



Cambridge Conference Licensing Workshop

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Introduction (1)

- Overview of Intellectual Property Rights
 - background to the protection of IPR
 - patents
 - trade marks
 - database rights
 - copyright
 - Crown Copyright
- Licences and licensing
 - typical terms of licence
 - licensing structures
 - legal issues e.g. liability for defective data



Introduction (2)

- PSI and the free data debate
- INPSPIRE Directive
- Implications for licensing
- Discussion questions



Introduction (3)

- The big questions...

Is there an “ideal” IPR ownership regime and licensing approach? Is there an ideal approach to dealing with public sector information and data and its use outside the public sector? What do you think is the solution? Assuming there are no ideals, what options are there and which will operate most effectively?



Intellectual Property Rights – General

- English law –
 - EU Directives
 - various worldwide treaties
- Protects the rights of those who invent or create
- Encourages creativity and innovation
- Reserve to the creator or inventor certain rights thereby encouraging the owner to make his or her work available to the public through licensing
- What are these reserved rights?



Patents

- Patents Act 1977
- A patent covers inventions
- To be entitled to a patent, an invention must:
 - be new;
 - involve an inventive step not obvious to someone with knowledge or experience of the subject;
 - be capable of industrial application (i.e. to be made or used);
 - not be excluded.



Rights of the patent owner

- Protection for up to 20 years
- Monopoly right i.e. even if someone else comes up with the same idea independently the owner can claim infringement
- Monopoly right granted in return for the specification i.e. putting the invention into the public domain
- Manufacturing and know how licences
- Compulsory or statutory licensing



Trade marks

- Trade Marks Act 1994
- Name, logo, slogan, domain name, shape, colour or sound
- Capable of distinguishing goods or services of one organisation from those of another
- Registered or unregistered



Registered Trade Marks

- To be capable of registration must be:
 - distinctive for the goods and services you apply for
 - not similar or identical to any earlier marks for the same or similar goods and services
 - not deceptive, or contrary to law or morality.
- Registration allows the owner exclusive use for the mark for the class of goods or services in which the mark is registered and in the country of countries of registration
- Infringement proceedings



Unregistered Trade Marks

- Protected by the law of *passing off* which protects the trade marks owners goodwill in the mark
- A passing off action will depend on:
 - establishing ownership of the mark
 - reputation and good will associated with the mark
 - loss suffered as a result of another's use
- Trade mark licence
 - control
 - quality



Database rights

- What is a database?
- *“a collection of independent works, data or other materials which are arranged in a systematic or methodical way and are individually accessible by electronic or other means”*



Protection

- Copyright
 - selection and/or arrangement of contents must be original
- Copyright and Rights in Database Regulations 1997 (implementing the EC Directive on the legal protection of databases)
 - substantial investment in obtaining, verifying or presenting the contents



Rights of the maker

- Infringement to extract or re-utilise all or a substantial part of the database
- 15 years from the end of the year in which the database was published
- Recommences following a substantial change in the database



Copyright

- Copyright, Designs and Patents Act 1988
- Protects original works:
 - original literary, dramatic, musical or artistic works, including computer programs and some databases
- Arises automatically once recorded without the need for registration
- Owner is the author or his or her employer
- Rights continue for author's life plus 50-70 years



Rights of copyright owner

- Right to control:
 - the copying of the work
 - issuing it to the public
 - adapting the work
- Authorise others to do this i.e. grant of a licence
- Sell or assign the rights
 - must be in writing and signed by the owner of the rights



Crown Copyright

- Section 163 – CDPA 1988
- All works originated within government have Crown copyright protection
- Various government departments have delegated authority to license the re-use of the Crown copyright material which they originate
- Office of Public Sector Information (OPSI)
 - monitors licensing activities of all departments with delegated authority
- Arguments for and against Crown Copyright (see later)



Licences and Licensing

- Terms
- Structures
- Legal Issues



Licence Terms

- Grant of licence
 - non-exclusive
 - exclusive
 - sole



Licence terms (2)

- Scope of licence
 - copy
 - use
 - develop
 - license others/sub-license
 - geographic territory
 - individual licensee
 - company or organisation
 - named/numbers of users
 - site licence
 - network and remote access
 - restrictions



Licence Terms (3)

- Purpose of licence
 - educational/research
 - commercial
 - internal business purposes
- Duration
 - perpetual
 - irrevocable/non-terminable
 - fixed term
 - renewable



Licence Terms (4)

- Commercial terms
 - one off fee
 - ongoing subscription
 - additional fees e.g. support and maintenance
 - payment terms
- IPR
 - reproduction of copyright notices
 - infringement of third party IPR
 - indemnity
 - other remedies



Licence Terms (5)

- delivery and acceptance
- practical terms e.g. operating software and equipment or system requirements
- additional services/know how e.g. updates
- quality
- liability
- confidentiality
- termination rights
- assignment
- dealing with disputes
- governing law



Licence Structures

- Incorporation of terms
 - signed, negotiated licence agreement
 - shrinkwrap
 - clickwrap and on-line terms
 - embedded terms
 - application service provider
 - subscriber-based
 - framework arrangements



Legal Issues

- Licensing terms and restrictions
- Copyright (Computer Programs) Regulations (which implemented the EC Directive on the Protection of Computer Programs in 1993)
- Software treated as a literary work for copyright purposes
- Certain rights given to a lawful user of software (i.e. a licensee)



Legal Issues (2)

- Rights given to lawful user
 - making back-ups of computer programs which are necessary for the purposes of lawful use of the program.
 - observing, studying or testing the functionality of a program in the course of lawful loading, displaying, running, transmitting or storing of the program.
 - reverse engineering or decompiling to the extent necessary to achieve interoperability with other programs



Legal Issues (3)

- Quality and liability
- Is software goods or services?
 - ICL v St Albans
- Supply of Goods Act 1979 and Supply of Goods and Services Act 1984
- Satisfactory quality (e.g. freedom from minor defects, durability)
- Express quality and liability terms



Legal Issues (4)

- Competition law
- Objective of competition law is to promote free movement of goods and services and level playing field for businesses
- IPR owners have monopolies and reserved rights
- Exercise of those rights within competition law regulatory framework e.g. exclusive grant of rights where this will promote competition by encouraging a licensee to invest in a product



Licensing public sector information

*Current debates and
legal developments
and implications for licensing*



General Debate Crown Copyright – a good thing?

- Essential to prevent misuse and misrepresentation of official information
- Illustrates the integrity and authenticity of information
- A reduction in income from licensing Crown Copyright works would prevent or hinder government departments from achieving their objectives
- Income funds essential research and development
- Higher costs for publishing government materials
- Reduced incentive for private sector to collaborate with public on information related projects
- Less incentive to make available non-essential but useful products and services
- Why should tax payers pay for commercial exploitation of government materials?



General debate – Crown Copyright not a good thing?

- Information is publicly owned (paid for through taxes) so should be freely available
- Could boost information market and lead to significant growth
- Ownership and management of government information may be split between different departments and dealing with this is challenging
- Leads to government competing with private sector
- It is impractical and expensive for government to monitor and enforce its rights



More recent debate

Some examples:

- Advisory Panel on Public Sector Information
- The Guardian Newspaper Technology supplement – “Free Our Data” campaign
- “Power of Information” review



Legal developments

- Directive 2007/2 INSPIRE Directive
- Aims to improve the way in which spatial data held by public authorities is shared between public authorities and between public authorities and the public
- Implementation in member states by 15 May 2009



Summary of Directive

- Creation of metadata and interoperability of spatial data sets and network services
- Public authorities linking spatial data sets
- Data sharing
- Monitoring the implementation and use of infrastructures for spatial information



Discussion questions

- Is there an “ideal” IPR ownership regime and licensing approach? What is it? What should it be?
- Imagine two students approach your organisation. They want to use your data and products for a term in connection with an undergraduate project. What is your approach to such a request?
- Would this differ if they were post graduates aiming to publish the result of their studies?



And some more...

- How would your organisation deal with a situation where the two students were approached by a major global commercial company wanting them to develop the results of their studies into a commercial product for marketing and sale? Or if they wanted to set up in business to do this?
- Is there an ideal approach to dealing with public sector information and data and its use outside the public sector? What do you think is the solution?

