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Introduction

WildWestWeb is a successful business created by three university graduates that has been running for a few years on the Internet. It recently designed its own site, TheStudentBar.com to integrate successful product genres into an engaging virtual environment, grouping graduates and students together in order to exchange information and to keep in touch using chatting software and bulletin board systems.

I have been assigned to analyse the following case scenario of WildWestWeb, and formally report on a selected subset of relevant legal issues which may arise, with a set of prioritised recommendations as to how such problems can be addressed and avoided. The areas I will be focusing on are,

- Data Protection
- Intellectual Property
- Crime and content

I will restate the problems or issues from the scenarios in terms of the legal problems which they pose within the three selected areas, linking these legal issues to the relevant parts of specific acts and statutory instruments and referring to principles established in pertinent and recent cases.

I will also prepare a prioritised action plan for the Managing Director relating to problems and issues in the three selected areas. In addition, I will reference sections of the acts into the appendix.

Part I: Data Protection

Scenario I

Mr X had been selling details of the subscribers to the site on to other agencies without the knowledge of WWW. They are now thinking of doing this themselves.

Issue

Some subscribers have complained that they have been approached by other organisations who appear to have information about them which may have originated from TheStudentBar.

Case Study

British Gas Trading Ltd v The Data Protection Registrar, October 1998.

BGTL was a registered data user with a purpose of direct marketing to individuals and trading in personal information covering the sale, hire, or exchange of personal information.

“The alleged breach of the first principle stemmed from BGTL’s distribution of a leaflet headed “Your Data Protection Rights – the right to choose the information you need” to its customers with their gas bills. The leaflet advised customers that BGTL wished to write to them about its current and future products and services together with those of other “reputable organizations” and to pass on customer information to other companies within its group. Customers who did not wish to receive such information or consent to such disclosure could tear off a coupon and return it to BGTL by freepost.”¹

It was contended that BGTL could not lawfully use customer data (DPA 1998 s.1(b), s.3) because that would be a breach of confidence. Furthermore, Mr X selling the subscribers' personal data without their consent or the consent of the data controller is an offence under Section 55(1), 55(2)(a) of the DPA 1998. If WWW wishes to sell the data as well, they will be charged under the mentioned sections, as well as Section 55(6)²,

“For the purposes of subsection (5), an advertisement indicating that personal data are or may be for sale is an offer to sell the data.”³

1 IP/IT-Update - <http://www.ipit-update.com/ictdp02.htm>

2 David Bainbridge – Introduction To Computer Law (5th ed) – p.496

3 Data Protection Act 1998 s55(6) - <http://www.opsi.gov.uk/acts/acts1998/80029--h.htm#55>

Scenario II

The subscribers are actively exchanging interesting gossip about their old lecturers and colleagues.

Issue

The subscribers can at any point assume they have a right of freedom of speech when discussing topics in their chats or bulletin board system (BBS). However, if they say anything inappropriate, untruthful, or potentially harmful and damaging to the student or lecturer, they could be liable for defamation under the Defamation Act 1996.

The Subscriber has the ability and can either defend himself if he can prove under Section 1(1)(b,c) that he took responsibility for publication and reasonable care towards his publication, or offer to make amends with a qualified offer (s.2(3,4)).

Part II: Intellectual Property

Scenario I

The registered users have the ability and are sharing different types of files, of which include music, graphic, and film files in the website's bulletin board system.

Issue

It may seem harmless, and people may think that sharing such material should be legal, as quoted,

“There is a view, still held by some, that the Internet is equivalent to the public domain and anything available there should be freely copied and used. This view is misguided”⁴

When sharing digital and electronic work, one must note that such work is protected by the Copyright, Designs and Patents Act of 1998 (CDPA 1998). The act states that the owner has the exclusive right to copy his or her work and to issue copies of the work to the public (CDPA s16(1)). In many cases, users often share copyrighted material of which they do not own. Such an act would be an infringement of copyright by copying (CDPA s17(1)).

Sharing adult content is also an important issue to look at. First of all, if the adult material is copyrighted, it may infringe on Section 17(1) of the CDPA 1998, even if part of the film or photographs were taken from it (see s17(4) CDPA 1998). More information will be mentioned regarding adult material in part 3 of the report, “**Crime and content**”.

4 David Bainbridge – Introduction To Computer Law (5th ed) – p.78

Scenario II

One of the previous employees of WildWestWeb (WWW), Mr X, has spent his effort and time developing the site's engine. He now is threatening to launch his own identical site with the same code he used and created in WWW.

Issue

The employee might claim that he is the copyright owner of the code, or at least has certain ownership since he is the author who coded the project. However, Section 11(2) of the CDPA states that the company itself is the copyright owner of the code, since the company had the coder working as an employee to complete tasks the company needed. Should the employee use the same WWW code in order to create his own, without the permission of the owner, in this case WWW; he will be in violation of the CDPA.

One should also consider any further licenses the code might fall under. It is not shown in the project's question, but some companies may stick their code under such licenses as the General Public License (GPL), the MIT license, or Sun's Common Development and Distribution License (CDDL) that allow certain flexibility to use, modify, and reproduce the code.

Scenario III

WildWestWeb wishes to link to other sites that provide up to date news and information.

Issue

In many cases, this situation is called 'hot linking'⁵, where one party links to another party's site and data, consuming the second party's bandwidth and making profit through fame or advertisement. (find a law + permission)

Case Study

Shetland Times Ltd v Dr Jonathan Wills [1997] FSR 604.

The Shetland Times provides news services to the public, and earns its profits through advertising links on its main page. Dr Jonathan Wills created his own website and hot linked to Shetland Time's news articles from within his site, bypassing the main page and all the advertisements. Shetland Times claimed that the actions to Dr Jonathan infringed the copyright of their main page. However, one could counter argue that

“the copyright in the headlines had been infringed by including them in a cable programme service. it was at least arguable that operating a website was operating a cable programme services within section 7(1) of the CDPA.”⁶

One final issue needs notice. Many websites allow linking through such means, or other mechanisms such as RSS Feeds, eg. Slashdot⁷, and hence no law would then be broken.

5 Altlab - <http://altlab.com/hotlinking.html>

6 David Bainbridge – Introduction To Computer Law (5th ed) – p.79

7 Slashdot – <http://slashdot.org>

Scenario IV

General misuse of the forum by the users.

Issue

There is a very high risk that the music and film files being shared by the users breach copyright laws (and possibly more laws too). The WildWestWeb forum administrators have a responsibility to make sure such situations do not happen on the forum, or bring them down to a minimum. Section 24(2) of the CDPA 1998 states if copyright infringement occurs, the WWW administrators are obliged to notify the users in regards of their unlawful activities. Otherwise, if WWW can not prove that they both have certain policies that guard against such illegal activities, and also participate in activities that prevent and stop such activities, it can be charged as a secondary infringer⁸.

Scenario V

Assignment solutions are also being circulated to present students.

Issue

Students may think that they have full ownership of the solutions they write for university assignments. However, similar to Scenario II, The university is the copyright owner of the data under Section 11(2) of the CDPA 1998. The student will need to ask for permission from the university if he wishes to publicly disclose the material otherwise he will be in violation of the CDPA. In such circumstances, the sharing of solutions in whole can be morally wrong because the purpose of the assignments is to educate the student and allow himself to generate his own answers. Such offences could lead to plagiarism and result in severe penalties.

⁸ David Bainbridge – Introduction To Computer Law (5th ed) – p.88

Part III: Crime and content

Scenario I

Looking at this site, I immediately notice that the subscribers are actively sharing adult files.

Issue

The sharing of adult content, photographic, animated, or film, in itself can be an offence classified under the Sexual Offences Act 2003, depending on the content of the material, of which could include indecent photographs of persons under the age of 16 – 17 years (s45(1,2)), or even in extreme cases material that would violate the Protection of Children Act 1978's Section 1(1)(a-d) where a person would take, permit to be taken, distribute, or publish such indecent photographs.

The sharing of adult content can also be in the form of written articles. Section 2(1-7) of the Obscene Publication Acts 1959 & 1964 prohibits the publication of obscene matter, with a penalty of a fine or up to three years imprisonment for any person who violates the act with respect to a computer disk containing pornographic images or information, but some doubt about transmission over a network⁹.

Scenario II

There are rumours about Mr X's honesty and misappropriation of company resources (over ordering / missing stock).

Issue

By law, the Managing Director must first investigate the rumours and find out the truth. In normal circumstances it is the Data Commissioner who investigates the actual data in question, which is all the information related to the stock in our case, however according to Section 31(5)(a-b) of the Data Protection Act 1998 (DPA), the Managing Director has exemption and the ability to act on behalf of the Data Commissioner to check the data in question.

Such a crime is a serious offence, and If Mr X is to be found guilty, he could face a maximum penalty of up to 7 years imprisonment for false accounting, false statements, and misappropriation of resources as stated in the Theft Act of 1968 (ss 17, 19, 20)¹⁰.

9 David Bainbridge – Introduction To Computer Law (5th ed) – p.428

10 David Bainbridge – Introduction To Computer Law (5th ed) – p.426

Action Plan

In this section, I will summarise the actions needed to be done by WWW in order to rectify both the existing problems, and the problems that will be caused by certain actions the company may do. My proposal for an action plan is divided into several parts. I recommend that WildWestWeb fully read and comply with all the parts if they wish to stay in the clear and prosper in what they aim to achieve.

Immediate Actions

Currently, the major issues discussed can be grouped into two sections

Issues that involve criminal activity, theft, defamation, and other illegal activities

The WWW should immediately stop and remove the illegal sharing of material, such as unlicensed or copyrighted music, films, images, as well as any illegal material of which can include indecent images, and pornographic or adult films. All offenders should be immediately notified of their actions and consequences. Should they continue with these actions then the proper authorities must be notified and further actions required.

Issues the company are planning to do that may infringe in copyright, data protection, and other illegal matters

The WWW should think twice about selling details of the subscribers of the site onto other agencies. It is a serious offence. Furthermore, WWW should inform Mr X about the offences he made and to contact the authority with regards to this matter at hand.

Investigation

WWW needs to investigate every possible problem that may arise or has already happened from illegal activities such as the misuse of file sharing, chatting, or information interchange. Every situation that might happen should be investigated in advance, to know of all the problems that may arise, the consequences, and possible solutions for the outcome. Furthermore, every problem that has already happened should be thoroughly and properly investigated in a professional manner.

The Managing Director should also investigate the allegations of Mr X's misappropriation during and after his employment in WWW.

Notification

As mentioned, Mr X needs to be notified of his actions. The authorities need to be notified of any serious illegal activities, especially ones that might threaten the company through secondary infringement.

Most importantly, the subscribers' complaints need to be addressed. The subscribers have a right to know of any misuse of their data, and the must be notified of

- The actions Mr X has done
- The actions WWW is/was planning on doing with the collected data.

Compensation

Due to the extreme seriousness of this issue, and the insufficient details in the question, I assume that the company does have means of protection against theft and unauthorised access, such as hacking. The reason I say so is because of the fact that subscriber information has been sold to third parties without the consent of the subscribers is in violation of the DPA 1998. Consequently, If they are found to be in breach of the DPA, they are liable for hefty penalties from the Information Commissioner. Furthermore, a breach of contract, in this case, the DPA, is all about restitution. However, if WWW could present due diligence that they followed the acts, had appropriate security measures and policies, and prove that the information was stolen by an unauthorised act from an outside person, the penalty will be less severe. They first need to bring an action of theft against the person who stole the data of which is not in titled to, in this case, Mr X.

Modifications

Legal Contracts

WildWestWeb needs end user and employment contracts. The contracts would basically inform the party of the policies and regulations as well as references to the legal documentations that justify and back the regulations. Both the users and the employees will need to agree to the terms in order to use and work on the site respectively.

Moderators

WildWestWeb needs to employ one or more moderators that would monitor the chat room(s) and bulletin board system for any misuse and or breach of contracts. The moderator will be entitled to modify or delete inappropriate messages or shared files that may be illegal, as well as temporarily or permanently ban offenders for their actions.

Appendix A

Data Protection Act

1. - (1) In this Act, unless the context otherwise requires-

"data" means information which-

- (a) is being processed by means of equipment operating automatically in response to instructions given for that purpose,
- (b) is recorded with the intention that it should be processed by means of such equipment,
- (c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, or
- (d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68;

The special purposes.

3. In this Act "the special purposes" means any one or more of the following-

- (a) the purposes of journalism,
- (b) artistic purposes, and
- (c) literary purposes.

31. - (1) Personal data processed for the purposes of discharging functions to which this subsection applies are exempt from the subject information provisions in any case to the extent to which the application of those provisions to the data would be likely to prejudice the proper discharge of those functions.

(5) Personal data processed for the purpose of discharging any function which-

- (a) is conferred by or under any enactment on the Director General of Fair Trading, and
- (b) is designed-

- (i) for protecting members of the public against conduct which may adversely affect their interests by persons carrying on a business,
- (ii) for regulating agreements or conduct which have as their object or effect the prevention, restriction or distortion of competition in connection with any commercial activity, or
- (iii) for regulating conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in a market,

are exempt from the subject information provisions in any case to the extent to which the application of those provisions to the data would be likely to prejudice the proper discharge of that function.

- 55.** - (1) A person must not knowingly or recklessly, without the consent of the data controller-
- (a) obtain or disclose personal data or the information contained in personal data, or
 - (b) procure the disclosure to another person of the information contained in personal data.
- (2) Subsection (1) does not apply to a person who shows-
- (a) that the obtaining, disclosing or procuring-
 - (i) was necessary for the purpose of preventing or detecting crime, or
 - (ii) was required or authorised by or under any enactment, by any rule of law or by the order of a court,
 - (b) that he acted in the reasonable belief that he had in law the right to obtain or disclose the data or information or, as the case may be, to procure the disclosure of the information to the other person,
 - (c) that he acted in the reasonable belief that he would have had the consent of the data controller if the data controller had known of the obtaining, disclosing or procuring and the circumstances of it, or
 - (d) that in the particular circumstances the obtaining, disclosing or procuring was justified as being in the public interest.
- (6) For the purposes of subsection (5), an advertisement indicating that personal data are or may be for sale is an offer to sell the data.

Appendix B

Copyright, Designs and Patents Act 1988

Cable Programmes

7.—(1) In this Part—

"cable programme" means any item included in a cable programme service; and

"cable programme service" means a service which consists wholly or mainly in sending visual images, sounds or other information by means of a telecommunications system, otherwise than by wireless telegraphy, for reception—

(a) at two or more places (whether for simultaneous reception or at different times in response to requests by different users), or

(b) for presentation to members of the public,

and which is not, or so far as it is not, excepted by or under the following provisions of this section.

First Ownership of copyright.

11.—(1) The author of a work is the first owner of any copyright in it, subject to the following provisions.

(2) Where a literary, dramatic, musical or artistic work is made by an employee in the course of his employment, his employer is the first owner of any copyright in the work subject to any agreement to the contrary.

The acts restricted by copyright in a work.

16.—(1) The owner of the copyright in a work has, in accordance with the following provisions of this Chapter, the exclusive right to do the following acts in the United Kingdom—

(a) to copy the work (see section 17);

(b) to issue copies of the work to the public (see section 18);

(c) to perform, show or play the work in public (see section 19);

(d) to broadcast the work or include it in a cable programme service (see section 20);

(e) to make an adaptation of the work or do any of the above in relation to an adaptation (see section 21);

and those acts are referred to in this Part as the "acts restricted by the copyright".

Infringement of copyright by copying

17.—(1) The copying of the work is an act restricted by the copyright in every description of copyright work; and references in this Part to copying and copies shall be construed as follows.

(4) Copying in relation to a film, television broadcast or cable programme includes making a photograph of the whole or any substantial part of any image forming part of the film, broadcast or cable programme.

Secondary infringement: providing means for making infringing copies.

24.—(1) Copyright in a work is infringed by a person who, without the licence of the copyright owner

- (a) makes,
- (b) imports into the United Kingdom,
- (c) possesses in the course of a business, or
- (d) sells or lets for hire, or offers or exposes for sale or hire,

an article specifically designed or adapted for making copies of that work, knowing or having reason to believe that it is to be used to make infringing copies.

(2) Copyright in a work is infringed by a person who without the licence of the copyright owner transmits the work by means of a telecommunications system (otherwise than by broadcasting or inclusion in a cable programme service), knowing or having reason to believe that infringing copies of the work will be made by means of the reception of the transmission in the United Kingdom or elsewhere.

Appendix C

Defamation Act 1996

Responsibility for publication.

1. - (1) In defamation proceedings a person has a defence if he shows that-
 - (a) he was not the author, editor or publisher of the statement complained of,
 - (b) he took reasonable care in relation to its publication, and
 - (c) he did not know, and had no reason to believe, that what he did caused or contributed to the publication of a defamatory statement.

Offer to make amends.

- (3) An offer to make amends-
 - (a) must be in writing,
 - (b) must be expressed to be an offer to make amends under section 2 of the Defamation Act 1996, and
 - (c) must state whether it is a qualified offer and, if so, set out the defamatory meaning in relation to which it is made.
- (4) An offer to make amends under this section is an offer-
 - (a) to make a suitable correction of the statement complained of and a sufficient apology to the aggrieved party,
 - (b) to publish the correction and apology in a manner that is reasonable and practicable in the circumstances, and
 - (c) to pay to the aggrieved party such compensation (if any), and such costs, as may be agreed or determined to be payable.

The fact that the offer is accompanied by an offer to take specific steps does not affect the fact that an offer to make amends under this section is an offer to do all the things mentioned in paragraphs (a) to (c).

Appendix D

Protection of Children Act 1978

Section 1

(1) It is an offence for a person -

- (a) to take, or permit to be taken, or to make any indecent photograph or pseudo-photograph of a child; or
- (b) to distribute or show such indecent photographs or pseudo-photographs; or
- (c) to have in his possession such indecent photographs or pseudo-photographs, with a view to their being distributed or shown by himself or others; or
- (d) to publish or cause to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such indecent photographs or pseudo-photographs, or intends to do so.

Appendix E

Sexual Offences Act 2003

Indecent photographs of children

Section 45

Indecent photographs of persons aged 16 or 17

- (1) The Protection of Children Act 1978 (c. 37) (which makes provision about indecent photographs of persons under 16) is amended as follows.

Appendix F

Obscene Publication Act 1959 & 1964

Prohibition of publication of obscene matter

2. Prohibition of publication of obscene matter

(1) Subject as hereinafter provided, any person who, whether for gain or not, publishes an obscene article [or who has an obscene article for publication for gain (whether gain to himself or gain to another)] shall be liable -

- (a) on summary conviction to a fine not exceeding [the prescribed sum] or to imprisonment for a term not exceeding six months;
- (b) on conviction on indictment to a fine or to imprisonment for a term not exceeding three years or both.

(3) A prosecution . . . for an offence against this section shall not be commenced more than two years after the commission of the offence.

(3A) Proceedings for an offence under this section shall not be instituted except by or with the consent of the Director of Public Prosecutions in any case where the article in question is a moving picture film of a width of not less than sixteen millimetres and the relevant publication or the only other publication which followed or could reasonably have been expected to follow from the relevant publication took place or (as the case may be) was to take place in the course of a [film exhibition]; and in this subsection 'the relevant publication' means -

- (a) in the case of any proceedings under this section for publishing an obscene article, the publication in respect of which the defendant would be charged if the proceedings were brought; and
- (b) in the case of any proceedings under this section for having an obscene article for publication for gain, the publication which, if the proceedings were brought, the defendant would be alleged to have had in contemplation.

(4) A person publishing an article shall not be proceeded against for an offence at common law consisting of the publication of any matter contained or embodied in the article where it is of the essence of the offence that the matter is obscene.

(4A) Without prejudice to subsection (4) above, a person shall not be proceeded against for an offence at common law -

- (a) in respect of a [film exhibition] or anything said or done in the course of a [film exhibition], where it is of the essence of the common law offence that the exhibition or, as the case may be, what was said or done was obscene, indecent, offensive, disgusting or injurious to morality; or
- (b) in respect of an agreement to give a [film exhibition] or to cause anything to

be said or done in the course of such an exhibition where the common law offence consists of conspiring to corrupt public morals or to do any act contrary to public morals or decency.]

(5) A person shall not be convicted of an offence against this section if he proves that he had not examined the article in respect of which he is charged and had no reasonable cause to suspect that it was such that his publication of it would make him liable to be convicted of an offence against this section.

(6) In any proceedings against a person under this section the question whether an article is obscene shall be determined without regard to any publication by another person unless it could reasonably have been expected that the publication by the other person would follow from publication by the person charged.

(7) In this section 'film exhibition' has the same meaning as in the Cinemas Act 1985.

Appendix G

Theft Act of 1968

False Accounting

17. False accounting

(1) Where a person dishonestly, with a view to gain for himself or another or with intent to cause loss to another,-

(a) destroys, defaces, conceals or falsifies any account or any record or document made or required for any accounting purpose; or

(b) in furnishing information for any purpose produces or makes use of any account, or any such record or document as aforesaid, which to his knowledge is or may be misleading, false or deceptive in a material particular; he shall, on conviction on indictment, be liable to imprisonment for a term not exceeding seven years.

(2) For purposes of this section a person who makes or concurs in making in an account or other document an entry which is or may be misleading, false or deceptive in a material particular, or who omits or concurs in omitting a material particular from an account or other document, is to be treated as falsifying the account or document.

False statements by company directors

19. False statements by company directors, etc.

(1) Where an officer of a body corporate or unincorporated association (or person purporting to act as such), with intent to deceive members or creditors of the body corporate or association about its affairs, publishes or concurs in publishing a written statement or account which to his knowledge is or may be misleading, false or deceptive in a material particular, he shall on conviction on indictment be liable to imprisonment for a term not exceeding seven years.

(2) For the purposes of this section a person who has entered into a security for the benefit of a body corporate or association is to be treated as a creditor of it.

(3) Where the affairs of a body corporate or association are managed by its members, this section shall apply to any statement which a member publishes or concurs in publishing in connection with his functions or management as if he were an officer of the body corporate or association.

Suppression, etc., of documents

20. Suppression, etc., of documents

(1) A person who dishonestly, with a view to gain for himself or another or with intent to cause loss to another, destroys, defaces or conceals any valuable security, any will or other testamentary document or any original document of or belonging to, or filed or deposited in, any court of justice or any government department shall on conviction on indictment be liable to imprisonment for a term not exceeding seven years.

(2) A person who dishonestly, with a view to gain for himself or another or with intent to cause loss to another, by any deception procures the execution of a valuable security shall on conviction on indictment be liable to imprisonment for a term not exceeding seven years; and this subsection shall apply in relation to the making, acceptance, endorsement, alteration, cancellation or destruction in whole or in part of a valuable security, and in relation to the signing or sealing of any paper or other material in order that it may be made or converted into, or used or dealt with as, a valuable security, as if that were the execution of a valuable security.

(3) For the purposes of this section 'deception' has the same meaning as in section 15 of this Act, and 'valuable security' means any document creating, transferring, surrendering or releasing any right to, in or over property, or authorising the payment of money or delivery of any property, or evidencing the creation, transfer, surrender or release of any such right, or the payment of money or delivery of any property, or the satisfaction of any obligation.

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