

Understanding intellectual property

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For most of you reading this editorial the term ‘intellectual property’ is probably quite vague. You are wondering what it means and why you should be concerned about it.

Intellectual property (IP) is a descriptive term for outputs from creative activity and includes data from artistic, literary, scientific and industrial developments (UK Copyright Service, 2004). For those of you involved in research at universities, you need to be aware that the IP from your research belongs to the university when you are an employee. This ownership is enshrined in legislation emanating from The Patents Act (1977) (as amended) and the Copyright, Designs and Patents Act (1988) in which it is stated that the ‘IP generated by an employee during the course of his/her normal duties belongs to his/her employer’ (Patents Act, 1977 (as amended): section 39).

What about the rights and role of the individual researcher or creator in this legislation? When doctoral students enrol for PhD programmes at universities, they normally sign an IP rights-related agreement on registration. Simply speaking, they sign the IP over to the university. In most cases, this is a requirement for registration and in the majority of cases we give little thought to the process and may leave the institution without reference to IP again. However, in some cases where research leads to the development of potentially commercial outputs, the case is different.

Two years ago, one of my former students developed a product ‘Designer Breastfeeding’[®] (Stockdale, 2007). This was my first experience of learning about the process and procedures involved in protecting the student, the research products and the relevant parties or stakeholders with regard to IP. Lessons learnt are worth sharing with those of you who are about to start your journey or those of you who are, for example, developing applications for valid and reliable tools for measurement.

When we thought we might have a product that could be commercial or exploitable, we contacted our university’s office of innovation for advice and they asked a series of questions about the ‘invention’ and for details about the products of the research, such as publications or conference papers. We proudly presented a profile of dissemination activities. However, we discovered that it is not always in the interest of the research to publish or disclose findings prior to taking their advice – in some incidences publication of research can disclose the novelty of a product. Any disclosure of the research, for example, in poster format, exhibition, or conference, may render the product ‘non-patentable’ and work against further development.

If you think your research could lead to a new or novel application or product, do not publish until you have filed for the patent. Once you have filed for this and completed the standard paperwork, you can publish and present. This is a major issue and one worth remembering. Fortunately, face-to-face support and advice was available from our office and the next stage for us was the completion of a technology disclosure form. This form was important, because this is the paperwork that determines the proportion of the remuneration that the inventor receives and the other stakeholders.

You will notice the small copyright symbol © after Designer Breastfeeding[®] and this is a marker to inform all readers that this is copyrighted to the author (in this case Dr Janine Stockdale at Trinity College, Dublin). The correct term should include ‘Copyright [dates] by [author/owner]’ but a small © is acceptable. Another term commonly used is ‘All rights reserved’. Copyright expires 70 years from the end of the calendar year in which the author dies or if there is joint ownership, then the end of calendar year in which last surviving joint owner dies. The UK Copyright Service provides the following statement:

‘Copyright is an automatic right and arises whenever an individual or company creates a work. To qualify, a work should be regarded as original, and exhibits a degree of labour, skill or judgement.

Interpretation is related to the independent creation rather than the idea behind the creation. For example, your idea for a book would not itself be protected, but the actual content of a book you write would be. In other words, someone else is still entitled to write their own book around the same idea, provided they do not directly copy or adapt yours to do so.

Names, titles, short phrases and colours are not generally considered unique or substantial enough to be covered, but a creation, such as a logo, that combines these elements may be.

In short, work that expresses an idea may be protected, but not the idea behind it’ (UK Copyright Service, 2004).

International recognition of a common understanding of copyright has been laid out by what is commonly known as the Berne convention. The World Intellectual Property Organization (WIPO) administers the convention (WIPO, 1979).

Understanding IP is beneficial to all of us so that we can protect our research products and share the remuneration from commercial exploitations in a fair and equitable manner. It is worth remembering there is potential for re-investing all proceeds into generating further research. However, you may be motivated to develop a spin-off company and set up your own small business. Remember research can generate income!

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