

# Intellectual property rights under ICT



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under the provisions of the Intellectual Property Act.

## What is caching?

Caching is a high-speed process of storage mechanism in the user's computer and on servers (peripherals) when the user surfs the web. From this cache memory, browser can retrieve the visited web pages quickly without fetching the same from the original website.

Like in browsing, storing of contents of web pages in caching may be unauthorised copying within the meaning of the Act.

## What is linking?

Linking of web pages happen when the user surfing on the web-page and clicking. It will link with another location on the website or a location on another website having similar data and connection automati-

cally. Hyper Linking allows one website to link with another webpage and to provide access to the same. There are two types of linking. They are surface-linking and deep linking. Surface-linking links home (main) page of one website with home page of another website. Under deep linking, browser will direct to an internal part of a certain webpage bypassing the home page of the web user, avoiding information of the Home page and advertisements of the web site and so on.

As a result, the subsequent web will lose advertisers who contribute to develop the same site, avoid opportunities to obtain consent to disclaim from the web user and finally quality of the same website would be endangered. This may be a violation of Intellectual Property Rights relating to 'unfair competition' and 'undisclosed information'.

## What is framing?

When a user visits a website that website fetches content from another into a window and the same content appears on the original website. This is called 'framing'.

The user may be confused about the website he logs onto first

and might not find out the details on different websites especially by framing.

In framing object code of the original web page will be reproduced and added to create the new frame, and if the author of website did not create or permit to create such frames it may be unauthorised copying and causing unfair competition and undisclosed information, infringement of copyright, rights relating to unfair competition and undisclosed information.

During transmitting materials on the web, the server reproduces materials in the file sharing system. Considering the provisions under the Act, this may be an unauthorised copy.

There are no provisions relating to liability of service providers in Sri Lankan copyright law unlike in some other jurisdictions.

Further, it could be argued that even though the service provider would not be liable for direct infringement of copyright, he would be liable for indirect infringement, if he knew or should have known that he facilitated the infringement of copyright materials.

Internet allows linking and framing under normal circumstances unless prohibited



expressly. It is not easy to prevent users from downloading and copying creators' web pages and contents by browsing the web pages.

Persons may be not liable for copyright violation or violations of other rights like unfair competition and undisclosed information if there is no indication on the website itself that the same contents are protected under

copyright or clear warning expressing effect of prohibition against unauthorised downloading.

## What is spamming?

When a computer operator downloads web pages, bundles of unknown advertisements could be displayed perhaps without the knowledge of the creator of the web page or service

provider. This type of advertising would amount to unfair competition, compared to normal advertising in legitimate manner spending bearing heavy cost to web page owners.

## Junk mail

Messages (advertisements) that are not really wanted by the person. However, the user may log on to the

webpage and later-e-trailer will send similar mail to the recipient. This type of advertising also may be unfair competition compared to normal advertising in the legitimate manner on web pages.

## What is mouse trapping?

Introducing a computer program into a computer where the user will not be able to move the mouse to enter from one web page to another. Until the user moves to another web page, advertisers will advertise their products on the screen sometimes even without the user's consent. This is also an unfair competition.

## Sniffing and cookies

Sending cookies to the recipient of the web page the sender will be able to disclose undisclosed information of the recipient. This may be a violation of Intellectual Property Rights of the recipient.

## What is phishing?

Phishing is an attempt to acquire sensitive information criminally and fraudulently, acquiring of user name, password and details of credit card.

Phishing is carried out by e-mail or other messages usually directing the user of the computer to enter data on website. This will be a violation of rights relating to undisclosed information under the Act. This may be an offence under section 4 of the Computer Crime Act in Sri Lanka as well.

To gain access to a website, the web user has to enter the web address through a browser (program to view a formatted web document) and that brings up the page requested and displayed on the screen.

Whenever a user opens a web page, his computer will operate by temporarily storing (temporary copying) the contents of that page in its Random Access Memory (RAM) automatically (facilitates browsing) to display the page on the screen.

If this is an unauthorised copying, it may be an infringement of copyright and other rights relating to unfair competition and undisclosed information since a RAM copy would amount to a copy under the meaning of the Intellectual Property Act.

Downloading of licensed images from the Internet, clip-art provided with software and free images of the internet will not be a violation of copyright. Taking images from a third party and creating a new image may be a violation of copyright.

Further, if at the time of browsing of such webpage, it is displayed on the computer screen without authorization of the owner of copyright it would amount to an act of communication to the public and a violation of owner's economic rights.

## Disk to disk copy

Direct copying may come