SANDEL, LØJE & WALLBERG

Protection of IP Rights in Web platforms

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Types of rights and their creation

Rights	Creation	Proprietor
Trademark	Registration or use	Employer
Patent	Registration	inventor
Design	Registration	Designer/applicant
Copyright	Creation	creator

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Consequenses of publication on a web site

- Publication
  - of the design
  - of the part of the technical invention that can be derived from the appearance
  - of photographs
- Spreading of the visual image and possibly the idea
- Globally
- Towards unknown persons and companies
- At all times

Issues related to Patent-protection

- Publication excludes patentability
- Technical ideas can only be protected through a patent
- Ideas and inventions are not protected by unfair-competition laws
- If an idea is not patented – it may be reproduced by anyone

Issues related to Design - protection

- Publication excludes registration of Design outside EU and USA

- In some countries Designs can only be protected through a registration

- If a Design is not registered it may be very difficult to protect in most countries

Issues related to copyright

- Protected through creation
- May be difficult to prove authorship
- Co-creation
- Copyright protection of industrial design is very uneven geographically
    - USA
    - China
    - Europe

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Dilemmas

- Publicity
- accessibility
- Enhancing benefits for community

- Protection
- Prior engagement
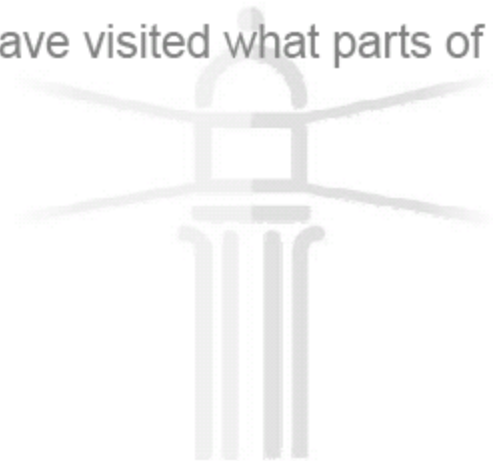- Enhancing personal benefits

Solutions

- Creating a closed community
- "Legal notices"
- Limit accessibility technically
  - Publication in low resolution
  - Limited views
- Hail the idea of "open source"

Solutions

- ## Creating a closed community
  - Pros
    - A good way to protect ideas
    - Will leave footprints about who have visited what parts of the site
  - Cons
    - Will prevent broad publication
    - Will be difficult to administrate

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Solutions

- "Legal notices"
- Pros
  - Easy to administrate
  - Does not prevent broad publication
  - Offers some protection
- Cons
  - Is almost impossible to enforce
  - Difficult to prove if someone copies the idea on to another website without "legal notice"

Solutions

- Limit accessibility technically
  - Publication in low resolution
  - Limited views
- Pros
  - Easy to administrate
  - Does not prevent broad publication
- Cons
  - May still prevent protection
  - Designs may still be exploited without authorisation

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Solutions

- **Hail the idea of "open source"**
- Pros
  - Easy to administrate
  - Does not prevent broad publication
- Cons
  - The appearance of the design may be the core of the business opportunity as opposed to traditional open source products i.e. software
  - The designer has no way of securing work for himself

JOIN

- Platform for
  - Presenting yet un-exploited design s
  - Presenting designers
  - Create design through co-operation
  - Commercialize design ?

Advice

- Publication is
  - good to create awareness
  - Bad for protection of inventions and designs
- Designers are not lawyers
  - They need guidance
- Be aware of what to post
  - Post ideas that would otherwise not have been used
- Use it as promotion – not real business facilitation (?)

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Co-authorship

- Great opportunity to show creativity, but
- Particularly complicated
  - In Denmark co-authors can veto use of the created design, unless having signed an agreement (or accept terms on the web-site)
  - In the US co-authors cannot veto use of the created work
  - Changes made may render a design registration useless

Conclusion

- JOIN is a good idea for promotion
- IP-rights are important but not the final answer
- Enforcing rights will still be expensive even with registered rights
- Designers using it most be educated
- JOIN must make up its mind about its role in the creative process