

The web of IP

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A global survey conducted by The Nielsen Company revealed that over 85 % of the world's online population has purchased products online, with half of this population purchasing online at least once a month. An increasing number of consumers are abandoning shopping malls for the safer and more convenient online shopping experience.

A customer of the Web 2.0 generation is also more than likely to read comments on the internet regarding a particular product, rather than viewing the product in-store.

In light of this online shopping trend, intellectual property proprietors face new challenges with the enforcement of their rights against new forms of unauthorised use across millions of websites, in multiple languages and domains. Enforcement of rights is costly and difficult in the online environment, so companies are advised to implement methods of proactively deterring infringement before it occurs.

Who owns the intellectual property?

With the rapid increase in web commerce, a company's website is as important as the location of its business. But who owns the intellectual property rights on a website?

In addition to other forms of intellectual property, a website could contain a collage of works in which copyright subsists. Most companies use web designers to create their website and assume that they own the rights on their website because they paid for the work done. Wrong!

Although the web designers are paid, they are usually sub-contractors and not employees, so they own the copyright in the material that they create. Ownership of copyright can only be transferred by a written deed of assignment.

Generally, only the owner of the intellectual property right can sue for infringement, so it is crucial that companies ensure that they own the copyright that subsists in the material on their website.

Deterrents

Most infringers would be aware that their unauthorised use is unlawful, but some actually believe that the material on websites can be freely copied. Although there is no legal requirement to use copyright and trade mark notices, these do serve as deterrents. Material in which copyright subsists should be accompanied by a copyright notice, namely © (owner) (year). Trademarks should be accompanied with a TM symbol or an ® symbol, if registered.

For example:

Adams & Adams[®]

Adams & Adams[™]

The implementation of digital safeguards such as watermarks and encryption is an effective deterrent against infringement. Digital watermarks are embedded data in digital multimedia content. Depending on the type of content, watermarks can be visible and invisible.

For example, visible watermarks (depicted right) can be used on the images on a website, whereas invisible watermarks can be used for the audio content. Visual watermarks are an effective deterrent against copying, and invisible watermarks can assist in proving that copying took place.



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Encryption is used to control the access and use of certain material on a website. Public access to such material can be locked; encryption keys, which are usually purchased, are used to unlock the material. People who pay for the encryption keys can use the material, but they are usually prevented from sharing the material with other people. Encryption methods are commonly used in the music industry.

Cyber-squatting

Cyber-squatting of domain names is a common online infringement of intellectual property rights. Cyber-squatters register the trademarks of companies as domain names and then attempt to sell these domain names for an exorbitant price to the trademark owner or its competitors. VeriSign, a provider of digital brand management services, estimates that 70 % of domain names associated with well-known trademarks are not registered by the true trademark owner.

Trademark owners should therefore register their trademarks as domain names in the relevant domain name extensions. Usually, these extensions would include the most common top level domain (TLD) extensions such as .com, .net and .org. Country code domain names, such as .co.za, should also be registered, depending on the geographical trading activities of a company. These domain names can be directed to the relevant product/service page on the company's website. [For a more in-depth look at the new generic TLDs (*gTLDs*), read [Naseem Javed's pieces - managing ed.](#)]

Online user diversion through the use of meta tags and keywords is a popular new form of unauthorised use.

