press.
- ❑ Chandra, R. (2010). Knowledge as property: issues in the moral grounding of intellectual property rights. Oxford: Oxford University Press.
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- ❑ Olwan, R.M. (2013). Intellectual property and development: theory and practice. New York: Springer.
- ❑ Ramcharan, R. (2013). International intellectual property law and human security. Hage, The Netherlands: T.M.C. Asser Press.
- ❑ Ryder, R.D. (2014). Intellectual property and business: the power of intangible assets. London: Sage.
- ❑ Martinez-Piva, J.M. (2009). Knowledge generation and protection: intellectual property, innovation and economic development. London: Springer.