Universities, intellectual property and litigation: A view from the sideline

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Introduction

The view from the sideline is different to that from the locker room and committee rooms. It is even further removed from the view that the game is being played. The lawyer's perspective is to see the rules of the game and the decisions of the umpire while missing the passages of play which make up the game itself. It would be little wonder if the players ignored any comments from such a spectator. Needless of such musings, it is proposed to follow the sporting spectators' tradition of giving a view no matter how uninteresting.

Intellectual property embraces a complex bundle of rights stated and implied in a wide range of domestic and international conventions. It is also an area of law which is intrinsically woven into the fabric of university activity. At first sight it could be expected that lawyers would rub their hands in anticipation of lucrative legal disputation. On the other hand, university advisers could be expected to wring their hands in anguish facing the dire consequences which could reasonably be expected to ensue if their advice or procedures based on such advice are ignored or neglected.

In fact, the area has provided neither the fertile field for lawyers as might be expected nor such disastrous consequences as might be feared. Although the educational use of copyright has been the subject of much much negotiation accomplished through legal action, in general legal action is exceptional. In other words the umpire is not seen or heard. The casual observer would be more likely to see the umpire than the legal action. One of the reasons for the absence of legal action is that there is an area of activity which has legal implications, it makes good sense to explain applicable statutory law and to warn of the consequences which might arise as well as explaining the law as it develops over time. Such advice is merely geared to litigation as the ultimate means of resolving disputes.

The lack of litigation

If you have asked the question at the ULP at a conference or seminar, the ULP is arguably the best university in the world. This has generally been well-formed observation. There should be no reason why, however, this information should not be published after publication of the patently will be to say that the sitting on the information that this information should be published.

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Facing the fact of litigation

Items to be considered...

Some courts from the courtroom

Some lessons from the courtroom

An appellation that is subject to appeal and regulation will have to address the problem of significant financial loss (if the case is lost). There may well be attacks on personal reputations. Substantial mental taxation is involved in devising or resisting an appeal. This is partly case the adversarial system of dispute resolution.

In some cases, a break in relationship between the litigants where there is a subsidiary relationship, lack of finality of resolution amongst the parties; breakdown in relationship between the litigants, as a significant increasing propensity of winning against a party who cannot pay (in which case the winners is left with his own legal costs and no enforceable compensation).