KCL Enterprises Limited

Protection of Copyright Works

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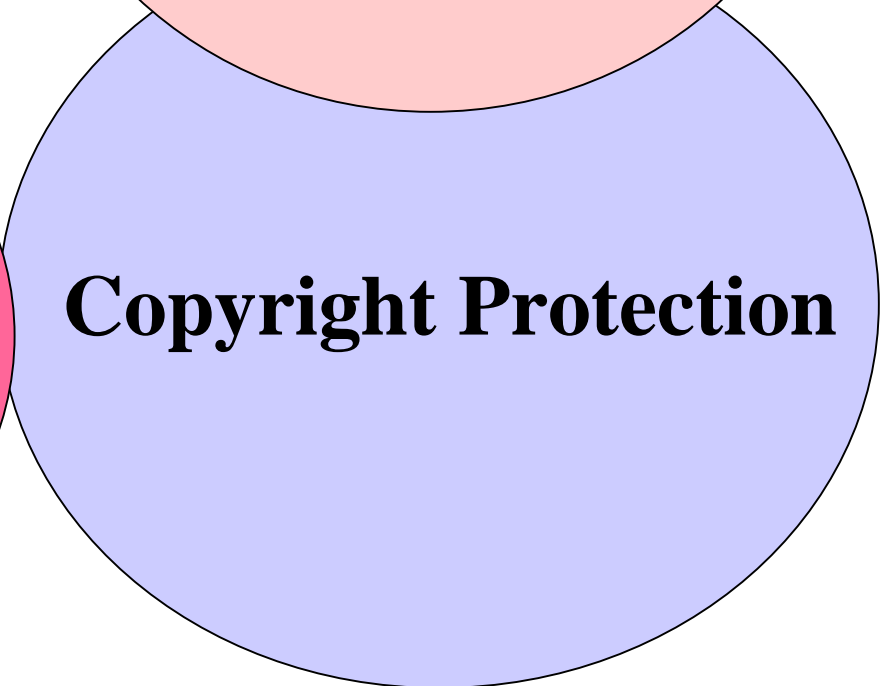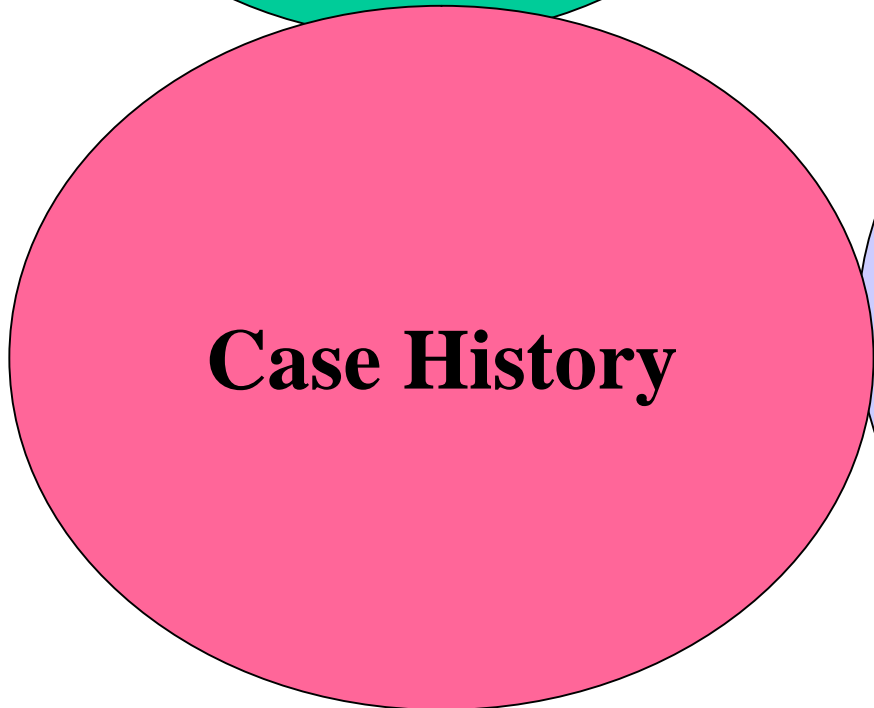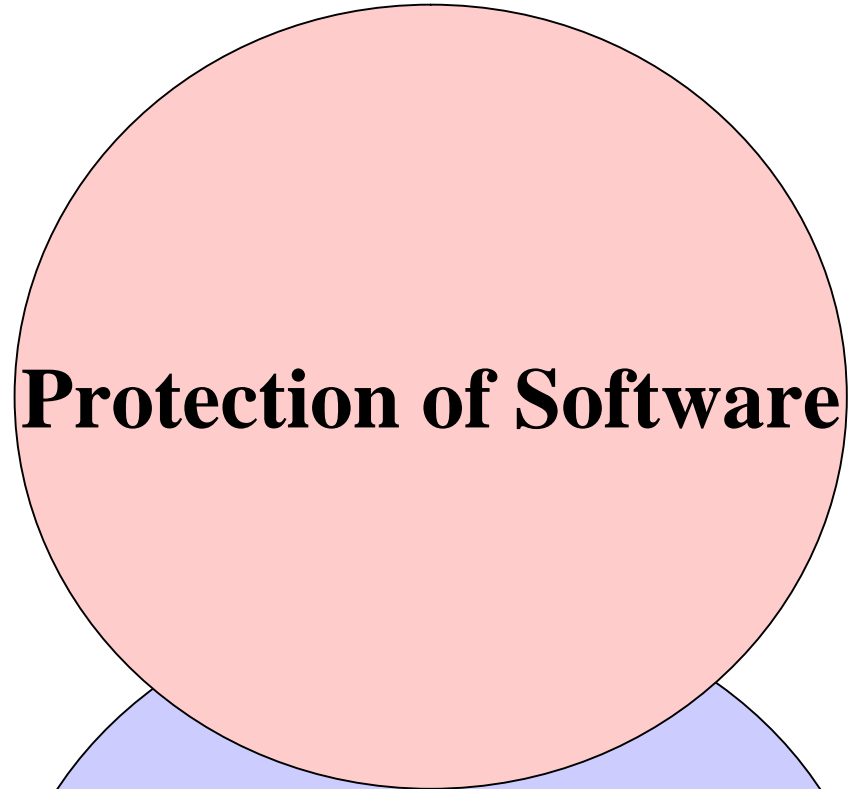London E1W 2BS

Monday 19 April, 2004

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Overview of IPRs

Protection of Software

Case History

Copyright Protection

WHY IPR PROTECTION?

Start-ups

Attract funding easier if :
IPR protection adequate;
Safeguarding your assets;
Brand maintenance and
reputation.

Investors

Companies must be seen to
be mitigating the risk of
failure !!!

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IPR from the Investor's Viewpoint

- **Barriers to entry**

- **Market share**

- **Increase in 'switching costs'**

- **Mitigating risk for the funds invested**

- **Adequate IP protection**

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CASE STUDY

Dr Wilson invented an aquatic robotic sampler which collects at regular intervals environmental data (such as temperature and light penetration). Dr W designed a database to store the data collected.

Dr W's PhD student is incorporating some of the data into his research and he codes a simple programme for use with the database. Dr W tries to re-run his program but finds that it crashes frequently as it cannot cope with the immense amount of data now in the database.

Dr W and Technician (T) design a computer program to mine the data. T uses student's original code and Dr W advises on the features and functionality of the programme.

There is a computer programme that forms the same function already on the market.

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WHAT ARE THE ISSUES?

Options – Intellectual Property Rights CAPITAL OR INCOME

- Licensing – exclusive or non exclusive

  - Assignment

    - Mortgage

      - Spin-out

        - Alliance - JV, collaboration, partnering

OVERVIEW OF IPRs
www.patent.gov.uk

REGISTERED RIGHTS

UNREGISTERED RIGHTS

- **Patents** - inventions
- **Trade marks** - badge of business, logos, names, smells, sound
- **Registered designs** - appearance of whole or part of a product resulting from the **features** of the lines, contour, shape, material, texture of the product

- **Know-how** - trade secrets
- **Copyright** - literary, including digital work, research notes, software
- **Unregistered design rights** - product shape and configuration
- **Brands** - goodwill and reputation

QUASI-REGISTERED RIGHTS

Domain Names

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IPR: Copyright

Copyright Designs and Patent Act 1988 as amended

▪**Bundles of rights** - to reproduce, rent, broadcast or to stop parties exploiting work

▪**Literary work**- books, articles, drawings, digital works, computer program

▪**Musical work** – music

▪**Artistic work** – sculpture, photograph

▪**Computer generated** – computer program

▪**No system of registration**- protected as soon as created and recorded

IPR: Copyright

Copyright and Regulated Rights Regulations 2003

- **New copyright** -copyright works communicated to the public by electronic transmission or broadcasting

- A copyright owner can stop a substantial part of his work being communicated to the public by electronic transmission, distribution or broadcast without a licence or consent. This includes digital copying and contents of books, articles or graphics made available on websites.

IPR: Copyright

➔ Not a **monopoly right**

➔ **Authorship and Ownership** *Cyprotex Discovery v University of Sheffield [2003]*

➢ **Author** - first owner of any copyright subsisting in a work
➢ **Author** - creator of the work is generally the author
➢ **Author** -individual, company or other incorporated body
➢ **Employer First Owner of copyright** - for literary or artistic works created by an employee in the course of employment
➢ **Computer Generated Works** – author is the person by whom the arrangements necessary for the making of the computer generated work (films and sound recordings)
Joint author – work produced by the collaboration of two or more authors in which the contribution of each auth   distinct from the other authors

IPR: Copyright
Authorial Rights v Entrepreneurial Rights

Authorial Rights – European Civil law concept

'Classic Copyrights' – protects the author's artistic output and originality

➢**Entrepreneurial Rights** – Common law concept

'Neighbouring Rights' – protects the investment or technical skills

➢Balancing the interests of the authors, investors, and the public

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IPR: Copyright

Authorial Rights v Entrepreneurial Rights

Entrepreneurial Rights

➢Protects those who invest in creativity.

➢Serves the same purpose as the classic rights i.e. prevent unlawful copying.

➢There is no requirement of originality or minimum effect.

➢Traditional entrepreneurial rights include:

  ➢Films

  ➢Sound Recordings

  ➢Broadcasts

  ➢Cable Programmes.

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IPR: Copyright

➔**Originality** – *Ladbroke (Football) Ltd v William Hill (Football) Ltd [1964]* originality defined "…the product must originate from the author in the sense that it is the result of a substantial degree of skill, industry, or experience employed by him." In this case it was held that copyright subsisted in the football coupons.

➔**Test** – degree of skill, labour and judgement expended by the author or creator

➔**Duration** – life of the author plus 70 years

IPR: Copyright

➔**Qualification Requirements**

➥**Qualified Person** - author has to be a qualified person at the material time

➥A British Citizen

➥A UK domicile or resident

➥Legal entity incorporated under UK law or another country to which the CDPA extends

➥**Material Time – literary or artistic works**

➥**Published works** - when work first published

➥**Unpublished works** - when first made

IPR: Copyright

➔**Fixation**

 ➢**Recorded in Writing** - for copyright to subsist in literary, dramatic or musical works they have to be recorded in writing

 ➢**Writing** - "Any form of notation or code, whether by hand or otherwise and regardless of the method by which or medium in or on which it is recorded …"
 ➢E.g storing in a ROM, disk, other computer memory or machine readable medium

➢**Conventions –** reciprocal protection of works in convention countries
 ➢**Berne Convention** – no formalities required
 ➢**Universal Copyright Convention** – copyright notice
 © [Name of Copyright Proprietor] [Year of Creation]

IPR: Copyright

➔ **Copyright Infringement** – under the CDPA

> ➢right to stop a third party exploiting copyright work without permission – copying, issuing copies of the work to the public

> ➢Not infringement of earlier work – Identical work created independently

WHY IS IP PROTECTION IMPORTANT: SOFTWARE

➔Computer programs and Databases – easily copied

➔Technical protection measures – regulate copying

➔Reliance on IPR protection

IPR: Software

➔ Copyright

  ➔Designs

  ➔Trade marks

    ➔ Patents

      ➔ Confidential Information

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IPR: Computer Programs

➔**Copyright Infringement of Computer program- reproduction in any form (require authorisation)**

➢right to stop a third party exploiting copyright work without permission – copying, issuing copies of the work to the public

➢Temporary or permanent reproduction by any means and in any form – loading, displaying, transmission or storage

➢Translation, adaptation or alteration

➢Distribution – in any form including rental

IPR: Computer Programs

➔ **Copyright Infringement** of Computer program

  ➢ **Exception**

   ❖ if no contract - no permission required to use the program for its intended use

   ❖ to make a back up copy (security)

   ❖ For observation and study

   ❖ Decompilation – conditions attached

IPR: SOFTWARE

Software Directive

Copyright protection of Computer programs – include the computer program and "preparatory design material" – e.g source code, object code or expression in any other human readable language or machine readable form

➔ "Preparatory design material" - includes flowcharts representing the underlying logic of the programs or description in words or otherwise of the design of the program

IPR: SOFTWARE
Software Directive

➔**Copyright protection of Computer programs**

➔**Originality** – amount of skill and labour expended

➔**Ownership** – author of a computer program is the person who created it except if created during the course of employment

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➔**Fixation** – expressed in any form of notation

IPR: Database rights

➔**Database** – comprises any organised collection of data

➔**Protection-** only applies to their selection and arrangements. *British Horse racing Board v William Hill Organisation* – ECJ to determine whether a database is protected by copyright law or database rights or both

➔**Ownership –** person who creates it

➔**Ownership of copyright in constituent items of the data**

➔**Term** – 15 years

➔**Infringement –** extracting or reutilising substantial part of the database

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PATENTS

➔ Ownership

➔Validity

➔Duration

➔ Patent Searches

➔ Risk of Patent Infringement

➔ Patent Filing Strategy

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Test for Patentability

A patentable invention

- ✦ it must be <u>**novel**</u>;
- ✦ it must involve an <u>**inventive step**</u>;
- ✦ it must be <u>**capable of industrial application**</u>; and
- ✦ it cannot fall within an <u>**excluded category**</u>, i.e. discovery, literary work, mathematical model

For an invention to be novel

- ✦ the invention must **not** form part of the <u>**"state of the art"**</u> i.e. all matters, including any product, process, information in any form which could be oral, written or by use or in any way whatsoever which was "<u>**made available to the public**</u>" anywhere in the world before the priority date

Inventive step

- ✦ must not be an obvious invention so that <u>**a person skilled in the art**</u> (e.g. a skilled scientist) would have found it an obvious invention to make at the priority date

PATENTING SOFTWARE

➔ Excluded under Patent Act 1977

➔Technical effect

Disclosure

General Rule:

Patents - Invention **disclosed before filing** patent application – **loss of patentability** e.g. publication of an invention in a journal

Know-how - **unauthorised disclosure** can **destroy know-how** e.g. an employee passing on details

Disclosure: What disclosure can destroy novelty?

Destruction of novelty means the invention is not patentable i.e. the invention is not novel. (*Note*: Not every disclosure is novelty destroying)

- ✦ disclosure at an international *conference* ?
  - YES
- ✦ publication of a patent application in the UK? - YES

    (If in USA "first to invent" - 12 months from filing date)

- ✦ disclosure under an obligation of confidence?   - NO

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Test for Patentability: Novelty

RECAP:

- ✦ To be **patentable**, an invention must be *novel*;

- ✦ Must **not** form part of the "**prior art**" - means any product, process, information located in whatever form (oral, written, in use) anywhere in the world which is "made available to the public";

- ✦ "**Made available to the public**" - means published or capable of inspection in the UK, or any member of the public is free to use without breaching confidence, or the public is given enough information to perform the invention.

Note: Disclosure of a patentable invention can destroy novelty.

Protection of Software

➔ **Software** = composite term comprising all material required by a computer user to operate and control a computer including the program, program description and supporting material.

➔ **Program description** = flow charts, functional and technical specification and description of the program

➔ **Supporting Material** = user manuals and other materials to assist in the application of the program.

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Development of Software Product

A software product normally comprises:

- ✦ A set of modules; or
- ✦ Suite of computer programs;
- ✦ Modules - building blocks of software products. Each designed to satisfy a specific function/application.

Development of a software product:

- ✦ Problem to be solved - Define the concept
- ✦ Develop solution to problem or logic underlying the product (algorithm) - schematic or written description of modules
- ✦ Source Code – underlying logic expressed as a source code

(Coding program generated)

- ✦ Tailoring sets of modules or creation of new modules - operate in accordance with the functional specification of the product
- ✦ Testing

Computer Programs

Source Codes

✦High level Language Representations

Object Codes

✦Machine readable version – set of programs designed to translate the instructions from a source code to an object code

Operating Systems

✚ Control the transformation and execution of a program

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Moral Rights

The author of a copyright literary work is entitled to be identified as the author in certain circumstances, provided this right has been asserted.

✦ Computer programs are excluded

Breach

Remedies: damages, account of profit, delivery up or destruction

Risk Management - checklist

✧ Due diligence

✧ Ownership of all IPRs?

✧ Copyright notices on all original works?

   [Name] [Year of Creation]

✧ Trade mark symbols: ® or ™

✧ Registration of IPRs?

✧ Consents & authorisation obtained for
      hypertext links on website

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Risk Management -checklist

- Advertising complies with relevant laws?
- Signed confidentiality agreements
- Confidential documents marked "strictly confidential"
- Security (Firewalls & Virus Protection)
- Segregation of servers
- Specialist IPR Insurance-Audit & Valuation

Conclusion

THANK YOU –
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