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# Web Sites and IP

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## Plan of Talk

- Forms of IPR
  - Forms of product etc to protect
  - Matching IPR against products to protect
    - examples
  - Jurisdiction (a little)
  - Conclusion
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## Many forms of IPR apply

- Copyright
  - Patents
  - Design Right
  - Trademark
  - Database Right
  - Confidential Information
  - Contract/Licenses
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## Many Different Aspects to Protect

- User interface for web site
    - operation and appearance
  - Backroom operation of web site
  - Overall (business) operation of web site
  - Products delivered from web site
  - Items posted to web site
  - Web site address
  - Mix and match approach; some are more amenable to IP protection than others
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## User Operation

- How the user interacts with the web site
  - primarily functionality
- Patents are main route for protection
  - powerful if obtained, since easy to detect infringement (can't protect as trade secret)
  - may be considered as non-technical, e.g. so could have business method rejection (especially in Europe)

## example – user interface (1)

- Amazon “1-click” patent –US 5960411
  - filed 1997, granted September 1999
  - Internet shopping – without use of shopping cart
  - preliminary injunction granted against Barnes and Noble
  - “Bezos admits that 1-Click purchasing is trivial to duplicate. He contends that what makes this patent viable has nothing to do with its implementation, but with its reframing of the purchasing problem. At the time he came up with 1-click shopping, everyone was locked into the mindset of the shopping cart metaphor. On the Web, he realized, all you had to do was point and click on an item, and it was yours.”
  - in Europe, business method, not technical (probably)

## example – user interface (2)

- Login system
  - requires unique combination for username and password (rather than just unique username)
  - attractive for people with common surnames !
  - difference is technical - and hence potentially patentable in Europe
  - easy to discover infringement by trial and error
  - drawback – what happens if you forget password

## example – user interface (3)

- recommendations for on-line purchase – e.g. as in Amazon and other web-sites
  - more difficult to browse on-line than in shop
- potential claim:
  - storing purchase histories for users
  - for a first user, correlating user purchase histories to find a second user with a purchase history having a high correlation with the purchase history of the first user
  - recommending an item to the first user that is in the purchase history of the second user but not the first user
- probably seen as business method
  - OK in US
  - non-patentable in Europe

## example – user interface (4)

- social networking - e.g. Facebook
  - network of users linked as friends
  - friends have access to each other's pages
  - status updates of a user propagated to users who are friends
- Patents
  - in Europe – probably non-technical
  - in US – probably potentially patentable

## Appearance

- Many factors in appearance
  - text, images, colour scheme and layout, GUI controls, etc
- Copyright
  - include copyright statement on all web pages (or accessible from)
- Designs
  - in theory available for icons, etc
  - very difficult to apply to user interface
    - too dynamic
- Distinctive appearance is quite difficult to protect

## Backroom Operation

- **Functionality – protect by patents**
  - including in Europe if technical
    - e.g. load balancing across servers, authentication
  - Google search algorithms
    - patentable in Europe if based on network properties, such as numbers of links, location of search term in web site address, number of occurrences of search term, etc
    - more problematic if based on semantics
- **Trade secrets (confidentiality) also an option**
  - retain option for later patent filing

## Overall Business

- **Functionality**
  - normally visible - trade secrets difficult
  - patents most appropriate
    - business methods are non-technical in Europe
    - other countries are less restrictive
  - possibly database right (for certain businesses and for certain threats)
- **Example – million dollar home page**
  - sell pixels on page (each is linked to advertiser site)
  - no technical innovation – business method
  - has been copied !

## example – overall business

- Google search + advertising business
  - possible claim:
    - receive search query; search web for query answer to produce first results; search separate database of query answers to produce second results; display first results and second results together, but with clear differentiation between first and second results.
    - arguably technical (but motivation is business) for patenting in Europe
    - algorithms for ranking advertisers (second results) may also be important

## example – black/white game

- Internet (or mobile phone) game
  - each round, every user chooses Black or White
  - everyone who chose most popular colour is eliminated
  - continue until winner is decided
- Not patentable (games are excluded)
  - BUT most lottery games based on random number generator very difficult to audit – technical problem
  - this gives fair (unbiased) selection between users without using random number generator, and so can be audited (based on user responses)
  - therefore can be presented as solution to technical problem

## Products delivered on/from web-site

- any intangible product
  - e.g. music, video, software, news
  - usually protected by copyright
  - normally governed by license agmt
    - download conditional on accepting license agmt
    - better if explicit (click to accept)
  - may consider additional technological measures against copying – e.g. DRM, pay-wall
  - widespread expectation that material is free
  - exploitation by third parties – e.g. Google

## Items posted to Web

- Web 2.0 – YouTube, FaceBook
  - a lot of third party material posted to Web
  - often no great respect for IPR
  - some protection as service provider
    - E-commerce Directive
    - but do need takedown policy
  - likewise rights owner needs to monitor
  - also questions as to ownership by poster (rather than web-site)
    - can you delete/close/transfer your account



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## Web-site address

- Trademark protection
  - Domain names not limited by goods
    - scope for genuine confusion
    - WIPO has domain name arbitration procedure to protect trademark holders
  - Note that domain name is contractual right with network body, not property right
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## Jurisdiction

- Lots of issues
    - IPRs are geographically limited; web is not
  - Trademarks
    - where are you doing business from web site; does this extend into location with trademark
      - can look at issues such as language, currency, etc.
  - Patents
    - where are claimed method steps performed ?
      - patent may be difficult to enforce if claim steps occur in different jurisdictions
      - try to draft claims accordingly
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## Conclusions

- Web is increasingly significant commercial arena
  - Important to protect business assets on web in same way as elsewhere
  - Need to consider a wide range of possible IPRs
  - Often not an exact fit or match
    - especially in Europe with no patent protection for business methods
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