

Accessibility of Digitally Born Intellectual Property: Cases from Malaysia

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Abstract

As previous experiences show, those who want to consume digital-born Intellectual Property items within Malaysia and abroad do not necessarily know about the why and how of establishing an Intellectual Property status for digital-born knowledge. Many complications arise during the process of establishing and protecting Intellectual Property within a complex cultural environment as that of Asia. One of the key problems is the general gap in understanding what it is that Intellectual Property embraces, and why it is important beyond its primary exploitation for financial gain. Using digitally born examples from Intellectual Property applications sent to Putra Science Park at one of the largest Malaysian Universities within the last three years, this paper illustrates typical complexities that arise in the process of providing access to Intellectual Property-protected items, especially those that attract international interest by companies and individuals who often exploit Intellectual Property from Asian universities. Taking a central role in this paper is the role audiovisual archivists play in providing secondary access to and preservation of these digitally born Intellectual Property items, beyond their primary uses within the commercial sector. Some contemporary audiovisual content created for commercial and research purposes, especially those created during research with local communities, must endure beyond the Intellectual Property product-development processes of today's profit-minded universities. Audiovisual archivists must be front-and-center in this process, both in selecting and preserving contemporary research output at universities around the world, but also in providing education to communities and researchers around the Intellectual Property process.

Keywords: copyright, key performance indicator, academic achievements, Intellectual Property, digital media, Malaysia

1. Putra Science Park at University Putra Malaysia

Putra Science Park at Universiti Putra Malaysia, which represents an Asian microcosm of knowledge marketing, is a rich testing ground for researching digital-born Intellectual Property in the context of a variety of information formats, including music and recordings, teaching materials, technology, and graphic design tools. There exists a proper list (figure 1) of types of works and categories which is one of the very few digital items accessible to the public:

Figure 1: Table of copyright classification at Putra Science Park, 2016.

NO.	TYPE OF WORKS	CATEGORIES
2.	ARTISTIC	Graphic Photograph Sculpture Collage Work of architecture being a building Model for a building Work of artistic craftsmanship
3.	MUSICAL	Musical works and includes works composed for musical accompaniment
4.	FILM	Being shown as a moving picture -being recorded on other material -the sounds embodied in any sound-track associated with a film
5.	SOUND RECORDINGS	Any fixation of a sequence of sounds or of a representation of sounds capable of being perceived aurally and of being reproduced by any means, but does not include a sound-track associated with a film
6.	BROADCASTS	Transmitting, by wire or wireless means, of visual images, sound or other information which- - is capable of being lawfully received by members of the public - is transmitted for representation to members of the public - includes the transmission of encrypted signals where the means for decrypting are provide to the public by the broad-casting service or with its consent
7.	DERIVATIVE	Translation, Adaptation, Arrangement, other Transformation, Collection of work and Collection of mere data

The exact wording and the carefulness in filling in this table of possible types of works that can be put under copyright and become an Intellectual Property of the university shows partly in which mood rights are treated in general. We find an administrative copy-paste culture that questions the understanding of the subject matter, for example under the category “musical works”. How did this grammatically interesting addition “and includes works composed for musical accompaniment” into this one-point-category? It had to actually being added for the shape of copyright constructions resulting from suggested items that are either inaccessible or not exploitable. Especially in the field of music education and performing arts, the number of such items increases in an alarming fashion. But there are some really positive examples, too: Putra Science Park won a gold award (figure 2) on “Copyright” for a digital born board game for children aged 6 to 12 which was commented on the internal website as follows: KUALA LUMPUR, Sept 10: Researchers of Universiti Putra Malaysia (Universiti Putra Malaysia) win gold award under the Copyright category during the National Intellectual Property award presentation held in conjunction with 2015 National Intellectual Property Day.

The group of researchers received a trophy, RM10,000 cash [peanuts for the PM], medal and certificate from Prime Minister, Dato' Seri Najib Razak at the Putra World Trade Centre [...]Dr Mohamad Fazli expressed his gratitude for winning the prestigious award...He said ‘Professor Bijak Wang’ was a board game made locally on financial research which could be beneficial in this era where reports of people going bankrupt were rampant. “This serves as a pro-active step to teach children on financial management, how to go about saving their money, indirectly instilling the culture and habit of saving from a tender age,” he said. Prof. Dato’ Dr. Mohd Azmi, meanwhile, said...“So far, several established organizations have indicated their interests with the kit and we are in the process of negotiating with them,” he said. Universiti Putra Malaysia.

Figure 2: Award presentation held in conjunction with 2015 National Intellectual Property Day in Kuala Lumpur, Malaysia, Dr. Mohamad Fazli receiving his award from Prime Minister Najib Razak at the Putra World Trade Centre. Photo: courtesy of Saleha Haron.



Not surprisingly, this innovation was made during Malaysia's biggest financial scandal in history, the 1MDB issue, in which the Prime Minister seems to be heavily involved which is continuously generating a huge amount of digitally expressed jokes that are not yet copyrighted. '1MDB issue' stands for 1Malaysia Development Berhad Scandal. The Malaysian Prime Minister was accused of taking over RM2.67 billion from a government-run strategic development company in his personal bank accounts. While the game might be indeed a useful idea that was copyrighted for this university, there are quite a number of items that have to be questioned as they infringe other rights due to lack of knowledge in the field and missing networking among a scientific community.

2. Fools

Among them are the following digitally born Intellectual Property items that do not look digital at the first view. For example the performance of an electric violin in upside down position hanging at a rope and flying through the performance hall (figure 3). The video taken through a mobile phone device was sufficient in order to prove the uniqueness of the event and the individual effort.

Figure 3: Photo of the event, performance of an electric violin in upside down position, taken by Yktang Photography for public promotion and used as cover photo in social media.



However, the performance style was not new (Pink did it before and it became a fashion over the years); the music was simply played back, and the mobile phone video was anything but an art work so far. A former colleague who is in the field of popular music and digital culture and was not even briefly consulted comments: 'According to my observation in Chinese Pop for years, Taiwan's Jolin Tsai (蔡依林) is the first to integrate

gymnastics into live dance & music performance. She earned massive attention for her "perseverance" and effort to take real training in yoga and gymnastics as a pop artiste. (Chow Ow Wei, 2016). This Intellectual Property item caused confusion as other staff were told to start playing their instruments in silly positions for the sake of the Key Performance Indicator of the Department, the Faculty, and subsequently the university ranking. A number of other interesting items could be taken as Intellectual Property coming from the same source. There was even an entire music CD recorded in a private home studio of the staff consisting of merely re-arrangements of oldies such as *Simple Gifts*, *Miserlou*, *Greensleeves*, *Danny Boy* and some others that are now kept as "compositions". This music composition Intellectual Property item was celebrated over months with a large banner at the university entrance. It came even under a specific knowledge class. After intervention by other universities, two things happened: A further specification was introduced which is "Type", that was then filled in as "Arrangement"; and access to these entries was restricted to the own university staff only.

Despite this memorable item were many other Intellectual Property recordings of short snippets that had to be timely stretched though the performer played just a few minutes in a concert one or two short music pieces composed and arranged by others in order to allow for an administratively measurable importance (Minimum of 20 Minutes). The whole list applicable for Intellectual Property items is provided on a burnt CD and a write up that had to be defended in front of a board of experts mostly consisting of the director of Putra Science Park or her vice director, one staff working in humanities and one lawyer. There is no expertise on recordings, on archiving, on music, on performance, or anything near to it. No reviews are undertaken, no input from external experts asked for. The proving material, at the end, is then stored in a normal office building on a normal shelf among many other folders and papers, mostly under temporary air conditioning during office hours. This example encourages many other colleagues to do the same and to put their karaoke sessions which means teaching lessons with power point text running over the screen as Intellectual Property items in order to satisfy quantitative standards. And this is multiplied with all universities in Malaysia and possibly other places where quantitative competitiveness is a core business. The items declared Intellectual Property, as it is understood, are not for re-use or application. They are just numbers. And they can actually only be accessed by the creators or owners, which is Universiti Putra Malaysia staff or staff of the respective research unit. But there is another contradictory issue which is the true creation of knowledge that takes part at any university. Among those items that really could have an impact on knowledge increase are recordings of teaching processes in performance studies and consecutive unique lesson plans as well as true compositions for locally available performers. These recordings cannot and should never be stored under the conditions given by Putra Science Park or any similar institution anywhere else in the region. The good news: they are rarely stored under such conditions. The bad news: they are often not stored at all.

3. Counter Movement

While building up the music department's own Audiovisual Research Collection for Performing Arts as a small scale university archive, it was impossible to co-operate with Putra Science Park in terms of archiving issues. The only approval was given for the database, a digital document developed for onsite use in the most effective and simple way. This database is continuously updated. However, the recordings need to have a back-up on the university server that is not included in this Intellectual Property process though it was included in the write-up. This safety copy storage was subject to completely other negotiations among IT staff that were well aware of the risks that digital items include. But these negotiations had nothing to do with Intellectual Property rights issues. The university is actually not interested in doing anything out of them as there is little understanding of items that cannot be listed as single 'events' commodities on a carrier. On the other side, the digital policy of the university prescribes full entries of teaching and lesson plans with uploading of all teaching material, digital sound and video recordings included. These items are supposedly covered by the employment contract and owned by the university without a clear Intellectual Property declaration and they consist of not a few illegally downloaded material, therefore access to them is strictly limited to Universiti Putra Malaysia staff. "With regards to intellectual property rights in the universities, workers are employees of the university and the law provides that if an employee has created an intellectual property in the course of employment, the university as an employer owns the intellectual property, unless there is a contract at the beginning of the period of employment stating otherwise. The legal position is clear to every type of intellectual property." (Ramli et al, 2016, p. 1226). The crucial point is whether an artwork or anything that could be an Intellectual Property item was created "in course of employment". Does free time and holidays count into the course of employment?

Is it legal to use university properties while creating artworks but then claiming Intellectual Property privately, for example sitting in the office chewing on an office pencil and dropping some dots on a music sheet? Why staff has to declare Intellectual Property officially if otherwise everything is owned by the university? Where is the motivation for the staff to further create Intellectual Property items? To clarify: Intellectual Property declaration has – as the previous discussion shows – little or nothing to do with knowledge building or protection. In performing arts and performing arts education, it is additionally accompanied by lack of understanding its core business such as the identification of unique performance values, whether musically or performance-wise. In humanities with very few exceptions it is sadly enough not even a primarily economic value but a symbolic value that increases countable items for a better result in university rankings.

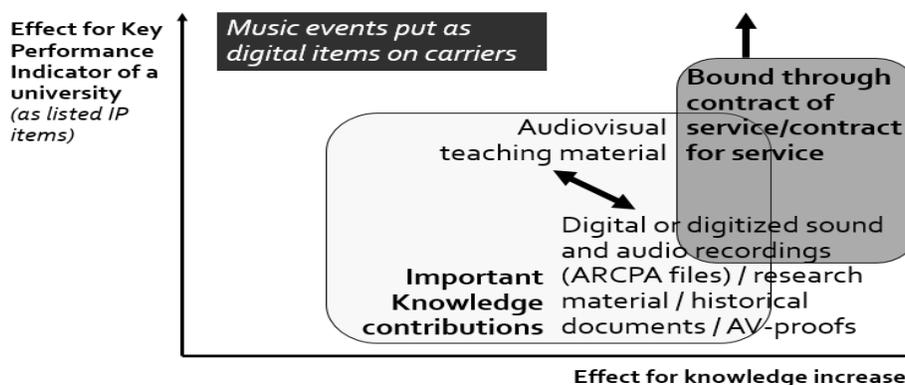
4.1. Demotivation

Instead of doing research that needs a lot of preparation, administration, discipline, and networking, especially performing arts staff opts often for a shortcut in putting some extra-university performances recorded with whatever was at hand and declare it as Intellectual Property. According to the author’s observation, out of 14 IP items counted in a time period over three years 2012-2014, 12 were just recorded extra-university activities in events with many performers that were not reviewed regarding quality, copyright issues, and/or length of performance. The main problem of all these interwoven causalities is the problem of accessibility. Intellectual Property items stored at a central university unit that consist mainly sound and audiovisual recordings are actually in-accessible to learners and teachers unless an economic interest is uttered and these items are approached as a commercial user. Interestingly, even though Intellectual Property items created automatically through the contract policy of the universities cannot be re-used internally without this formal commercial intent. Only the marketing department of the university is allowed to access items for free and/or at any time. And it is all too well known how many audiovisual experts, performing arts experts, or even AV archivists are working in university marketing departments: Zero. This answers the earlier question of how comes this odd addition into the list of copyright categories “and works composed for musical accompaniment”. Unsure whether something is composed or just re-arranged, a work of music or a work of acrobatics, for accompaniment of whatever show, dinner, celebration, or high tea, everything can be in the inaccessible stock of Intellectual Property items.

4.2. Motivation

And there is the backside of the ranking medal: Those IT staff and dedicated archivists who are truly interested not only in keeping digitally born Intellectual Property but in the very essentials of their knowledge contribution care about present decisions and their consequences for the future. As far as possible and with the consent of the Intellectual Property creators, official university Intellectual Property items and ‘normal’ audiovisual items which are simply stating copyright (considering project bound items as Universiti Putra Malaysia legal status) that can be archived in the on-site audiovisual archive to ensure their further existence beyond the lifespan of a CD or DVD being stored on an office bookshelf with an on-off air condition environment. The main point, however, is to also ensure accessibility in long term, even if they are temporarily restricted, of all items that might be not in the scope of the Intellectual Property marketing departments.

Figure 4: Overview about processes and proportions from the perspective of ‘university units versus knowledge creators’. The more ‘useless’ the item the better for the KPI. The more important for the main university task of building knowledge and teaching, the harder to be acknowledged as this is fixed through contract of/for service.



Another interesting point is that commercial interest in audiovisual items that might be university Intellectual Property seems to increase with the inaccessibility. The pro-active role audiovisual archivists play in providing secondary access to and preservation of these digitally born Intellectual Property items, beyond their primary uses within the commercial sector, is crucial to the social task of the university (figure 4). Some contemporary audiovisual content created for commercial and research purposes, especially those created during research with local communities, must endure beyond the Intellectual Property product-development processes of today's profit-minded universities. Audiovisual archivists must be front-and-center in this process, both in selecting and preserving contemporary research output at universities around the world, but also in providing education to communities and researchers around the Intellectual Property process. This educational task connected to archival work is again a crucial undertaking in societies that struggle hard in overcoming of postcolonial nationalism, of devaluating art as subordinated commercial tool, and of ideological or religious resentment against core disciplines of social sciences such as history, geography, anthropology, philosophy, and the arts. Interestingly, the avoidance of anything entertaining in circles of the religious policy, is often being instrumentalised by staff in performing arts when questions are asked about restricted access or potential re-use of any of the named items. It is said that administrators are biased in taking these items in the list after they know the contents. They will restrict access and avoid re-use that is, however, exactly what is wanted by the creators of this type Intellectual Property items. Everyone gets some points and nobody is harmed.

5. Outlook

These conditions then have to meet with administrative practicalities regarding Intellectual Property establishment from staff, contract regulations, and the distribution of competencies and power. Ramli et al who described parts of the latter problem based on a comparison between research universities in Malaysia conclude that "The university's intellectual property policy must also provide guidelines on the allocation of university intellectual property ownership provided that the policy is legally valid to bind members of the university." (Ramli et al, 2016, p. 1252). As many of the project work and substantial knowledge accumulation is realized by temporary contract staff, this might become a major problem in the future of many large Asian universities, as could be explained taking the example of Malaysia.

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