

Module Four - Intellectual Property Rights

Introduction

Intellectual Property Rights (IPRs) are critical in protecting the rights of creators of knowledge; once that knowledge has been expressed down in any medium. Intellectual property is “an all-encompassing term now widely used to designate a group of the following fields of law: patent, trademark, unfair competition, copyright, trade secret, moral rights, and the right of publicity” Field (2006). According to the United Kingdom’s *Universities’ Joint Information Systems Committee (JISC)* (2008) “the objective of intellectual property law is to grant the creator of a work certain controls over the exploitation of that work, as the unfettered ability of others to copy the work or invention may deprive the creator of reward and incentive”. The World Intellectual Property Organisation (WIPO) Convention of (1967) gives the following as protected under IPRs:

- “Literary, artistic and scientific works;
- Performances of performing artists, phonograms, and broadcasts;
- Inventions in all fields of human endeavor;
- Scientific discoveries;
- Industrial designs;
- Trademarks, service marks, and commercial names and designations;
- Protection against unfair competition; and
- All other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields” (WIPO, 1979).

IPRs are an important component in the learning and research process. Their importance lie in the fact that one is able to use other people works without necessarily taking that knowledge and passing it off as one’s own; and this can be done through acknowledging another person’s work or where those ideas arose from.

Learning Objectives

The objectives of this module are:

- Discuss some key Intellectual Property Rights concepts,
- Identify the uses and benefits of Intellectual Property Rights,
- Discuss Copyright in the learning and research process,
- Know sources of information on Intellectual Property Rights
- Identify some Sources of information on Intellectual Property Rights

Learning Outcomes

At the end of this Module, trainees should be able to:

- Understand the various Intellectual Property Rights regimes,
- Appreciate Fair Use of Intellectual Property Rights principles; rights and duties in the learning and research process,
- Appreciate Copyright and its effect on Information Use and,
- Identify some Sources of information on Intellectual Property Rights.

Table 1: Summary of Content

	Content	Methods	Mode of Assessment
1	Understand the various Intellectual Property Rights (IPRs) regimes	Brainstorming Lecture Discussion Demonstration	Pre and Post Questionnaire Question and Answer
2	Appreciate Fair Use Intellectual Property Rights principles; rights and duties? in the learning and research process	Lecture FGDs Demonstration	Question and Answer
3	Appreciate Copyright and its effect on Information Use	Lecture Focus Group Discussion Demonstration	Question and Answer
4	Identify some Sources of information on Intellectual Property Rights	Discussion Lecture Demonstration	Question and Answer

Overview of Key Types of Intellectual Property Rights

Overview of key types of Intellectual Property Rights

Copyright, Patents, Trade Marks and Trade Secrets amongst others are included in Intellectual Property Rights. Intellectual Property Rights are rights that are due to people for products resulting out of their thinking process. There are international treaties defining standard benchmarks of each IPR, and every country has laws that govern the use of these regimes. This module will discuss IPRs but will mainly focus on Copyright as it affects the learning and research process.

Patents

The World Intellectual Property Organisation (n.d) defines a patent as “an exclusive right

granted for an invention, which is a product or a process that provides a new way of doing something, or offers a new technical solution to a problem”. It is “a contract between society as a whole and an individual inventor. Under the terms of this social contract, the inventor is given the exclusive right to prevent others from making, using, and selling a patented invention for a fixed period of time — in most countries, for up to 20 years in return for the inventor’s disclosing the details of the invention to the public” (Field, 2006).

Trade Marks

Trademarks are “commercial source indicators, distinctive signs that identify certain goods or services produced or provided by a specific person or enterprise” (Field, 2006). According to Korn (2005) Trade Marks can be distinguished under the following:

- it is distinctive for the goods or services for which an application is made to register;
- it is not deceptive, or contrary to law or morality;
- it is not similar or identical to any earlier marks for the same or similar goods or services.

Trade Secrets

Field (2006) defines Trade Secrets as “any information that may be used in the operation of a business and that is sufficiently valuable to afford an actual or potential economic advantage”. A definition by WIPO (n.d) says “any confidential business information which provides an enterprise a competitive edge may be considered a trade secret. Trade secrets encompass manufacturing or industrial secrets and commercial secrets. The unauthorized use of such information by persons other than the holder is regarded as an unfair practice and a violation of the trade secret”. Trade secrets “protect the development of new ideas as well as established information that derives value from not being publicly known” (Krotoski, 2009). However as argued by HO1 (2001), “Intellectual Property assets like any other physical assets need to be protected legally so that there is clear ownership of the asset. When you purchase a house, you would want to have a deed to prove your ownership of the property”. He further describes different types of protection for IPRs as indicated in Table 2.

Table 2: Types of IPR Protection (Hoi, 2001)

Type of Protection	Protection Term	Protection Method	Example
Trade Secret	As long as the information remains secret	Take measures to protect the secret. Obtain contractual rights to protect the secret.	Soft-drink formula
Copyright	Life of the author plus 50 years	Rights accrue on “fixation” of the work. Copyright registration.	Software in BIOS ROM
Trade Mark	For as long as the mark is used in commerce	Rights accrue on the use of the mark. Additional rights available upon registration.	Brand name or make of a computer
Patent	Twenty years from	Rights accrue at the time	Network

	the date of filing	the patent is issued.	Security
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Copyright

Any information resource whether in print or electronic format should be used responsibly. Responsible use of any information resource requires that it is duly acknowledged by citing the author of the work. It is in this context that copyright exists so that information users are assisted in their use of information and therefore avoid any abuse or misuse of information sources. Korn (2005: 4) defines copyright as a “legal term describing the economic rights given to creators of literary and artistic works, including the right to reproduce the work, to make copies, and to perform or display the work publicly”. Nowadays copyright is assumed automatically upon the expression of an idea in any medium without necessarily having to put the copyright symbol ©. Some works become public domain after the expiry of copyright. And other works enter the public domain because they never really were copyrighted in the first place, as they were meant to be freely used by the public.

Several rights are conferred under copyright laws; such that only the owner of a copyrighted work can authorise to:

- reproduce the work,
- prepare derivatives work,
- distribute copies of the work,
- perform the work, and
- display the work in public” (Hoi, 2001).

There are essentially two types of rights under copyright that accrue to an author or creator of an idea. These are:

- “Economic rights allow the rights owner to derive financial reward from the use of his works by others.
- Moral rights allow the author to take certain actions to preserve the personal link between himself and the work” (World Intellectual Property Organisation, n.d).

Public Domain

Public domain are “works that are either ineligible for copyright protection or with expired copyrights. No permission whatsoever is needed to copy or use public domain works” (University of California, 2003). Some works become public domain after the expiry of copyright. Other works enter the public domain because they never were copyrighted in the first place, as they were meant to be freely used by the public. Public domain is “different from “open access,” which typically refers to works that are copyright-protected, but whose authors or publishers have chosen to make the work freely available to the public. Even if works are in the public domain, users should still acknowledge the source of the work, since failure to do so could constitute plagiarism” (Eisenstadt, 2008).

Fair Use

Fair Use is a concept that allows certain works to be copied but with certain conditions attached to that process. It "permits certain limited uses without permission from the author or owner.

Depending on the circumstances, copying may be considered "fair" for the purpose of criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research" (Library of Congress' Copyright Office, n.d). However the author of the works still needs to be acknowledged. According to the University of Maryland University College "some general examples of limited portions of published materials that might be used in the classroom under fair use for a limited period of time include": the following:

- "A chapter from a book (never the entire book).
- An article from a periodical or newspaper.
- A short story, essay, or poem. One work is the norm whether it comes from an individual work or an anthology.
- A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper.
- Poetry
 - Multiple copies of a poem of 250 words or less that exist on two pages or less or 250 words from a longer poem.
- Prose
 - Multiple copies of an article, story or essay that are 2,500 words or less or excerpts up to 1,000 words or 10 percent of the total work, whichever is less.
- Illustrations
 - Multiple copies of a chart, graph, diagram, drawing, cartoon, or picture contained in a book or periodical issue" (University of Maryland University College, n.d).

Several factors generally apply when using copyrighted material under fair use. Some of these four factors have been identified by the University of North Carolina at Chapel Hill School of Education, (n.d):

Table 3: Four factors determining fair use

What is the character of the use?

What is the nature of the work to be used? How much of the work will you use?

What effect would this use have on the market for the original or for permissions if the use were widespread?

Columbia University Libraries/Information Services (2009) gives examples where the courts in the USA found that fair use did not apply. See Table 4. As indicated before; the purpose, nature, amount and the effect of the copying under fair use are always taken into consideration to determine whether it qualifies under this usage.

Table 4: Case Summary of Infringement of Fair Use

Princeton University Press v. Michigan Document Services, Inc., 99 F.3d 1381 (6th Cir. 1996).

A private copy shop created and sold “coursepacks” under circumstances similar to the Kinko’s case. The copy shop here was also found to have acted outside the limits of fair use.

- **Purpose:** The fact that the use was commercial and was not transformative caused this factor to weigh against fair use.
- **Nature:** Although they were nonfiction materials, copied excerpts contained some degree of creative expression, cutting against fair use.
- **Amount:** Defendant used between five and 30 percent of each work. This factor weighed against fair use.
- **Effect:** The court gave particular emphasis to the effect on the market; accordingly, the court provided relatively little analysis of the other three factors. The court noted that licensing or potential licensing opportunities existed for all copied works, and other commercial copy shops routinely requested permission to reproduce copyrighted works. Such an existing licensing system was said to weigh heavily against fair use.

Conclusion: The court held that such photocopying by a commercial copy shop does not constitute fair use. As in the Kinko’s case, this court did not address the question of whether similar activities may be fair use if conducted by a university or nonprofit copy shop. This appeal was heard by all judges of the Court of Appeals for the Sixth Circuit. Evidencing that even judges can disagree about fair use, eight judges joined the ruling against fair use, while five judges dissented and would have found that the copying was fair use (Columbia University Libraries/Information Services,(2009)

Open Access

Open Access is a “cost-effective way to disseminate and use information. It is an alternative to the traditional subscription-based publishing model made possible by new digital technologies and networked communications. As used by ARL, open access refers to works that are created with no expectation of direct monetary return and made available at no cost to the reader on the public Internet for purposes of education and research” (Association of Research Libraries, 2004).

Creative Commons

Creative Commons is as “an internationally active non-profit organisation that provides free licenses for creators to use when making their work available to the public. These licenses help the creator to give permission for others, to use the work in advance, under certain conditions” (The ARC Centre of Excellence for Creative Industries, n.d). The Creative Commons licenses are “a flexible and straightforward tool for creators or right-holders that valued accessibility and use of their works over the establishment of a traditional market with monetary incentive” Charbonneau (2010). Creative Commons assigns several licenses to creators or owners of knowledge. Table 5 shows some of the types of licenses available under Creative Commons (Burrough and Mandiberg, 2009).

Table 5. Creative Commons Types of Licenses

		Can someone use it commercially?	Can someone create new versions of it?
Attribution			
Share Alike			Yup, AND they must license the new work under a Share Alike license.
No Derivatives			
Non-Commercial			Yup, AND the new work must be non-commercial, but it can be under any non-commercial license.
Non-Commercial Share Alike			Yup, AND they must license the new work under a Non-Commercial Share Alike license.
Non-Commercial No Derivatives			

Reproduction of Copyrighted Works

Copyrighted works could be reproduced without seeking the authority of the authors, if such copying meets certain conditions. These legally reproduced works are permitted under what is called Fair Dealing or Permitted Acts. In Fair Dealing “the copying must not be prejudicial to the interests of the rights holders” (Korn, 2005). In such instances, copying is then allowed when the work fall in the following categories:

- Non-commercial research and private study
- Criticism and review
- Making temporary copies
- Copies for visually impaired users (Korn, 2005).

Plagiarization

Information gained from other sources when used in one’s work must always be acknowledged. It is always important to acknowledge that we used another person’s work, and this can be done by citing them. If one does not acknowledge the sources of that information then one is stealing that person’s Intellectual Property Rights. This is commonly referred to as plagiarisation, which essentially means cheating. In simple terms, Plagiarisation is using another person’s work without acknowledgement. According to Higgins “plagiarism” is the attempt to pass off other people’s work (ideas, words, phrases or passages) as your own. Plagiarism is not

acceptable; regardless of which writing style, format, guide or publication manual you may be using to complete an assignment” Higgins, M., Ohri, L., Scheirton, L., Malone, P., Alekha Dash, A. and Padilla, R. (2005). . They further cite Iverson (Higgins, M., Ohri, L., Scheirton, L., Malone, P., Alekha Dash, A. and Padilla, R. 2005) detailing four types of plagiarism. See Table 3.

Table 3: Types of Plagiarism

- “Direct plagiarism: Verbatim lifting of passages without enclosing the borrowed material in quotation marks and crediting the original author.
- Mosaic: Borrowing the ideas and opinions from the original source and a few verbatim words or phrases without crediting the original author. In this case, the plagiarist intertwines his or her own ideas and opinions with those of the original author, creating a “confused, plagiarized mass”.
- Paraphrase: Restating a phrase or passage, providing the same meaning but in a different form without attribution to the original author.
- Insufficient acknowledgement: Noting the original source of only part of what is borrowed or failing to cite the source”

Iverson C, Flanagan A, Fontanarosa PB, Glass RM, Glitman P, Lantz JC, et al. American

Khumalo (2009) acknowledges ignorance about the prevalence of plagiarisation at universities in South Africa; which maybe the case in most African universities. When participating in a “debate held at the Durban University of Technology about plagiarism at our universities” he found that students did admit copying from various sources but “they claim that their dilemma is that the authors of original recognised texts "put it so well and so authoritatively" that it would be futile to change it - and undermine the original texts!" However what should be of contention is why they fail to acknowledge the sources of that information? He further argues that the whole essence of acknowldging a source is in the end to “to add your unique voice, your authoritative deduction or conclusion from what you have read from the original sources”

There are many reasons that can be attributed to plagiarism. It may be an indication that students are increasingly becoming lazy, fail to think or just don’t want to put much effort into reserach and knowledge creation. Others are not aware that plagiarism is just like stealing of goods and services; is a serious offence. Copyright has become especially important in the digital age; as conceptions of ownership becomes blurred. Below are examples of what students said when found to have copied other peoples work without acknowledgedin the source.

Table 4: Student Perspectives on Plagiarism

At DePaul University, the tip-off to one student’s copying was the purple shade of several paragraphs he had	At the University of Maryland, a student reprimanded for copying from Wikipedia in a paper on the Great Depression	One of the teachers said that when some students were confronted with this charge, they did acknowledge that they had culled
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lifted from the Web; when confronted by a writing tutor his professor had sent him to, he was not defensive — he just wanted to know how to change purple text to black (Gabriel, 2010).	said he thought its entries — unsigned and collectively written — did not need to be credited since they counted, essentially, as common knowledge (Gabriel, 2010).	material from various sources. The students claim that their dilemma is that the authors of original, recognised texts "put it so well and so authoritatively" that it would be futile to change it - and undermine the original texts! (Khumalo, 2009).
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According to the University of South Africa (2005) rules and regulations; the following is an infringement on author moral rights:

- “failure to acknowledge the author where phrases or passages are taken *verbatim* (word-for-word) from a published or unpublished text;
- use of a summary of a work which contains the ideas of others and presents the essence of an argument in language that condenses and compresses the original language of the source without acknowledging the author of the work;
- using the patch-writing (cut-and-paste) method, where pieces of other persons works, including those taken from the internet, are blended with one’s own words and phrases without acknowledging the author of the source work”.

According to the University of South Africa (2005), in research work copyright is infringed upon when an authors exclusive rights are not recognised. This situation can arise in different situations but especially in the following cases under fair dealing:

- “failure to indicate clearly (e.g. with quotation marks or indent and different font) phrases or passages taken *verbatim* (word-for-word) from a published or unpublished text without crediting the original text and author;
- paraphrasing of an article, a book or an electronic text without acknowledging the source(s) and the author of the work. This amounts to reproducing a text in different words as the author, by changing the word order of the text, the sentence types and the style of the author;
- using more than a substantial part of the work will not be fair dealing, even if an acknowledgement of the source and the author”.

The University further indicates that such infringement may constitute criminal liability and the following actions fall under this category:

- copying information from another person (e.g. another student's assignment or portfolio) and submitting identical work where such work is not the result of teamwork and indicated as such by all participants,
- buying an essay from a ghost-writing service and pretending that it is one's own work;
- asking someone else to do an assignment on one's behalf.

Citation

IPRs are an important component in the learning and research process. Their importance lies in the fact that one is able to use other people's works without necessarily taking that knowledge and passing it off as one's own; and this can be done through acknowledging another person's work or where those ideas arose from. Citation is important:

- "Because ideas are the currency of academia
- Because failing to cite violates the rights of the person who originated the idea
- Because academics need to be able to trace the genealogy of ideas" (Hunter, n.d).

According to Rutgers, The State University of New Jersey (2010) citing is important for the following reasons:

- *"To back up your assertions.*
- *To give credit to others for their ideas.*
- *To demonstrate to your teachers the work that you have done."*

Citation Methods

There are several ways or methods to acknowledge another person's work or ideas, namely:

- Quote the exact words of the author and put them in quotation marks
- Summarise the author's key points
- Paraphrase the author.

Although citations may vary in general, citations should include the following:

- "Author Name — Personal or Corporate
- Date of Publication or Last Update in Parentheses. Use "n.d." (stands for no date) if date cannot be found.
- Title of document or article
- Source of document or article, for example the title of the journal or the complete work, if relevant
- Other publication information, for example volume number, page numbers, etc., if relevant
- A retrieval date statement, for example: Retrieved January 27, 2001, from the World Wide Web

- the URL — the World Wide Web address, for example: <http://knowledgecenter.unr.edu>” University of Nevada. (n.d).

Citation Styles

There are several ways of citing. The following are the most commonly used citation styles in the Health Sciences: The National Library of Medicine (NLM) Style Guide, the Harvard style of citation and the Vancouver style (Uniform requirements for manuscripts submitted to biomedical journals). Always consult with your university or institution on what citation style is used. If you are writing an article for submission to a journal, check with the journal what the citation format is used. It is always important and critical to consult the latest editions of the referencing styles from either the internet or other locations.

The following are some of the most commonly used citation styles:

- Vancouver Style Guide arose of the 1978 Vancouver International Committee of Medical Journal Editors (ICMJE) meeting. It prescribes Uniform requirements for manuscripts submitted to biomedical journals. (Available from: www.icmje.org)
- The National Library of Medicine (NLM) Style Guide. (Patrias, K. Citing medicine: the NLM style guide for authors, editors, and publishers [Internet]. 2nd ed. Wendling, DL, technical editor. Bethesda (MD): National Library of Medicine (US); 2007. Available from: Available from: <http://www.nlm.nih.gov/citingmedicine>)
- Harvard System of Referencing Guide. Available from the following websites: www.shef.ac.uk/library/libdocs/hsl-dvc1.pdf
<http://libweb.anglia.ac.uk/referencing/harvard.htm>
<http://www.unisa.edu.au/ltu/students/study/referencing/harvard.pdf>
- **APA Style Guide**, from the American Psychological Association. (Available from: <http://www.apastyle.org/>)
- **MLA Style Guide** from the Modern Language Association of America. (Available from: www.mla.org/style)
- **Chicago Style Guide**, from the American Anthropological Association (Available from: www.chicomanualofstyle.org)

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