



**Estonian Information
Technology College**

Computers and Laws I: Can Property Be Intellectual?

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Disclaimer

- Today's lecture is heavily loaded with personal opinions of the lecturer. These are meant to stimulate thinking about the issue and awareness of multiple viewpoints, not to be parroted 'for the grade'!



For intro: damn the satellites

- The case of Estonians moving to Brussels and taking their Sat-TV equipment with them
 - Their stuff was fully legal in Tallinn
 - It became illegal in Brussels – due to regions
- Equally stupid cases can be found worldwide



The concept of 'intellectual property'

- As defined by WIPO (*World Intellectual Property Organization*)
 - a legal umbrella term to cover all results of human creativity, such as
 - Works of literature, art and science
 - Recordings, broadcasts, performances
 - Scientific discoveries
 - Industrial design
 - Trade and service marks
 - Protection against unfair competition
 - ...



“Two kilograms of dreams, please!”

- Defined as immaterial property, yet has many qualities similar to material objects (can be bought and sold, rented, given away etc)
- Cannot be measured by physical parameters
- The main problem resulting in all the above – objective factors (quality) are often less important than the subjective and artificial factors surrounding the object (politics, business, international relations, corruption...)
- At the end of the day, the one with better lawyers wins
- Better lawyers are expensive
- Money talks, BS walks...



Two more features

- IP rights are temporary – the duration should be a sensible compromise between private and public interests, yet usually it is not
- IP rights are territorial – in principle, every country should be able to establish and enforce its own rules. In practice, this is the privilege of large and powerful ones



The WIPO system

- Industrial property
 - Patent
 - Utility model (small patent)
 - Industrial design
 - Trade mark
 - Trade secret
- License
- Copyright



Patent

- A temporary monopoly granted to an inventor by a special organization
- Fixed deadline – typically 20 years
- Criteria
 - Novelty
 - Applicability
- Main problem: does not support production, but rather stifles competition (and as a result can stall the whole invention)

Utility model / small patent

- Meant for prototypes or intermediate results
- Lower requirements
- Shorter deadline – typically 10 years
- Problems are similar to those at patents



Industrial design

- Meant to protect from imitating a product's looks or design (not just functional)
- In Europe, can be registered for 25 years (by 5 at a time)
- Main problem: ambiguity
 - How different is enough?
 - Who decides? Designer vs engineer vs lawyer vs clerk



Trade mark

- A word, symbol or image that distinguishes a product from other, similar ones
- Prevents others from using the same trade mark, but does not prevent doing the same thing under a different one
- Main problems: ambiguity and effectiveness (“Pad” vs “Tab” is a good example)



Trade secret

- Information which has value only when kept secret
- No fixed deadline
- Protected by law until
 - Declared not secret anymore
 - Derived from a final product (can be contested)
 - Found out independently
- In any case, the genie will be out of the bottle
- Problem: wilful violation is hard to prove (and in case of software, almost impossible)

License

- Essentially, an usage permit by an author/owner
- In IT, mostly in the form of EULA (End-User License Agreement) – the owner retains all control and dictates all circumstances
- Main problems: legalistic, ambiguous and incomprehensible to commoners

Copyright

- Applies to works of literature, art and science
- Belongs to the author by default (NB! Anglo-American vs Continental European model)
- Applies automatically at creation
- Must have a tangible form (not just an idea)
- Long deadlines – nowadays up to 90-95 years after the death of the author

- Main problems: not so much with copyright itself but rather the next steps

Prehistory

- Moral rights are a very old category
- Material rights were quite irrelevant until the advent of industrial copying
- Actually, most of the famous authors did not sell their creation by unit – they were employed by other people.

Examples:

- Shakespeare
- Bach
- Händel
- Mozart



The Age of Print

- Gutenberg Bible 1455
 - Johann Fust vs Gutenberg
- The movable type enabled radically larger scale of copying
- Martin Luther vs publishers – some posed as authors, some did also alter his writings
 - Martin should have used CC!



The Statute of Anne, 1709/10

- The first piece of legislation dedicated to copyright
- NB! The original idea was to control not multiplication as such, but to catch printers releasing explosive materials (e.g. pamphlets against the King)
- A very important provision – nine copies of all printed material was to be sent to libraries



The U.S. Copyright Act 1790 and the Berne Convention

- Set the duration of 14 + 14 years
- NB! Did not cover foreign authors
- The Berne Convention for the Protection of Literary and Artistic Works
 - UK 1887
 - US only in 1988
 - Last more substantial changes in 1979, two years before the first IBM PC



The 20th century mechanisms and their durations

- Copyright – 70-95 after the death of the author
- Patent – 20 years
- Small patent (utility model) – 10 years
- Trade secret – no deadline
- Trade mark – during active use (re-registration possibility)



But what went wrong?

- The Gods Must Be Crazy – the Coke bottle as Pandora's Box
- Scarcity: a meme?
- Information: a resource that spreads only by copying
- The medium is going cheaper and cheaper, the real value is in content

Examples

- Mr Brilliant
- Charles M. Gentile vs the Cleveland Rock and Roll Hall of Fame Museum
- Church of Scientology
- Robert Kunststadt: patent the sports techniques!
- NBA.com - only we can report the game
- The Shetland Times: no linking without permission



The Digital Dilemma

- How not to throw the baby out along with the bathing water?
 - Borrowing should be legal – the main point of public libraries
 - How to make people buy more than one item



Internet has changed the game

- Digital media has radically simplified copying
- Networks have radically changed distribution
- The Web has radically changed publication



A bit lighter intermezzo: the Tinfoil Revolution

- In the beginning of 2012, public protests spanned Europe
- ACTA – Anti-Counterfeit Trade Agreement
- The global push towards the U.S. model, and the first agreement of its type to be classified (substantial parts)
- Leaked in 2008, finalized in late 2011
- The major point for IT and Internet: ISP-s would have been held responsible for license violations in their networks – at the same time, no mechanism was proposed to prevent excessive snooping and censorship
- In January 2012, it was almost passed in Europe – 22 countries signed it. But then the Poles and Swedes started to think

Meanwhile, in another galaxy (sort of)

- ... or actually Estonia
- The ruling Reform Party and the Prime Minister Ansip strived to pass ACTA even without involving the Parliament
- ... eventually they still had to
- On February 8, Mr Ansip debuted as a stand-up comedian in the Parliament...

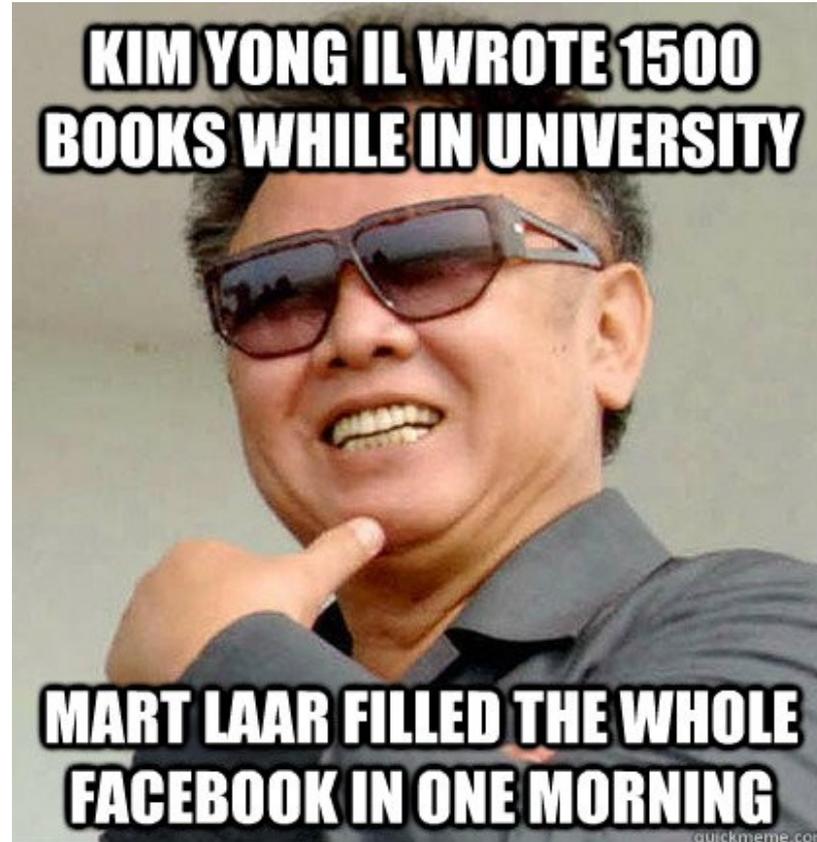
“You know, those arguing against have eaten seeds – and not the ones that we sow to fields. Sometimes in these cases it has been told to help when tinfoil is inserted in the caps. Maybe jacuzzi can also help. I don't know what can help them, but they should seek assistance from somewhere.”

An important lesson for politicians: do not piss off your electorate!

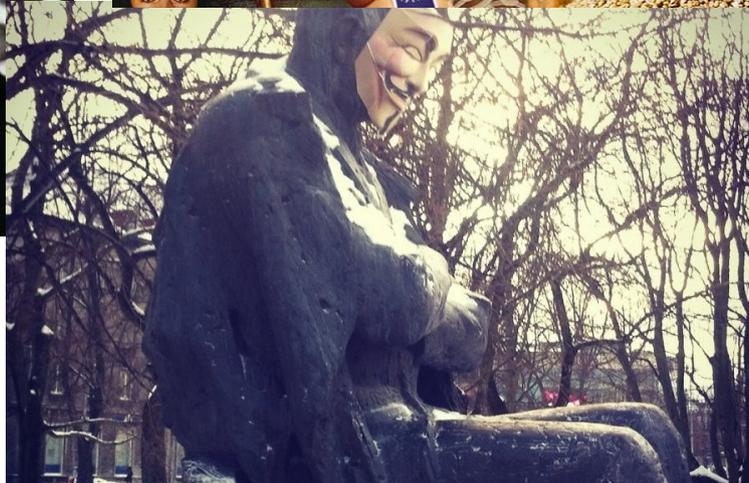
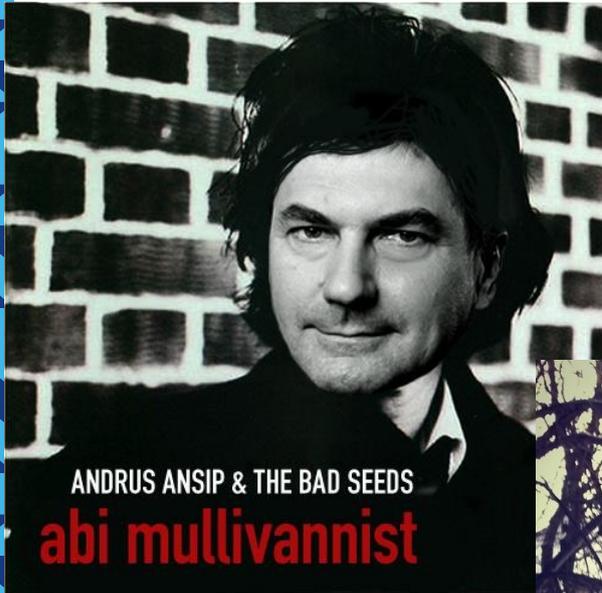
- February 11, 2012 – thousands of protesters in Tallinn and Tartu. Most importantly, the majority of them were likely the electorate of the Reform Party
- “Ansip's ACTA”, a crazy piece of techno mix by DJ Tinfoil - <https://www.youtube.com/watch?v=J2DmWLzkvLU>
- The avalanche of Web memes - it actually started a week earlier with ...



this



And followed by those



Outcome

- In July, the European Parliament decides to reject ACTA (39 for, 478 against, 165 abstained)
- Yet the show is far from being over

Seeking the alternatives

- Free and open-source software
- Free content => Free Culture
- Open Access



Three big problems

- The Rabbit's Friends and Relatives
- The Old Man Paragraph vs the Internet Kid
- The Almighty Patent Clerk: Omniscience required



A Copyright Reform?

- Rick Falkvinge and Christian Engström 2012:
 - Moral Rights Unchanged
 - Free Non-Commercial Sharing
 - 20 Years Of Commercial Monopoly
 - Registration After 5 Years
 - Free Sampling
 - A Ban on DRM



Some conclusions

- Lots of diverse matters
- “Intellectual property” is too wide a term lumping together too many very different things
- The choice is whether to keep playing the ostrich (and let the system slowly die) or reform it

The legal stuff goes on next time...

