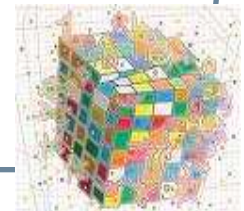


Overview

1. IP and E-Commerce
2. Creating a Website
3. Choosing a Domain Name
4. Protecting your Website



1. IP and E-commerce



Impact of E-commerce on IP

The IP system is crucial for the orderly development of the digital information and knowledge exchange

- IP as a main value component for transactions in online trade of products and services
- IP in development of digital technologies
- IP and online branding and marketing
 - Domain Names, Websites, Online Advertisement
- Relevance of Patent Protection and Licensing in E-Commerce



amazon.com



Challenges in E-commerce

1. Protection of Computer Programs (Software)

Different type of IP rights might be available for different components of a software

1. **Copyright Protection:** most used form, protects e.g. object code, literal components
2. **Patent Protection:** in most countries, only computer-related inventions might be protected (related with solving a technical problem)
3. **Trade Secrets:** source code
4. **Industrial Design:** might be available for Graphic Users Interfaces (GUIs), icons, etc



Challenges in E-commerce

2. Online Content Distribution

Ease of uploading, copying, downloading of copyright materials in digital form

- Music, films, arts, scripts, software (content)

An E-Commerce Business consider:

- To protect its IP in Internet
- Never distribute or permit downloads of the third parties content that doesn't belong your business



Challenges in E-commerce

3. Take measures to prevent activities violating your IP rights

- Develop and implement a clear policy against unauthorized copying of files, or any actions that encourage or facilitate such copying
- Educate your employees about company policy against misuse of IP
- Develop and implement a system of training, monitoring and prevention
- Conduct a regular review of company business practices
- Restrict the employees' access or keeping in their possession or in their systems any unauthorized copies of software or other content



Challenges in E-commerce

4. IP concerns about international transaction in the digital economy

1. **Domain name Issues**
2. **Jurisdiction and Applicable Law**
3. **Enforcement**
 - Difficulties with finding the infringer and enforcing the IP rights
 - Difficulties with enforcement of legal decisions in another country

2. Developing a Website



How your business can develop a website?

Your business might develop a website by approaching

1. an employee of the company

- if a website is created as a part of the job, in majority of jurisdictions the company would own the copyright over the website

2. an outside contractor (external developer/freelancer/company)

- **Beware:** the outside developer/designer **would own the copyright** in the created work, even if played, **unless otherwise is not stipulated in the contract**
- **Written contract**

How your business can develop a website?

Different elements of website might be protected by IP rights

- **Website layout**
- **Elements of a website**
 - Written text, images, photos, drawings, charts
 - Short movies and video clips
 - Music, radio, computer programs and interactive games
 - Directories, databases, lists
 - Logos, trademarks, training manuals, databases,
 - Software, website engine, e-commerce tools/solutions/software
 - Computer generated symbols, screen displays, graphic-user-interfaces (GUIs)
- **Hidden components of website**
 - Source code, algorithms, data flows charts



Outsourcing website development

- **Elements existed before the development of the website and owned**
 - By you
 - By the developer
 - By the third party
- **Elements specially created for the website development**
 - Ascertain the ownership
- **Elements owned by others**
 - Normally would need a prior permission, ascertain responsibility of a developer



Issues to be included into the contracts

A good web-site development agreement should give you all the rights you need for the foreseeable future use of your website

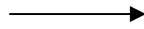
- Scope of work and responsibilities
- Ownership of material
- Warranties
- Maintenance and Updates
- Confidentiality
- Liability
- Others



Using material owned by others

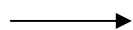
A permission (assignment, license agreements, 'click-wrap' licenses, 'shrink-wrap' licenses) from the owner of IP rights is first required

Copyrighted Works



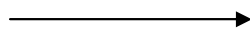
- Finding info from CMOs
- Moral rights aspects
- Specifics of using photos
- Public domain material
- Take-down protection for infringing material

Technical Tools/Software



- Licence based Terms & Conditions
- Database protection

Trademarks



- Domain Names
- Metatagging, Linking, Framing

Personal Information, Others' Likeness



- Privacy policy
- Marketing and advertisement policies
- Special requirements for technical contracting tools

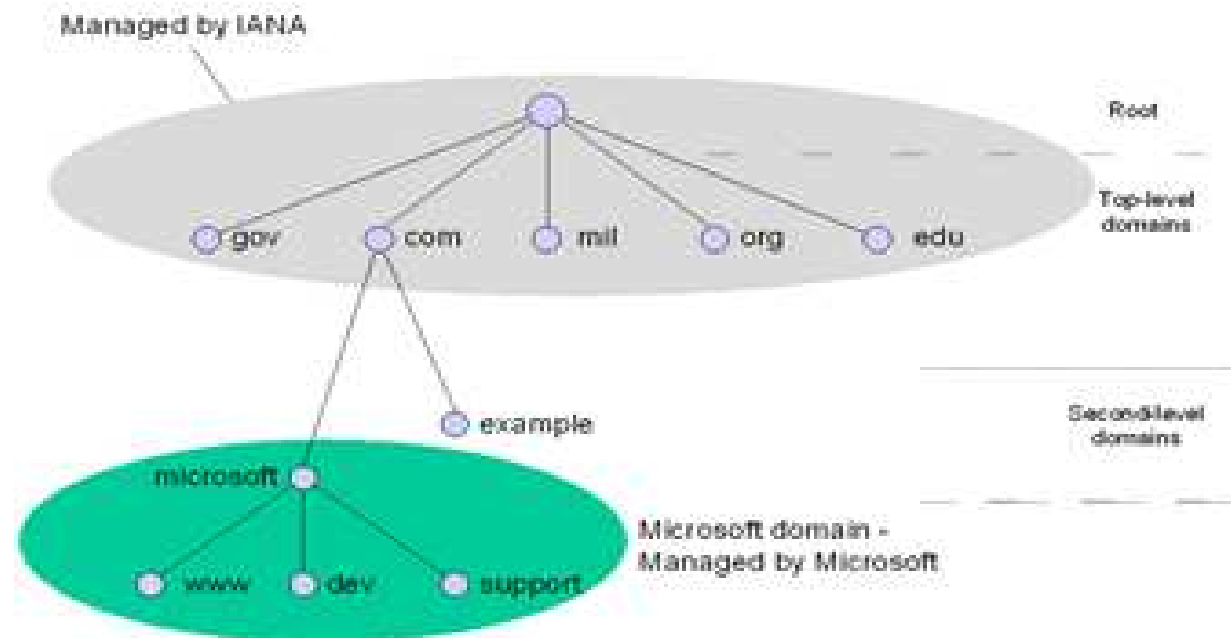
- **Let's discuss it on a practical example...**
take a look at Exercise 1

3. Choosing a Domain Name



Basics of Domain Names

- **Domain Name:** the human-friendly form of Internet address that is commonly used to find web sites
- **Domain Name System**



Choosing the first level domain

First level domains

- Generic Top Level Domains (gTLD) and
- Country Code Top Level Domains (ccTLD):
- Some are open: .com, .org, .net and .info, .tv
- Some are restricted: .int, .net, often ccTLD
- Functionally no distinction what first level domain your business choose
- Check the national requirements for e-commerce activities
- There can be business-related criteria which are linked with a certain country, a region, etc



Choosing the second level domain

The second level domain

- Should enable your customers to identify and find easily your website online
- Powerful marketing tool

Recommendations for the choice:

- same or similar to the one of your business name /trademark
- distinctive for your business or products



Choosing the second level domain

Choosing the second level domain

- **Recommendations for the choice**
 - never identical or similar to the business name/ trademark of other company
 - avoid controversial names (geographical, personal names, IGO names, names of genetic drugs etc)
 - shorter domains names preferable

Case Study: Roses Only

Source: Smart Start IP Australia

- James Stevens, hereditary florist whose family have operated in Sydney since 1967
- **Business concept:** Men want three things when they shop for flowers: speed, convenience and roses
- **Solution:**
 - Internet as a sales tool
 - Boxed flowers as the marketing instrument

Naming right: trademark and domain name registration for the website

New business “Roses Only” was launched in 1995

- The brand dominates Australian online flower sales, is expanded into the New Zealand and UK markets
- In 2005 the business was expanded into fresh fruit delivery under a new trade mark ‘Fruit Only’ through a new website under the same domain name



Trademarks vs. Domain Names: Possibilities for conflicts

Trademarks	Domain Names
<ul style="list-style-type: none">– National IP rights– Possibility for coexistence of similar or identical TMs– Examination– State registration– More expansive and long	<ul style="list-style-type: none">- Internationally available- Technically just one domain name can exist within one first level domain- Registered on a first-come, first-served basis without examination-Private contract with Registrar- Generally not expensive and quick

Uniform Domain Name Dispute Resolution Policy (UDRP)

- Domain names have acquired significance as business identifiers
- The phenomenon of “cybersquatting”
- Limitations of court litigation efficiency in combating cybersquatting
 - Conflicts in costs, time, remedies, jurisdiction

- In August 1999 ICANN adopted the **Uniform Domain Name Dispute Resolution Policy (UDRP)**
 - **WIPO Arbitration and Mediation Center**



Principal Characteristics and Scope of the UDRP

- **The UDRP is limited solely to cases of deliberate, bad-faith, abusive registrations (cybersquatting) of trademarks and leaves the resolution of other trademark disputes to the courts**
- A UDRP application costs \$US750 (paid by the applicant), is filed by email and is decided within 45 days.
- **Abusive registration criteria:**
 - The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights
 - The registrant has no rights or legitimate interests in respect of the domain name
 - The domain name has been registered and is being used in bad faith
- The UDRP is not available for registrations which violate **trade names, geographical indications or personality rights**

Case Study: Tales of cybersquatting - Southcorp



Source: Australian IP Toolbox

- Southcorp, Australia's wine company, received an unwelcome email through the 'contact us' facility on one of its web sites from a United States based cybersquatter. He told Southcorp that he had registered the name of one of its flagship brands, Lindemans, as a global top-level domain name and offered to sell or rent lindemanswine.com back to Southcorp.
- Southcorp sent a letter by email, fax and registered mail, telling the cybersquatter that it would apply under the 'Uniform Dispute Resolution Policy' (UDRP) to have the domain name transferred to Southcorp.
- Before the system began in January 2000, Southcorp would have faced the expensive and slow prospect of suing the cybersquatters in their national courts.
- The British registrant of penfolds.org also gave up without a fight, but the cybersquatter who owned lindemanswine.com faced a UDRP application with a decision against him and transfer of the disputed domain name to the Southcorp.

- **Let's discuss it on a practical example...**
take a look at Exercise 2

4. Protecting your Website



Strategies to implement by your business

Precautionary measures:

1. Register your trademarks
2. Consider the link between your company name, trademark and domain name
3. Register your website and other copyright materials with the national IP office if possible or deposit your copyright materials
4. Think about obtaining patent protection on business methods and technological tools if possible

Strategies to implement by your business

5. Let people know / remind them that content is protected

- Use IP symbols to mark your rights:
 - TM, SM, ©, P
- Use watermarks for your copyright content



6. Let people know what use of the materials they can make

- Insert copyright notice on every website page, indicating for the viewers:
 - What they can do with the content
 - Who to contact for copyright clearance

Strategies to implement by your business

7. Control access to your website content

- **Use technological measures of protection**
 - Online agreement for providing limited licenses
 - Encryption
 - Access control or conditional access system

8. Detect infringements on your website

- **Use Internet search engines**
 - E.g. Google Images, Altavista Search tools



How to take actions against violations?

- Step 1:** Make screen shorts or print relevant pages, and print the source code from the violating website
- Step 2:** Be sure you can prove the originality and your ownership of the website content
- Step 3:** Send a cease and desist letter to the owner of the violating website
- Step 4:** Contact Internet Service Providers (ISP) and Internet Search Engines Providers to remote/block the violating content

Conclusions

- Ascertain copyright ownership and IP compliance in relation to your website
- Register your domain name avoiding violation of IP rights owned by others
- Protect your IP rights in digital environment

Thank you for your attention!



Any Question?

WIPO's website for SMEs :

www.wipo.int/sme

Contact address: larysa.kushner@ehu.it