2016

AN INTRODUCTORY TEXT TO
THE LIBRARY AND INFORMATION PROFESSIONS

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CHAPTER ELEVEN
INTELLECTUAL PROPERTY RIGHTS AND LIBRARIES

By
Solomon A. Uganneya

.0 INTRODUCTION

Intellectual property rights (IPR) are often a difficult concept to grasp in a world which is intensely focused on the material world. IPR are not in themselves tangible objects and therefore are often overlooked, ignored or even dismissed by many working in areas where they are actually crucial to the exploitation of what is being made, invented or thought about. IPR have become increasingly important and advances in digital communication and technology have been major factors that necessitate a proper understanding of all issues involved. These have led to a situation in which the need for awareness of IPR-related issues among library and information professionals (LIPs) assumes great importance. This chapter attempts to examine some of the principal facets of IPR, their implications for library and information service delivery.

2.0 THE BASICS

Essentially, intellectual property is a concept to protect the creativity of the human mind and in most jurisdictions is divided into a series of different types. These will be examined briefly but the emphasis of this chapter will be on patent information and copyrights. There are basically four elements in IPR although other, more subtle, divisions can be detected and refined in both law and practice. There is protection for

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2.0 THE BASICS

Essentially, intellectual property is a concept to protect the creativity of the human mind and in most jurisdictions is divided into a series of different types. These will be examined briefly but the emphasis of this chapter will be on patent information and copyrights. There are basically four elements in IPR although other, more subtle, divisions can be detected and refined in both law and practice. There is protection for

invention, protection for manufacture, protection for design and protection for the expression of ides. Many objects may contain more than one of these areas in them and will therefore enjoy multiple protection.

3.0 INTERNATIONAL SCENARIO

Before examining the different types of intellectual property right, it would be safe to briefly describe the major international organizations, international agreement and conventions as related to IPR.

3.1 WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

This is the international body that is exclusively concerned with various aspects of intellectual property. It was established in 1967 to promote the protection of IP throughout the world through cooperation among states and in collaboration with other international organizations. WIPO became a special agency of UN in 1974 with headquarters in Geneva. The philosophy and function of WIPO is to promote the development and harmonization of IP-related legislation, standards and procedures among member states and to handle the administration of 24 international treaties. In 1996, WIPO signed the cooperation agreement with the World Trade Organization (WTO). Among the functions of the WIPO are:

- To promote an IP culture;
- To integrate IP into national development policies and programmes;
- To develop international IP laws and standards;
- To deliver quality services in global IP protection system; and

- To increase the efficiency of WIPO's management and support process (www.wipo.int).

3.2 TRADE RELATED ASPECT OF INTELLECTUAL PROPERTY RIGHTS (TRIPS)

This is a treaty administered by the WTO and sets minimum standards for many forms of intellectual property. In 1994, TRIPS was negotiated at the end of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) treaty. This agreement introduced intellectual property law into the international trading system for the first time, and it has remained the most comprehensive international agreement on intellectual property to date; it is applicable to all WTO members. The basic principle of the TRIPS agreement is equal treatment of one's own nationals and foreigners. TRIPS also specified enforcement procedures, remedies and dispute resolution procedures. Though it is not expected for all members to have identical rules on IP, it however requires all members to comply with the minimum standards set by it. Moreover, laws of the member countries should not contravene the provision of the agreement (http://www.WTO.org/english/tratop-e /trips-e/triptq-e.htm).

3.3 PATENT TREATIES

3.3.1 Patent Cooperation Treaty

Basically, patent rights are country dependent or territorial in the sense that the right is given only within the country or territory. To have rights in other countries requires an application to have the right granted. The patent cooperation Treaty (PCT) is an international patent law,

concluded in 1970. It provides a unified procedure for filing patent applications to protect inventions in each of the 135 contractive states. A patent application filed under the PCT is called an international application or PCT application. A single filing of an international application is made with a Receive Officer (RO) designating the countries where patent protection is sought. The advantage is that by filing one application, the applicant will obtain an international filing date for his application and that filing date will have the effect of a regular national filing in each country.

3.4 COPYRIGHT TREATIES

3.4.1 Berne Convention (BC)

The earliest copyright convention is the Berne Convention for the Protection of Literary and Artistic Works of 1886. The convention is based on the principle of national treatment, meaning that under national law one cannot discriminate against works from countries that are party to the convention. It also adheres to the principle of automatic protection, as such there would be no need to register the work.

3.4.2 The Universal Copyright Convention (UCC)

This was adopted at Geneva in 1952. UCC and BG are the two principal international conventions protecting copyright. The UCC was developed by UNESCO as an alternative to the Berne Convention for those states which disagreed with some aspects of the Berne Convention (Napster, 2001).

3.5 The Rome Convention (RC)

This convention was essentially for the protection of performers, producers of phonograms and broadcasting organizations. It was accepted in 1961. The convention secured

protection in performances of performers, phonograms of producers of phonograms and broadcasts of broadcasting organizations. It is however necessary to note that Copyright Acts is fully compliant with the provisions of the Rome convention.

4. THE OWNERS AND AUTHORS RIGHTS

When we create something, we do two things: we put something of ourselves into it and we become vulnerable to the outside world. For instance, you paint a picture and show it to someone. They may laugh at your efforts, criticize your brushwork, or say it is inspirational. Whatever the reaction, you will take it personally as either praise or criticism of yourself, not just your artwork. This is just as true of your book or a scientific paper in a journal. It follows that what we create we should also control. From this comes the idea of copyright because the action we want to control is "copying" our work, whatever form that copying may take. The need to control may be because we are worried that someone will alter our work in some way or because they may deprive us of some money. It is important to note that the copyright is quite separate from the work in which it subsists. The fact that you buy a book does not give you any control over the copyright in the book.

5. CATEGORIES OF IP

According to Crush (1992) the law in most countries gives authors and owners a set of rights which vary from one type of IP to another, including:

Patent	-	Right to make the object patented.
Design Right	-	Right to prevent others using the design c making things from it.
Trademark	-	Right to market goods or services under the label.
Copyright	-	Right to copy, issue copies, perform broadcast, translate or adapt.

In addition to these essentially economic rights, man countries give authors certain moral rights as follows:

a) To have author's name included when the work published.
b) To prevent significant parts of the work being removed.
c) To prevent significant addition made to the work.
d) To prevent significant alterations to the work.
e) To prevent someone else's name being added to th work.
f) To prevent works being attributed to someone whe they did not create them.

5.1 PATENTS

Patents are one of the oldest forms of intellectu property. It is the protection given to an invention – "product" or the "process" of manufacturing a product. It give an inventor the right to stop others from making, using or sellin an invention without the permission of the inventor. Patents ar generally interested in the functional and technical aspect c products and processes, and must fulfill specific conditions to b granted. For instance, the product invental/process develope should not be the sole possession of the inventor in perpetuit It should be for a public domain. In addition, (1) it must be ne

(novelty); (2) steps of inventor should be known; (3) It must be useful (utility); (4) human effort should be rewarded; i.e. one is entitled to the fruit of his labour. Most patents are for incremental improvements in known technology – evolution rather than revolution. The technology does not have to be complex. Patent rights are functional; a Nigerian patent, for example, does not give rights outside of Nigeria. Patent rights last for up to 20 years in many jurisdictions but items can vary and renewal is often required in some circumstances.

A patent specification discloses the details of the inventions for which the patent protection is sought. The legal rights in a patent are based on the disclosures made in the specification which can be either provisional or complete. Provisional specification does not disclose the complete description of the invention as time may require to develop it further, while complete specification discloses the complete details of the invention.

Some things cannot be patented, including things that exist in nature – such as the discovery of a new comet; a machine that defy the laws of nature – such as the law of gravity, scientific theories or mathematical model; methods of medical treatment and diagnostic methods, invention contrary to law or morality or injurious to the public health, etc. Patents are filed with the head corporate affairs of patent, trademarks and designs. Basic information concerning the invention required includes: (a) patent number, (b) date of filing the patent application (c) international patent classification and (d) title of invention.

5.2 TRADE MARKS

A trademark is any sign which can distinguish the goods and services of one trade from those of another. A sign includes words, logos, colours, slogans, three-dimensional shapes and sometimes sounds and gestures. A trademark is therefore a "budget" of trade origin. It is used as a marketing tool so that customers can recognize the product of a particular trader. To be registerable in many jurisdictions it must also be capable of being represented graphically, i.e. in words and/or pictures. A trademark that is not exploited can lapse after a given period of time but if it is used and renewed if necessary it can last indefinitely (Feather, 1994).

5.3 Designs are protected in different ways in various countries, but African and EU have standard rules for protective design rights.

A design refers to the appearance of the whole or a part of a product resultive from the features of, in particular, the line, contours, colours, shape, texture and for materials of the product itself and/or its orientation. Some countries offer protection by three legal rights:

- Register designs
- Unregistered design right and
- Artistic copyright.

The design of a product can be synonymous with the branding and image of a company and can become an asset to them with a monetary value that could increase. Design registration usually gives the owner a monopoly on his or her product, i.e., the right for a limited period to stop others from making or selling the product without their permission. It is additional to any design right or copyright protection that may

exist automatically in the design. Registration can deter a potential infringement and also brings the exclusive right to make, import, sell or hire out any article to which the design has been applied or to let others use the design under the terms agreed with the registered owner.

5.4 COPYRIGHT

The idea behind copyright is rooted in certain fundamental ides about creativity and possession. Basically, it springs from the idea that anything we create is an extension of "self" and should be protected from general use by anyone else. Coupled with this is the idea that the person creating something has exclusive right over the thing created, partly for economic reasons but also because of this extension of "self idea". Copyright is therefore important to ensure the continued growth of writing, performing and creating. Copyright law aims to protect this growth but at the same time tries to ensure that some access to copyright works is allowed as well. Without this access, creators would be starved of ideas and information to create more copyright material. Copyright is not something that can be registered; the Berne Convention for the protection of literary and artistic works, to which most countries belong, prohibits registration as a condition of claiming copyright. Copyright does not often last indefinitely. As a general rule it expires 70 years from the end of the year in which the author dies, although there are different rules in many countries for works without authors, unpublished documents and those created by government or other institutions. The table below summarizes the types and characteristics of intellectual property rights.

Table 1: Types and Characteristic of Intellectual Property Right.

Types of IP	Protects	Last for	Registerable or not
Patent	Inventions	20 years approx.	Registerable
Design Right	Appearance	10 – 15 Years	Can be reg. or not
Trade Mark	Distinguishing sign	Indefinite	Registerable
Copyright	Expression of creativity	70 years after death	Not registerable

(European Parliament, 2001).

Note: This table gives example and it is not legal guide to any jurisdiction.

6.0 RIGHTS IN AN ELECTRONIC WORLD

Apart from some possible uses of computer software, patents are not relevant to the electronic information world as they relate to manufacturing objects. Design right applies also to making things although the documents containing the design will almost certain be electronic in today's electronic environment. Trademarks will be highly relevant in terms of branding services and products such as Dell Computers, AOL online or Netscape Navigator, as well as the thousands of products about which information is available through the web. The greatest complexity in IP terms for electronic information is the copyright.

It is important to note that whatever is said about "electronic rights" is usually derived from fundament principles of copyright, for example, changing from a right to protect publishers to one that protects authors. Although supplementary laws have been passed in many countries to

accommodate technologies those laws invariably are built on existing principles. The EU Directive on the Harmonization of certain aspects of copyright and related rights in the information society tries to introduce additional rights, but these are still built on the basic ideas behind copyright.

6.2 DATABASES

Some materials are not considered by all legislations to be suitable for copyright protection. For example, directions, list of organizations or people or simple bibliographies. Nevertheless such items are the result of considerable investment in terms of money, labour and technical skills. For this reason the EU introduced a directive to regulate the situation. As a consequence anything qualifying as a database is now protected in the EU by a special Database right. This lasts for only 15 years. Instead of the usual 70 years, but it is subject to renewal or extended each time the database has significant changes made to it. Thus a dynamic database will be continually updated and therefore the 15 years protection "clock" will continue to tick until the time when the database is shut down and no longer active. This right protects all kinds of valuable products which do not demonstrate any kind of creativity in terms of original thinking.

7.0 IP AND LIBRARIES

Libraries are information intermediaries because they collect and store large quantities of published materials which they make available to their readers (end-users) in a form which enables them to exploit such material for a wide range of purposes. Traditionally, libraries have been passive information

intermediaries, that is, they have collected and stored information and organized it in a meaningful way but have left their end-users to exploit it as they saw fit. Increasingly, libraries are becoming active information intermediaries, providing detailed and analytical guides to the literature, producing information bulletins, current awareness services and proactive document delivery system based on the profile of individual interests and needs, through SDI (selective dissemination of information) services. In the present world economic climate, libraries are becoming much more commercial and are beginning to exploit their collection for commercial gain rather than supply information for the benefit of their readers (Cornish, 2000).

They do not create IP themselves nor do they directly publish the expression of it. Their role is to act as intermediaries between the publisher and the users of the published information. Information intermediaries (libraries, booksellers, subscription agents, database hosts, etc.) may act directly between two elements (publishers & user) of the information chain, or may themselves deliver to other information intermediaries for onward delivery to the end-users, although some interplay between the different segments is inevitable. In addition to conventional libraries, there are several organizations throughout the world which exist almost exclusively to offer document delivery services either to individuals or to other libraries. These include the British Library Document Supply Centre in UK, and INIST in France. Other major players include the Central Medical Library in Cologne and the Technical Information Library in Hannover. In theory the provision of material in electronic form could mean the end of

libraries. It is unlikely that this will happen because users cannot always have access to every source of supply and therefore need guidance on what is the best and most appropriate source for their needs. Nevertheless, the role of the libraries will change from supplying information and documents to supplying packages of information. Information is a big business, however it is defined. The desire, never mind the need, for information is a constant feature of current cultural patterns, particularly in the industrial world. Information may be supplied in various ways, newspapers, journals and books, broadcast/narrowcast, television, teletext or online system. Nevertheless, the demand for it is these and document supply is merely one aspect of the way that demand is being satisfied. In the more sophisticated reaches of the information supply industry, librarians are not simply renamed "information scientists", but transmogried into knowledge scientists. A knowledge scientist is not only just expected to provide information, but to interpret it for the customer. This particular trend leads librarians to receive requests for appropriate data, suitably package on a given topic or aspect of a topic.

Therefore the role of the library is essentially that of a "neutral" intermediary between creators, owners and users of intellectual property. This possible role include gaining access to a work, store a work, repackage a work repeatedly in different formats depending on the needs of customers, provide additional services which publishers are unable or unwilling to develop and protect any privileges IP owners enjoy under national registration to allow them to provide services.

CONCLUSION

Clearly there is much still to be done. No system has found the complete answer to the problem of promoting and protecting intellectual property right. Economy, politics, legal issues and consumer resistance may in the end determine how these issues are resolved. Access, integrity, paternity, printing, downloading and royalty payments can all be managed. The future is certainly challenging as both law and technology develop. Similarly, as users become more aware of the possibilities of information delivery, their expectation will change and fundamentally alter attitudes to intellectual property in a world where every user may well become an owner.

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