Intellectual property rights in the Australian university context: An overview

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1 Introduction

The purposes of this article are:
- to describe the existing legal position within the Australian university context 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 stringent. They include the need 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. The 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 approved, 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 procedure which will be followed in the case of new variety applications and the variety must be 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 legislation are likely to be made in late 1999.
- Registered designs: this is a monopoly form of protection which is granted for 15 years in respect of new and original designs for the shape, configuration or ornamentation of useful articles. To obtain protection, the design must be registered and there are certain strict tests that must be satisfied.
- Copyright: 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 to secure the rights 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 criteria 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 is in the case of patents or designs. Furthermore, the range of subject-matter protected as works is wide. Among other things, it includes databases, compilations, computer programs, photographs, designs 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 videotapes and discs), the broadcast signals of television and radio transmissions, and the topographical 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, animé 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 fees for the use of their performances by third parties in particular circumstances. There is a possibility that this form of protection may be enhanced in the medium future.
- Trademarks: 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 and to distinguish it from the similar goods and services of others. Trademarks, 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 time. It is the function of the registration of the registration of the marks where they have not been used, have become generic or have become confusing or deceptive. Sweeping changes in the trademark law have been proposed by the Commonwealth Government and it is possible that new legislation will have to be introduced in the course of 1993.
- Passing off and unfair competition: these are non-statutory forms of protection which may enable a trader to protect this or her...
3. Ownership of these rights at present

The current law grants owners of certain intellectual properties the exclusive right to use, distribute, display, and perform their creations. However, these rights are often exclusive and can be challenging to enforce.

4. Issues for consideration

4.1. Unemployment

The impact of unemployment on the economy is significant. While some workers can find new jobs relatively quickly, others may experience long periods of unemployment. This can lead to financial stress and reduced opportunities for future employment.

4.2. Salaries

Salaries are critical for ensuring that individuals can fulfill their basic needs and contribute to the overall economy. The adequacy of salaries can affect both the morale of workers and the productivity of the workforce.

4.3. Minimum wage

The minimum wage is a crucial issue in determining the living standards of workers. Setting a fair minimum wage can help ensure that workers are compensated adequately for their labor.

5. Specific provisions should be made for students so that their position with respect to the ownership of intellectual property rights is known at the outset of their contract with the University. The university's minimum requirements for students would be that they agree to assign to the University all rights in new works that are created by them while enrolled, except for works that are specifically commissioned by the University.

6. Possible solutions

6.1. Supporting new businesses

Encouraging the establishment of new business startups can provide opportunities for intellectual property creation and development. This can stimulate economic growth and create jobs.

6.2. Addressing intellectual property issues

Developing strategies to address intellectual property issues, such as copyright and patent infringement, can help protect creators' rights and promote innovation.

6.3. Building partnerships

Forming partnerships between universities and industry can facilitate the commercialization of intellectual property, leading to economic benefits for both parties.