INTELLECTUAL PROPERTY RIGHTS IN CYBERSPACe

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Items for Discussion

- Brief Summary of Malaysian Legislative Initiatives in IP
- Issues relating to IP in Cyberspace - Developments since the Malaysian Legislative Response?
- Legislative Response?

Response - Copyright (Amendment) Act 1997

- Scope of Copyright
  - Communication to the public
  - Distribution
- Circumvention of effective technological measures
- Definition
- Removal and alteration of electronic rights management information

Summary of IPR Legislative Initiatives for MSC

- Issues of Concern in 1997
  - Scope of protection in online environment
  - Protection of existing works
  - Position of temporary copying
  - Status of multimedia works - creation, scope
- Electronic databases
- Liability of online service and network providers

Commitment to Protect IPR under MSC Bill of Guarantees

[Restricted to copyright]
Since then ...

- Legislative initiatives
  - in Japan, US, Australia, some ASEAN countries
- International
  - WIPO Copyright Treaty;
  - EU Directive on the Harmonisation of Certain Aspects of Copyright and Related Rights in the Information Society –

- Cases
  - Copyright, patents, trade marks
- Testing the boundaries of IP laws in cyberspace
  - IP as a means of protection
  - Permissible limits of IPR

Issues

- Linking
- Use of Trade Marks
- Streaming
- Domain names
- Software Patents & Business Methods
- Peer2Peer technology
  - file downloading sites – music, software, etc
- Posting or copying web content

Contents – Using and Creating

- Protection of Content
- Delivery of content
- Existing Works
  - Web Contents
  - Copying, Linking, deep linking, framing, etc
  - Control of Access
- Protection of web contents
  - Copyright Management System

Issues

Using Content

Dealing with content

Copyright
Selling, Distributing,
Trade Mark
Sharing, etc
Patent
Creation of New Works

- Creation of online works – existing or customised works
- Web sites and portals – web pages
- Text, graphics, audio, video – both customised or existing works
- Web programmes – streaming or webcasts

Delivery of Works

- Bandwidth
- Compression techniques – MP3 format – allow for rapid transmission from computer to computer by email or other file transfer protocol
- Peer2Peer software – file sharing
- Distribution of music, images, text, etc

Linking

- A connection between content of two different files – same web site or different web site - HREF (Hypertext REference link or IMG (IMaGe) link
- Deep linking – linking to a particular page bypassing home page of the site
- “Heart and soul” of the World Wide Web – Implied licence?
- Infringement of Copyright? Trade Mark? Database right?
- Protection of Link List

Posting or copying web content

- Making available existing works on Internet
  - Random House suing RosettaBooks for selling e-books from some of its authors
  - 25 June 2001 US Supreme Court ruled in Tasini v NY Times that right to print articles by freelancers did not extend to online publication
- Copying web content
  - Easyscopes.com vs Women.com
### Challenges for Copyright

- Digitisation, Compression techniques, high bandwidth
- Copying of works-existing and web contents
- P2P software, search engines, web sites-links, FTP, etc
- Transmission of legal as well as illegal copies of works
- Growth of services etc offering file swapping, file sharing, streaming of broadcasts

### Software Patents & Business Methods

- **Software**
  - Hyperlinking software
  - Business to business software
  - Internet Search Engines
  - Audio Software and File Formats
  - Graphical User Interface Software

- **Business Methods**
  - Internet purchasing patents - e.g. 1-Click
  - Advertising and marketing patents
  - Auctions on the Internet
  - Account and Management Systems

### Business Method Patent

- Software inventions that embody methods of transacting business on the Internet
- Eg. 1-Click - US Patent No. 5,960,411 (the "'411 patent") - Amazon.com
- A method and system for placing purchase order over a communications network by using only a single action
  - a single click of a computer mouse button, once information identifying the item is displayed to the consumer.
- Action against BarnesandNoble.com – Express Lane
- Trial – Sept 2001

### Trade Marks, Names in Cyberspace

- Use of trade marks, brand names, business names, logos, etc
- Marks may be registered or unregistered
- Business establishing web presence – typically would use their names, trade marks as domain names e.g. www.malaysiaairlines.com.my or use their trade marks on their websites.
Trade Marks

On Web Sites
Visible or Invisible
Banner Ads, Meta Tags

Domain names
Similar or Identical Names
To block registration
To extract money
Honest concurrent use

Domain Names

- Domain name hijacking or cybersquatting
- Obtaining for future use
  - To prevent owner of trade mark or name from using it
  - To extract money from owner

- Unlikely – exposure to litigation
- In itself not a tort but coupled with purpose of blocking that is to extract money – bad faith

Depends ...

Legislative Response?
Existing Laws? Need for Change?
Copyright: Restricted Acts?

- Electronic or online copying, storage, and transmission
  - Reproduction?
  - Transmission?
  - Distribution?

- Responses
  - Makes such activities controlled activities

Encryption

- Encryption – Adobe used encryption to lock up content - eBook Reader
- Advanced eBook Processor – allows decryption – Dmitry Sklyarov – charged with trafficking in a product designed to circumvent copyright protection – US DCMA.
- DVD – encrypted with Content Scramble System (CSS)
- DeCSS program – to bypass encryption

Controlling Access

Technological solutions for protection of rights
- Encryption, watermarks, software, chip, scrambling, passwords, spoofing, hacking
- Use of electronic rights management information

Legislative Responses

- Anti-circumvention provisions
- Rights Management Information
- Liability of service providers
Legislative Responses

- Anti-circumvention provisions
  - Directed at behaviour; and
  - Devices
    - Primarily designed to circumvent, or
    - Very limited commercially significant use other than circumvention of technological measures

Malaysian Copyright Act 1987 - s 36(3)

- Copyright is infringed by any person who circumvents or causes anyone to circumvent
- Any effective technological measures
- Used by authors in connection with exercise of their rights
- That restrict acts which are unauthorised.
Electronic Rights Management Systems (ERMS)

- Terms and conditions of use
- Monitor access
- Identify users
- Facilitate collective administration

Violation to remove

Creation of multimedia works, facilitates rights clearance

Responsibility of Service Provider

- Mere conduit
- Provider of contents
- Will depend on
  - Direct liability
  - Secondary liability

Our Patents Act

- Invention
  - new
  - inventive step
  - industrially applicable
- Limits to what can be patented
  - schemes, rules or methods for doing business, performing purely mental acts or playing games

Software? No exclusion
Business methods? Yes

Challenges for Patents

- A balance between innovation and protection
- Hence need for technological innovation
- Patenting software and business methods – consistent with the above principle?
**TRIPS - Art 27**

- Patents shall be available for
  - any inventions - products or processes
  - in all fields of technology

**Software and Business Methods permissible?**

- Express provisions to deal with the registration or trafficking of domain names identical or similar to registered trade marks?
- Provision of dispute resolution mechanism?

**Trade Mark**

- Existing measures under law of passing off or trade mark law adequate to meet the issue?
- If registered trade mark
  - Use as a trade mark – that is, in connection with trade, to indicate origin
  - Confusion or deception
- Misrepresentation

**Dispute Resolution**

- Dispute resolution mechanism – ICANN
- Uniform Domain Name Dispute Resolution Policy (UDRP)
- Applicant required to submit to mandatory dispute resolution procedures in the following situations:
  - Identical or confusingly similar trade mark
  - No rights or legitimate interests in respect of domain name
  - Domain name has been registered and being used in bad faith
Final Issue ...

- IP – an asset and a tool
- To protect, expand and develop business, enhance competitiveness, increase market share and export opportunities
- Identify, Develop, Manage and Commercialise IP Asset
- IP Policy

Thank you

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COMBATING CYBER CRIMES – COMPUTER CRIMES ACT

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