

Protecting Literary and Artistic Works in Libraries: The Role of Intellectual Property in Promoting Culture and the Arts

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This paper explores the crucial role of intellectual property, particularly copyright, in protecting literary and artistic works in libraries. Librarians and library staff are not just custodians of library resources but also protectors of authors' intellectual property rights. However, most librarians lack knowledge about intellectual property in the context of the library. For this reason, librarians must be "copyright literate" to be copyright implementors and educators. With technology and digital transformation, copying and unauthorized use of library materials have become prevalent. There is a need to upskill librarians and library staff to capacitate them to serve in this expanded role. This paper discusses the different kinds of intellectual property that may be found in libraries and proposes ways in which knowledge of intellectual property can help libraries promote culture and the arts. The paper underscores the critical role of libraries in promoting literary and artistic works through protecting intellectual property rights.

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Introduction

Libraries are repositories of literary and artistic works in the form of books, scholarly publications, special collections, historical archives, and other educational resources, both in physical and digital formats. Depending on the library's size, priority, and scope, its collections vary from a few thousand to millions of works. To properly manage its collections, libraries should devise strategies for preserving them so that present and future generations can benefit from these resources. One important aspect of library management is intellectual property management. It involves protecting and handling the library's intellectual property assets and employing strategies to safeguard the intellectual property rights of the library, the authors, and the reading public. There is a growing awareness of the importance of intellectual property in sharing knowledge while preserving and managing collections.

There are two views on the role of intellectual property, particularly copyright, in library management. The critical view sees intellectual property as a restriction for libraries to carry out their mandate. Since the primary role of a library is to share and disseminate knowledge, the limitation imposed by copyright limits their right to reproduce copies, lend library materials, and offer digital resource services. For example, a library cannot make multiple copies of books to make it more accessible to students and faculty for fear of copyright infringement. On the other hand, the progressive view looks at intellectual property as necessary to protect the rights of authors and inventors as they are needed to promote culture and the arts. From this view, intellectual property protection is imperative for adequately managing libraries. The role of intellectual property in libraries is to preserve collections, educate and provide access to the public, and provide the legal mechanism to protect unauthorized use of resources.

This paper explores the important role of intellectual property in protecting literary and artistic works in libraries. With the advent of digital transformation and the explosion of information on the internet, libraries face challenges in protecting their intellectual property while ensuring access to them by students, faculty, and the general public. It cannot be denied that there is rampant copying of books, downloading of files, and public display of audiovisual

works within the library. While dissemination of knowledge is one of the primary goals of a library, this must be balanced with respect for the intellectual property rights of the authors of these works.

Why Library Staff Should Understand Copyright

Copyright education is vital to the proper management of libraries. Libraries contain resources like books, art collections, literary works, drawings, and audio-visual works, all protected by copyright. Books are borrowed daily, journal articles reproduced, films watched, and materials shared. While library staff has some knowledge about copyright in general, there is a need for more in-depth understanding of copyright, mainly focused on library management.

Librarians and library staff encounter copyright issues daily as their “products” are copyright materials. To serve their clients, they should understand the basics of intellectual property in general and copyright in particular. For example, books are now easy to share because of technology, but access should be regulated based on licensing contracts. With the eagerness to share information, librarians may be violating copyright law without knowing it.

In August 2017, the International Federation of Library Associations (IFLA) gathered in Poland to discuss, among others, the levels of copyright literacy of librarians and staff in the cultural heritage sector. The panel comprised resource speakers from the United Kingdom and other European countries. The discussion was documented in the paper entitled “Copyright Literacy and the Role of Librarians as Educators and Advocates: an International Symposium.” The panel agreed on the importance of copyright literacy among librarians and the challenges and opportunities ahead. “Copyright literacy” was coined by Professor Tania Tordova (2014), who defined it as “knowledge about copyright.” Secker and Morrison defined it as “acquiring and demonstrating the appropriate knowledge, skills, and behaviors to enable the ethical creation and use of copyright material” (2016, 211). In the panel discussion during the conference, four reasons were given on why librarians should be copyright literate:

- *Technological developments mean that copying or “sharing” information provided by libraries is extremely easy. However, access to much digital content is regulated by license contracts that many library users may be unaware of.*
- *Recent international copyright reforms around the world have reflected both the creative industries’ attempts to combat piracy and illegal copying as well as libraries’ and educational institutions’ efforts to ensure appropriate limitations and exceptions to copyright law are in place. This balance between public and private interests, as reflected in the law, is constantly shifting and needs to be considered in context when people encounter copyright issues.*
- *Like other forms of information, copyright advice and commentary reflects the interests and views of the people or organizations that created it. In addition, a great deal of online copyright information reflects US law, so will not be directly relevant to many people and organizations throughout the rest of the world. Librarians are therefore key partners in helping people find trusted sources of information on copyright law. At least in the English-speaking world.*
- *The evolving professional identity of librarians, leading to new roles providing support for researchers and delivering teaching in all aspects of information*

literacy, means that they are no longer acting merely as custodians or gatekeepers of library collections.

For these reasons, it is clear that copyright literacy among librarians is necessary and that librarians need to increase copyright knowledge and awareness. In the lectures I have conducted where I spoke with librarians, I can say the same with librarians in the Philippines. Hence, there is a need to promote copyright literacy in the Philippines through education programs and training. There is a need for library professionals to keep abreast with the local and international developments in intellectual property, particularly copyright. Indeed, there is a need to address copyright literacy among librarians to manage libraries with the challenges posed by digital transformation. As aptly stated by WIPO:

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IP, in particular copyright, is highly valuable to the development of a forward-thinking society. Modern history has shown that culture, and in particular the enrichment of a society's patrimony, is dependent upon adequate IP protection provided to artistic and literary works. A society fosters and nurtures the creative process by providing the impetus to create new artistic and literary works through IP Protection.

Defining Intellectual Property Rights for Libraries

For a librarian to manage intellectual property rights in the library, there is a need to define precisely what copyright means in the context of the library. According to the World Intellectual Property Organization (WIPO), copyright “*relates to literary and artistic creations, such as books, music, paintings and sculptures, films and technology-based works (such as computer programs and electronic databases) xxx referred to as authors' rights.*” It should be noted that copyright protects only the expression of the idea, not the idea itself. Also, “*the ideas in the work do not need to be original, but the form of expression must be an original creation of the author.*” This distinguishes it from patent protection, where inventions protect the idea itself in the form of products or processes. This means that the legal protection of copyright relates only to using the expression without permission.

A. Works Protected by Copyright

Copyright protects “artistic and literary works” as Article 2 of the Berne Convention states, “*literary and artistic works shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression.*” Under Sections 172 and 173 of the Intellectual Property Code of the Philippines, the following are the original and derivative works protected by copyright:

- (a) *Books, pamphlets, articles and other writings;*
- (b) *Periodicals and newspapers;*
- (c) *Lectures, sermons, addresses, dissertations prepared for oral delivery, whether or not reduced in writing or other material form;*
- (d) *Letters;*
- (e) *Dramatic or dramatico-musical compositions; choreographic works or entertainment in dumb shows;*
- (f) *Musical compositions, with or without words;*
- (g) *Works of drawing, painting, architecture, sculpture, engraving, lithography or other works of art; models or designs for works of art;*
- (h) *Original ornamental designs or models for articles of manufacture, whether or not registrable as an industrial design, and other works of applied art;*

- (i) *Illustrations, maps, plans, sketches, charts and three-dimensional works relative to geography, topography, architecture or science;*
- (j) *Drawings or plastic works of a scientific or technical character;*
- (k) *Photographic works including works produced by a process analogous to photography; lantern slides;*
- (l) *Audiovisual works and cinematographic works and works produced by a process analogous to cinematography or any process for making audio-visual recordings;*
- (m) *Pictorial illustrations and advertisements;*
- (n) *Computer programs; and*
- (o) *Other literary, scholarly, scientific and artistic works.*

The following are the derivative works:

- (a) *Dramatizations, translations, adaptations, abridgments, arrangements, and other alterations of literary or artistic works; and*
- (b) *Collections of literary, scholarly or artistic works, and compilations of data and other materials which are original by reason of the selection or coordination or arrangement of their contents. (Sec. 2, [P] and [Q], P.D. No. 49)*

Copyright involves the right to prevent others from using the copyrighted work without permission. Copyright is not just one right but a bundle of rights that can be disposed of or assigned just like any other property. These rights include the right to reproduction, right to make derivative works, right of first public distribution, right of rental, right of public display, right of public performance and right of other communication to the public. Reproduction rights or the right to copy is the most basic of the economic rights of copyright and the legal basis of the most use of copyrighted work.

B. Limitations on Copyright

The statutory rights conferred by copyright are not absolute and subject to limitations. They can be classified as limitations as to (1) subject matter and by, (2) statutory enactment, and (3) Equity.

First, works that are not protected as to subject matter are those which relate to any “*idea, procedure, system, method of operation, concept, principle, discovery or mere data as such, news of the day and other matters of press information, and any official text of legislative, administrative or legal in nature.*” Works of government are also beyond copyright protection. Limitations as to subject matter do not have copyright protection because they are part of the public domain and are considered materials for the use of everyone.

Second, works that are not protected as to statutory enactment are those enumerated under Section 184 of the intellectual property code on the limitations on copyright. These include acts enumerated from letters (a) to (k) and are limited to instances, such as when it is done privately and free of charge, for information purposes, teaching purposes, or similar activities subject to the conditions stated therein.

Third, works that are not protected on equity grounds are under “Fair Use”. It is a valid defense against a charge of copyright infringement and is based on the four-factor test: a) purpose and character of the use; b) nature of the copyrighted work; c) amount and substantiality of the portion used; and d) effect on the use upon the potential market for or value of the copyrighted work. There is no exact definition of “fair use,” and its application depends on the circumstances of each particular case.

C. Defining Intellectual Property Rights for Libraries

Various intellectual properties may be found in libraries. The following are the common intellectual properties in library resources:

1. **Copyright:** This is the most common and constitutes most intellectual property in a library. They comprise works as previously enumerated in Sec. 172 and 173 of the IP Code, such as books, written materials, music, audio-visual works, drawings, art collections, and other similar works. Libraries deal with copyrighted material mostly in their daily operations.
2. **Trademarks:** While trademarks do not directly apply to library materials, libraries should be careful in branding or promotions. Libraries can have their marks and logos protected. Examples of library use of trademarks can be seen in naming rights of buildings or projects, titles of exhibitions, promotional materials and collaterals, works of art, and domain names.
3. **Patents and Trade Secrets:** Like trademarks, patents are not usually found in library materials. However, there are instances when new technologies in library management and operations can be patented. For example, new technologies in the management and distribution of books, methods for selling online, and methods in preserving library materials like paper can be patented by the library and even licensed to third parties. On the other hand, the list of library materials, patrons and sponsors' databases, or fundraising methods can be protected as trade secrets.
4. **Industrial Designs:** While not protected by copyright, industrial designs are within the area of artistic works because they relate to the aesthetic appearance of products. For example, a design for a chair used in the library for better ease and comfort or light used in reading books may be found and used in the library and can be protected as industrial designs.

Librarians and library staff trained to know about copyright, identify them in the library resources, and apply them to their work can better serve their patrons and educate them about the importance of intellectual property in library management. With proper training, they can also help prevent copyright infringement of works and address issues concerning them.

The following is an example of a hypothetical case showing the challenges libraries face in implementing copyright law in today's online environment:

A library has an old fragile book in its collection published in 1960. According to the publisher, there are no copies available in the market, and they can only offer a copy in digital format through a subscription for a fee. The library has no budget to pay for the subscription fee. Students clamor for the book as it is part of their research. The library wants to make a digital copy of the entire book so that the students can use them in the library. The following are the copyright questions the library may face: 1) Can the library scan the entire book? ;(2) If yes, can the library send it online to students who request a copy?; (3) Can the library make it available to the students through the internal online database or the library website?; and (4) Can the library make the book accessible to the students by paying a license fee to the copyright owners? The answer to these questions would depend on the national copyright law of the country. In the Philippines, the answers to these questions are found in Section 13 of R.A. 10372, which amended Section 188 of the IP Code), to wit:

"SEC. 188. Reprographic Reproduction by Libraries. – 188.1. Notwithstanding the provisions of Subsection 177.1., any library or archive whose activities are not for profit may, without the authorization of the author or copyright owner, make a limited number of copies of the work, as may be necessary for such institutions to fulfill their mandate, by reprographic reproduction:

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"(c) Where the making of such limited copies is in order to preserve and, if necessary in the event that it is lost, destroyed or rendered unusable, replace a copy, or to replace, in the permanent collection of another similar library or archive, a copy which has been lost, destroyed or rendered unusable and copies are not available with the publisher."

Based on the said law, the following are the proposed answers to the questions: (1) Yes, the library can make a digital copy of the book if it is a non-profit institution, the purpose is for preservation, and if it is necessary to fulfill their mandate; (2) No, the library cannot send a copy to the students because the allowed purpose is only for preservation; (3) Yes, the library can make it accessible to students on the condition that it can be accessed only in the library and not accessible to the public; An alternative answer is No because the purpose is only for preservation; and (4) Yes, the library can make the copy accessible to the students if it secures a license to do so from the copyright owner of the book.

The Ways intellectual Property can help Libraries in Promoting Culture and the Arts

With the evolving nature of library materials and the new ways of sharing information, libraries play a crucial role in promoting culture and the arts. Protecting intellectual property rights is one of the ways libraries can contribute to promoting culture and the arts. The following are some of the ways libraries can use intellectual property to this end:

1. **Copyright Education:** The library is a suitable venue for promoting copyright literacy with its vast number of copyright materials used by students, faculty, and the public. With the proper training of library staff, they can provide workshops and training about copyright law, fair use, and avoiding infringement. Copyright advocacy can also be promoted to ensure increased awareness of authors over their work.
2. **Preservation and Access of Library Materials:** Library resources are for the present and future generations. To ensure these materials are available to everyone, libraries should acquire legal rights through copyright protection. The library should ensure that formal contracts and licenses are in place to enable the library to possess and preserve library materials legally. Moreover, digitizing materials and making them available online will allow broader access to these works.
3. **Library Exhibitions and Performances:** Libraries can initiate activities like exhibitions, displays, and events that showcase the works of artists and authors. These include art exhibitions, poem reading, movie watching, producing plays, or holding historical events. These activities help increase awareness and respect for the intellectual property of authors and creators.

4. **Collaboration with Other Libraries and Institutions:** Libraries can collaborate with other libraries, museums, artists, and government institutions to help artists and authors showcase their creations. With proper intellectual property agreements and licenses, artists will be motivated to display their works and network with other artists and institutions, promoting culture and the arts.
5. **Promoting Dissemination of Knowledge while Respecting Copyright:** Libraries can provide open and neutral spaces for sharing works. It can support open-access programs while recognizing intellectual property rights. This can help support open licensing for inclusivity. Libraries can also have creative spaces where people can collaborate and express their creativity. This includes performance studios, 3D printing facilities, or digital laboratories, which allow artists and community members to engage and network in an atmosphere that respects the works of others.
6. **Create Revenue from Intellectual Property:** Most libraries operate in non-profit schools or institutions. However, libraries can still generate income from intellectual property while fulfilling their primary mission to provide access to library materials. Libraries can charge fees for reproducing licensed materials like course packs or works in the public domain. It can develop management systems for digital access to library materials and license them to others for a fee. It can also apply for grants or sponsorships for naming rights or exclusive access to library resources. It can also offer intellectual property consulting and training for a fee.
7. **Sponsoring intellectual property advocacies:** Libraries can initiate activities that promote intellectual property policies that support free access to library materials, respect for intellectual property, and preservation of traditional or cultural knowledge. It can even affect government policy to promote the most access to library materials while balancing it with recognition of the intellectual property rights of authors and creators.

Conclusion and Recommendation

The library profession has evolved with the advent of technology and digital transformation. Aside from just being custodians of library materials, they should now embrace their new role as intellectual property managers of library resources. In this newly expanded role, they should be copyright literate and copyright educators. One way to support copyright literacy for librarians is to have a well-designed copyright curriculum that not only educates them about the technical aspects of copyright law but to know how it is applied in the context of library services that they offer. Copyright education and training should be part of the qualifications for librarians to get their licenses and continuing professional education. They should be ready and able to give the right advice when dealing with library materials. But this cannot be done alone. There is a need to get support from library colleagues and professional organizations.

Librarians are now expected to be copyright educators. While they may not fully know the intricacies of the law, just like lawyers, they are the front liners in the proper management and protection of library materials. They have to grapple with the ongoing debate on access to materials on the one hand and the protection of intellectual property on the

other. Ultimately, library management is about improving access to information while at the same time respecting the rights of authors and creators.

With this, the following are my recommendations to the library management: (1) Conduct training for librarians and library staff to increase copyright literacy; (2) Conduct an IP Audit to ensure that licenses are in place for preservation and access to library materials; (3) Organize library events and performances to spur interest in intellectual property and ensure that the rights of creators are recognized; (4) Develop an IP Policy within the institution to provide, among others, for the rules on IP ownership, access to library materials, and dispute resolution; (5) Collaborate with other libraries and institutions for networking and sharing of best practices; (6) Explore ways to create revenue with intellectual property owned by the library; and (7) Join local and international library associations to keep abreast with the developments in copyright law and library practice.

Protecting intellectual property in libraries contributes to the preservation of artistic works, promotion of creativity, documentation of history, and promotion of the cultural heritage of a society. First, protecting intellectual property in libraries ensures that library resources like books, photographs, collections, and audiovisual materials are well-kept and preserved in libraries for present and future generations. Second, protecting intellectual property in libraries motivates writers and creative artists to share their works with society. Third, the protection of intellectual property in libraries supports the preservation of historical records and memory and history of people; and fourth, intellectual property protection contributes to archiving cultures, artistic works, and traditions. A library that fosters intellectual property protection contributes to preserving art, memory, and history.

Indeed, intellectual property has a crucial role in the management of libraries. As a repository of copyrighted materials, libraries need to know to protect them to foster the preservation of culture and the arts. An intellectual property strategy is necessary to secure the rights of authors whose works reside in the library. Since intellectual property promotes culture and the arts, then libraries must support intellectual property protection. As aptly stated by WIPO on the nature of copyright protection in promoting cultural heritage: “*Copyright protection is above all one of the means of promoting, enriching and disseminating the national cultural heritage. A country’s development depends to a very great extent on the creativity of its people, and encouragement of individual creativity and its dissemination as a sine qua non for progress.*”

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