



# Enforcing Copyright

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# Copyright law is fairly simple



- Copying a protected work is unlawful.
- Creative industries are important
  - Our creative industries are worth more than £7 billion to the UK economy and it's important to protect them from online criminal enterprises (from GDP estimated at £2.8 trillion)
- But statistics show that copying takes place at a significant level

## But can it be enforced?

- A question that does not seem to have an answer.
- I'll mention a range of approaches that have been tried in the UK
- Although none have been very successful



# Blocking orders



- Possibly the most effective form of remedy
- More than 500 websites have been affected by such orders
- They are made against major ISPs
- Requiring them to block access to specified IP addresses.
- But addresses can change

## Those who can ...

- Do
- Those who can't teach
- Those who can't teach administrate
- The problem with blocking orders is that those people who understand Internet technology will find a way around them.
- Orders may be of limited effect



# Other options

- Three strikes and your' out
- From US Baseball
- The notion was that getting caught infringing copyright 3 times would result in expulsion from the Internet.
- But .....



# There are always “Buts”



- Who is to blame?
- In a house a number of people will have Internet access.
- Is it reasonable to deny all members of a family access because of one (unidentifiable) infringer?

## Continuing the “buts”

- And in the EU Internet access is being regarded as a fundamental human right
- There are also questions about the accuracy of technologies used to identify infringers.





# Information Society Service Provider Liability



- Should ISSPs be liable for conduct facilitated by their services?
- Some providers such as Google and eBay are very profitable.
- The European E-Commerce Directive provides some immunities from liability and states that there is no general requirement to monitor the activity of users.
- But .....

Not knowing or turning a blind eye?



# eBay



- One of the best known on-line market places.
- Great for bargain purchases
- But also a haven for forgeries
- Does eBay know what its users are doing?
- Should it check more closely?

# The “Barras” market in Glasgow



# You can buy anything



- So long as it is a forgery.
- Stallholders rent their place from the market owner.
- There are reasonably regular police raids.
- But it is always the stallholders who are responsible rather than the owner of the land on which the market is held.
- Should it be different in an Internet context?

## Or Google?



- The company's policies change rapidly
- But you might look at the case of [Interflora v. Marks and Spencer and Google](#)
- My link is to the latest court citation but there have been 16 judgments published. And the case may not be finished yet.
- Good news for lawyers

## What was at issue?

- Google allowed web site owners to bid for the right to use meta tags (descriptors)
- Interflora is the best established network of flower deliver services





☎ 0333 003 3577 | [Order Tracking](#) | [Contact Us](#)

Enter keyword or flower type

Items: 0  
Total: £ 0.00

[Our Ranges](#) | [International Delivery](#) | [Delivery and Collection](#)

**LOWERS >>**  
Monday to Saturday)


**BIRTHDAY FLOWERS >>**  
Celebrate their special day

**DELIVERY WHEN YOU**  
Evenings. Sundays. Ne...

# Surprise flowers

not make someones day  
a hand delivered bouquet

[View our Surprise flowers](#)





# Marks and Spencer

- The well known department store was establishing a flower delivery service.
- It registered Interflora as a Meta tag with Google





- A user of the Google search engine who has carried out a search is presented with a search engine results page or SERP which usually contains three elements. The first is the search box which contains the search term, a word or phrase typed in by the user. The second contains links to websites which appear to the Google search engine to correspond to the search term. These are known as the "natural" or "organic" results of the search and are usually displayed in order of relevance. The third comprises links, referred to as "sponsored links", to websites which are displayed because the operators of those websites have paid for them to appear.

# The end product



h - Windows Internet Explorer provided by Osborne Clarke

o.uk/search?hl=en&q=interflora&meta=

s Help

le ... x BBC NEWS | Science ... Court Hearings - Chan... harrods - Google Search Home

Google Mail more v

Search [Advanced Search](#)  
[Preferences](#)

the web  pages from the UK

Results 1 - 10 of about 1,330

**Interflora are Still Taking Orders For Delivery on Mother's Day!** Sponsored Links

It's not too late! We're still taking orders for Mother's Day

Free Delivery & Cheap Prices From £9.99. Great Value Flowers Delivered

Sp

[M&S Mother's Day f](#)  
Spoil your Mum with a E  
from our Exclusive Colle  
[www.marksandspencer.com](http://www.marksandspencer.com)

s and more on your behalf. Your flowers are expertly  
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## The key issue

- Would consumers be confused?
- The High Court said yes.
- The Court of Appeal was not convinced.
- I am not either



## Some conclusions

- In previous times, copyright infringement necessitated significant investment.
- Think of a book. You could use a photocopier





## But the results ....

- Will be inferior to the original.
- And a few generations of copies would make the end product unintelligible.
- The Internet (and digital technology) is different.
- We can all produce perfect copies on an almost unlimited scale



# Conclusions



- There is a song by JohnnyNash that starts
  - There are more questions than answers  
Pictures in my mind that will not show  
There are more questions than answers  
And the more I find out the less I know
- Very true in this context
- We have an incredibly creative force in the Internet. Few of us could work without it.



## But ....

- There are very significant challenges to traditional notions of copyright.
- Authors do have rights
- Old models are failing and who knows what can replace them?

