

Intellectual property & e-commerce

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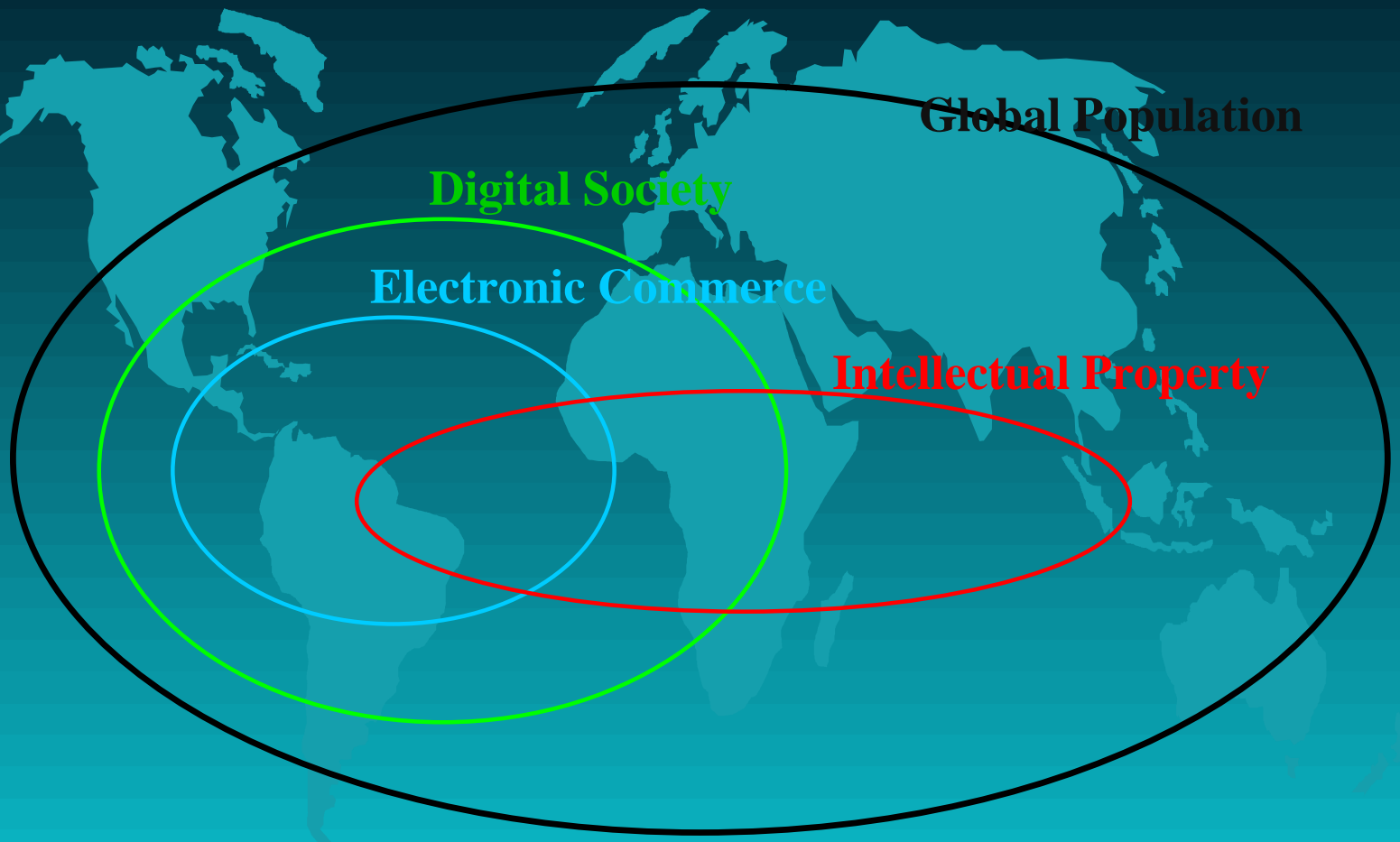
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A stylized world map in shades of blue and teal, serving as a background for the slide content.

Overview

- Digital evolution - e-commerce and intellectual property
- Migration of intellectual property to the Internet
- Challenges
- Emerging issues
 - Ⓜ domain names
 - Ⓜ digital rights management
- WIPO's role and response

Intellectual Property System - Role



“Knowledge-based economy”

u Internet and e-commerce

- scale and speed

value - forecast for online transactions is US\$6 trillion in 2004

users - 665 million in 2002, forecast for 1 billion in 2005

u “information economy”

u Internet as a source of information

- value in intangibles

software, text, music, film and IT = IP works

– ‘network of networks’ is communication channel

– business assets *intellectual*, as opposed to *physical* capital

Intellectual Property on the Internet

- ‘digital economy’ ‘information age’
 - value in intangibles and intellectual (not physical) capital
 - ‘click and mortar’ business models
 - changing way we consume information
 - changing business models for product delivery
 - intellectual property (IP) ideally suited to digitization
 - migration of IP to the Internet: software, e-publishing of newspapers, scientific and medical publications, copyright in web pages, music file sharing, webcasting and Internet radio, video on demand, digital film and TV

IP in a knowledge-based economy



- u need for strong intellectual property protection?
 - to encourage creators & national cultural development
 - to enable persons worldwide to exploit their IP rights
 - to support local & foreign investment
 - to sustain e-commerce growth
- u role of WIPO
 - mandate to protect and promote IP
 - dual-oriented..

New Challenges



- u **Nature of the Internet**
 - global (packet switching ISPs)
 - anonymous
 - multifunctional
 - specifically unregulated
- u **Policy challenges ...**
- u **Legal challenges ...**

Policy Challenges

u Regulation and governance

- no overall regulation or effective controls
 - specific legislation
 - judicial regulation (e.g., *Licra v. Yahoo*, French court found Yahoo violated French law by allowing French citizens to view auction sites displaying Nazi memorabilia. US Federal Judge found the US\$13,000 a day fines were unenforceable as unconstitutional) (e.g., *Gutnick v Dow Jones*, Australian High Court allowed US Internet publishers to be sued for defamation in Victoria over material published on a US-based site)
 - technical regulation (e.g., cryptography, DRM)
- conflict with territoriality of IP systems
- speed of change challenges traditional policy making

Policy challenges...

u Global development

- only 10% of world's population is online
- 'digital divide'
 - 37% Americas, 31% Asia, 29% Europe, 1% Africa
 - greatest growth in developing countries (Latin America, Asia - users in Asia Pacific expected to reach 236 million in 2004)
 - more than 63.5% of users are non-native English speakers
- need for information infrastructure
 - physical - affordable telecommunications, bandwidth (broadband), computer hardware and software
 - intellectual - skilled technical know-how, public awareness, language, education and consumer confidence
 - governmental - effective government strategy, competition, financial support and positive legal framework

Legal Challenges

- Take one company: a company in Beijing starts an online business - providing media & music content on the Internet
- Concerns:
 - securing worldwide rights to multimedia content
 - registering a domain name with corresponding trademark rights
 - entering electronic agreements (disclaimers to limit liability)
 - technological measures for security of content, anti-circumvention
 - data and privacy issues
 - anonymity and authenticity
 - consumer protection issues
 - questions of jurisdiction & applicable law to defend or assert rights

Legal challenges..

“the digitization of everything not obstinately physical”

John Perry

Barlow

u Digitization ‘bits and bytes’

- IP ideally suited to digitization
- intangibles... perfect, instant, infinite copies
- globally distributed, transient, morphable
- worldwide piracy – increasing with bandwidth
- increasing challenge to IP owners

Internet piracy

- Software industry
 - Chinese software piracy rate estimated at 92%
- Music industry:
 - 200,000 unauthorized music sites online (Napster, Grokster, Aimster, KaZaa)
 - total world pirate music market worth US\$4.3 billion annually
 - more than 40% of all CDs/cassettes are pirated copies
 - development of legitimate online music services (MusicNet, pressplay, iTunes, Rhapsody)
- Film industry :
 - 400,000 - 600,000 illegal downloads per day, and increasing... (costing Hollywood studios US\$3.5 billion annually)
 - e.g., Matrix Reloaded was available days after its simultaneous worldwide theatrical release

Cost of piracy

- impact of piracy:
 - ▢ greatest victim is local culture
 - ▢ profits channelled into organised crime
 - ▢ restricts investment, growth and jobs
(copyright industries in the USA, for example, account for 5.2% of GDP – US\$535 billion)
- world's largest pirate markets:
 - ▢ China (90% of the market), Russia, Brazil, Indonesia, Mexico, Italy, Spain, Taiwan, Poland, Greece
- burden of enforcement:
 - music industry body – IFPI- in 2001, removed 1,060 unauthorised peer-to-peer (P2P) music services, 28,000 pirate and file transfer protocol music sites, 2.8 million simultaneous P2P users, and 700 million unauthorised music files from the Internet in 51 countries

Legal challenges...

u Enforcement

- detection, anonymity and privacy
- technological protection measures (DRM, watermarking, digital signatures, encryption)
- alternative dispute resolution

u Jurisdiction

- where is 'where' on the Internet
- multi-jurisdictional
- applicable law and choice of law
- dispute resolution and enforcement of judgements
e.g., Le Grand Secret
e.g., e.g., nicolekidmannude.com, wiposucks.com

Emerging IP Issues



u Trademarks

- metatags, framing, deep linking
- cybersquatting

u Copyright

- music distribution
 - file sharing via MP3, Napster, Kazaa
 - new legal subscription services (itunes, MusicNet, Emusic.com, Pressplay)

u Patents

- patentable subject matter (hyperlinks), business method patents

u Databases

- sui generis or other forms of protection

Internet domain names

- u **disputes in the Internet domain name system**
 - domain names are commercially valuable:
attract the public to their business' web sites
 - domain names are unique and global:
one name operates anywhere in the world (vs. the territorial publicly regulated trademark system)
 - domain names may be registered without verification:
first-come, first-served, quickly
- u **Limited options for dispute resolution (buy the name, vary the trademark, mutual website links, or litigation)**

WIPO Internet Domain Name Processes

- u **First WIPO Process (1999)**
 - addressed conflicts between trademarks and domain names
 - fast, conducted via online and regional consultations
 - recommended Uniform Dispute Resolution Policy (UDRP)
- u UDRP adopted by the ICANN took effect December 1, 1999
- u **Second WIPO Process (2002)**
 - addressed conflicts between domain names and other identifiers

Digital rights management (DRM)

- u Purpose of DRM technologies: to describe and identify digital content protected by intellectual property rights, and establish rightsowners' rules for its use
 - metadata applied at the time of creation of digital objects, permanently associated with content
 - to secure content and enforce usage rules
 - technological protection measures (encryption, watermarking)
 - to prevent infringement of rights, assure authenticity of content, and prevent unauthorized access to works in transit

Role of DRM

- DRM promotes creation, storage, use and remuneration of all forms of intellectual property
- to enhance access to content
 - piracy has thrown focus on security/restricted access
 - DRM expands the market for content
 - flexible means of distribution and access based on rules
 - new business models based on DRM
- needs interoperability of systems
 - development of standards (proprietary/open - MPEG21)
- needs education and awareness raising

Legal framework for DRM

- u DRM part of legal e-framework
 - WIPO ‘Internet Treaties’
 - require Parties to provide legal protection and remedies against circumvention of effective technological measures used by authors, and against the removal or alteration of ‘rights management information’
 - implemented, for example:
 - European Union - Directive of May 22, 2001, on harmonisation of copyright and related rights in the Information Society
 - USA - Digital Millennium Copyright Act, 1998

DRM technologies ...



- content identification
- metadata management
- watermarking and fingerprinting
- rights expression languages/ data dictionaries
- authentication of parties and content
- tracking
- privacy management
- payment

Policy questions ...

- implementation of WIPO Internet Treaties
- effect of DRM on copyright exceptions and limitations (access to public domain material)
- DRM and private copying levies
- privacy
- jurisdiction and applicable law
- interoperability

A stylized world map in shades of blue and teal, serving as a background for the text. The map is centered and shows the outlines of continents.

WIPO Digital Agenda

1. Broaden the participation of developing countries through the use of WIPONET and other means for:
 - access to IP information
 - participation in global policy formulation
 - opportunities to use their IP assets in electronic commerce
2. Entry into force of the WCT and the WPPT before December 2001

WIPO Digital Agenda ...

3. Promote adjustment of the international legislative framework to facilitate electronic commerce through:
 - the extension of the principles of the WPPT to audiovisual performances
 - the adaptation of broadcasters' rights to the digital era
 - progress towards a possible international instrument on the protection of databases

WIPO Digital Agenda ...

4. Implement the recommendations of the Report of the WIPO Domain Name Process and pursue the achievement of compatibility between identifiers in the real and virtual worlds through the establishment of rules for mutual respect and the elimination of contradictions between the domain name system and intellectual property rights



WIPO Digital Agenda ...

5. Develop appropriate principles with the aim of establishing, at the appropriate time at the international level, rules for determining the circumstances of intellectual property liability of Online Service Providers which are compatible and workable within a framework of general liability rules for OSPs

WIPO Digital Agenda ...

6. Promote adjustment of the institutional framework for facilitating the exploitation of intellectual property in the public interest in a global economy and on a global medium through administrative coordination and, where desired by users, the implementation of practical systems in respect of:
 - the interoperability and interconnection of electronic copyright management systems and the metadata of such systems
 - online licensing of the digital expression of cultural heritage
 - online administration of IP disputes

A world map is visible in the background, rendered in a light blue color against a dark blue gradient. The map shows the continents of North America, South America, Europe, Africa, Asia, and Australia.

WIPO Digital Agenda ...

7. Introduce and develop online procedures for the filing and administration of international applications for the PCT, the Madrid System and the Hague Agreement at the earliest possible date

WIPO Digital Agenda ...

8. Study and, where appropriate, respond in a timely and effective manner to the need for practical measures designed to improve the management of cultural and other digital assets at the international level by, for example, investigating the desirability and efficacy of:

- model procedures and forms for global licensing of digital assets
- notarization of electronic documents
- the introduction of a procedure for the certification of websites for compliance with appropriate intellectual property standards and procedures

WIPO Digital Agenda ...

9. Study any other emerging intellectual property issues related to electronic commerce and, where appropriate, develop norms in relation to such issues
10. Coordinate with other international organizations in the formulation of appropriate international positions on horizontal issues affecting IP, in particular:
 - validity of electronic contracts
 - jurisdiction

Development of IP Law

u **'Internet Treaties'**

- WIPO Copyright Treaty (WCT)
- WIPO Performances and Phonograms Treaty (WPPT)

WCT - in force March 6, 2002

WPPT - in force May 20, 2002

- ensure that rightsholders control dissemination of protected material over Internet, including right to make available 'on demand'
- prohibition on circumvention of technical measures

u **Audiovisual performers' rights**

u **Protection of databases**

Future issues....

- 
- DRM and private copying levies
 - public domain
 - copyright and cultural heritage
 - open source software
 - exceptions and limitations ('copyright balance')
 - duration of copyright protection
 - ISP responsibility and liability (notice and takedown)
 - new business models

Thank you

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