

Online but not above the law

Website creators and users need to be aware of intellectual property rights and how to protect everyone's interests

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Pam, a third-year university student in Communication Arts, spent months creating an attractive website. She worked hard to boost the website's traffic, only to find a few months later that some of the original material on her site had been copied by others.

What happened to Pam might not compare with thousands of copies of a pop song being downloaded for free, or with copies of Microsoft Office being peddled for 150 baht at Pantip Plaza, but Pam was a victim of an intellectual property violation just the same.

Millions of people today have websites or blogs. Some just want a space where they can express their opinions, record memories, share thoughts and experiences with family, friends, colleagues and the community. Some create small virtual stores or hold online auctions. Some may have ambitions to get into e-commerce in a bigger way.

But no matter what one creates online, there are bound to be legal considerations involved. Just as in the real books-and-paper or bricks-and-mortar world, people who run or visit websites need to be aware of IP issues such as copyright, trademark, patent and defamation law.

Many of the violations committed by small website owners are probably unintentional. On the other hand, those who believe their rights have been violated need to be aware that once they put something online, anyone in the world can see it and some may be tempted to use material that doesn't belong to them.

According to Areeya Ratanaya, an IP legal consultant at the international law firm Tilleke & Gibbins, there are a lot of cases in which website owners violate IP laws without any intention or knowledge.

For e-commerce websites, even more legal restrictions are involved including the Electronic Transaction Act, Penal Code or even the Consumer Protection Act, Advertising Act and Pharmaceutical Laws, to name a few.

For non-commercial websites, Ms Areeya says that anyone seeking to avoid legal fallout should simply ensure that everything that is posted on the site is created by the owner alone.

"Don't assume that anything available online can be used or copied freely," she says. "Besides, people shouldn't encourage infringing activities such as posting hyperlinks to websites hosting infringing content."



The most frequently found cases are violations of Copyright Law by infringing on content, downloading or uploading software, movies and songs, using unauthorised trademarks, selling counterfeited items and "cybersquatting".

More serious is defamation, which could include the posting of unflattering or compromising images, or pictures taken without someone's knowledge.

The Copyright Acts can be difficult to fathom since the standard seems so broad. It could be argued that all duplicated works break the law. It is the intent of infringement that is the main factor to be taken into account, explains Ms Areeya.

If the act of duplication is for personal not commercial use, for example, on a blog, there could be considerable leeway. "However, the individual case must then be taken into account since each case is different in the details."

Other exceptions include the use of content as reference, for academic purposes, for analytical and commentary reasons and for the public interest, which is known in legal jurisdictions around the world as the "fair use" principle. In such cases, users should give credit to the owners of the information.

For pictures, motion pictures and musical works, credit is seldom enough; one needs to seek the permission of the creator or rights holder.

"And, when a violation is found, it largely depends on the original website's owner whether to take legal action against the infringing party," says Ms Areeya. "Some don't while some do."

In cases of IP violations, charges can be pursued under both the Civil and Criminal Code.

Portions of the information and other content taken from the original website

are another vital determination. Though Thai laws do not specify the amount of copied details that could still be considered legal, the portion used must not be a major part of the overall content.

"What has been practised overseas is that the laws only allow users to make use of the original information for no more than 10% to 20% of their content," she said. "It's still considered illegal if the users copy more than 50% of the original content even if they give credit to the owners."

So how does one keep track, in the boundaryless world of the Web, of whether the material on one's own website is being infringed? Total vigilance is almost impossible, but Ms Areeya says technology can help. There is specialised software that can search for text, content, photos, names, domain names, file names and more to identify whether infringe-

Better safe than sorry

What should you do if your online work is being infringed? Areeya Ratanaya, an intellectual property specialist with Tilleke & Gibbins, suggests the following steps:

1. Verify your rights. Are they still legally protected? For instance, if you formally registered a patent, is your licence still valid?

2. Keep records of any infringements as evidence, either in digital or hard-copy form. This step is important as you will definitely need it in court.

3. Assess the situation. Evaluate the size of the damage, and decide which approach you should take:

- ♦ Send a warning or notice to the infringing parties to take down the infringing content.
- ♦ Use dispute resolution.
- ♦ Pursue the case in court.
- ♦ Notify the police to take action.

Here are some guidelines to protect your rights from violations by others and to prevent yourself from breaching others' rights.

1. Register and record your intellectual property rights properly and make sure to keep their validity active.
2. Post a notice about your rights

on the website. Make sure it is clearly written and in an easily noticed place.

3. Apply security measures such as copy protection, passwords, cookies, watermarks and the like.

4. Exercise reasonable levels of care including constant monitoring of activities by website users.

5. Initially find out whether a name, picture or other content is already registered and used by others before registering it as your own or using it.

6. Purchase a licence or notify and ask permission from the original owner prior to making any use of the work.

7. Keep records or back up a file of your website for future reference in case infringement occurs.

8. Read other websites' "terms of use" very carefully prior to proceeding with any action.

9. Give credit to the source of information used (in this case, other details must also be prudently considered).

10. Be cautious about the portion of information taken from other websites particularly in the case of "fair use".

11. Educate your family, friends and employees about IP rights and protection against violations.

ment has taken place and where it occurs. However, the software is quite costly, used mainly by big brands and beyond the reach of most individuals.

For individual users, simple search engines can be very helpful to a certain level. Beyond that, one's own network of friends, colleagues and website visitors can serve as watchdogs.

The bottom line of IP law is to create a balance between public and business interests, says Ms Areeya. For instance, under patent law, the government gives an inventor the sole right to disclose detailed information about a newly invented technology or process for others to further develop.

"In any case," she says, "when people respect the laws, it means they also respect their own rights because the laws provide benefits not only to business owners but also to the public in general."