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Computer Software and Intellectual Property Rights

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Intellectual property rights in software

- Copyright

- Database rights

- Patents?

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Copyright

- Unregistered right

- Work must be original and result of skill, labour and judgement

- Concerned with the material expression of ideas

- Does not protect the ideas themselves

- Principally to protect reproduction of the copyright work

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Computer software and copyright

- Protects computer programs, which includes:

  — preparatory design material eg specifications, flowcharts etc

  — source code/object code

- Does not protect:

  — ideas and principles underlying a computer program

- Must have a human author

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Ownership of copyright

- Author is first owner.

- If in course of employment then employer is first owner

- Joint authorship

- Commissioned works

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Infringement

- Copying

- Transient copying included

- Literal copying
  - question of fact

- Non literal copying
  - more difficult to prove

- Substantial part
  - quantitative/qualitative approach

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Permitted acts

- Reverse engineer/decompile if

  — act performed by a licensee or person having a right to use a copy of the program

  — necessary to obtain the information to achieve the interoperability of the program with other programs provided and that information is not readily available

  — acts confined to the parts of the program which are necessary to achieve interoperability

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Permitted acts – cont'd…

- Adapting a program, subject to contractual term to the contrary
  — if necessary for lawful use

- Back up copies
  — by lawful user

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Defences

- Internet and implied licence

- Non commercial use for private study and research

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Avoiding infringement

- Do not copy program ie the expression, but line between idea and the written computer program may be blurred

- When instructing programmers do not refer to an existing work

- Ensure all staff understand the basics of copyright

- If a licensee ensure you do not contract out of right to adapt program

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Avoiding infringement – cont'd…

- Link to home page as opposed to deep linking

- Technical solutions

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Database rights

- Collection of independent works, data or other materials

- Arranged in a systematic or methodical way; and

- Individually accessible by electronic or other means

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Examples of qualifying databases

- www.entertainmentnews.co.uk

- www.amazon.co.uk

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Definition of a patent

- Registered right

- Invention

  — new

  — Involve an inventive step

  — capable of industrial application

  — not excluded

- Monopoly

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Ownership

- Inventor

- If in course of employment then employer is owner

- Commissioned works

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Patenting software and business methods

- General prohibition on patentability of computer programs; but

- Patent office practice and technical effect

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Draft Directive on the Patentability of computer implemented inventions

Article 5 of Draft Directive

"Member states shall ensure that a computer implemented invention may be claimed as a product, that is a programmed computer, a programmed computer network, or other programmed apparatus, or as a process carried out by such a computer, computer network or apparatus through the execution of software".

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Infringement of patents

- All integers of the claim

- Indirect infringement by supplying the "means essential"

- Copying or knowledge of the patent not necessary

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Avoiding infringement of patents

- Searching

- Look for alternative ways

- Obtain a licence

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Defences

- Implied licence

- Patent not valid

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Exploitation

- Intellectual property is just like any property

- Licensing

- Acquiring intellectual property

  — steps to ensure you have good title

  — consider patent filings

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Confidentiality

- Not always possible

- Source code

- Employees and business partners

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