

Examples Class II

2007

Business Studies 2006

- Business Studies
- Name five different types of intellectual property [5 marks]
- Distinguish between “Deep linking” and “Direct linking”. Can a search engine deep link without infringing the copyright of the original site? [5 marks]
- Why is the use of thumbnails of pictures by a search engine fair use? [5 marks]
- Why are there likely to be only a few dominant search engines? [5 marks]

Name five different types of intellectual property [5 marks]

- Patent
- Copyright
- Trademark
- URL
- Design right
- Registered Design
- Database right
- Trade secret
- Plant breeders rights

Distinguish between “Deep linking” and “Direct linking”.

Can a search engine deep link without infringing the copyright of the original site? [5 marks]

- Deep linking is where one web page links to another site other than through the main front page. Direct linking, is where media or an image from one site is used on another.
- Despite a number of test cases in various jurisdictions (the Paperboy case in Germany, Ticketmaster vs Microsoft in the US; Shetland Times vs Shetland Chronicle in the UK) the legality of deep linking is unclear. Direct linking is likely a breach of copyright.
- Custom and practice would indicate that the use made by search engines of small quotations and deep links is regarded as fair use. The omission of a “noindex “ meta-tag may be regarded as granting implicit permission

Why is the use of thumbnails of pictures by a search engine fair use? [5 marks]

- “Fair use” is a provision in copyright law that permits limited copying, for example short sections in a review, or parody, or for educational or academic work. It only applies to text.
- Although the use of thumbnails of images by a search engine would appear to be in contravention, custom and practice indicates it is a fair use. A recent court case, *Kelly v. Arriba Soft Corporation*, provides and develops the relationship between thumbnails, inline linking and fair use. In the lower District Court case on a motion for summary judgment *Arriba Soft* was found to have violated copyright without a fair use defense in the use of thumbnail pictures and inline linking from Kelly's website in Arriba's image search engine. That decision was appealed and contested by Internet rights activists such as the Electronic Frontier Foundation, who argued that it is clearly covered under fair use. On appeal, the 9th Circuit Court of Appeals found that the thumbnails were fair use and remanded the case to the lower court for trial after issuing a revised opinion on July 7, 2003. The remaining issues were resolved with a default judgment after Arriba Soft had experienced significant financial problems and failed to reach a negotiated settlement.
- Another argument is that by displaying an image on the web page, there is an implied term of use that allows (by normal custom and practice) search and indexing functions. This argument is confirmed since the implied term can be refused by the author by use of a “no-index” tag.

Why are there likely to be only a few dominant search engines? [5 marks]

- For a search engine to be successful it needs users. The users pay either directly or indirectly, for example by responding to the advertising. The more revenue, the more can be spent on improving the search engine, and the more likely a user is to be satisfied. The more users, then more traffic is driven to the searched sites, and so more sites will offer themselves.
- Thus if a user uses a search engine the utility increases not only for this user, but for all other users of the search engine. This “network externality” means that if one search engine becomes dominant, it is likely to pull users from other search engines, since the switching cost is comparatively low, and reinforce its dominant position. However because switching costs are low, the dominant search engine must ensure it retains its superiority, since if another superior engine emerges there is little to prevent users from migrating. Some, such as MSN use Microsoft’s control of the browser and desktop to drive traffic, so far as they are allowed to by the anti-competitive laws, such as setting the default search engine used.