

Intellectual Property Rights

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Introduction

- If someone steals your bicycle, you no longer have it. If someone takes away a computer belonging to a company, the company no longer has it.
- This seems very obvious. In fact, it hides an important and subtle point. If you invent a drug that will cure known illnesses and leave the formula on your desk, someone can come along, read the formula, remember it, and go away and make a fortune out of manufacturing the drug

- But you still have the formula even though the other person now has it as well. This shows that the formula - more generally, any piece of information - is not property in the same way that a bicycle is.
- The legal definition of theft involves taking away a piece of someone's property with the intention permanently to deprive them of it.
- As we have just seen, this cannot apply to a piece of information.

- Property such as bicycles or computers is called tangible property, that is, property that can be touched. It is protected by laws relating to theft and damage. Property that is intangible is known as *intellectual property*.
- It is governed by a different set of laws, concerned with intellectual property rights, that is, rights to use, copy, or reveal information about intellectual property.

- Intellectual property crosses national borders much more readily than tangible property and the international nature of intellectual property rights has long been recognized.
- The international law relating to trade marks and patents is based on the **Paris Convention, which was signed in 1883.**
- **The Berne convention**, which lies at the basis of international copy rights law, was signed in **1886.**

- Rapid changes in technology and the commercial developments that follow them present the law with new problems.
- The law relating to intellectual property rights is evolving very rapidly and most of this evolution is taking place in a global or regional context.
- For the UK, European Union law regarding intellectual property rights is critically important, but this law is itself much influenced by developments elsewhere, particularly in USA

Different Types of Intellectual Property Rights

- There are several different rights that relate to intellectual property.
- We shall only be concerned with those that are relevant to **software and the information system industry**.
- These rights should be looked on as a package; different rights may be used to protect different aspects of a piece of software.

- Copyrights is, as the name suggests, concerned with the right to copy something . It may be a written document, a picture or photograph, a piece of music, a recording, or many other things, including a computer program.
- Patents are primarily intended to protect inventions, by giving inventors a monopoly exploiting their inventions for a certain period.
- Confidential information is information that a person receives in circumstances that make it clear they must not pass it on.

- Trade marks identify the product of a particular manufacturer or supplier.
- Any or all of these rights can be used to protect a piece of software.
- The law of copyrights automatically protects the **source code** and **all documentation** of the package from copying.
- The company might be able to patent the wailer. In which case no one else would be able to produce a similar product.

Copyright

- As the name suggests, copyright is associated primarily with the right to copy something.
- The 'something' is known as the work. Only certain types of work are protected by copyright law.
- The types that concern us here are 'original literary, dramatic, musical or artistic' work.

- The 1988 Copyright design and Patents Act states that the term 'literary work' includes a table or compilation, a computer program, preparatory design material for a computer program and certain databases.
- Copyright comes into existence when the work is written down or recorded in some other way. It is not necessary to register it in any way.

The rights of the copyright owner

- Copyright law gives the owner of the copyright certain exclusive rights. The rights that are relevant to software and , more generally, to written documents, are the following
 - The right to make copies of the work: Making a copy of a work includes copying code from a disc into RAM (random access memory) in order to execute the code. It also includes downloading a page from the web to view on your computer, whether or not you then store the page on your local disk.

- The right to issue copies of the work to the public, whether or not they are charged for it.
- The right to adapt the work: This includes translating it-whether from English to Chinese or from C to Java.
- In general , these rights last for 70 years after the death of the author; there are, however, many exceptions and special cases.
- This is far longer than is likely to be commercially relevant for software, although there is software still in use that was written well over 390 years ago.

- It is very important to realize that copyright law does not give the owner of the copyright any power to prevent someone else using or publishing identical material, provided they can show that they did not produce it by copying the copyright work. (This is in marked contrast to patent law).
- This means that programmers do not need to worry that they will be breaching copyright if they inadvertently produce code that is identical to that produced by another programmer somewhere else- something that can easily happen.

What you can do to a copyright work

- The law specifically permits certain action in relation to a copyright work and some of these are of particular relevancy to software.
- First , it is explicitly stated that it is not an infringement of copyright to make a backup of a program that you are authorized to use.
- However, only one such copy is allowed. if the program is stored in filing system with a sophisticated backup system, multiple backup copies are likely to come into existence.

- Secondly, you can ‘decompile’ a program in order to correct errors in it.
- You can also decompile a program in order to obtain the information you need to write a program that will ‘interoperate’ with it, provided this information is not available to you in any other way.
- Thirdly , you can sell your right to use a program in much the same way that you can sell a book you own. When you do this, you sell all your rights. In particular, you must not retain a copy of the program

Databases

- Copyright subsists in a database if 'its contents constitute the author's own intellectual creation'.
- There are many data bases that do not satisfy this creation but which, nonetheless, require a lot of effort and a lot of money to prepare.
- Examples might include databases of hotels, pop songs, or geographic data.

- In order to encourage the production of such modest but useful databases, regulations were introduced in 1997 to create a special intellectual property right called the database right.
- The database rights subsists in a database ‘ if there has not been substantial investment in obtaining , verifying or presenting the contents of the data base’.
- It last for 15 years and prevents anyone from extracting or reusing all, or a substantial part of, the database without the owner’s permission.

Copy right infringement

- Anyone who, without permission, does one of the things that are the exclusive right of the copyright owner is said to infringe the copyright.
- There are two sorts of infringement.
- Primary infringement takes place whenever any of the exclusive rights of the copyright owner is breached.

- It is a matter for the civil courts and the usual remedies are available; a claim for damages or an injunction to refrain from the infringement are the most likely.
- Secondary infringement occurs when primary infringement occurs in a business or commercial context.
- In the case of software, this could involve trading in pirated software or it could involve using pirated software within a business.

Ownership and licensing

- As a general rule, the copyright in a work belongs initially to its author.
- If the work is jointly written by several authors, they jointly own the copyright.
- There is one important exception to this
- If the author is an employee and has written the work as part of his or her job, then the copyright belongs to the employer, unless there is an explicit, written agreement to the contrary.

Where does copyright law come from

- The primary source of law relating to copyright in the UK is the copyright, Design and Patents Act 1988; important amendments to the Act were made by the copyright (computer Program) regulations 1992, the Copyright and Rights in Databases Regulations 1997, and the Copyright and Related Rights Regulations 2003.

Sri Lanka Position

- Intellectual Property Act, No.36 of 2003
- According to Section 6 the work shall be protected as literary, artistic or scientific work. Which includes books, pamphlets, articles, computer programs and other writings.
- According to section 8 no protection shall be extended to any idea, procedure, system, method of operation, concept, principle, discovery or mere data, even if expressed, described, explained, illustrated or embodied in a work

Contd..

- The owner of the copyright of a work shall have the exclusive right to carry out or to authorize the following acts in relation to the work
- Reproduction of the work
- Translation of the work
- Adaptation, arrangement or other transformation of the work
- The public distribution of the original and each copy of the work by sale, rental, export or otherwise

Contd...

- Rental of the original or a copy of an audiovisual work, a work embodied in a sound recording, a computer program, a database or a musical work in the form of notation, irrespective of the ownership of the original or copy concerned;
- Importation of copies
- Public display of the original or a copy of the work

Infringement of Copyright

- The fair use of a work, including such use by reproduction in copies or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship or research, shall not be an infringement of copyright.

Computer Programs/Software

- Protected under Copyright Laws
- World trade Organization –TRIPS Agreement –Article 10 provides adequate protection.
- Computer Program means – a set of instructions expressed in words, codes, schemes or in any other form, which is capable, when incorporated in a medium that a computer can read, of causing the computer to perform or achieve a particular task or result.

Infringement of Copyright

- Any person who infringes or is about to infringe any of the rights protected under Intellectual Property Act may be prohibited from doing so by way of an injunction and be liable to damages.
- The owner of such rights is entitled to seek such other remedy as the court may deem fit.

Unlawful acts

- The manufacture or importation for sale or rental of any device or means specifically designed or adapted circumvent any device or means intended to prevent or restrict reproduction of a work or to impair the quality of copies made

Offences and Penalties

- According to section 178 – Any person who willfully infringes any of the rights protected under Copyright of the IPR Act shall be guilty of an offence and shall be liable on conviction after trial before a Magistrate to a fine not exceeding rupees five hundred thousand or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment.

Contd..

- The Magistrate may make an order that all copies of the work and all implements used for the infringement, or all plates in the possession of the alleged offender, which appear to him to be infringing copies, or plates in the possession of the alleged offender shall be destroyed or delivered up to the owner of the right, or otherwise dealt with in such manner as the Magistrate may think fit.

License Agreement

- Is software good or not?
- Software cannot be sold but can be licensed.
- There are many different types of restrictions that a license agreement may place on the extent to which a customer can use the software.
- Liability for Defective Software