

Lesson 2:

Law and the Internet

Objectives

By the end of this lesson, you will be able to:

- ✦ 3.1.3: Establish and protect a brand (includes trademark registration).
- ✦ 3.2.1: Identify legal and governmental aspects of e-commerce (includes legal precedent, liability concepts, international issues, ethics, jurisdiction, copyright, patents).
- ✦ 3.2.2: Identify and protect intellectual property.
- ✦ 3.2.3: Identify e-commerce taxation issues.
- ✦ 3.2.4: Avoid questionable practices (includes spam, spyware, selling user information).
- ✦ 3.2.5: Identify international trade laws.

Pre-Assessment Questions

1. Which of the following terms pertains to products such as written materials, musical compositions and trademarks that are protected by law?
 - a. Artistic representations
 - b. Electronic publishing
 - c. Intellectual property
 - d. Copyrighted material

 2. David distributes pirated software from his personal Web site. Which law is he violating?
 - a. Internet Software Piracy Act
 - b. North American Free Trade Agreement
 - c. Although software piracy is highly unethical, it is not in violation of any law.
 - d. Digital Millennium Copyright Act

 3. What is the term used to refer to unsolicited e-mail messages used to advertise a product or service?
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Note: Internet-related law is an emerging discipline. It constantly changes and incorporates elements of several other legal areas. Laws relating to the Internet and specifically to e-commerce are subject to change without notice. This lesson is designed to introduce you to basic legal concepts, but is not meant as a substitute for sound legal counsel in establishing and maintaining your e-commerce business.

Introduction to Internet Legal Issues

More than five centuries ago, the invention of the printing press changed the world. The printing press helped make information more widely available. Today, the Internet is a modern version of the same revolution. If information is power, no medium offers this power to more people than the Internet.

The Internet is supplementing (and in some cases replacing) such societal hallmarks as libraries and town halls. Online services such as America Online and Microsoft's MSN are becoming popular sources of entertainment and information. Print and broadcast media companies around the world now use the Internet as a major part of their delivery network. Internet addresses and e-mail addresses have become a requirement for professional and commercial credibility. Magazines, books and music are published and disseminated electronically, with many published in electronic format only.

These advances present disadvantages as well. Besides creating societies with artificial classes, the Internet is, ironically, affecting the companies that do the most to advance it: software companies. These companies claim to be losing money because of the Internet. Many software products are becoming commodities because they can be easily duplicated, thereby depressing prices. Various elements of intellectual property have vague boundaries that can be crossed with hazy justifications.

OBJECTIVE:
3.2.1: Legal and governmental aspects

In the first days of the Internet and during the earliest stages of e-commerce, many individuals and businesses imagined the Internet as a vast, uncontrolled wilderness. However, taking commerce into an electronic virtual environment did not mean leaving legal requirements and governmental controls behind. Instead, it meant that you often needed an even better understanding of international law than you did for a traditional business. The Internet makes crossing international boundaries easier; in fact, they are often crossed without your knowledge.

In general, the same business law and international commerce precedents apply across the Internet as in any other business. In many cases, precedent is specific to the jurisdiction in which the decision is made. The jurisdiction is typically determined by the physical location or address of record of the business and the customer, not necessarily that of the Web site hosting the business; this fact makes it more difficult to predict which country's regulations might apply to a business over time.

The same issues arise regarding ownership and control. Bypassing physical boundaries does not mean that you can avoid concerns about brand ownership, copyrights and patents. The Internet does not provide a mask of anonymity, hiding illegal or unethical behavior. You are likely to find that complaints by customers who feel they have been mistreated or misinformed can be distributed wider and faster than ever before, sometimes causing irrecoverable damage to a business.

This lesson will discuss many of the complex issues surrounding law on the Internet. It will also address issues relating to ethical business practices in the electronic community. Such issues consist of approaches, challenges, technologies, intellectual property, protection, security and the law.



Movie Time!

Go to CIW Online to view a movie about this topic.

Legal Issues (approx. playing time: 04:30)

All movie clips are © 2011 LearnKey, Inc.

Electronic Publishing

Electronic publishing (EP) is the use of computers rather than traditional print mechanisms to distribute information. The term electronic publishing as used in this lesson is not limited to publishing only. It also encompasses other fields that benefit from digital technology: music, movies and video games.

narrowcast advertising

Advertising that is designed to target a specific, typically small demographic group.

EP is becoming more popular because of the savings it offers over paper publishing. A CD-ROM holding more than 150,000 pages of information can be produced for less than U.S. \$1, significantly less when self-publishing. Compare this amount with U.S. \$1,300 or more, which is the cost of producing the same information using traditional print methods. EP is also making it easier for publishers to reach specific markets, allowing them to target particular groups within those markets. Instead of a broadcast advertising medium such as television, publishers can do **narrowcast advertising** (which targets a specific, typically small demographic group) on a specific Web site that is routinely accessed by certain people.

One drawback of EP is that as more documents and more media such as music, movies and games are being placed on the Internet, intellectual property rights may be at risk of being violated. Computer-based theft is rising, as are the lawsuits against companies for violating patents and copyrights. Intellectual property is closely guarded in today's digital age, and has become a controversial topic in the age of EP. Consider the examples discussed in the following sections.

Example 1: Sending copyrighted material to others

A little girl named Sedona loves Barbie dolls. For her birthday, her father visits www.mattel.com looking for the perfect gift. After downloading images of a custom Barbie for Sedona, he saves the **Graphics Interchange Format (GIF)** image of Barbie on his computer to show his wife. His wife then sends the image to a friend who is also considering a Barbie for her daughter. Can she legally send that image to a friend? Is the friend who unwittingly accepts this image of Barbie participating in a copyright violation? If so, who can be considered liable: Sedona's parents, the recipient friend, or the ISP that provided the medium for the information dissemination?

Graphics Interchange Format (GIF)

A graphics image file format commonly used in HTML documents; designated by the file name extension .gif.

Example 2: Newsgroups and message boards

An Internet user downloads a game from a **newsgroup** or message board. The game belongs to another subscriber who has uploaded it there, presumably for his friends to use. One Internet user downloads the game and finds it so fascinating that she immediately sends it to a dozen friends. Is this distribution an intellectual property violation? Did the first Internet user have the right to distribute the game without consulting the author? Is the newsgroup or message board liable for posting a private game to the rest of the world?

newsgroup

On Usenet, a subject or other topical interest group whose members exchange and distribute mail messages.

Example 3: Artistic representations

A user digitizes songs from an album (or clips from a movie) as a backup for personal use, and to place on a Web site later. The original user plays the songs on a computer, and copies them to portable devices. What are the limits on how the music can be copied and used? Are users who (unwittingly or not) download the songs and save them on their computers violating copyright laws? Is the Web site itself in violation?

Example 4: Defamatory information

An ISP hosts a Web page on a subscriber's behalf. This page has a defamatory quality to it that offends other subscribers and users of the ISP. Is the ISP responsible for the content of the defamatory information? Or is it simply a conduit and not obligated to analyze the information it disseminates?



The same questions apply to universities and corporations. Is a university or corporation liable if one of its members creates a page that offends others? These are some issues that lead many corporations, universities and ISPs to initiate strict monitoring and usage policies.

Intellectual Property Issues

OBJECTIVE:
3.2.2: Intellectual property

The preceding examples demonstrate that intellectual property has become a controversial topic in the age of EP. As more material is published through electronic media, issues such as copyright, trademark and patent infringement often arise. The speed of these technical advancements has exceeded the legal system's capacity to stay current. The U.S. legal system obviously was not developed with the digital age in mind. Increasingly, the juxtaposition of digital technology with these older laws has made interpretation necessary.

Rapid computer transmission, electronic reproduction, and text and image manipulation are destined to change how the ownership of information is treated under the law. Technology threatens something with a long history of legal protection and which computers made much easier to challenge: the ownership of an idea or of information.

Two branches of intellectual property

The two types of intellectual property are industrial property and copyrighted material. Industrial property covers inventions, trademarks and industrial designs.

Industrial property

Protection is granted for industrial property in the form of exclusive rights of exploitation.

- **Industrial designs** — To be covered for industrial property protection, industrial designs must be original or novel and must be registered by a recognized governmental office, often the same office that registers patents. Essentially, such protection prevents any third party from using the design without consent of the rightful owner.
- **Inventions** — An invention is a novel idea that permits in practice the solution of a specific problem in the field of technology. Again, the protection is to prevent unauthorized persons from using, producing or profiting from the invention without consent.
- **Trademarks and service marks** — A mark is a sign, or a combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings. It may consist of distinctive words, letters, numbers, drawings or pictures, and can also include containers or packages.

- **International protection** — Laws of a particular country are generally only of concern to or enforceable by that country. However, many countries are signatories (signed in agreement) to various international treaties designed to provide reciprocal protection.

Copyrighted material

Copyright covers literary, musical, artistic, photographic, audiovisual and software works. Copyright protection generally means that certain uses of the work are lawful only with the authorization of the copyright owner. The subject matter of copyright is usually described as "literary and artistic works" — that is, original creations in literature and the arts. The form in which such works are expressed may be words, symbols, music, pictures, three-dimensional objects or combinations thereof (as in the case of an opera or a motion picture). Copyright laws protect the following items:

- **Literary works** — novels, short stories, poems, computer programs, other written works
- **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
- **Software** — computer programs

Copyright protection is limited in time. Many countries have adopted, as a general rule, a term of protection that starts at the time of the work's creation and ends 50 years later. The United States has modified time limits over the years but laws are based on dates of creation and copyright registration, and generally set terms for the life of the author plus a specified number of years. For specific information about U.S. copyrights, visit www.copyright.gov/faq.html or www.loc.gov/copyright. Examples of indictments for copyright violation can be found at www.cybercrime.gov/.

The laws of a country relating to copyright are generally concerned only with acts accomplished or committed in that country. However, many countries have agreed to treaties designed to provide reciprocal protection in the international arena.

Because computers quicken the pace of copying, transmitting and disseminating information, and because asserting ownership of something so easily transferable is difficult, computers challenge the entire idea of ownership of intellectual property. The following list enumerates some significant intellectual property issues.

- **Copyright, trademark and patent law**
 - What constitutes transmission of an electronic document?
 - How should patents be granted for algorithms and techniques?
 - Which aspects of a user interface or program controls can be patented?
 - How should domain names be allocated?
- **Lawsuits, including future litigation**
- **New laws**

Some people have characterized intellectual property law as an obsolete device suited only to protecting tangible goods. To varying degrees, information is intangible, so how can it be protected? Recent legislation has sought to modify existing laws to cover online media and other intangible goods. Because these laws are written and applied, considerable ambiguity is expected in defining intellectual property infringements. After the laws are established and understood uniformly, protection will be more easily granted to, and guarded by, the rightful owners. However, this remains a rapidly changing area of international law, often making it difficult to fully enforce current protections.

Areas of Liability

Areas of liability in EP can be divided into the following categories, all of which affect the Internet:

- Copyright, trademark and patent issues
- Privacy and confidentiality issues
- Jurisdictional issues

You will look at each of these categories in some detail. The following lab directs you to some available information about legal issues relating to e-commerce, specifically information available through Yahoo.com directory links. Suppose your employer wanted to post a short business article on the company Web site, and you were asked to verify the legality of posting the article. You would want to research legal and regulatory issues relating to e-commerce in general, as well as any that apply directly to your particular business segment.



Lab 2-1: Examining electronic commerce law

In this lab, you will examine some legal aspects of electronic commerce on the Web. You will learn about and use some public sources for this information.

1. Open your browser.
2. **Browser:** In the Address field, enter *dir.yahoo.com*.
3. **Browser:** The Yahoo! home page appears. Click the **Computers & Internet** link, as shown in Figure 2-1.

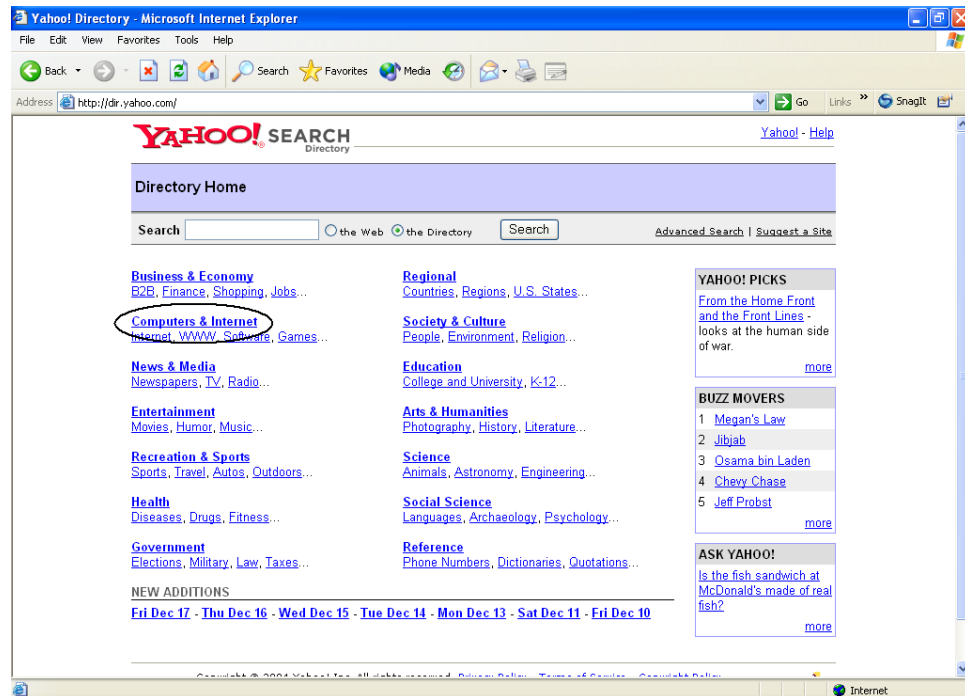


Figure 2-1: Yahoo! Search Directory

4. Click the **Internet** link.
5. Click the **Law@** link, as shown in Figure 2-2.

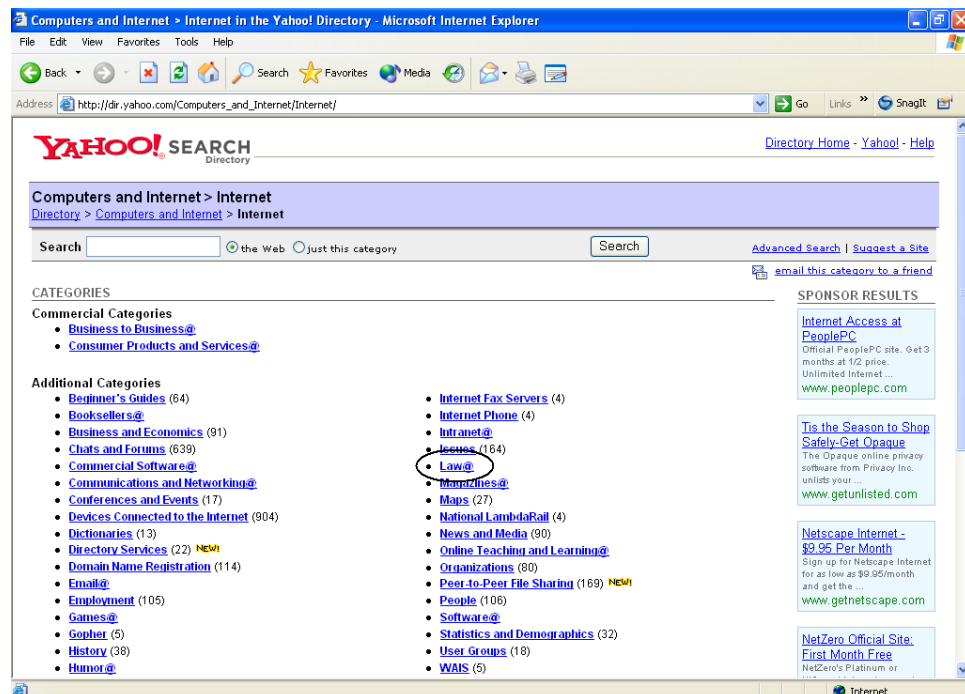


Figure 2-2: Yahoo! Law@ link

6. Scroll down and view the links on this page (Figure 2-3). These sites can provide additional information about legal issues in the electronic commerce environment.

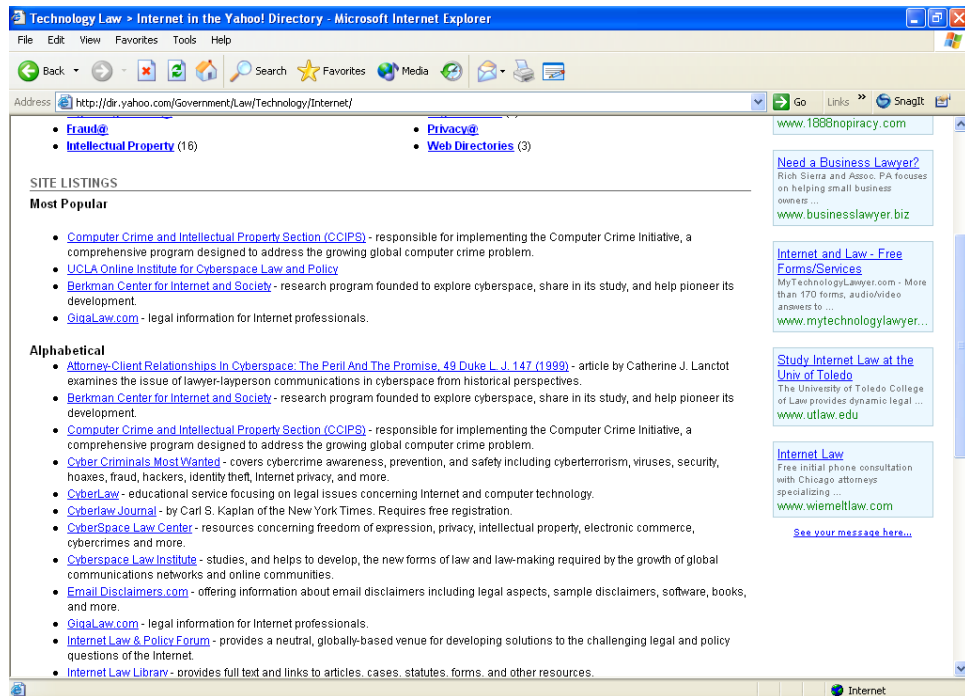


Figure 2-3: Yahoo! links

Copyright, Trademark and Patent Issues

Copyright, trademark and patent laws address the issue of ownership of intellectual property.

Copyright in the United States

OBJECTIVE:
3.2.1: Legal and governmental aspects

Article 1, Section 8 of the United States Constitution gives authors exclusive rights to their own works for a limited time. Congress later enacted the 1976 Copyright Act, which protects "original works of authorship," including literary works. The term "literary works" has been held to include computer software. Section 103 of the Copyright Act protects "compilations," which are defined as works "formed by the collection and assembling of pre-existing materials or of data that are selected, coordinated or arranged in such a way that the resulting work as a whole constitutes an original work of authorship."

To promote creative expression, copyright protection prevents anyone but the rightful owner from copying, distributing, displaying or making derivative works from a copyrighted work. Authors may transfer their copyrights to others, such as publishing companies, if they want. Copyright law does not protect others from independently creating the same idea or concept. A copyright usually lasts for the life of the author plus a number of years, depending on its dates of creation and registration. For example, for works published in the United States after March 1, 1989, the copyright term is described as follows:

- For works by private authors, 70 years after the death of the author
- For works produced through corporate authors, 95 years after first publication or 120 years after creation (whichever is shorter)

Information about other copyright terms is available at the following page:
www.copyright.cornell.edu/training/Hirtle_Public_Domain.htm.

Works protected include literary works (including computer programs); musical works; pantomimes and choreographic works; pictorial, graphic and sculptural works; motion pictures and other audiovisual works; sound recordings; and architectural works. Although registering a copyright is not mandatory, it is advisable because legal owners of copyrights can more easily prove authorship if they hold registered copyrights, and can seek legal remedies more easily.

The basic elements of a work are:

- Expression.
- Originality.

OBJECTIVE:
3.2.2: Intellectual
property

For copyright purposes, the work is considered original if it was independently created and not copied from others. Further, originality does not require novelty; that is, a work will not be denied copyright protection merely because it is similar to a work previously produced by someone else. Copyright protection does not extend to an idea or fact.

Many Internet users wonder: What can copyright mean when millions of people are accessing the Internet and downloading any information they can find on any subject they desire? Some of the following issues might arise in Internet-related situations.

- The author of a message posted to a newsgroup is entitled to copyright protection. Although reposting the message is common, it will generally constitute a copyright violation unless the author has relinquished rights to the message or has given permission for it to be circulated. However, many newsgroups require such permission as a condition of membership.
- Digitized images are often transmitted and distributed on the Internet. The original creators of the digital image are protected by copyright law, assuming the original material was not in the public domain already. Beyond the initial creators, any individuals copying or scanning the image are duplicating someone else's work in violation of copyright law.
- A copyright violation may occur when copying software and transmitting it over the Internet.
- Authors of e-mail messages own the copyrights to their work in most circumstances. Third parties cannot use the e-mail message without the owner's consent.

However, copyright law is still very unclear with respect to certain portions of the Internet. For instance, is the store-and-forward function of a mail transfer agent (or a router) owned by an ISP a form of copyright infringement?

OBJECTIVE:
3.2.1: Legal and
governmental
aspects

In general, intellectual property is considered copyrighted when it is produced. Problems arise in proving who produced the property and when. Even so-called hidden properties of electronic files, such as the file creation timestamp, can be manipulated. Several service businesses specialize in helping you understand and protect your intellectual property rights. A broad-based reference site is located at www.bitlaw.com.

The courts are attempting to settle these issues. Following are three precedent-setting cases that have been decided in the digital arena.

Sega Enterprises Ltd. vs. MAPHIA

The courts decided in favor of Sega Enterprises, which brought suit against MAPHIA, an electronic bulletin board service (BBS). Sega Enterprises claimed that MAPHIA copied a Sega game to its BBS and made the game available for user downloads. The courts found that MAPHIA sometimes charged the users a direct fee for downloading privileges, or bartered for the privilege of downloading the Sega Enterprises game. Because the Sega Enterprises game was protected by copyright, MAPHIA violated Sega's copyright by obtaining unauthorized copies of the game and placing them on the BBS storage medium.

Napster vs. the Recording Industry Association of America (RIAA)

Napster Inc. was sued in 2000 by the Recording Industry Association of America (RIAA) for allowing the free distribution of copyright-protected music through the use of peer-to-peer (P2P) file-sharing software. Using the Napster software, users could search and download almost any song title in **MPEG-1 Audio Layer-3 (MP3)** and other formats, allowing unlimited use and redistribution on computers, CD players and MP3 players. The RIAA claimed that Napster was promoting copyright infringement by allowing users to freely distribute and use the material without paying royalties. Napster claimed it was only providing the service and that end users ultimately decided whether or not to use, download or distribute music, for which Napster received no fees or royalties.

In June 2001, the U.S. Ninth Circuit Court of Appeals upheld a lower court's findings that Napster was in copyright violation and must remove all titles requested by the RIAA from user access.

Napster continues as an Internet music distributor, but under a radically changed business model. Napster still provides music downloads, but only as a fee-based subscription service. In addition, Napster also provides commercial-free Internet radio stations, enabling users to listen to preference-targeted music playlists.

Feist Publications Inc. vs. Rural Telephone Service Company

In 1991 the U.S. Supreme Court heard the case of *Feist Publications Inc. vs. Rural Telephone Service Company*. In that case, Feist and Rural Telephone both published telephone directories that competed for advertising space. The Feist telephone directory covered 15 counties, one of which included the Rural Telephone Service area. Rural refused to license its telephone directory information to Feist; therefore Feist copied the Rural Telephone directory information. The court sided with Feist, and held that copyright protection afforded to databases (which was how Rural presented its directory information to the court) was limited, extending only to the author's selection and arrangement of the data. The court also held that listing the names and numbers of all subscribers in a telephone service area in alphabetical order does not satisfy the minimum "original work of authorship" requirement for copyright protection.



As a consequence of the Feist decision, businesses that create and maintain databases currently have very limited protection under United States copyright laws. That protection now covers only the original selection, coordination and arrangement of data, but not the data itself. Furthermore, selection, coordination and arrangement are protected only to the extent that they satisfy the creativity requirement of being an "original work of authorship."

MPEG-1 Audio Layer-3 (MP3)
Popular compression standard for audio files; retains most of the sound quality of the source.

Information Infrastructure Task Force (IITF)

President Clinton formed the Information Infrastructure Task Force (IITF) in 1993. The IITF established a working group on intellectual property rights to examine the intellectual property implications of electronic publishing. In July 1994, the group published the "Green Paper," a preliminary draft report on intellectual property rights. The working group has recognized the need to review current copyright laws in light of the fact that copying and disseminating information are easy with electronic media. The organization has been relatively inactive since 1997.

Trademarks in the United States

Lanham Act

A 1964 law that was an important early step toward U.S. trademark legislation.

OBJECTIVE:
3.1.3: Brands and trademarks

Trademark law is another area of interest in EP. Under common law and the U.S. **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."

Many people are familiar with the golden arches of McDonald's and the wave design on a Coca-Cola bottle. Each of these identifying symbols is a form of property owned by the company that uses it. Besides symbols, a brand name or a company name is also one of the most common trademarks: Campbell's Chicken Noodle Soup, Heinz Tomato Ketchup or IBM Personal Computers.

Trademarks originate from the rule that no one has the right to sell products that belong to another person or company. The law recognizes trademarks as property and grants to the trader an exclusive right to use an individual mark. One way to lose the right to a trademark is by abandoning its use or by failing to renew registration. Loss of a trademark right can also occur when it is transformed or when a term degenerates into a household term, as happened with such well-known former trademark names as aspirin, cellophane, dry ice, shredded wheat, thermos and others.

A direct contribution of EP to trademark law concerns domain names. A domain name is a company's logical address or source identifier on the Internet. The holder of a domain name may be entitled to protection from the U.S. Patent and Trademark Office (PTO) if the domain name also functions as a trademark or service mark. The Lanham Act defines a service mark as one "used in the sale or advertising of service to identify the services of one person and distinguish them from the services of another." The PTO may deny federal registration of a domain name if the mark is likely to be confused with a previously registered trademark or service mark. The test for confusion is based on the likelihood with which an average consumer in a similar marketplace would confuse the source of the product or service given similarities in sound, appearance, meaning or connotation of the two marks.

Porsche Cars North America Inc. vs. Porsch.com

In January 1999, the Porsche automobile company brought a trademark infringement suit against the owners of 130 domain names for allegedly infringing or diluting the Porsche trademark. Porsche's attorneys argued that many domain name registrants use fictitious names, addresses and other false information in registering domain names to insulate themselves from service of process (in other words, to avoid prosecution). Porsche has since lost the suit and is now buying all the domain names from their owners.

Internet Corporation for Assigned Names and Numbers (ICANN)

The international organization responsible for domain name registration. In 1998, inherited responsibilities originally performed by InterNIC. Performs Internet address space allocation, protocol parameter assignment and root server management.

The Internet agency that assigns domain names does so on a first-come, first-served basis without examining whether the proposed name would violate anyone else's proprietary rights. The problem with the first-to-file approach is that the domain name may also function as a trademark or service mark, potentially subjecting the new user to infringement proceedings under the Lanham Act. If a domain name is challenged by another individual or organization as an infringement under trademark or service mark law, the **Internet Corporation for Assigned Names and Numbers (ICANN)** will place the domain name "on hold" to make the domain name unusable by anyone until the matter is resolved.

Several domain name infringement suits have been brought to the courts in the United States, including the following.

Intermatic Inc. vs. Toeppen

Intermatic Inc. sued Dennis Toeppen to cease and desist using the domain name *intermatic.com*. The court ruled in 1996 that Toeppen, "by registering *intermatic.com* as a domain name and attempting to sell or license the name to the owner of the famous Intermatic trademark, diluted that mark under the law, since traditional trademark law applies even though the Internet is a new medium of communication."

Kaplan vs. Princeton Review

Stanley Kaplan, the owner of various standardized testing preparation courses, sued competitor Princeton Review over Princeton's use of the domain name *kaplan.com*. Kaplan alleged that such "bait-and-switch" tactics appropriated the goodwill and recognition associated with Kaplan's trademark, service mark and trade name. The dispute eventually led to an out-of-court settlement and a change of domain name by Princeton.

Patents in the United States

OBJECTIVE:
3.2.1: Legal and governmental aspects

Patents are another area of interest in EP. A patent, in law, is a document issued by a government conferring some special right or privilege. In the United States, the term is restricted to patents for inventions granted under federal statute. The specific attributes of novelty for which a patent is sought are called claims; thus, a patent can have several claims. The patent gives the inventor the exclusive right to use a certain process, or to make, use or sell a specific product or device for a specified time.

After a patent is granted, issues of infringement or scope, or other questions related to the grant, are within the jurisdiction of the U.S. district courts. Infringement consists of knowingly and wrongfully making, using or selling someone else's patented invention. In general, a patent protects against infringement only within the jurisdiction of the government by which it is issued. Therefore, inventors should secure a patent in all countries in which they want protection. Patent laws have been enacted in most countries. The most important applicable international treaty is the International Convention for the Protection of Industrial Property.

An important issue in EP-related patent law is software, and the exact determination of what should and should not be patented. Generally, software patents do not cover the entire program; they cover only algorithms and techniques. A problem may arise when the algorithms and techniques mentioned in a patent application are formulated and used independently by other programmers from when the application was filed. Much of the legal precedence applying to software patent laws was established during the early days of the personal computer revolution in the 1980s and 1990s.

Some argue that the patent system opposes the nature of software development. Present computer programs contain thousands of algorithms and techniques; each could be considered patentable, and some are patented. For example, Apple Computer was sued because its HyperCard program was alleged to violate U.S. Patent number 4,736,308. In simplified terms, that patent protects a product that entails scrolling through a database displaying selected parts of each line of text. Separately, scrolling and display functions are ubiquitous parts of graphical programming, but the particular combination was the subject of the infringement action. Apple itself has sued Microsoft for allegedly infringing on the look and feel of what it claims is its invention of graphical rendering of information on a computer display.

Diamond vs. Diehr

The judicial basis for software patent eligibility is found in the 1981 case of *Diamond vs. Diehr*, in which the court said that "a patent could be granted for an industrial process that was controlled by certain computer algorithms." Consequently, the U.S. PTO has used this case as a precedent for allowing patents on algorithms and techniques. The PTO's stance on patents for algorithms and techniques has increased the granting of software patents in the United States.

International intellectual property law

OBJECTIVE:
3.2.2: Intellectual property

Concerns relating to EP are in no way limited to the United States. In addition to concerns about protections, another serious issue is whether or not a country enforces its own EP-related laws.

The general guidelines are typically similar for international intellectual property law to the United States. Specific details, such as copyright terms, requirements for registering trademarks, and the patent process, are specific to international jurisdictions. Patent issues can be particularly difficult because a patent is recognized only in the country in which it is issued. International patent protection requires having to apply for a patent in each applicable jurisdiction.

Trade agreements between international entities typically include mutual recognition of copyright and intellectual property protections. Despite this, intellectual property continues to be a confusing and sometimes contentious area in trade relations. Charges are sometimes made of countries vigorously protecting local property while willfully ignoring violations of international copyrights, trademarks and patents.

The European Union (EU) is attempting to coordinate copyright protections for its member countries. A key part of this is the EU's Directive 2001/29/EC, the EU Copyright Directory (EUCD).

Efforts are also under way through the World Intellectual Property Organization (WIPO) to coordinate international copyright protections. WIPO administers 23 international treaties relating to intellectual property protection. Information about WIPO and its efforts is available at www.wipo.int.

Pending or current United States legislation

OBJECTIVE:
3.2.1: Legal and governmental aspects

As mentioned earlier, the legal reach of any copyright or patent extends only as far as the government that recognizes that particular ownership. In an effort to set forth guidelines to determine the direction of EP, certain pieces of legislation have been introduced to help enforce and protect intellectual property.

On-Line Copyright Infringement Liability Limitation Act

The On-Line Copyright Infringement Liability Limitation 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. The On-Line Copyright Infringement Liability Limitation Act is actually Title II of the Digital Millennium Copyright Act. This protection is valid if someone else (such as a subscriber) initiated the transmission, if the storage and transmission are automatic, and if the provider does not retain a copy for longer than necessary to perform the transmission. The Act also protects the provider from financial liability if the provider did not know that the material was infringed, and did not receive a direct financial benefit as a result of the transmission. The following activities are covered by the act:

- Intermediate and transient storage of materials (such as Web pages or chat room discussions)
- System caching
- Putting information on a system at the direction of users
- Using information-location tools (such as directories, indexes and hypertext links)

The provider is exempt from claims based on the provider's removing or disabling online access to the material when he or she learns that an infringement may have occurred, whether or not such material is in fact an infringement.

Under the Act, anyone who knowingly misrepresents that online material is infringed is liable.

No Electronic Theft (NET) Act

The No Electronic Theft (NET) Act amends U.S. copyright law so that "financial gain" includes the receipt of anything of value, including other copyrighted works.

The NET Act establishes penalties for willfully infringing on someone else's copyright-protected material. To view a summary of the NET Act, visit the following page: www.usdoj.gov/criminal/cybercrime/netsum.htm.

Digital Millennium Copyright Act (DMCA)

The Digital Millennium Copyright Act (DMCA) was created to allow U.S. copyright laws to conform to WIPO treaties for international copyright standards. The DMCA has the following four main parts:

- **Anti-Circumvention Provision** — makes it illegal to manufacture, import, distribute or provide products designed to circumvent encryption, scrambling or other technologies used to prevent piracy.
- **Integrity of Copyright Management Information (CMI)** — outlaws the knowing falsification of data identifying works, copyright owners, key facts and payment royalties.
- **Service Provider Liability** — defines situations in which a service provider may be immune from damages.
- **Webcasting** — provides for the licensing of sound recordings for Webcasters and other digital audio services.

Privacy and Confidentiality

Discussing privacy and confidentiality appears paradoxical when information about anyone can often be obtained with a few keystrokes. This section discusses some ways in which some loss of privacy and confidentiality is the tradeoff required for more advanced technology.

Easy access to public information

As more information about individuals is collected and becomes available through the Internet, you will often hear concerns that privacy is becoming more a historical memory and less a modern reality. Individuals are concerned about the amount of information available on the Internet and to whom the information might be available. As instances of identity theft and other forms of cybercrime increase, protecting any personal information provided by your customers remains a critical issue.

Several easily accessible Web sites (for example, *www.switchboard.com* and *www.411.com*) provide directory listings allowing visitors to search for any publicly listed information (name, address, phone number). Some argue that finding such information does not hurt the subscriber because it is public. However, the point is not that the information can be found, but that it can be so readily and easily found. Before the Internet was widely used, finding public information took time and effort because physical access to a telephone directory was needed. This requirement no longer exists. A browser and a connection to the Internet are all that is needed. Some services go beyond information that is generally considered publicly available. In addition to basic contact information (address, e-mail and telephone), these fee-based services will provide you with all the information they can locate about the person. The business practices of some of these services are considered questionable, and possibly illegal, and investigations are being performed into the information sources used and how the sources are accessed.

Another area in which privacy and confidentiality impose on public information is court documents. Many courts have discovered that they can scan legal documents pertaining to divorces, trials, felonies and misdemeanors, and store them digitally. Besides easy retrieval and low maintenance costs, such documents can be easily indexed and searched. The disadvantage is that anyone with a browser can access these documents from anywhere in the world. Again, the crux of the matter is not that the information can be accessed, but the ease with which it can be accessed. The chances of this information being used for malicious purposes rise as it becomes available to more people.

Commercial search engines and related services were developed to make it easier to find goods, services and information on the Internet. They are now increasingly used to find personal information with the amount of data recovered by a Web search of an individual's name becoming something of a point of pride in some user communities. The popularity of this activity in the United States is demonstrated by the shift of the term "Google" from simply the name of a search engine service to a verb used to refer to the act of searching the Internet.

One controversial topic that relates to accessibility of private information is the issue of wireless location privacy. On June 19, 2001, the U.S. Congressional Internet Caucus (a bipartisan group of members of the House of Representatives and the Senate working to teach their colleagues about the advantages and disadvantages of the Internet) convened a panel of experts to discuss issues of wireless location privacy. Privacy groups and members of the wireless communications industry have urged the Federal Communications Commission (FCC) to set rules for commercial use and disclosure of location information provided by cell phones and other wireless communications devices.

Resources on electronic privacy, including proposed privacy legislation, include the Center for Democracy and Technology (www.cdt.org), the Computer Security Resource Center (<http://csrc.nist.gov>) and the Electronic Privacy Information Center (www.epic.org).

The following lab demonstrates the ease with which you can locate information, including what you might consider personal information, on the Internet. Often, this information becomes available through questionable practices by businesses, such as selling (or not protecting) user information. Suppose you are a small-business owner and you need to find current information about customers in an outdated database. You would want to use various tools available on the Internet that could help you find updated or current information about these customers.



Lab 2-2: Searching for personal information on the Internet

In this lab, you will search for and view information on the Internet.

1. Open your browser.
2. **Browser:** In the Address field, enter **people.yahoo.com** to access Yahoo! People Search, as shown in Figure 2-4.

Figure 2-4: Yahoo! People Search

3. Enter your first and last names in the US Phone And Address Search text area. To narrow the search, you can enter a city and state. Click the **Phone And Address Search** button. If you are prompted that information sent over the Internet might be seen by other users, select **In The Future, Do Not Show This Message**, then click **Yes**.

4. Record any information you located about yourself in the space provided.

5. Try searching for information on someone else. Record the information in the space provided.

Note: You can also use a number of other free sites, including Google.com, Switchboard.com and Bigfoot.com, to locate information on individuals. For more specific information, several fee-based sites exist, such as LexisNexis (www.lexis.com/).

6. **If Time Permits:** Go to **www.ask.com** and search for **Internet Privacy Law**.

7. Navigate through some of the links, and look for current and relevant information.

Marketing and databases

Marketers can track almost anything. Do you travel often? Airlines will send you frequent flier deals. Do you own a personal computer? Circulars from computer warehouses will appear in your mailbox. Are you a member of a music club? You will receive offers to join video clubs, book clubs and other music clubs. Every vendor is vying for your discretionary income, and technology enables merchants to track, index and analyze your purchases.

Given the enormous appetite of marketers and the equally enormous databases that hold consumer information, privacy is rapidly disappearing. As soon as you fill out a product registration card, the vendor has learned some information about you, and can then use that information digitally. Firms that analyze purchase data sometimes sell such information.

OBJECTIVE:
3.2.4: Questionable
practices

Some consumers might excuse the data analysis if it were used only for targeted advertising. Someone who recently bought a Bose audio system could be reasonably assumed to have an interest in the latest Harman Kardon digital receiver. But customers will probably perceive a misuse of data if they are suddenly swamped with sales pitches from BMW or Condé Nast as a result of their Bose purchases. However, targeted advertising works this way in some cases. Unrelated items are somehow linked together, leaving the consumer with a mailbox full of junk, either paper or digital. Concerns about identity theft and other privacy issues have caused many consumers to view the practice of selling contact information as ethically questionable. Most reputable businesses will either ask customers' permission before sharing private information or will use the fact that the business does not share its customer information as a selling point.

Misuse of sensitive information

In 1997, the U.S. Social Security Administration (SSA) decided to allow citizens to access their retirement projections on the Web. The user had only to enter his or her Social Security number and birth date. However, the SSA soon discovered that malicious individuals who had access to both pieces of information could get other people's projections. Many such individuals were caught accessing other accounts. The SSA promptly closed the site.

As a service to Social Security participants, the SSA site was a good idea. However, the required information to access the site was not difficult enough to deter imposters. Anyone with someone else's Social Security number and date of birth could masquerade as that person. How did malicious individuals get the Social Security numbers? From several possible sources: access to Internal Revenue Service (IRS) documents, registration information, and even underground Web sites that trade in pirated Social Security numbers.

A new law intended to protect children from pornography and privacy violations on the Internet was part of a recent United States \$500 billion spending bill. The Commission on Online Child Protection passed the Children's Online Privacy Protection Act (COPPA), effective April 21, 2000. The privacy measures prevent Web sites from collecting information about children 13 years of age and younger without a parent's verifiable permission. The law also requires Web site operators to block access by anyone 17 or younger to materials deemed "harmful to minors" by requiring all users to provide a credit card or personal ID number. You can view the text of COPPA at www.ftc.gov/opa/2000/04/coppa1.htm.

As is often the case, however, there have been unseen consequences. The exact scope of the act continues to be defined through ongoing court cases, with some providers left wondering what information and images they can or cannot supply. Some organizations are concerned about their liability in providing information, for which a minor might have a valid need for access for research projects — for example, medical reference information or works of art. The Act has also helped to drive the development and distribution of applications that screen and block access to inappropriate Web sites. These applications help to protect organizations that provide free public Internet access, such as libraries, from prosecution.

Jurisdiction and Electronic Publishing

OBJECTIVE:
3.2.1: Legal and governmental aspects

Jurisdictional issues are another legal area for EP. Some estimates contend that U.S.-based corporations are losing \$60 billion annually because of intellectual property infringement. As a result, the U.S. government is trying to achieve a global standard for intellectual property law.

As computer crime proliferates, computer thieves disperse around the globe. To cause harm to a computer, the perpetrator need not be physically near the target. On the Internet, criminals can attack U.S. targets from outside the country. The task of catching these thieves is often thwarted by international borders. Laws are territorial; they can be applied only within the jurisdiction of the body that issued them.

The Web uses Uniform Resource Locator (URL) addresses and Hypertext Transfer Protocol (HTTP) to link computers from many countries, with no regard for national or international boundaries. The same advancements in telecommunications have allowed information to be shared worldwide. This sharing creates a problem because of different intellectual property laws. For example, users in the United States can access

information in other sovereign countries that, if obtained in the United States, would violate intellectual property rights. These foreign sites often provide the same information at a lower price, so the U.S. user would naturally be attracted to them. Jurisdictional issues are difficult to resolve among the various states, and more difficult across international borders.

cracker

A person who locates and exploits a vulnerability in a system in order to do harm.

In some celebrated cases about **crackers** breaking into commercial and government computers, the crackers were coming in from Europe. U.S. authorities could monitor their activities but could not apprehend them because U.S. jurisdiction did not extend to the European countries. Finally, the crackers were apprehended (with the cooperation of U.S. authorities) in their home countries, and stood trial on the grounds of conducting unwarranted and malicious espionage on foreign soil.

Internet jurisdictional issues raise interesting problems. For example, gambling in most U.S. states is illegal unless conducted on American Indian-owned lands or on a riverboat. Yet dozens of online gambling sites are available. Are these legal? The U.S. Congress is considering two bills that would outlaw online gambling in the United States. In traditional commerce (even over the phone), both parties have some contact (physical or verbal) before a transaction is completed. Most electronic commerce scenarios do not offer this contact. If anything is wrong with the goods or services exchanged over the Internet, either of the parties can be sued.

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." How do these jurisdictional issues work on the Internet, where the participating parties may never have physical contact? Interestingly, the courts have held that physical presence is not a prerequisite for jurisdiction. That is, under particular circumstances, Internet presence alone can be sufficient to grant jurisdiction over a non-resident.

Several cases have established jurisdictional precedent, including the following:

- In *State of Minnesota vs. Granite Gate Resorts*, the state attorney general in Minnesota, where gambling is illegal, successfully sued Granite Gate Resorts, a sports betting service contracting out of Nevada.
- A Connecticut company successfully sued a Massachusetts company in Connecticut for using an Internet domain name that it claimed infringed on its trademark.

However, the cost of conducting electronic commerce should not include lawsuits. Following are some methods for protecting a site against lawsuits from other states.

- Do not advertise that products are available nationwide if some jurisdictions could be expected to consider them illegal. In *State of Minnesota vs. Granite Gate Resorts*, if the online betting page had carried a disclaimer stating "Not valid in Minnesota" and the company had attempted to exclude Minnesota residents, the state's cause for action would have been diminished.
- Keep "interactivity" to a minimum. Some courts have found that when a site includes a toll-free telephone number, which presumably encourages contact (or interactivity) from out of state, jurisdictional precedence applies.

Jurisdictional restrictions do not protect patents. Under international laws, a patent must be secured in every country in which the patent holder intends to do business. As mentioned earlier, WIPO attempts to promote technology sharing among member

countries. Included in the treaties administered by WIPO are the Berne Treaty and the Paris Convention, both of which are multinational agreements governing the management of intellectual property.

The following lab introduces some potential issues you might encounter as you move from selling in one country or geographical area into international sales. It also introduces a Web site that can help you to localize your Web site. Suppose you decide to begin selling your business products overseas, using your e-commerce site to take orders. You need to understand the issues relating to localizing your Web site to make it accessible to your customers, as well as legal and regulatory information.



Lab 2-3: Selling Habitat For Humanity products in Europe

In this lab, you will explore the various issues involved in selling your e-commerce business's products overseas.

The Habitat For Humanity Gift Shop would like to sell its products in France, the United Kingdom, Germany and Italy. If this project moves forward, the Web site will need to be translated into French, German and Italian. You will also need to determine how you will accept payment from overseas customers, and how the Habitat For Humanity Gift Shop will handle customs and import restrictions.

1. In your browser, enter ***www.welocalize.com***, then select the appropriate language (see the Welocalize Web site in Figure 2-5). Review the information. In the space provided, list target languages supported.

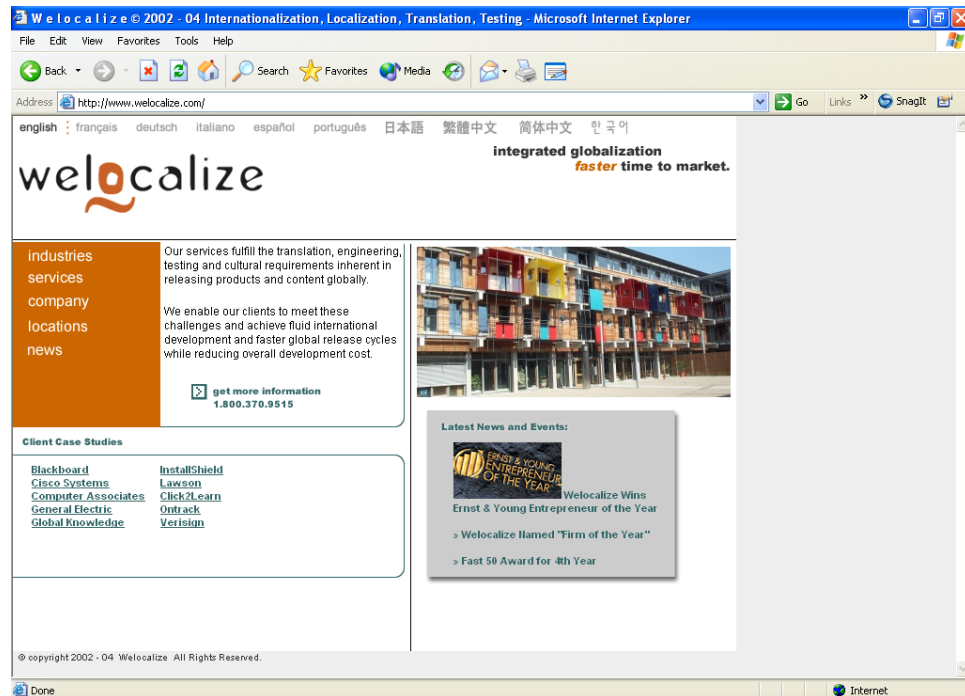


Figure 2-5: Welocalize Web site

2. Visit **<http://babelfish.altavista.com/>** to access translation features. Compare this site with the Welocalize site. In the space provided, identify the company providing the best value and explain your choice.

3. Because Habitat For Humanity has previously sold products only in the United States, it has offered standard shipping times and prices. Discuss how you would adjust these times and prices for European customers.
4. You need to learn about trade policies and restrictions in your new target markets. In your browser, enter **http://europa.eu.int/comm/trade/index_en.htm** for information about trade with the European Union (EU). See Figure 2-6.



Figure 2-6: EU External Trade policy information

5. What payment options do you plan to offer international customers? Must they pay in U.S. dollars, or will you accept foreign currencies? In your browser, enter <http://quote.yahoo.com/m3> to view a free currency conversion service offered by Yahoo! See Figure 2-7.

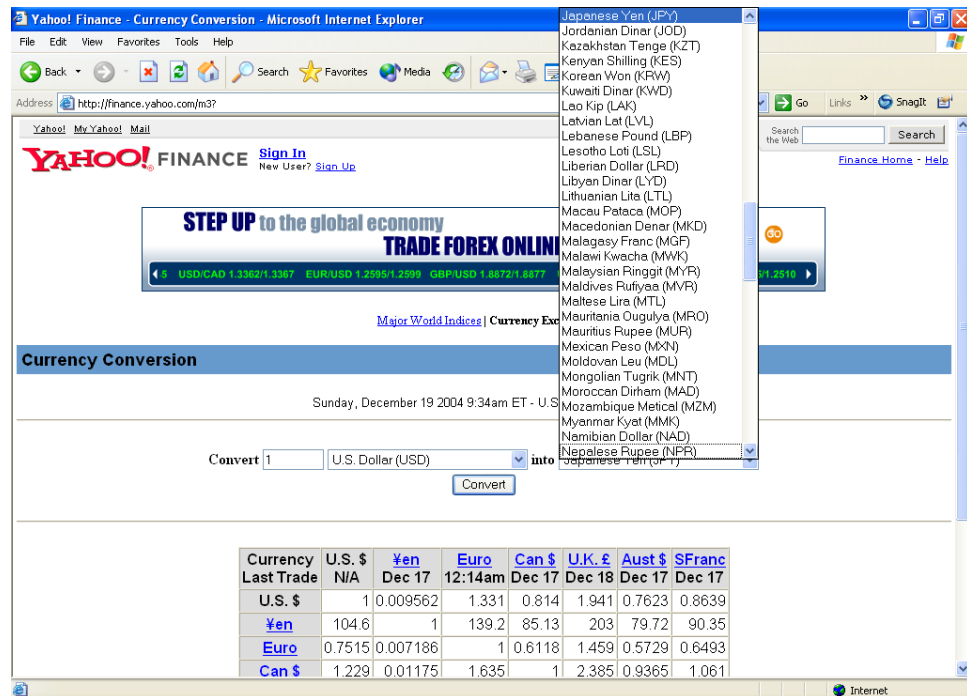


Figure 2-7: Yahoo! Currency Conversion site

In this lab, you examined various issues that confront business owners hoping to expand their e-commerce presence internationally. You visited Web translation sites, considered import restrictions and explored currency conversion considerations for your business.

Internet Taxation

OBJECTIVE:
3.2.3: E-commerce
taxation

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.

In 1998, the Commerce Committee of the U.S. House of Representatives passed, and the president signed, the Internet Tax Freedom Act (ITFA), which imposed a three-year moratorium on new Internet taxation. As part of the Act, Congress established the Advisory Commission on Electronic Commerce to address the issues related to Internet taxation. The Congressionally appointed members of the Commission include the following:

- Three representatives from the federal government — the secretary of commerce, the secretary of the treasury, and the U.S. trade representative (or delegates).
- Eight representatives from state and local governments (including at least one representative from a state or local government that does not impose a sales tax and one from a state that does not impose an income tax).
- Eight representatives of the electronic commerce industry (including small business), telecommunications carriers, local retail businesses and consumer groups.

The Advisory Commission conducted a thorough study of federal, state, local and international taxation and tariff treatment of transactions using the Internet and Internet access, and other comparable intrastate, interstate or international sales activities. The Commission was assigned to produce an important policy initiative.

The ITFA initially placed a three-year moratorium, due to expire October 2001, on various taxes on Internet access and e-commerce so the Commission would have time to review the issues before making recommendations.

Central to the examination of these issues is the fact that the Internet is not constrained by geographical boundaries and by its very nature violates geographical boundaries that hinder other forms of commerce. The Commission analyzed the implications of personal privacy on the taxation of Internet purchases.

Some of the key issues, at least with certain states, concern their inability to collect sales tax revenue from Web businesses. Businesses collect sales tax only from customers in states where they have physical presence. Many state officials are worried that as electronic commerce grows, local sales tax revenue will decline and basic services will be hurt. Many states have made efforts to limit the scope of the ITFA or to find ways around its imposed moratorium.

The Advisory Commission on Electronic Commerce finished its work as of April 2000 and was dissolved. Its report recommended to Congress that the Internet tax moratorium be extended for five more years, until 2006. In 2000, the U.S. House of Representatives approved the recommendation. Final approval of the extension was announced in June 2001. During the extension period, lawmakers will develop a simplified tax plan. The commission's report can be found at www.ecommercecommission.org.

The act was further amended in 2004 through the Internet Tax Nondiscrimination Act, extending the moratorium through 2007 with recommendations to make the moratorium permanent.

Bit tax

bit tax

A tax based on data transfer by volume or volume over time.

This new area of taxation has spawned the term **bit tax**. A bit tax is any tax on electronic commerce expressly imposed on or measured by the volume of digital information transmitted electronically, or by the volume of digital information per unit of time transmitted electronically. It does not include taxes on the provision of telecommunications services. A bit tax proposal recommendation issued by the United Nations in 1999 immediately generated published articles from both advocates and opponents of the proposal. A major complaint is one that surfaces any time a recommendation is made to tax Internet commercial activities — that it will stifle development and slow the growth of business.

International Tax and the Internet

OBJECTIVE:
3.2.3: E-commerce taxation

The Internet Tax Freedom Act calls for a declaration that the Internet should be free of foreign tariffs, trade barriers and other restrictions.

It describes the view of the U.S. Congress that the president should seek bilateral, regional and multilateral agreements to remove barriers to global electronic commerce through the World Trade Organization, the Organization for Economic Cooperation and Development, the Trans-Atlantic Economic Partnership, the Asia Pacific Economic Cooperation forum, the Free Trade Area of the Americas, the North American Free Trade Agreement (NAFTA) and other appropriate venues. This ongoing effort continues to be supported by the U.S. Congress.

Customs and E-Commerce

OBJECTIVE:
3.2.5: International trade laws

A growing concern of e-commerce is the importance of customs. In many cases, Web shoppers can now purchase products from anyone and have the products shipped directly to them. The traditional process of importing and exporting goods has been largely regulated by customs services. These services help ensure legal compliance, and protect goods entering and leaving a country.

Intentional illegal importing and exporting will always occur, but its ramifications are beyond the scope of this course. Instead, we will explore unintentional illegal activity.

Many regulations and restrictions for importing and exporting can be easily overlooked in the e-commerce business. An e-commerce site could be offering goods that may have restrictions on exporting from the state of origin or restrictions at the state of entry. This discussion will not include obviously illegal items.

For example, an e-commerce site that sells technical books is required to have special documentation and additional taxes when shipping to Canada. If the e-commerce retailer is not aware of these restrictions, legal difficulties could result.

A software company that sells an application with high encryption capabilities could also be violating import/export and customs laws.

The following sites contain information about various aspects of importing and exporting for different countries:

- Imex Exchange (www.imex.com)
- Federation of International Trade Associations (www.fita.org)
- Asia-Pacific Economic Cooperation (www.apecsec.org.sg)
- World Customs Organization (www.wcoomd.org)
- United States Customs and Border Protection (www.customs.ustreas.gov)

Tariffs and E-Commerce

OBJECTIVE:
3.2.3: E-commerce
taxation

In shipping goods across international borders, each jurisdiction has its own set of taxes called tariffs. Tariffs can be very difficult to determine. Online services are available to help international marketers know and understand them. The following sites provide some of this information:

- FedEx Trade Networks (World Tariff) (www.worldtariff.com)
- USAExportImport (www.usaexportimport.com)

World Tariff is a subscription-based service requiring a one-year subscription. Tariffic is based on a pay-per-trade model and offers a free demonstration. In the pay-per-trade model, you are charged per trade transaction, facilitated by World Tariff.

USAExportImport is a B2B portal that also operates a tariff subscription-based service. The service also provides applications not only to assist with tariff calculations but also to help in preparing items for shipment.

You can view customs value information, review remedy investigations and download official Harmonized Tariff Schedule (HTS) information from the United States International Trade Commission (USITC) at www.usitc.gov. Information is provided by the USITC at no charge.

Tariffs and trade practices and regulations are sometimes the cause of disputes. The World Trade Organization (WTO) has provided an international forum for resolving these disputes since its foundation. The WTO grew out of the General Agreement on Tariffs and Trade (GATT), replacing that body in 1995. Despite an announcement in 2002 that the WTO has plans to disband and reintegrate into a new organization, it continues to be the primary body resolving complaints about international trade practices with no obvious signs of ceasing or even reducing its operations.

International tariff information can be confusing, but is critical to selling internationally. In addition, tariffs are somewhat volatile. Keeping up with tariff regulations without some assistance is nearly impossible. The following lab is designed to provide an introduction to some of the information about tariffs that is readily available on the Internet. Suppose you were planning to sell products in a neighboring country, using your e-commerce site. How would you know about the tax rates on imported and exported goods? You could use the U.S. International Trade Commission Web site to research this information for free. (Most tariff services charge fees for their assistance.)



Lab 2-4: Researching tariff data on the Internet

In this lab, you will visit the United States International Trade Commission (USITC) Web site, a free service, and research customs values and a sample tariff code.

1. In your browser, enter **http://dataweb.usitc.gov/scripts/tariff_current.asp** to access tariff and trade data on the USITC Web site, as shown in Figure 2-8.

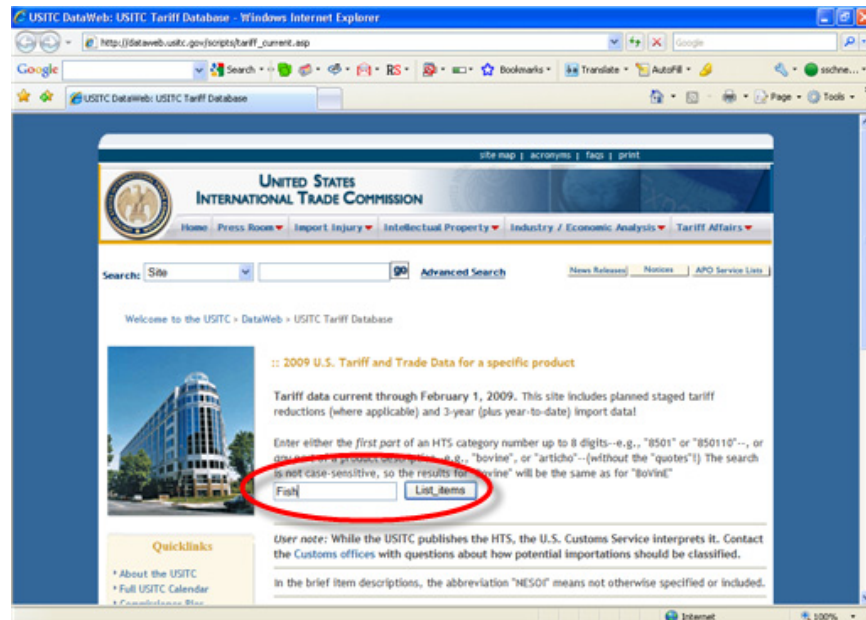


Figure 2-8: USITC tariff and trade data

2. Type ***Fish*** and click the **List Items** button, as shown in the previous figure.
3. Select **03011000 — Live Ornamental Fish — 01/01/1990** and click the **Detail** button.
4. Review the information provided (Figure 2-9).



Figure 2-9: Tariff and trade data for specific products

5. Click the **Imports By Source Country** link, shown circled in the previous figure.
6. Review the detailed customs value information, as shown in Figure 2-10.

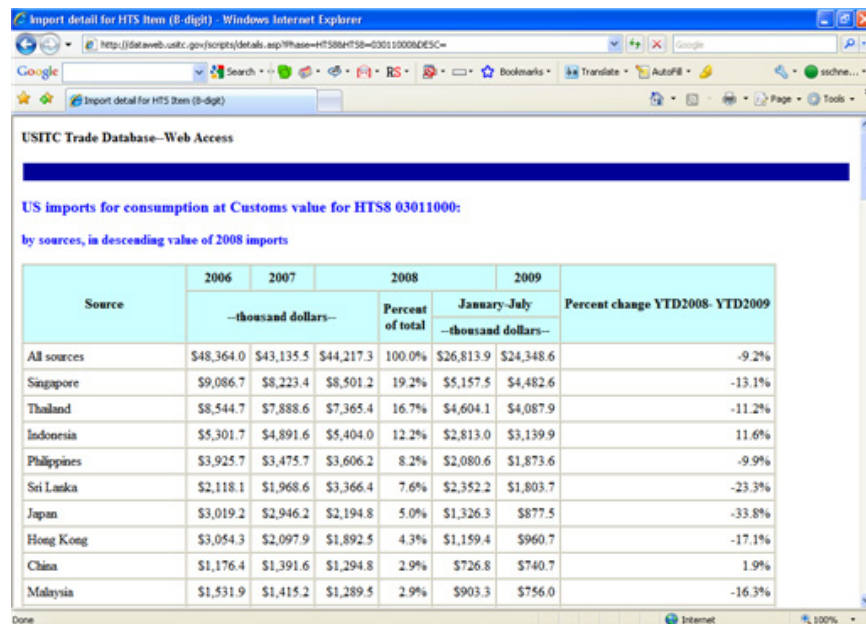


Figure 2-10: Trade database import values

7. **If Time Permits:** Navigate to www.usitc.gov/tata/hts/index.htm and review some of the tools provided by the USITC.

In this lab, you visited the USITC Web site and viewed U.S. import tariff information.

Protecting a Brand

OBJECTIVE:
3.1.3: Brands and trademarks

After a brand has been established, it becomes a potential victim for others to unfairly capitalize on its success. Some analysts estimate that more than U.S. \$20 billion are lost each year in e-commerce. These losses occur in the form of counterfeiting, unauthorized use of logos, domain name parodies, misinformation, rumors and impostors.

Common places for misinformation and rumors are electronic bulletin boards and chat rooms. In these places, companies can be slandered with anonymity and the reputations of companies can be damaged. For example, during an 18-month period beginning in 1998, Callaway Golf, which manufactures golf clubs, was experiencing false and damaging posts on a Yahoo! message board. Through a series of legal maneuvers, the source was eventually tracked to a competitor; but as a result, Callaway's stock price fell more than 50 percent during the period.

Some multinational companies have employees specifically assigned to surf the Web and find those who are defacing or illegally using their brand. Other companies offer employees rewards if they report any infringement they encounter. For most companies, awareness of brand infringement comes from employees who report the incident because they are proud of their company and the brand they have helped to create.

Another possible solution is to outsource brand infringement trackers. Companies offering assistance in this area include the following:

- GenuOne (part of www.opsecsecurity.com)
- eWatch (www.ewatch.com)
- Cyveillance (www.cyveillance.com)

A company can also lose exclusive use of a brand if it becomes too popular and too commonplace. Companies must try to ensure that product names are used to describe a specific brand item, not a product category. Otherwise, the brand can fall into the public domain, leaving the original owner with no control over the name or its use. Companies with brands that are considered household names often monitor print and electronic media to ensure that their brand names are used properly. A portion of the advertising budget for these products is dedicated to continuing education, reminding authors and other information producers of the difference between branded product names and generic descriptions.

OBJECTIVE:
3.2.4: Questionable practices

spyware

A software application secretly placed on a user's system to gather information and relay it to outside parties, usually for advertising purposes.

spam

Unsolicited and unwanted e-mail messages; the online equivalent of junk mail.

Ethical Business Practices

In addition to concerns about legal requirements, e-commerce businesses must also seriously consider the issue of ethical business practices, which is often difficult to define. The fact that an activity is not specifically illegal does not necessarily imply that it is right. By their nature, ethical business practices are sometimes harder to define as to what should or should not be allowed. Questionable practices include selling customer information without the customer's knowledge or permission, spamming and using **spyware**.

E-commerce is often an arena for new types of unethical practices, though many of these have their roots in traditional business. Some businesses see the practice of selling customer information as a natural extension of the practice of selling customer mailing lists by traditional businesses. **Spam** is seen as the next generation of junk mailing, and unwanted catalogs and product flyers often fill consumers' mailboxes.

blog

A collection of personal thoughts posted on a public Web site. Blogging is the act of adding entries to a blog.

The electronic community has proven very resourceful in combating some types of unethical practices. Questionable businesses can expect to find themselves identified on Web sites and Web logs (or **blogs**) throughout the Internet. Spammers who use valid e-mail return addresses find their own mailbox flooded with unwanted responses. Several products and Web-based services will scan your computer for signs of spyware with applications available to help block future infestations.

Governmental agencies are also taking part in the fight against some of these practices. One draft regulation in the U.S. Congress would require all businesses to provide a valid "From" address on all e-mail correspondence, making it easy to identify and respond to the source. Reviews of business practices are ongoing; one issue of special interest is whether spyware, which is already generally considered unethical, should be made illegal.

Reputation is key in any business. Because of the speed of communication and ease of reaching a wide audience, it is often even more important to avoid not only unethical business practices themselves but even the appearance of unethical practices.

Case Study

Books in a Bind

All Things Text is an on-demand publishing house that specializes in e-books and short-run traditional soft-cover print books. Contact with customers is through the Internet only. The business maintains a database of print-ready works and pays the author a per-sale royalty. The author retains ownership of the works.

Tony is the owner and only full-time employee of All Things Text. He is concerned about protecting the intellectual property of all the authors, but also wants to ensure that he does not leave himself open to liability suits or inadvertently violate copyright restrictions. Tony develops a standard author's contract to be used by All Things Text. By signing this contract, the author grants Tony's business the right to publish his or her work for sale, the right to publish a small number of copies for promotional purposes, and the right to quote up to one page of text for promotional purposes. The number of copies that can be printed for promotional purposes is not specified.

* * *

As a class, discuss the following issues with regard to All Things Text.

- Who is responsible for protecting the integrity of the copyright of materials in the business content database?
- Consider a possible situation. A customer purchases an e-book. The book does not have any copy protection notice and the customer uploads it to a public Web site for distribution. What entities can be held at fault for violating the author's copyright and why?
- What is the potential effect if Tony chooses to sell his customer list to other book distributors? Consider both legal and customer relations issues.
- Who is responsible for registering international copyrights for stored content?
- How can Tony use the materials in the content database for advertising and promotion without first getting additional permission from the author?

Lesson Summary



Application project

The digital revolution has created many new legal issues, most of which have yet to be formally addressed. With the ease of digital reproduction, many laws are being violated. In many cases, these violations are committed out of ignorance and a lack of understanding about the rights of others and their work.

Have you or has someone you know had ownership rights infringed upon or violated by the use of some electronic means? Do you fear that something you own may be in jeopardy of infringement? What steps, if any, could you take to prevent such infringement. Visit some of the sites mentioned in this lesson to further research information about copyright violations.



Skills review

In this lesson, you learned that Internet law is a growing area. You saw examples of how the United States and other countries are addressing Internet-based business regulations and controls. You also considered taxation issues and the possible consequences of violating customs laws. In addition, you learned about establishing and protecting a brand, you identified legal aspects of e-commerce and you identified intellectual property and learned how to protect it. Finally, you learned how to avoid questionable business practices, and identified applicable international trade laws.

Now that you have completed this lesson, you should be able to:

- ✓ 3.1.3: Establish and protect a brand (includes trademark registration).
 - ✓ 3.2.1: Identify legal and governmental aspects of e-commerce (includes legal precedent, liability concepts, international issues, ethics, jurisdiction, copyright, patents).
 - ✓ 3.2.2: Identify and protect intellectual property.
 - ✓ 3.2.3: Identify e-commerce taxation issues.
 - ✓ 3.2.4: Avoid questionable practices (includes spam, spyware, selling user information).
 - ✓ 3.2.5: Identify international trade laws.
-

Lesson 2 Review

1. What are the two branches of intellectual property and what do they cover?

2. How does copyright law apply to material published on the Internet?

3. In what way does trademark law apply to the Internet and electronic publishing in the United States?

4. In what way does patent law apply to software, including applications distributed through the Internet?

5. In what way can an online provider be exempted from liability for copyright infringement?

6. What is the current legal situation in the United States regarding taxes being levied on interstate Internet purchases?

7. In the United States, what is the requirement for a state court to have jurisdiction over a non-resident party?
