

Course: Professional Issues in Information Technology

Week 4: Intellectual Property Rights

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Learning outcomes Lecture 4:

Intellectual Property Rights

At the end of this lecture, the learner should be able to:

1. Define Intellectual Property (IP)
2. Describe Copyrights, Patents and Trade marks and protection offered by each
3. Describe basic requirements for patent, and copyright qualifications

Course description

- The course begins with an introduction to terminologies like profession, data and Information Technology. This will be followed by a coverage of the data processing cycle, an introduction to Law, Ethics and the Concept of privacy. Cyber crimes will then be covered to see what the law says in relation to cyber crimes.
- A detailed coverage of Intellectual property rights will then follow with the learners being exposed to various property rights and the glaring issue of plagiarism.
- The four dimensions of ethical dilemmas will then follow to enable learners apply wisdom in matters related to ethical decision making.
- An evaluation of the effect of Information Technology in employment will culminate the course where learners will cover issues related to health and safety at work, Netiquette, Software contracts, major internet security issues and Computer misuse.

Intellectual Property Rights

Definition: Intellectual property (IP) refers to the **intangible creations of the mind**, that result from the **expression of an idea**.¹

- IP rights are the **exclusive legal possessions** of the creator for a specified period of time.

Intellectual Property Rights...

- **Examples of these creations are:** - Inventions, Literary and artistic works, Symbols, Names, Images and Designs used in commerce
- The importance of IP rights is to promote the **progress of science and useful arts, by securing** exclusive right **for limited times to authors and inventors** to their respective writing and discoveries.²

Intellectual Property Categories

Intellectual property has three major categories namely: -

- 1) Copyright.
- 2) Trade mark and
- 3) Patent,

These categories help define the **type, extent and duration of the intellectual property protection.**

World Intellectual Property Day

- This day is marked on April 26th every year
- It is an annual event founded by the World Intellectual Property Organization (WIPO), to raise awareness on the role of intellectual property rights in creativity and innovation.
- In Kenya, the event is normally organized under the auspices of the Kenya Copyright Board

1. Copyright

- This is an **exclusive grant from the government** which allows the owner to **reproduce (copy) the original work partly or wholly, to distribute, perform, or display it to the public in any form or manner including the Internet.**³
- These exclusive rights granted to the author or creator lasts for a **certain time period** after which the work is said to enter the public domain.
- The work(s) include: literary, dramatic, musical and artistic works.

- The protection lasts for a stipulated period of time, usually for the lifetime of the author with an additional fifty or a hundred years after their death.
- Term for **individual is life plus 50 years; for organizations, publication plus 75 years** ⁴
- Ones' work is **from** the moment it is created and fixed in a tangible form that it is perceptible either directly or with the aid of a machine or device.

- What does a Copyright protect?
 - i. written and literal works such as novels, book layouts,
 - ii. dramatic and theatrical works such as dance and choreography,
 - iii. musical works such as albums, films, sound recordings and broadcasts
 - iv. artistic works such as photographs and artworks.⁵
- Copyright is granted immediately the work is recorded on a physical medium such as paper or magnetic disk.

- Registering with the Copyright office is not mandatory for protection though its recommended since registered works may be eligible for statutory damages. This may save on attorney's fees in successful litigation in case of any damage.
- Copyright protection act is available for all unpublished works excepts for **works that have not been fixed** in a tangible form of expression. i.e. **titles, ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices and common property containing no original authorship**⁶
- Copyright covers the **expression of an idea in tangible form but not the idea itself.**

- Copyright **does not protect facts, ideas, systems, or methods of operation.**
- The work must be **recorded in a physical medium** to be considered for copyright protection.
- The fair use doctrine allows for the limited unauthorised use of copyright material under certain circumstances: **quotations are allowed for the purpose of review or criticism;**
 - a) brief quotation in a news report;
 - b) reproduction by an educator of a small part to illustrate a lesson; and
 - c) reproduction of the work in legislative or judicial proceedings.⁷

Copyright: The Problem of Perfect Copies and Encryption

- Copyright law protects original forms of expression such as writings, art, drawings, photographs, music, motion pictures, performances, and computer programs from being copied by others for a minimum of 50 years
- “Look and feel” copyright infringement lawsuits are precisely about the distinction between an idea and its expression

Copyright: The Problem of Perfect Copies and Encryption

- **Doctrine of fair use permits teachers and writers to use copyrighted materials with permission under certain circumstances**

• **Fair Use Considerations to Copyright Protection**

- ✓ **Reason for use** – Is it for educational purposes(non-profit) or for profit
- ✓ **Amount of work used**– e.g. a stanza in a poem or a page in a book is allowed but not the entire poem or a whole book chapter
- ✓ **Context of use**– last minute (e.g. submit a class assignment) or planned infringement
- ✓ **Market effect** – will the use harm the marketability of the product?
- ✓ **Nature of work**– Creative works like plays have greater protection ⁸

2. Patent

- This is a **document that grants the holder exclusive rights** on an invention for a fixed number of years.⁹
- A patent usually refers to a **right granted to anyone who invents or discovers** any new and useful process, machine, article of manufacture, or composition of matter, or any new and useful improvement thereof.
- An *Invention* is a successful technical solution to a technical problem which must be new, non-obvious and capable of industrial application

Patents: Business Methods and Processes

- One may obtain a patent therefore, subject to the conditions and requirements of this title.
- Patent grants the owner an exclusive monopoly to the ideas behind an invention for 20 years
- A patent grants the inventor exclusive rights to the **use and sale** of the invention and the protection **lasts for 20 years** after the patent was issued.¹⁰
- Copyright differs from a patent in that copyright protects original works of authorship, while a patent protects inventions or discoveries

Types of Patents

1. Utility patents - may be granted to anyone who invents or discovers any new and useful **process, machine, article of manufacture, or composition of matter, or any new and useful improvement of an existing idea**

2. Design patents may be granted to anyone who invents a new, original, and ornamental **design** for an article of manufacture
3. Plant patents are granted to anyone who invents and asexually reproduces a new **variety of plant** e.g. patents issued for Genetically Modified (GM) foods.

Patent Qualifications

To qualify for a patent:

1. The invention has to be **new**,
2. Capable of being **made or used in an industry** and
3. Should be a **new arrangement** that would **not be obvious** to anyone in the field. ¹¹

The following are not eligible for patent protection:

- Scientific or mathematical discovery,
- Theory or method;
- Literary, dramatic, musical or artistic works;
- Ways of performing mental acts, playing a game or doing business;
- Presentation of information; and
- Methods of medical treatment or diagnosis.

3. Trademark

- This is a symbol used by businesses to identify their goods and services.
- Government registration of the trademark awards exclusive legal right to its use.
- It is also referred to as brand name or logo for goods denoted as ®™

- Trademarks are **signs** (like words and logos) that **distinguish goods and services in the marketplace** while **designs** protect the appearance of a product/logo, from the shape of an aeroplane to a fashion item.
- **Trademarks and designs both help protect an organisation's public identity i.e. brand** as well as distinguish its products and services from those of its competitors.
- Trademark is “any work, name, symbol, or device, or any combination thereof ... used in commerce ... to identify and distinguish ... goods ... from those manufactured or sold by others and to indicate the source of the goods.”

Trademarks: Online Infringement and Dilution

- **Trademark** is a mark used to identify and distinguish goods and indicate their source
- **Dilution** is any behavior that would weaken the connection between the trademark and the product

Trademarks and the Internet

- **Cybersquatting** involves the registration of an infringing domain name, or other Internet use of an existing trademark, for the purpose of extorting payments from the legitimate owners¹²
- **Cyberpiracy** involves the same behaviour as cybersquatting, but with the intent of diverting traffic from the legitimate site to an infringing site

Trademarks and the Internet

- Anti-Cybersquatting Consumer Protection Act (ACPA) creates civil liabilities for anyone who attempts in bad faith to profit from an existing famous or distinctive trademark by **registering an Internet domain name that is identical, or confusingly similar, or “dilutive” of that trademark**

Trademarks and the Internet...

- The use of trademarks in meta-tags is permitted if the user does not mislead or confuse consumers
- The permissibility of using trademarks as keywords on search engines is also subtle and depends both on the extent to which such use causes “initial customer confusion” and the content of the search results

Trademarks and the Internet...

- Linking refers to building hypertext links from one site to another site
- Deep linking involves bypassing the target site's home page, and going directly to a content page
- Framing involves displaying the content of another Web site inside your own Web site within a frame or window

Laws of confidence

- This is the common law concept which deals with confidential information
- **Categories of laws of confidence are;** Trade secrets, Government secrets and Private personal information¹³
- **Trade Secrets**-are valuable commercial assets which do not have to be new ideas or information. Example, the Google Search Algorithm

Review Questions

1. Briefly describe the following terminologies as they relate to IT and the Internet:
 - a) Privacy.
 - b) Intellectual property rights.
2. Describe the **kind of protection** offered by:
 - i. **Copyrights,**
 - ii. **Trade secret and**
 - iii. **Patents**
3. Discuss **two benefits and two limitations** of each protection type for **developers** of computer software

Content Covered in Week 4: Intellectual Property Rights

We have been able to cover the following:

1. Intellectual Property
2. The concept of copyright, patents and trade marks and protection offered by each .
3. Basic requirements for patent, trademark and copyright qualifications

Course Text Books

1. Professional Issues in Information Technology. Bott, F. *British Computer Society, UK.* (2005)
2. Ethics in Information Technology, 4th ed. Reynolds, G. *Course Technology, Boston, USA.* (2011)
3. Computers in Society: Privacy, Ethics and the Internet. George, J.F. *Pearson Prentice Hall, New Jersey.* (2004)
4. Cyber-ethics: Morality and Law in Cyberspace, 5th ed., Spinello, R.A. *Jones & Bartlett, Burlington, Mass., USA.* (2013)
5. Contemporary Issues in Ethics and Information Technology. Schultz, R.A. *IRM Press, USA.* (2005)