

IT & Law summary

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Lecture Slides

Lecture 1 - IP part I

Intellectual property (always absolute right):

- the legal protection for **creations of the mind** (ideas expressed as art, inventions, brands)

Absolute rights vs relative rights:

- absolute: applicable against anyone
- relative: enforceable only against a **specific person** (the debtor), bound to a contract

Patent law:

- computer programs are mostly excluded

Software patents:

- patents granted if the invention:
 - ...is new
 - ...involves an inventive step
 - ...is suitable for industrial application

Copyright:

- 2009/24/EC (legal protection of computer programs)
- no registration required for protection
- 70 years after author's death
- transfer requires deed (signed document)
- license does not require deed
- employer is right holder (except freelancer/contractor)
- first sale doctrine/exhaustion rule (UsedSoft)

Lecture 2 - IP part II

Database rights:

- [96/9/EC](#) (legal protection of databases)
- contents may be protected by copyright
- [sui generis](#) (protected 15-16 years after completion database)
 - investments that count for protection:
 - obtaining data
 - verifying data
 - presenting data
- [spin-off theory](#)
 - excludes database protection

Just like regular copyright:

- transfer and license regime
- first sale doctrine/exhaustion rule
- no registration required for protection

Domain names:

- first come, first serve
- ICANN regulates EU domains
- SIDN regulates Dutch domains

Disputes:

- based on other IP rights:
 - trade marks (logo or "iPhone") > trade names ("Apple Inc.")
 - [tort law](#)
- equal rights?
 - first come, first serve
- WIPO (Domain Name Dispute Resolution)

Lecture 3 - Privacy Law

General Data Protection Regulation (GDPR):

- violation: €20.000.000 or 4% of the worldwide annual turnover, whichever is higher
 - rather protecting consumer rights than fundamental (human) rights

Protection:

- vertical protection (state vs citizen)
- horizontal protection (citizen vs citizen)

Privacy:

- information privacy - against collection and processing of personal data
 - GDPR
- privacy of communications - security and privacy of e-mail, phones, other.
 - [2002/58/EC](#) - ePrivacy
- bodily privacy - protection of people's physical selves against invasive procedures*
- territorial privacy - against intrusion into domestic and other environments as workplace*

Lecture 4 - Computer Crime

Criminal behaviour:

- using computer as:

- ...motive
- ...instrument
- ...target

Criminal law:

- budapest convention:

- binding international instrument on cybercrime

- 2013/40/EU (defines cyber attacks)

Types:

- procedural ('powers') - defines rules and methods the state must follow

- substantive ('prohibited acts') - defines content of crimes and associated punishments

- Dutch Criminal Law is mixture

- main criminal law principle:

- nulla poena sine lege (no penalty without a law)

Lecture 5-6-7 - BIT Only

Contracts:

- for robust and successful contracts:
 - managerial discipline
 - technical discipline
 - legal discipline

Elements:

- identification
- articles
- signatures
- schedules

Terms and conditions (T&C):

- general t&c
- first shot rule

Market standards:

- ARBIT terms (customer perspective)
- NLdigital terms (supplier perspective)

Cloud contracting:

- costs
- exit plan
- service level agreement (SLA) - what the 3rd party (licensor) promises
 - service definition
 - service level
 - service management
- escrow alternative (protecting licensees against bankruptcy of licensor)
- audit rights

International private law:

Issues:

- jurisdiction (the authority of court to hear a case)
- applicable law (which country's law is applied?)
- recognition and enforcement (will court's decision be enforced in another country?)

Sources:

- national law
- european law
- international treaties

-choice of law and choice of jurisdiction can (independently!) be agreed upon

No law/jurisdiction agreed upon:

B2B/C2C:

Law

- sale of goods - seller's country's laws (seller)
- provision of services - service provider's country's laws (service provider)

Jurisdiction

- sale of goods - where the goods were delivered (buyer)
- provision of services - where the services were provided (receiver)

B2C:

Law

- country of consumer

Jurisdiction

- consumer may bring proceedings in its own country **or** the business's
- business may only bring proceedings in the consumer's country

2000/31/EC (eCommerce):

- contracts must be allowed to be concluded by electronic means
- b2b: non-mandatory law
- else: mandatory law

No liability of intermediary service providers:

- [mere conduit](#)
- [caching](#)
- [hosting](#)

2011/83/EU (business to consumer rights):

- provisions on the passing of risk, payment
- mainly mandatory law
- right of withdrawal
 - if the business succeeds to inform the customer:
 - 14 days to cancel distance contracts
 - if the business fails to inform the customer:
 - up to a year to cancel the distance contracts
- customer pays returning costs, unless business fails to inform the customer

Dispute resolution:

Typology:

- implicit expectations (prevention by better contracts)
- unclear contracts (prevention by better contracts)
- non-performance

Remedies of Breach of Contract:

- dissolution/cancellation of contract (if seriousness is justified)

- reimbursement of payment
- compensate damages

Fight or flight (litigate or settle):

Litigate

- court
- arbitration

Settle

- negotiation
- inquiry
- conciliation
- mediation

Legislations

2009/24/EC - Legal protection of computer programs:

- protection of author's IP
- 70 years after author's death

96/9/EC - Legal protection of databases:

- protection of database structure and organization
- copyright (focus on creativity)
 - 70 years after author's death
- sui generis (focus on substantial investment)
 - 15-16 years after completion database

GDPR (2016/679) - Protection of personal data:

- protection of personal data

2013/40/EC - Defines cyber attacks:

- defines cybercrime and its sanctions

Dutch Criminal Code - Criminalizes hacking, data, and system interference.

- eu cybercrime implemented in dutch law
- fines/prison (check with test question!)

Bit only:

2002/58/EC - ePrivacy

- regulates privacy in online communications

2000/31/EC - eCommerce

- legal framework for online services

- regulates online contracts and consumer rights

2011/83/EU - Business to consumer rights

- harmonizes consumer rights

- clear pre-contract information

- digital and physical goods

Important takeaways

- Filing an IP right at the governmental organisation is NOT required to acquire a **patent**
- In cloud contracts, the thing most negotiated is **liability**
- A contract concluded by email is **valid**
- A contract can be valid without a **written** acceptance
- Right of withdrawal is only valid for **B2C** contracts

Terms to remember

First sale doctrine - allows the **lawful owner** of a copy to **resell or dispose** of it without permission.

Sui generis - requires **substantial investment**, ignores creativity. Grants the maker a 15-year monopoly to prevent the **extraction** and **re-utilization** of a substantial part of that data.

Spin-off theory - investment in creating data as a **by-product of a main enterprise** should **not** qualify for database protection.

Tort law - addresses domain disputes like **cybersquatting** or **confusing names**, seeing them as an **unlawful** act.

Nulla poena sine lege - no one can be criminally **punished** for an act **not** clearly **defined** as a **crime** by law beforehand.

BIT Only:

Haviltex - dutch court case on the **interpretation** of commercial **contracts** (contract text vs intention of parties)

First shot rule - the **first terms** sent govern the contract, unless the receiving party **explicitly and clearly rejects** them.

Cloud contracting - legally defining the **delivery and use of IT services** (data, software, infrastructure) via a **third-party provider's network** (e.g. Google, Amazon, etc.)

Escrow - when a neutral **third party holds** the human-readable **source code for licensed software**, only releasing it to the customer if a specified supplier **failure** occurs (like bankruptcy)

Audit rights - the **contractual permissions** granted to the **customer (the Data Controller)** to check and verify the **cloud provider's (the Data Processor's)** compliance with the contract

Mere conduit - shields a service provider from liability if they are a **passive, technical data carrier** without control over the content.

Caching - the **automatic, intermediate, and temporary storage** of data

Hosting - the **storage of information** generally intended to be **permanent or long-term**

Arbitration - a formal, private process where disputing parties agree to **submit their case** to one or more neutral third-party experts (**arbitrators**) instead of going to a public court.

Inquiry - a third party **investigates** the facts of the dispute but does **not** offer a solution. The goal is to **clarify** what the dispute is about, but it's up to the parties to find a **solution themselves**

Conciliation - a **non-binding process** where a **neutral** investigates, facilitates discussion, and **suggests** a settlement proposal.

Mediation - a **voluntary, non-binding process** where a neutral helps parties **communicate** and negotiate a **mutually agreed-upon** solution.