

**Bar Council
Majlis Peguam
Malaysia**

**Commonwealth Lawyers'
Association**

LAWASIA

**Jointly Present An IT Conference On
IT And The Law : Recent Developments**

**Copyright and the Law
Relating to IT**

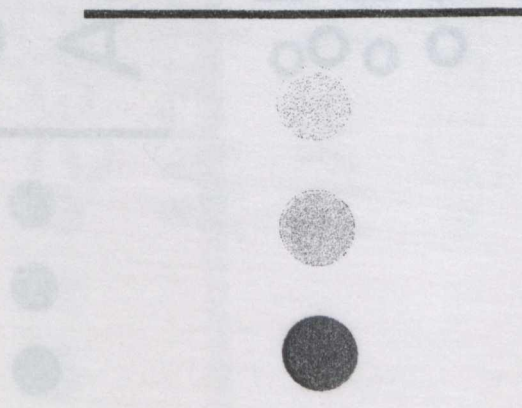
By

Professor Dr Khaw Lake Tee

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Friday, 2nd August 2002



Copyright and ICT - Selected Issues

Conference on Information Technology
Professor Khaw Lake Tee
2nd August 2002

Items

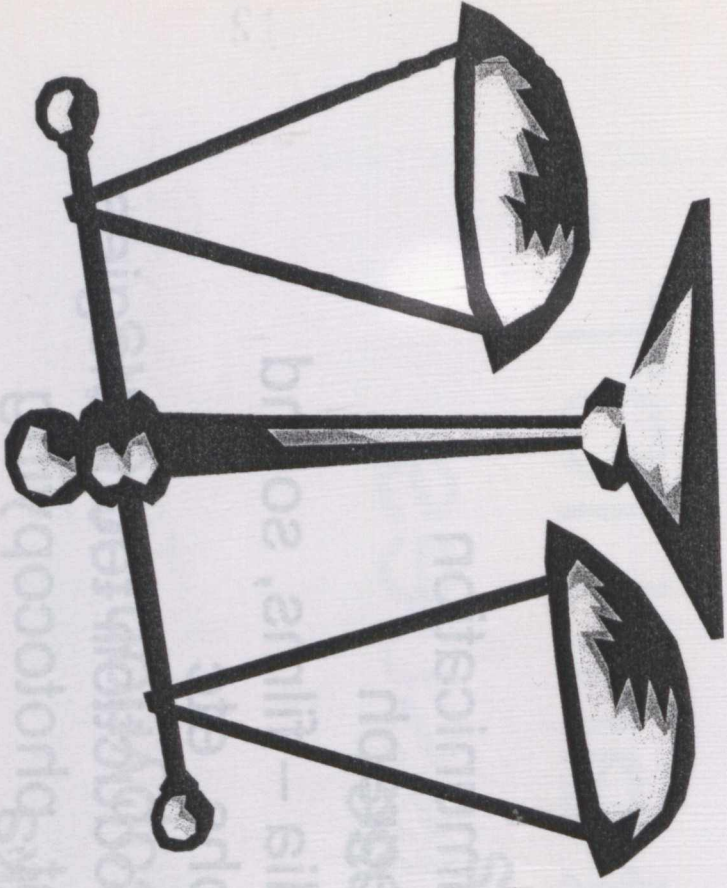
- o Preliminary Remarks
- o Impact of ICT on Copyright Works
- o Issues
- o Legislative Response
- o Employee-Creators

Copyright and Technological Advances

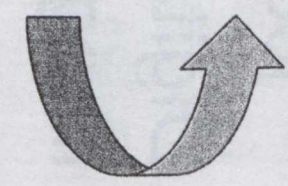
- o Post-Printing Press
- o Developments in communication technologies – eg telegraph
- o Developments in media – films, sound recordings, photographs, etc
- o Developments in reproduction technologies – recording equipment, photocopying machines
- o Developments in media, reproduction and communication technologies - Internet

Balancing the Equation

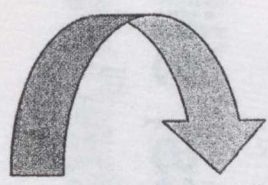
- Creators
- Entrepreneurs
- Users
- Employer and
the Knowledge
Worker
- Service



Impact of ICT on copyright works



Creation and Production



Distribution

Creation and Production: Migration to New Platform

- Conversion to electronic format:
 - Electronic versions of (or electronic) books, magazines, newspapers, journals, sound recordings, films
- Digital videos, music, graphics, still images
- Software
- Databases



Creation and Production: New Types of Work

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

Existing Copyright Works

Copying

Web Pages

Compression
Techniques, Peer-to-
Peer Tech
Post-Napster —
Moves by music
industry

Distribution

New Platform

Print to electronic
format: *National*

Writers' Union v NY

Times v Random House

Delivery or Distribution

- o Vast array of communication and information storage and retrieval tools – email, IRC, newsgroup, P2P
 - o Best known – WWW
- ‘The Web is ... comparable, from the readers’ viewpoint, to both a vast library including millions of readily available and indexed publications and a sprawling mall offering goods and services’

Justice Stevens in *Reno v ACLU*

‘From the publishers’ point of view, it constitutes a vast platform from which to address and hear from a world wide audience of millions of readers, viewers, researchers, and buyers. Any person or organization with a computer connected to the Internet can “publish” information’

Justice Stevens in *Reno v ACLU*

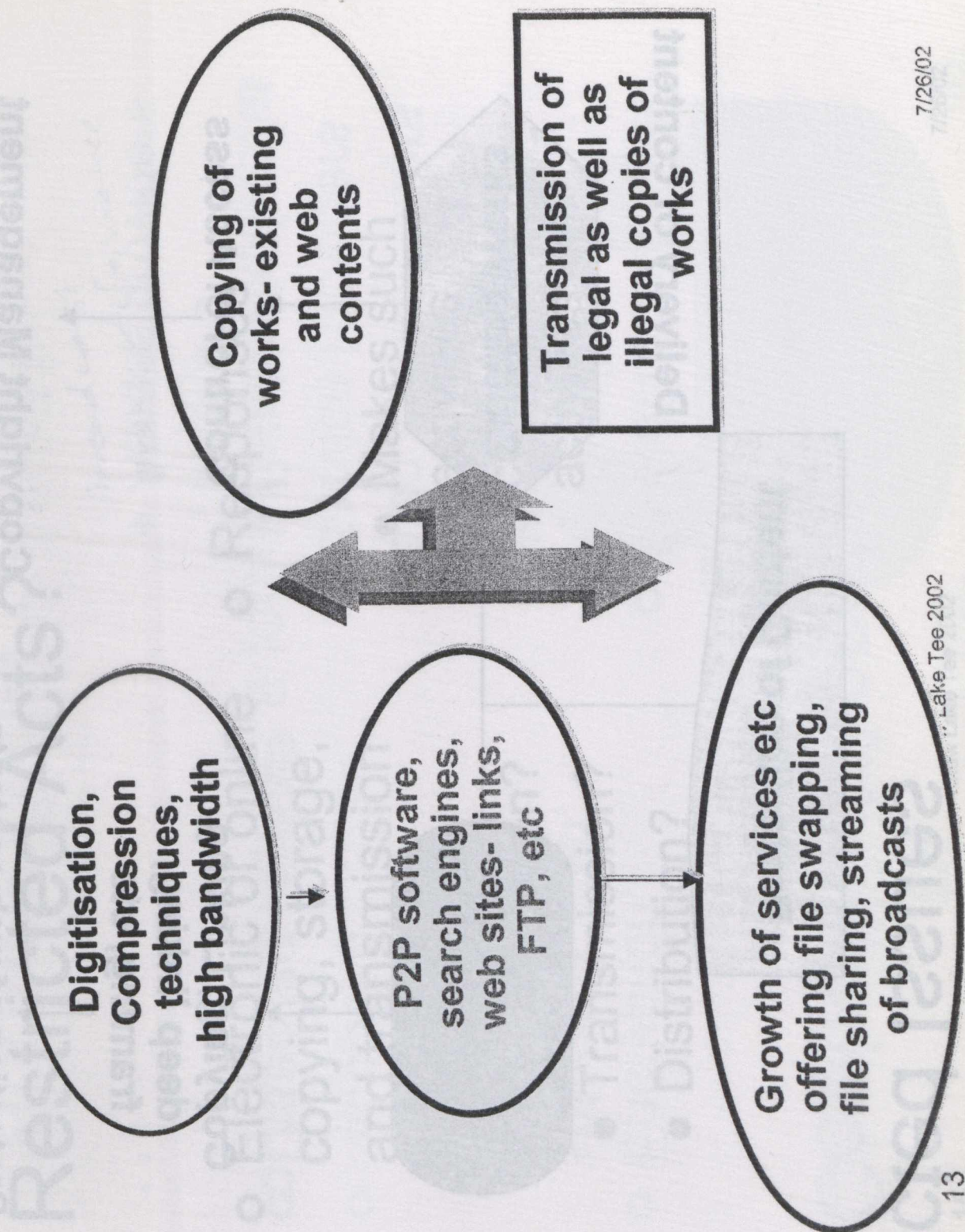
- o Bandwidth
- o Compression techniques
- o Peer2Peer software
- o Distribution of music, images, text, etc

**New opportunities for
creative works**

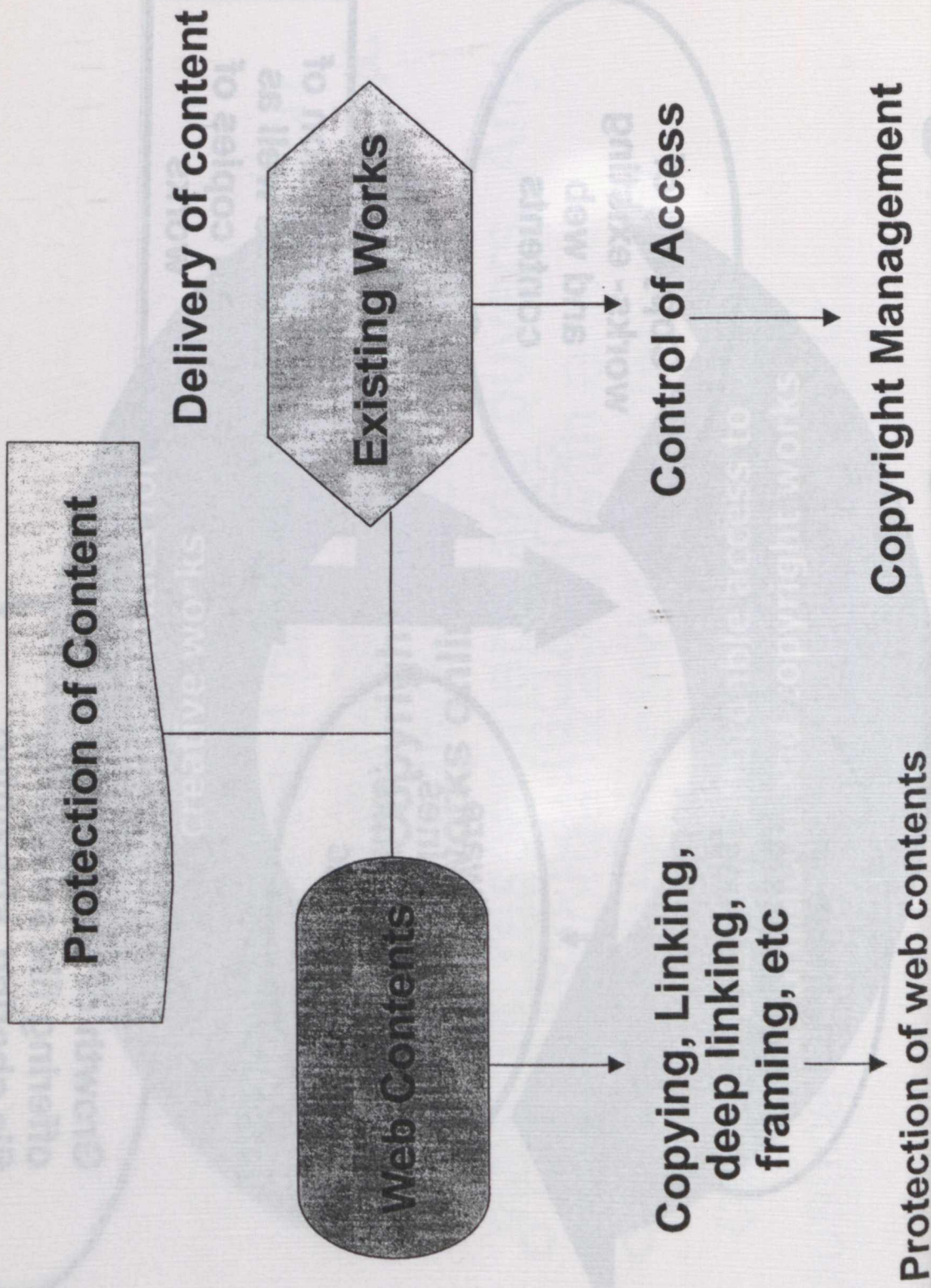
**Copyright
works online**

**Easy and affordable access to
information and copyright works**

Challenges



Selected Issues



Restricted Acts?

- Electronic or online copying, storage, and transmission
 - Reproduces?
 - Transmits?
 - Distributes?
- Responses
 - Makes such activities controlled activities

*of Copyright Act
broadcast
public performance*

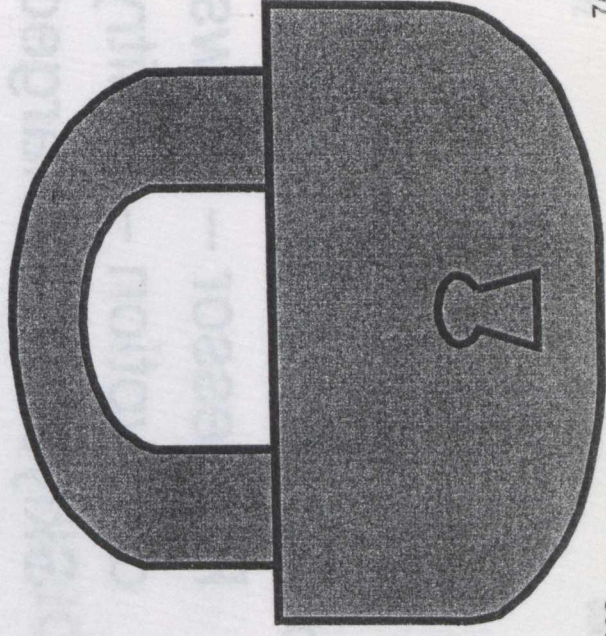
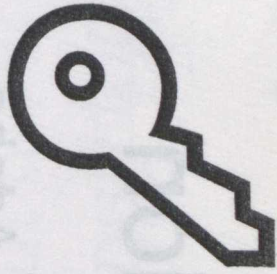
Controlling Access

- Encryption, software, chip, scrambling, passwords
- 'Spoofing'
- Disabling devices
 - Use of robots ('web spiders'), watermarks – contain RMI but also to track users
 - Service Providers
 - Providers of software
 - Access providers

Technological Solutions but

...

- When there is a lock, there is always a key.



Encryption

- o Encryption – Adobe used encryption to lock up content - eBook Reader
- o Advanced eBook Processor – allows decryption – Dmitry Sklyarov – charged with trafficking in a product designed to circumvent copyright protection – DCMA.
- o DeCSS program – to bypass encryption

o DVD – encrypted with Content Scramble System (CSS)

●●● 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 ltd commercially significant use other than circumvention of technological measures

WIPO Copyright Treaty, Art 11: Adequate legal protection and effective legal remedies against the circumvention of effective technological measures

● ● ● | Legislative Responses

- US Digital Millennium Copyright Act 1998
- EU Directive on the Harmonisation of Certain Aspects of Copyright and Related Rights in the Information Society (2001) – similar to Art 11 of WIPO but bans devices that are used or designed for circumvention.

Malaysian Copyright Act 1987 - s 36(3)

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

Devices?

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7/26/02

Copyright Management Systems

- o Terms and conditions of use

ALSO

- o Monitor access
- o Identify users
- o Facilitate collective administration

Violation to remove

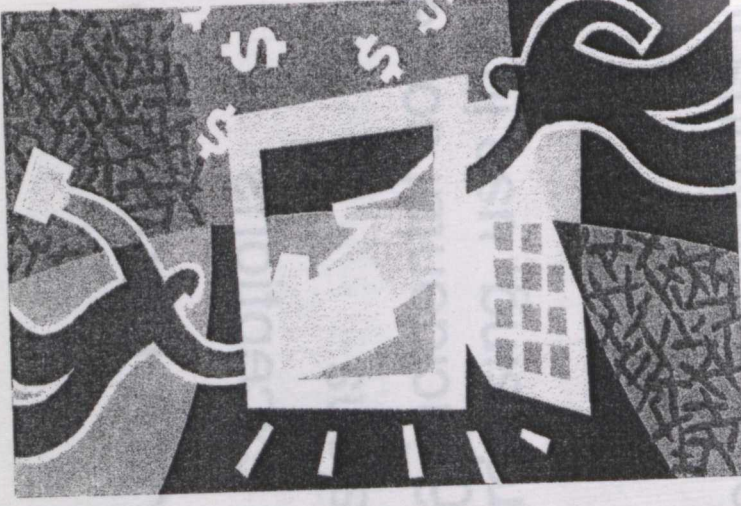
Creation of multimedia works, facilitates rights clearance

Balancing ...

- o Need for exceptions
 - Anti-Circumvention provisions
 - Temporary reproduction – incidental copies for technical purposes, browsing, use in normal course,
 - Public security
 - Use by libraries, educational institutions for non-commercial purposes
 - Computer programs – normal use, back up, interoperability, error correction, security testing

● ● ●
| BUT ...

- Exceptions may be circumvented by contract
 - Shrinkwrap
 - Clickwrap/clickthrough
 - * Negotiability?
 - * Overriding/modifying exceptions
- Restrictions for indefinite period



- o Online Providers?
- o Depends on
 - direct infringement
 - causing an infringement

Employers and Knowledge Workers

- o Normal rule: any work created in the course of employment belongs to the employer.
- o A different rule in the new economy?