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# Law and the Internet

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## Abstract

This paper addresses the following questions posed to the writer:

- What are the two branches of intellectual property and what do they cover?
- How does copyright law apply to material published on the Internet?
- In what way does trademark law apply to the Internet and electronic publishing in the United States?
- In what way does patent law apply to software, including applications distributed through the Internet?
- In what way can an online provider be exempted from liability for copyright infringements?
- What is the current legal situation in the United States regarding taxes being levied on interstate Internet purchases?
- In the United States, what is the requirement for a state court to have jurisdiction over a non-resident party?

## Project 2 - Law and the Internet

### *Two branches of intellectual property and what they cover*

The two branches of intellectual property are Industrial property and Copyrighted material

Industrial property includes the following:

- Industrial designs - Must be original or novel, registered by a recognized government office
- Inventions - A novel idea that creates a solution to a specific problem in technology
- Trade and service marks - A sign or logo that identifies goods or services of a specific company or person. Consists of distinctive words, letters, numbers or images
- International protection - Almost non-existent. Only where countries have signed an agreement to respect and reciprocate

Copyrighted material. According to the U.S. Constitution, Article 1, Section 8, materials are copyrighted “To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.”<sup>1</sup> Copyrighted materials include literary and artistic works and cover original works in literature and the arts. Included in the list of items that can be copyrighted are words, symbols, music, pictures, three-dimensional objects or a combination of all or any of the above. Copyrights are limited in time and usually apply only within the country of origin, unless agreements have been reached between certain countries. In many countries they have adopted lifespan of 50 years from the time the piece was created. The United States currently holds to the life of the author plus a specified number of years after their passing. For works created after January 1978, for a private author, the span

after death is 70 years. For corporate authors, the span 95 after the first publication to 120 after creation (whichever is shorter).

Copyrighted materials include the following:

- Literary works - Novels, short stories, poems, computer programs, manual such as Company Standard Operation Procedures
- Musical works - Songs, choruses, operas, musicals
- Artistic works - Drawings, paintings, etchings
- Photographic works - Portraits, landscapes, photos of news events
- Audiovisual works - Television broadcasting, film dramas, documentaries
- Architectural - Drawings, blue prints, schematics, plans of all kinds
- Software - Computer programs (more accurately, the logarithms and markup scripts)

### *How copyright law applies to material published on the Internet*

“The Internet has been characterized as the largest threat to copyright since its inception. The Internet is awash in information, a lot of it with varying degrees of copyright protection. Copyrighted works on the Net include news stories, software, novels, screenplays, graphics, pictures, Usenet messages and even email. In fact, the frightening reality is that almost everything on the Net is protected by copyright law. That can pose problems for the hapless surfer.”<sup>2</sup>

Under the copyright law on the Internet the major items protected are the underlying design of a web page and its contents. These include links, original text, graphics, audio, video, html, vml and other unique markup language, websites listed by an organization or individual, and all other unique elements included on the site.

### ***Ways trademark law applies to the Internet and electronic publishing in the United States***

“The Lanham (Trademark) Act (15 U.S.C.) contains the federal statutes governing trademark law in the United States. However, this act is not the exclusive law governing U.S. trademark law, since both common law and state statutes also control some aspects of trademark protection.”<sup>3</sup>

Under the Lanham Act, a trademark is “any word, name, symbol or device, or any combination thereof, adopted and used by a manufacturer or merchant to identify his goods and distinguish them from those manufactured or sold by others.”<sup>4</sup>

Service Marks, used on services rather than goods, are also governed by 'Trademark law.' Common law trademark rights can stem merely from the use of a mark. However, registering a trademark or service mark with the state or federal government is advisable. The ® symbol is used to designate a registered trademark. “tm” and “sm” are used for unregistered trademarks and service marks.

One of the major concerns of the trademark law on the internet concerns domain names. The domain name is the logical address and/or source identifier of an entity on the internet. According to our text, if the domain name functions as a trademark or service mark, the domain name holder may be entitled to protection from the U.S. Patent and Trademark Office.

### ***Ways patent law applies to software, including applications distributed through the Internet***

In law, a patent is a document that is issued by a government that gives an individual or company special rights or privileges. In the U.S, patents are restricted to inventions and are granted under federal statutes. With a patent, an inventor has “the exclusive right to a certain process, or to make, use or sell a specific product or device for a specified time.”<sup>5</sup>

Patent laws apply to the internet in the creation and use of software, but only cover algorithms and techniques. The problem arises when someone else formulates the same algorithms and techniques after the application was filed.

### ***Ways an online provider can be exempted from liability for copyright infringements***

The On-Line Copyright Infringement Liability Limitation Act, Title II of the Digital Millennium Copyright Act, amends U.S. copyright law to “exempt an online provider, such as an ISP, from liability for direct infringement, based on the intermediate storage and transmission of material over the provider’s network.”<sup>6</sup> This Act protects the provider should a subscriber or someone else starts the transmission, or if the storage and/or transmission are automatic, or if the provider does not keep a copy longer than needed to perform the transaction. The Act will also protect the provider from financial liability if the provider was not aware that the material was infringed, or did not benefit financially as a result of the transmittal.

### ***The current legal situation in the United States regarding taxes being levied on interstate Internet purchases***

The textbook states: “The U.S. Constitution currently prevents states from taxing transactions beyond their borders. The Supreme Court has ruled that states cannot require out-of-state companies to collect sales taxes unless Congress passes a law allowing them to do so.”<sup>7</sup>

### ***The requirement for a state court to have jurisdiction over a non-resident party within the United States***

The textbook states: “The U.S. Constitution requires that for one state’s court to have jurisdiction over a non-resident party, that party must have had ‘minimum contacts’ with the court’s state. An important element of ‘minimum contacts’ is that the non-resident ‘purposely established’ contacts and ‘created continuing relationships and obligations with the citizens of

another state.” The textbook goes on to say “...the courts have held that physical presence is not a prerequisite for jurisdiction (on the Internet). That is, under particular circumstances, Internet presence alone can be sufficient to grant jurisdiction over a non-resident.”<sup>8</sup>

## Footnotes

1. U.S. Constitution, Article I, Section 8. U.S. Copyright Office, Library of Congress <http://lcweb.loc.gov/copyright/> accessed April 4, 2011
2. "The Copyright Web site" <http://www.benedict.com/> accessed April 4, 2011
3. "Lanham (Trademark) Act (15 U.S.C.)" [www.bitlaw.com/source/15usc/](http://www.bitlaw.com/source/15usc/) accessed April 4, 2011
4. Chapter 2 E-Commerce Strategies and Practices: Academic Student Guide - Volume 1 CIWv5 E-Commerce Designer Series, 2009, Certification Partners, LLC. Page 2-12
5. Chapter 2 E-Commerce Strategies and Practices: Academic Student Guide - Volume 1 CIWv5 E-Commerce Designer Series, 2009, Certification Partners, LLC. Page 2-13
6. Chapter 2 E-Commerce Strategies and Practices: Academic Student Guide - Volume 1 CIWv5 E-Commerce Designer Series, 2009, Certification Partners, LLC. Page 2-15
7. Chapter 2 E-Commerce Strategies and Practices: Academic Student Guide - Volume 1 CIWv5 E-Commerce Designer Series, 2009, Certification Partners, LLC. Page 2-23
8. Chapter 2 E-Commerce Strategies and Practices: Academic Student Guide - Volume 1 CIWv5 E-Commerce Designer Series, 2009, Certification Partners, LLC. Page 2-20

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1. Chapter 2 E-Commerce Strategies and Practices: Academic Student Guide - Volume 1 CIWv5 E-Commerce Designer Series, 2009, Certification Partners, LLC
2. "United States Copyright Office" <http://www.copyright.gov/> accessed April 4, 2011
3. "Copyright and the Internet" <http://mason.gmu.edu/~montecin/copyright-internet.htm> accessed April 4, 2011
4. "The Copyright Web site" <http://www.benedict.com/> accessed April 4, 2011
5. "Copyright Issues" <http://mason.gmu.edu/~montecin/cpyrght.htm> accessed April 4, 2011
6. "Lanham (Trademark) Act (15 U.S.C.) Index" <http://www.bitlaw.com/source/15usc/> accessed April 4, 2011
7. "Trademark Law on the Internet: Will It Scale? The Challenge to Develop International Trademark Law" [http://www.isoc.org/inet97/proceedings/B5/B5\\_3.HTM](http://www.isoc.org/inet97/proceedings/B5/B5_3.HTM) accessed April 4, 2011