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

Copyright and the Law
Relating to IT

By

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Copyright and ICT - Selected Issues

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Professor Khaw Lake Tee
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Items

- Preliminary Remarks
- Impact of ICT on Copyright Works
- Issues
- Legislative Response
- Employee-Creators
Copyright and Technological Advances

- Post-Printing Press
- Developments in communication technologies – e.g. telegraph
- Developments in media – films, sound recordings, photographs, etc
- Developments in reproduction technologies – recording equipment, photocopying machines
- Developments in media, reproduction and communication technologies - Internet
Balancing the Equation

- Creators
- Entrepreneurs
- Users
- Employer and the Knowledge Worker
- Service Providers
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, films
  - journals, sound recordings, graphics, still
  - digital videos, music, 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
- Information and services.
Existing Copyright Works

Distribution

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

New Platform

Copying

Web Pages

Print to electronic format: National Writers' Union v NY Times: Random House

Conversion to electronic versions of (or electronic)
books, magazines,
digital videos, music
industry

Software

Database

Creation and Production: Migration to New Platform
Delivery or Distribution

- Vast array of communication and information storage and retrieval tools – email, IRC, newsgroup, P2P
- 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.
- Bandwidth
- Compression techniques
- Peer2Peer software
- Distribution of music, images, text, etc.
New opportunities for creative works

Copyright works online

Easy and affordable access to information and copyright works
Challenges

Digitisation, compression techniques, high bandwidth

P2P software, search engines, web sites - links, FTP, etc

Copying of works - existing and web contents

Transmission of legal as well as illegal copies of works

Growth of services etc offering file swapping, file sharing, streaming of broadcasts
Selected Issues

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

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

- Responses
  - Makes such activities controlled activities
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

- 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 – DCMA.

- DVD – encrypted with Content Scramble System (CSS)

- DeCSS program – to bypass encryption
Legislative Responses

- Anti-circumvention provisions
- Rights Management Information
- Liability of service providers
Legal remedies against the circumvention of technological
measures
other than circumvention of technological
Very lid commercially significant use
Primarily designed to circumvent, or
Devices
Directed at behaviour, and
Anti-circumvention provisions

Legislative Responses
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)

○ 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.
Copyright Management Systems

- Terms and conditions of use

ALSO

- Monitor access
- Identify users
- Facilitate collective administration
Balancing ...

- 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
- Online Providers?
- Depends on direct infringement causing an infringement
Employers and Knowledge Workers

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