

Legal Issues in Online Environments

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Why care about Intellectual Property as a marketer/ advertiser?

- Cassidy v Saatchi & Saatchi Australia Pty Ltd [2004] FCAFC 34
 - An ad agency can only be liable as an accessory if it knows of the matters that allow the misrepresentations to be characterised as misleading.
 - An agency is ordinarily not a principal – knowledge is irrelevant

Copyright is a contentious top
KLF = Kopyright Liberation Front



Copyright Laws are extremely similar throughout the world

- The World Trade Organisation (WTO)
- Trade Related Intellectual Property Agreement (TRIPS)
- United States Trade Representative (USTR)
- Super 501
- What this means is that a copyright infringement in one place can give rise to a liability in another place
- Roadshow Films v iiNet

Faced with the complexity of the Copyright Act, what are the key points?



Q: What is Copyright?

A: (very loosely) the right to copy consider a newspaper – *Re Dickens*

Q: How do you register copyright?

A: You don't

Q: Who owns copyright?

A: That depends

The Internet

- “information wants to be free”
- The internet is a “property free zone”

See the *Copyright Amendment (Digital Agenda) Act 2000*



Copyright here subsists in

- a) The photograph of the Mona Lisa
- b) The image of Mickey Mouse (also subject to trade mark protection)
- c) The *Pulp Fiction* movie poster

These images were on the internet. They infringe copyright

Exceptions

- a) “in the public domain” (ie. copyright has expired. The works of William Shakespeare are, for example, clearly in the public domain)
- b) Fair use/ fair dealing – research, criticism, reporting news, parody and satire, giving of professional advice by a lawyer or patent attorney or trade mark attorney.
- c) Format shifting and time shifting for personal or private use.
 - The 10 percent rule (for research and study)
- d) Other special exemptions (eg photographs of buildings, back-up copies of software, temporary reproduction for internet browsing)

Trade Marks

- A trade mark is a badge of origin.
- It tells consumers from where the goods originate.
- An international regime – but different to copyright

[Prev IM](#)[Next IM](#)

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[Add to List](#)[Print Friendly Page](#)**Trade Mark : 1230423**

Word: WRAYS
Image:
Lodgement Date: 18-MAR-2008
Registered From: 18-MAR-2008
Date of Acceptance: 10-AUG-2010
Acceptance Advertised: 26-AUG-2010
Registration Advertised: 23-DEC-2010
Entered on Register: 06-DEC-2010
Renewal Due: 18-MAR-2018
Class/es: [45](#)
Status: Registered/Protected
Kind: n/a
Type of Mark: Word

[Endorsement](#)

Owner/s: **Wrays**
56 Ord Street
WEST PERTH WA 6005
AUSTRALIA

Address for Service: **Wrays**
Ground Floor
56 Ord Street
WEST PERTH WA 6005
AUSTRALIA

Goods & Services

Class: 45 Patent and trade mark attorney services, including searching services relating to patents; trade marks and designs and renewal services relating to patents, trade marks and designs; intellectual property consultancy; services relating to licensing of intellectual property and patent exploitation

Endorsements: Provisions of subsection 41(5) applied."

[History](#)
[Opposition](#)

Trade Marks continued...

But – you need to file in each jurisdiction .

How does this work on the internet?

Ward Group Pty Ltd v Brodie & Stone Plc [2005] FCA 471
“RESTORIA”

Also – well known marks

Eg. Van Cleef and Arpels
“Spillover reputation”

Domain names can be trade mark infringements

- Massive legal spend on UDRPs with cybersquatters
- www.wrays.co
- Facebook v Faceporn (23 October 2010): Facebook v Teachbook (August 2010)

(But domain name use can be honest use – see www.wrays.com)

L'Oreal v Ebay

- Do online business facilitators infringe trade marks?
- European Court of Justice – Yes, if they use keywords, Adwords or otherwise draw attention to the products

Gutnick v Dow Jones (December 2002)

- “Allegations of business dealings with religious charities”
 - Only 5 copies of the magazine sent to Australia
- “If people want to do business in, or indeed travel to, or live in, or utilize the infrastructure of different countries, they can hardly be expected to be absolved from compliance with the laws of those countries. The fact that publications might occur everywhere does not mean that it occurs nowhere”

Privacy

- Paul Keating on Lateline (14 July 2011)
- ALRC Privacy Report (1983) (2008)

Cross Border Data Flows

- Once the data leaves the country, what happens to it?

NPP 1: collection

- Describes what an organisation should do when collecting personal information, including what they can collect, collecting from third parties and, generally, what they should tell individuals about the collection.

NPP 2: use and disclosure

- Outlines how organisations may use and disclose individuals' personal information. If certain conditions are met, an organisation does not always need an individual's consent to use and disclose personal information. There are rules about direct marketing.

NPPs 3 & 4: information quality and security

- An organisation must take steps to ensure the personal information it holds is accurate and up-to-date, and is kept secure from unauthorised use or access.

NPP 5: openness

- An organisation must have a policy on how it manages personal information, and make it available to anyone who asks for it.

NPP 6: access and correction

- Gives individuals a general right of access to their personal information, and the right to have that information corrected if it is inaccurate, incomplete or out-of-date.

NPP 7: identifiers

- Generally prevents an organisation from adopting an Australian Government identifier for an individual (e.g. Medicare numbers) as its own.

NPP 8: anonymity

- Where possible, organisations must give individuals the opportunity to do business with them without the individual having to identify themselves.

NPP 9: transborder data flows

- Outlines how organisations should protect personal information that they transfer outside Australia.

NPP 10: sensitive information

- Sensitive information includes information such as health, racial or ethnic background, or criminal record. Higher standards apply to the handling of sensitive information.