

## Chapter 12

# Intellectual Property Challenges in Digital Library Environments

**James Macharia Tutu**

*Muranga University of Technology, Kenya*

### ABSTRACT

*Intellectual property poses a major challenge to digital libraries. This is because access to information in digital libraries is limited by laws, licenses and technology adopted by intellectual property owners. Similarly, intellectual property renders it difficult for digital libraries to make orphan works discoverable and accessible. Furthermore, intellectual property fragments copyright ownership, making it difficult for digital libraries to obtain the right clearance on content. To cope with these challenges, digital libraries have embraced the open access movement which allows reading, copying, downloading and sharing of digital content as long as the creators of the works are cited and acknowledged. Besides, digital libraries offer access to digital works produced under creative commons licenses. These licenses give the copyright owners the liberty to modify the copyright of their works to give room for sharing, use, and building upon the work.*

### INTRODUCTION

Intellectual property refers to creative products and the rights accorded to the owners of these products relating to their access and use. The rights given to the owners of creative works are referred to as intellectual property rights. These rights are protected by intellectual property laws such as the patent and copyright laws. For example, a work protected by copyright gives the owner exclusive rights to reproduction, public performance, broadcasting, translation and adaptation of the work. Intellectual property strives to strike a balance between private and public interests. It achieves this by giving the creators control over their works for a specified period of time (for example, fifty years after the life of the author) but gives some leeway for the public to explore the work for the benefit of humanity. The advances in technology, and especially digital technology, have posed a number of challenges in managing intellectual property. Libraries, and particularly digital libraries, are in a dilemma on how best to observe intellectual property rights and achieve their mandate of providing access to information.

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Digital libraries consist of digital contents, which are either born digital or have been converted to a digital format. The nature of digital technology makes it easier for users to infringe intellectual property rights such as copyright because of the ease of downloading, copying, sharing and modifying a digital object. Critically, measures instituted to protect intellectual property rights in digital libraries go against the library philosophy of providing universal access to information. Therefore, digital librarians are currently exploring strategies to fulfil their mandate without violating intellectual property rights. This chapter contributes to the ongoing discourse on the subject.

## **Understanding Intellectual Property**

The World Intellectual Property Organization (WIPO) (2011) describes the intellectual property (IP) as the creations of the mind. The examples of such creations include literary and artistic works, and inventions. IP is broadly grouped into industrial property encompassing patents, industrial designs, and geographic indications; and copyright that embraces literary works, films, music, artistic works and architectural design.

The owner of an intellectual property, for example, an author has rights to his/her creation. These rights are generally referred to as intellectual property rights. WIPO (2011) asserts that IP rights enable the creators of intellectual property to benefit from their creation or investment. Intellectual property rights are also referred to as intangible rights because they are related to non-physical objects. Consequently, Drahos (1999) defines the intellectual property rights as the rights of exploitation of information. Thus, intellectual property rights are sets of national laws, international treaties and agreements that grant exclusive rights to owners of intellectual creations for a specified period of time. These laws aim at protecting the IP owners for the exploitative use of their creations while also ensuring that they economically benefit from the labour of their work.

## **Historical Development of IP**

The institutionalisation of IP can be traced to a patent granted to an architect and engineer Filippo Brunelleschi in 1421 by the Republic of Florence<sup>1</sup>. Brunelleschi was granted a three year patent for a barge he had manufactured. However, the Venetian Republic's 1474 patent statute laid the proper foundation for the institutionalisation of IP. The statute was aimed at encouraging innovation by granting exclusive rights to inventors. The statute also stipulated the fundamental requirements for obtaining a patent, namely: proof of usefulness of the invention, novelty, practicality and uniqueness. It also established the compensation and enforcement mechanism, set term limits, and granted a monopoly for invention disclosure. England's 1624 Statute of Monopolies and the 1710 Statute of Anne are the other notable landmarks in the early development of the IP system. The Statute of Monopolies ceased the practice of granting patents to ideas or works in the public domain and instead offered a fourteen year monopoly to new and original ideas and works. The Statute of Anne was the precursor of the modern copyright law and granted an author fourteen-year copyright protection and a possible fourteen-year renewal if the author was still alive. The internationalisation of IP, however, began with the Berne Convention of 1883, an international copyright treaty; and the Paris Convention of 1886, an international industrial property treaty. This led to the signing of Stockholm World Intellectual Property, International Convention in 1967. The convention established the World Intellectual Property Organization (WIPO) which came to force in 1970. WIPO is a specialised United Nations agency that offers worldwide standardisation of

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