Feature: Intellectual Property

The intellectual property of academics as teachers, scholars or researchers

David Saunders, Griffith University

In keeping with recent Australian Universities' Review issues on accountability and sexual harassment, this issue on intellectual property aims to familiarise readers with the concepts of RIRPs,

- the new communications technologies that affect the production and dissemination of knowledge, including e-mail, scanners and electronic data bases of digitised materials,
- new institutional arrangements for research conducted collaboratively by universities and outside companies or sponsored by the latter, especially where there is no direct contractual relationship between the parties,
- the need to define the public domain in cases where the creator or developers of protected materials, even those arranged within a system of legal norms and sanctions governing the ownership and use of intellectual property. Not that the production and circulation of knowledge would cease if intellectual property law were dissolution forthew.

David has important bearings on our work practices as teachers and researchers and on the way in which we fund, support, and supervise the research of our graduate and postgraduate students. Regrettably, we lack effective empirical evidence on matters as basic as the economics of copyright and patent systems and the nature of intellectual property law and its institution. It is not enough to point out that the salaries, the copyright and patents license fees. But we can easily identify the key issue: the ownership and control of intellectual property.

Where should we set the limits of individual ownership and control on the one hand, and the community's ability to control the use of information and its distribution on the other? Good answers are needed if we are to avoid falling into the trap of viewing Margaret Thatcher when she argues that "to lose copyright in their writings would mean that academics would be likely to lose one of their few remaining sources of income and democracy." This issue of the Review explores aspects of the ownership and control of intellectual property without according to the notion that "to lose copyright in this way would mean that the way to secure the best possible conditions for the creation of knowledge - is synonymous with the public good, we therefore see that this is a risk of circumstances that certainty of the sort needed for legislative action and informed administration is not immediately available. The premise of the first two initial observations is that we should not claim to know the answer before we are prepared to take some of the circumstances.

This seems to be a good place to start. Even in the short time of preparing this issue of the Review, circumstances bearing on academics' status as owners of intellectual property rights have changed - as a result of the authorship of this project and the endless number of reports about the effects of the AAT on the university community. It is not an easy matter to get the best out of the system in which we live. It is a matter to get the best out of the system in which we live.

However, making such decisions among the several forms of intellectual property is now unavoidable caught up in an array of circumstantial factors. RIRPs include:

- the new communications technologies that affect the production and dissemination of knowledge, including e-mail, scanners and electronic data bases of digitised materials,
- the need to define the public domain in cases where the creator or developers of protected materials, even those arranged within a system of legal norms and sanctions governing the ownership and use of intellectual property. Not that the production and circulation of knowledge would cease if intellectual property law were dissolution fortheth

First, the Law Council of Australia's recent proposal for a thorough reform of intellectual property law and its administration. In "Intellectual Property Law Reform and Administration" (1992), the Law Council urges the Parliament to "formulate the 'new' reform of intellectual property law in a responsible manner and to ensure that the new law is not used in ways that would undermine the public domain and the public interest in the advancement of knowledge."

The proposal includes a call for a fundamental change in the way the "new" law is formulated, including a special status for the "public domain" and the "public interest," and the need for a "new" reform of intellectual property law in a responsible manner and to ensure that the new law is not used in ways that would undermine the public domain and the public interest in the advancement of knowledge.

At this stage, it is hard to know what a "new" law would look like in a "new" reform of intellectual property law. It is important that the "new" law is not used in ways that would undermine the public domain and the public interest in the advancement of knowledge. It is important that the "new" law is not used in ways that would undermine the public domain and the public interest in the advancement of knowledge.

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Intellectual property rights in the Australian university context: An overview

Sam Ricketson, Monash University

1 Introduction

The purposes of this article are:

- to describe the existing legal position within the Australian universities with respect to the ownership and exploitation of intellectual property rights by staff, students and outside contractors;
- to identify issues that require attention in this area; and
- to suggest some possible solutions to these problems.

2 The subject-matter covered by the rights in question

It is as well to begin this discussion with a brief description of the subject-matter covered by the rights which are comprehensively referred to as "intellectual property". These are:

- Patents for inventions: useful developments in the areas of science and technology that may be protected by the grant of a patent or petty patent (for less significant inventions). Patents confer a monopoly form of protection that prevents anyone else from exploiting the subject matter of the invention. They run for a limited term of 16 years and must satisfy certain strict requirements that are very different from those for the alleged invention to be "new", "inventive" and "useful". The patent application procedure is often protracted and costly, but the protection, once obtained, can be very powerful as it gives the patentee virtually absolute control over the use and exploitation of the patented invention;
- Circuit layouts, or the plans for integrated circuits ("ICs"): these have only recently become the subject of specialised protection and last for between 20-30 years, depending upon the type of layout and place of exploitation of the IC takes place. Unlike a patent, there is no registration procedure, but the protection granted is essentially protective against copying, not a monopoly right (as in the case of a patent). There are also a number of significant exceptions to the protection granted, particularly in the area of reverse engineering, which reduces the value of this protection;
- Plant variety rights: once again, these have only recently been made the subject of legislative protection. They are intended essentially to provide breeders of new plant and seed varieties with proprietary rights in those varieties. There is an application process which, if followed, will be followed by court actions if the variety is not satisfied before protection is granted. This lasts for 20 years and is akin to that of a patent, although it is considerably narrower in scope. Significant amendments to the plant variety rights legislative framework are likely to be made in late 1993;
- Registered designs: this is a monopoly form of protection which is granted for 16 years in respect of new and original designs for the shape, configuration or ornamentation of useful articles. To obtain protection, a design must be registered and there are certain strict tests that must be satisfied;
- Copyright: this covers two broad categories of subject-matter:
  - (a) "Works" or creations of a literary, dramatic, artistic or musical character. Protection arises automatically once the work comes into existence (there is no need for registration or any like procedure as in the case of patents or designs). The term of protection is very lengthy: the life of the human author plus 50 years. Furthermore, the scope of protection granted is extremely wide: it not only prevents unauthorised copying and adaptations of the work, but also extends to other forms of public dissemination, such as performance, broadcasting and cable diffusion. There is no aesthetic or qualitative criterion for the obtaining of protection: so long as the work is not copied from elsewhere and represents the result of the author's efforts and skill, there is no requirement of novelty or inventiveness as in the case of patents or designs. Furthermore, the range of subject-matter protected as works is very wide. Among other things, it includes databases, computer compilations, computer programs, photographs, design and technical drawings, and buildings.
  - (b) Subject-matter other than works. This category covers subject-matter of a more industrial or manufacturing character where copyright, rather than human, authors are concerned. It covers sound recordings (including CDs, tapes and cassettes), films (including videograms and discs), the broadcast signals of radio and television emissions, and the typographical data of published works. The term of protection given to these subject-matter is shorter than for works (usually for a period of 50 years) and the rights granted are also more limited in scope. Nevertheless, as a matter of marketplace reality, the owners of sound recordings and film copyrights are often able to command higher royalties for the use of their material by third parties than are the owners of copyright in works.
- Live performances: protection of a very limited nature has been recently granted to live performers (actors, musicians, dancers, lecturers, anime artists) and the like to prevent the unauthorised recording and broadcasting of these performances. This is not a copyright, but it may enable performers to charge less for the use of their performance than third parties in particular circumstances. There is a possibility that this form of protection may be enhanced in the medium future.
- Trade marks: these are statutory monopoly rights that are given with respect to distinctive marks or insignia, e.g. name, invented word, symbol or the like, which a trader uses to identify a good or service as his. They are protected for a period which is required and the conditions for each are quite strict. Trade marks, however, may be extremely potent weapons in the marketplace, as they are the "flagship" for particular products or services and can therefore be extremely valuable. Protection is for an indefinite term, but it may be terminated if the registration of the marks where they have not been used, have become generic or have become confusing or deceptive. Sweeping changes in the trade marks laws have been proposed that would reframe the Commonwealth Government and it is proposed that new legislation will give effect to these changes may be introduced in the course of 1993.
- Panning off and unfair competition: these are non-statutory forms of protection which may enable a trader to protect this other...