



Intellectual Property Management

Intellectual Property Management in the area of culture aims at helping museums and other cultural heritage institutions and sites to manage their intangible assets by a) securing their legal protection, b) making the best out of it in terms of exploitation and profit, and c) preventing them from infringing third party rights. This factsheet explains what intellectual property is, why IP Management is important, what steps institutions need to take when they perform it and what the challenges and opportunities of this era are.

What is Intellectual Property?

Intellectual Property (IP) refers to the legal rights recognized by a State with the aim to protect the fruits of the human intellect or else the creations of the mind in the field of industry, literature, art, and science.

These rights include **copyright** (i.e., literary and artistic works) and **related rights** (i.e., rights of the performers, sound and film producers, broadcasting organisations, database makers, publishers of print materials and press publishers, etc.) and **industrial property rights** (i.e., patents and utility models, industrial designs, trademarks, trade secrets, etc.).

IP rights are in their majority absolute and exclusive rights meaning that they belong to their rightholders and can only be exercised by them. That means that any use of protected subject matter, which is unauthorized, will be considered illegal and brings with it sanctions and remedies. Yet, protected content can be used in certain instances on the basis of exceptions or limitations provided in the law.

When IP protection expires, protected subject matter falls into the public domain and can be used freely by anyone.

What is IP Management?

Even if cultural institutions are non-profit organizations or do not want to engage in business opportunities, IP management is essential for them to accomplish their aims and mission. In fact, it helps institutions and sites to manage their intangible assets by a) securing their legal protection, b) making the best out of it in terms of exploitation and profit, and c) preventing them from infringing third party rights. The main issues that need to be taken into account are the following:

1. IP Inventory/IP Audit
2. IP Policy
3. Licensing Strategy
4. Digital Rights Management and New Business Models
5. IP Culture
6. Dispute Resolution

1. The IP Inventory/IP Audit/IP Strategy

For a cultural heritage institution to be able to manage its IP assets, it needs to first list and inventory them. That has a dual aim. On the one hand, it allows the institution to realize how much of the necessary rights (e.g., concerning artefacts in its collections) has acquired and how much it needs to acquire in order to pursue its aims legally. On the other hand, it allows it to make provision as to how not to infringe third party IP rights and escape liability. That is usually done on the basis of an IP Inventory or an IP Audit.

An IP Inventory is an inventory of the IP assets held by the institution, whether by creation, acquisition, or license. An IP Audit identifies the IP assets, their value and importance, and enables the setting up of an IP Strategy to ensure that the institution is leveraging as much value as possible out of its, often under-utilized or undervalued, assets.

2. IP Policy

An IP Policy assists an institution's personnel to deal with IP issues in a principled manner. The Policy may also replace an IP Strategy, without precluding instances where both may co-exist.

The IP Policy may take the form of principled statements that work as guidelines to the institution administrators faced with decisions that involve IP issues. Some examples in this respect are statements for avoiding liability, ownership and use of self-generated IP, terms of acquisition of collections, use of trademarks and logos, terms of donations, online licensing, digitization of works, terms of access to the works/collections as well as more specialized ones by reason of the institution's specific goals. For example, if a library, standardized terms for photocopying, lending, dealing with out of commerce books, orphan works, etc. The IP Policy may also contain due diligence steps and 'safe harbour right statements' to avoid liability.

3. Licensing Strategy

If the institution decides to engage in commercial/profit-making activities, it needs to follow a licensing strategy. This strategy may implement in more detail aspects of the institution's IP Policy.

Some examples where a fully-fledged Licensing Strategy is required are the following:

- charge visitors for guided tours, taking pictures, videos, etc.
- operate a shop with products incorporating the image/design of items in its collections and other products
- use of images/photographs of items in its collections by private parties, companies, other institutions, online platforms, etc.
- selling of books with pictures of items in its collection and generally making publications, selling postcards, posters, copies of items in its collections
- use of its trademarks and logos
- rent some of its premises for conferences together with the use of logos or for social events
- run a restaurant, a café, etc.

4. Digital Rights Management and New Business Models

In an era of digitization, a cultural heritage institution or site needs to conform and adapt its services. This has been especially so after the pandemic where physical visits were no longer possible for an extended period of time and where the institutions were no longer accessible under the terms and conditions applicable until then (i.e., before the pandemic). The institutions realized that in order to keep up with the general pace and the augmenting needs of offering as much as possible to the public without the constraints of time or geography, they had to make at least their collections visitable. Thus, an institution's strategic decisions include going digital: i.e., digitize collections, offer virtual tours, maintain a website with pictures and information, introduce licences for digital materials, 'advertise' their collections through world-known platforms such as Europeana, Google Arts, and so on. At the same time, taking into account that offers on the Metaverse had multiplied, institutions had to be able to compete and therefore use new technologies to respond to such a task (e.g., virtual/augmented/mixed realities, immersive performances, haptic technologies, AI, NFTs).

5. IP Culture

The creation of an IP culture is usually the goal of the implementation of an IP Strategy. Since an institution does not necessarily have an IP Strategy, an IP Policy should aim at the cultivation within the institution of an IP Culture where all employees are informed/educated/trained as to how to deal with creative content (generated within the organization, outsourced, or belonging to third parties) and be aware and motivated to apply the institution's IP Policy concerning their part of work or role. They need to develop a culture as to how to handle IP issues according to the institution's policies and guidelines.

6. Dispute Resolution

Engaging in exploitation make give rise to disputes. Disputes may also arise from the breach of any type of contract or agreement where the institution is a contracting party irrespective of whether this is for commercial benefit or not. It could simply be an exhibition agreement. Disputes may also arise from tortious behaviour such as the infringement of IP rights.

The institution needs to take decisions on the resolution of disputes whether, for example, it will resort to litigation or to Alternative Dispute Resolution (ADR) (arbitration, mediation, conciliation, negotiations, etc.).

Dispute resolution may be part of the institution's IP Policy so that there is a uniform stance as to how one handles such situations.

The Project

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