

Caveon Webinar Series:

Protecting Your Tests and Trademarks

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Agenda for Today

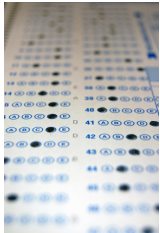
- Scope of threats
- Relationship Building
- Copyright Law
- Trademark Law
- Steps to Remove Content
- Summary






The Real Threat to your Tests


An internet search of free braindump sites was conducted and "at least part of the item bank was found to be compromised as early as 3 weeks after the live release and almost entirely exposed, with great accuracy, after 8 months."





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Intentional Theft and Blatant Infringement

There are 1000's of websites that steal your test questions and sell them for profit.

And, it only gets worse...

These websites are very incestuous.

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The "Braindump"


BRANDUMP FAMILY TREE

ITSOLEXPRT.COM

Actualdump.com	Dumps4exam.com	Freeexamking.com	Questionexam.com
Actualprep.com	Dumps4paper.com	Freeexamking.org	Real exams.me
Actualtest.sme	Dumps4papers.com	Freeexamking.net	Real examscram.biz
Actualtestscram.biz	Dumps4test.com	Papercollection.com	Real examscram.com
Actualtestscram.com	Examocr.am.me	Pass4sure.me	Real examscram.net
Actualtestscram.net	Examnotes.sme	Pass4sureexam.biz	Soft test software.me
Actualtestscram.org	Examquestions.biz	Pass4sureexam.com	Test killer.me
Actualtestscram.net	Examquestions.biz	Pass4sureexam.net	Test king.me
Beitcertified.com	Exam dumps.com	Pass4sureexam.org	Test kingram.biz
Beitcertified.net	Exam sheets.sme	Pass4sureexam.org	Test kingram.com
Braindumps.me	Exam sheetscram.biz	Prepexam.com	Test kingram.net
Braindumpsam.biz	Exam sheetscram.com	Prepexams.biz	Test kingram.org
Braindumpsam.com	Exam sheetscram.net	Prepdumps.com	Test paper.sme
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Dumps4key.com		Voccollect.com



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Not all instances of Copyright Infringement are intentional

- Homework Help Sites
- Project and Freelancers
- Forums
- Auction Sites – eBay, Craigslist
- Facebook








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Excerpt from an actual Terms of Use Agreement

"You are not allowed to and agree not to use any of the solutions, answers, materials or information available on or through the website, whether in whole or part, to cheat. Examples include:

- Submitting any textbook solutions from the Website as your own to any class...
- Any other violation of your instructor's or school's academic honor code..."

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Create Allies and Work as a Team

- Start warm and friendly
- Build relationships with forum owners
- Send a Bystander Letter
- Send Cease and Desist Letter
- Do not seek revenge, stay professional

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Let's Answer the Following...


- What is a copyright?
- What materials can be protected?
- What rights are granted from a copyright?
- How do I get, maintain and protect a copyright?
- How do I enforce my rights?
- What about international considerations?

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Copyrights - Subject Matter


- Author's original expression of idea in tangible medium of expression (e.g., drawings, musical scores, sculptures, software code, etc.).




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Copyrights - Categories of Works


- Broadly interpreted, but specifically includes
 - Literary Works
 - Musical Works
 - Dramatic Works
 - Pictorial, Graphic and Sculptural Works
 - Audio-visual Works



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Copyrights - Categories of Works, cont.


- **Compilation** -- Work formed by selection, assembly, and arrangement of pre-existing materials, facts, or data.
- **Collective Work** -- A work in which a number of contributions, constituting separate and independent works, whether or not in the public domain, are collected.
- **Derivative Work** -- Work based upon one or more pre-existing works.

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Copyrights - Originality


- Copyright subsists only in original works of authorship.
- Originality liberally interpreted -- Work need only originate from author and not copied from another's work.
 - Even if identical work, entitled to copyright protection as long as it was independently created.
 - The work need not have literary or artistic value or quality (subjective standard avoided).




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Copyrights - Subject Matter


- Not Protected:
 - Symbols, designs, and ornamentation (generally things that can be trademarked)
 - Ideas and procedures (generally things that are patentable)
 - Facts (but manner of expression is)
 - Data (but manner of expression is)




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Copyrights - Length

- Life of Author + 70 years
- Critical Information when term of copyright starts
 - When created
 - When published
- Transition Date: 1/1/78



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Copyrights - Rights Granted

- Depends on type of work, but includes:
 - Reproduction Right-- reproduce copyrighted work in virtually all mediums of expression
 - Distribution Right -- distribute reproductions of the work by sale, lease, loan, etc.
 - Performance Right -- right to perform work publicly
 - Display Right -- right to display work publicly



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16



Copyrights - Rights Granted: Limitations

- Fair Use, but not commercial use, for
 - Criticism
 - News reporting
 - Teaching
 - Scholarship
 - Research



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17



Copyrights - Ownership

- General Rule -- Initial copyright vests in creator/author(s)
- One claiming copyright must either be creator/author or owner by assignment
- Owner versus possessor




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18



Copyrights - Ownership (continued)


- Joint Works -- Work created by two or more persons, each having equal, undivided interest in work.
- Work Made for Hire -- The employer or commissioning party is considered the author provided this is made clear to the author.




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Copyrights - Acquisition


- Acquired automatically on creation
- No publication or registration is required, but can be advantageous




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Copyrights - Publication



- Publication: Tangible copies of work sold, leased, given away or otherwise made available to general public
- Publication previously, but no longer, required for obtaining federal copyright
 - Advantages remain though for publishing your work




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Copyrights - Notice of Publication

- Optional
- Place all published works to avoid certain defenses to infringement
- Three elements
 - Symbol "©", "(C)", "COPR." or "COPYRIGHT";
 - Year the work was *first* published; and
 - Name of copyright owner





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Copyrights - Registration

- Optional
- Statutory advantages
 - Presumption of ownership
 - Statutory damages (up to \$30,000 per infringing act)
- Prerequisite to filing suit against alleged infringer
- Recommendation -- Register within 3 months of first publication to preserve all rights




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Copyrights - Registration, cont.

- Filing Requirements
 - Application
 - Deposit
 - Fee
- Examination only considers
 - Originality
 - "Fixed"
 - Proper subject matter




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Copyrights - Enforcement

- Elements of Infringement
 - Establish ownership
 - Proof of Copying
 - Direct v. Indirect Proof
- Indirect Proof of Copying
 - Access
 - Substantial Similarity
 - Sliding Scale

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Copyrights – Enforcement, cont.

- Remedies
 - Injunctions
 - Impounding of Copies
 - \$\$\$\$\$\$\$\$
 - Actual
 - Statutory: 0.75 to 30K per act of infringement, at the discretion of the Court
 - Increased damages (i.e., willful infringement)

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Copyrights – Enforcement, cont.


- Criminal Offenses: becoming more important tool with online piracy
- Indirect Infringement
 - Right and ability to control infringer's acts
 - Receives a financial benefit from the infringement
 - Knowledge is not necessary

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Copyrights - DMCA


- DMCA: provides safe harbors for on-line content providers if they:
 - Store material at request of user;
 - Are merely referring users to online locations where material is located; or
 - Only store the infringing material by system caching.
 - In other words, they are intermediary and store material while serving as conduit.
 - Modifications proposed (but not enacted) in 2011/2012 to give more power to copyright owners.




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Copyrights - Internet


- Eligibility for DMCA
 - Adopt, implement, and inform its subscribers or users of policy for terminating repeat infringers.
 - Must accommodate and not interfere with "standard" measures to identify and protect copyrighted works.
 - Need NOT monitor or affirmatively seek out copyright infringement, except as part of the standard technical measures.
 - Need NOT have to access, remove, or block material if such action is prohibited by law.




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DMCA Take Down Notice


- Identify copyrighted work(s)
- Identify infringing material with sufficient detail
- Sufficient Contact Information
- Certify copyright owner or agent
- Find and send notification to the service provider (if needed by "Who is" search)




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Copyrights - International Considerations


- Protection limited to each country
- Enforcement also limited to each country
- Seeking protection becomes a matter of cost v. benefit analysis
- Enforcing rights also becomes a cost v. benefit analysis




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Copyrights - Takeaways


- Legal avenues are limited because of logistics and costs
- Ask nicely first, and then ask nicely again
- When possible, form a cooperative relationship
- When not, hit hard and hit fast (to keep material out of circulation)




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Trademark Basics


- Word, phrase, symbol or design (or combination) that identifies and distinguishes the source of the goods of one party from those of others
- Must be distinctive, i.e., must be able to identify the source
 - Inherently distinctive
 - Distinctiveness through secondary meaning




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Trademarks - Acquisition


- Actual use with good/service
 - Actual sale
 - Actual advertising
- No rights granted by pursuing registration, unless accompanied with actual use
- Actual Use (without registration) can be limited geographically




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Trademarks - Enforcement


- Prevent use of confusingly similar marks, not
 - the product or service itself under a different mark
 - A similar mark on a different product or service
- Standard: Likelihood of Confusion
- Strongest rights if registered, not just used
- International considerations
 - Limited geographically
 - Some foreign countries only recognize registration




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Trademark Violation

- Misuse of your logo
 - Insinuating endorsing product
 - Suggested affiliation
- Using your company name as part of website name



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Misuse of Trademark



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Options for Delivery of Notification

- DMCA – Digital Millennium Copyright Act
- Takedown Notification Letter or Bystander Letter

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Removal Success Using Bystander/DMCA Notifications



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39



Final Thoughts

- Monitor the web for evidence of potential infringement
- Infringement may be found on braindump sites, portals, forums as well as typical websites
- Build friendly relationships
- Support further necessary investigation with the appropriate takedown notifications



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40



Questions?

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41



Thank you!

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42