

The web of IP



By [Nishan Singh](#)

13 Mar 2012

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.



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A meta tag is a coding statement in the hypertext markup language (HTML) that describes the contents of a webpage.

Keywords are words that identify what a webpage is about and are used by search engines to categorise a website. Internet search engines use meta tags and keywords to rank the information in a search result.

Legal debate and uncertainty

There is legal debate and uncertainty surrounding the unauthorised use of trade marks in meta tags and as keywords. Accordingly, companies are encouraged to optimise their meta tags and register their trademarks as keywords with search engines.

Social media adds a further dynamic to the online environment. According to the public relations firm [Burson-Marsteller](#), 79 % of the 100 largest companies on the Fortune 500 list use Facebook, Twitter, YouTube and corporate blogs to communicate with customers and other stakeholders. However, as with other online activities, there are uncertainties regarding the enforcement of intellectual property rights on social media networks.

Therefore, it is advisable that intellectual property owners take defensive steps to prevent infringement on social media networks.

The registration and maintenance of business profiles on social media networks may be a daunting task and should therefore be approached strategically; however, when devising a strategy, it is advisable to register the company's trademarks as defensive profiles, as an initial step.

Ownership of social media accounts

The ownership of social media accounts is also becoming a difficult issue for companies. Employees often register professional accounts with social media networks that are linked to the employer's business and they create a database of customers during the course and scope of their employment. On termination of the employment contract, legal disputes ensue regarding the ownership of such accounts. Binding case law and certainty on this subject are eagerly awaited.

Employers are therefore encouraged to implement an employee policy that controls what employees can post, blog or tweet. Employment contracts should contain clauses that govern ownership of social media profiles and the copyright in blogs, tweets and posts.

The above-mentioned methods may assist in deterring infringement; however, once a reputation is established and a brand achieves a desired level of success, infringers take notice. Therefore, active enforcement of intellectual property rights is necessary and still the strongest deterrent. A company that actively pursues infringers sends an appropriate message to potential infringers.

ABOUT NISHAN SINGH

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