

Libraries and Digital Humanities: The Intellectual Property Rights Perspective

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ABSTRACT

Advancements in digital technologies have altered the way knowledge is captured, catalogued, indexed, accessed, and consumed in institutions across the world. Digital humanities have not only empowered the faculty members and researchers in the humanities departments, it has also entrusted with the librarians, additional responsibilities of curating and cataloguing knowledge in their libraries and enabling humanistic researches in the field. Such curating, indexing, and consumption exposes significant intellectual property right (IPR) issues that librarians have to manage. This article explores the IPR issues associated with the digital humanities that librarians should specifically address as part of their activities.

Keywords: Digital humanities; Libraries; Librarians; Intellectual property rights; Copyright; Patent; Trademark; Thanjavur maratha records; Licensing; Due-diligence; Contracts

1. INTRODUCTION AND HISTORICAL CONTEXT OF INTELLECTUAL PROPERTY RIGHTS

The librarians are organisers of knowledge for the society, and guardians of knowledge created in the society. They are necessary to the field of academics and are an integral part of the education system. Libraries are not just a place for organising knowledge, but also a tool, and a place, that ignites and develops cultural and social development of the civilisation.¹

The Charter issued by Queen Mary in 1557 reserved to the monarch the right to grant patent rights to publishers for printing and publishing books, while ignoring author's interests. The Statute of Anne passed in 1710, restored the balance by granting the authors the right to control reproduction of the books, which later evolved into copyright law. Around the same time, publishers started using marks to indicate the origin of books,² which later evolved into trademark law. The monarch would grant, privileges to those in their favor to explore natural resources, extract taxes or rule a region in return for a share of revenue from such activities or gifts from such grantees.² These privileges evolved to become the modern day patent rights granted by the governments.

Countries formalised legislations to protect copyright, trademark, and patents of their citizens that were diverse in form and function, posing challenges to international business entities. The World Trade Organisation (WTO), through its Agreement relating to Trade Related Aspects of Intellectual Property Rights (TRIPS) standardised and harmonised intellectual property rights across the world. WTO mandated all member nations to implement the standardised law within a stipulated time. With these recent developments in the field of intellectual property rights (IPR), librarians became responsible not only for helping researchers in accessing knowledge, but also helping them protect it under appropriate intellectual property rights. Advancements in technology have made copying information easier, making controlling publications and creation of derivative work difficult. It has posed new challenges like privacy, information security, copyright, censorship, and data preservation. Licensing arrangements with repositories has put the onus of protecting intellectual property rights in such repositories on librarians.

In addition to these downstream challenges, digital humanities pose upstream intellectual property challenges even before the work is created and captured in a digital format. This article focuses on the intellectual property issues for librarians associated with digital humanities, specifically on copyrights, patents, and trademarks.

Section 2 discusses digital humanities and the role of a librarian therein. Section 3 covers issues relating to copyright, patent, and trademarks that librarians should address to protect outputs of digital humanities and Section 4 summarises and concludes the paper.

2. DIGITAL HUMANITIES, LIBRARIANS AND INTELLECTUAL PROPERTY RIGHTS

Digital humanities, though considered indefinable, the articles trying to define digital humanities have become a typical genre.⁴ While exploring the opportunities and challenges at the conjunction of 'digital' with 'humanities', digital humanities have emerged as a singular field of knowledge.⁵⁻⁶ It not only deals with applying digital technologies to the field of humanities (for instance, digitising content from humanities), but also using humanities and the tools and techniques therein to alter and update the field of digital technologies (for instance, using language syntaxes in developing a new natural language processing software that could be implemented as part of the machine learning project).⁶

As knowledge keepers, librarians are responsible not only for safekeeping historical knowledge in the form of manuscripts and political records (which were hitherto inaccessible to public due to the fragility of such material), but with technological advancements, they are now able to digitise such manuscripts and records and make them accessible to researchers for further research in humanities. While providing such access, they are securing necessary licenses from manuscript owners to safeguard copyright for its users. Having moved to the center of digital humanities, librarians are now responsible not only for digitising manuscripts and enabling its access to researcher (which were managed internally with library staff), but also dealing with issues like privacy, intellectual property rights and its licensing, data preservation, etc. These developments could expose librarians to situations and complications that might be difficult to manage without external support.

This article explores three intellectual property challenges faced librarians in today's globalised networked world: (a) copyright issues in sourcing manuscripts, its digitisation, curating, and indexing; (b) patenting of technological processes and innovations involved in digitising manuscripts and making them accessible; (c) protecting various aspects of digital humanities as a trademark. Section 3 introduces various intellectual property rights and its application in digital humanities.

3. INTELLECTUAL PROPERTY PERSPECTIVES OF DIGITAL HUMANITIES

Intellectual Property Rights (IPR) is an exclusive right granted to the creator (either an inventor, or a writer/author, or a designer or a business organisation), to exploit his/her intellectual creation for a limited period. Patents protect technological inventions, copyright protects expression of literary and artistic works, trademarks protect distinct identity of a product or a service, designs protect

visual aspects of the product, and trade secrets protect confidential information that has commercial value. We will now discuss copyright, patent, and trademark that affect library services, specifically in digital humanities.

3.1 Copyrights

Copyright deals with literary, artistic, and scientific works. It also deals with performances of performing artists, phonograms, and broadcasts. All literary works, which is the subject matter of library sciences, would be covered under copyrights. The Copyright Act of 1957, as amended in 2013 governs the copyright law in India (hereinafter Copyright Act).

As purveyors of knowledge and custodians of the knowledge librarians occupy one of the most important roles within an academic institution. They are responsible not only for securing copyright for literary works like textbooks, question papers, class notes / material, handouts, case studies, answer papers, course outlines, even the delivering of a lecture falling within the purview of copyrights², but also have the moral right to ensure academic integrity by dealing with issues like plagiarism in academic work both by students and faculty members of the institution.

Copyright law ensures that mere ideas are not protected under copyrights; only an expression of such ideas into copyrightable medium makes it eligible for copyright protection.⁸ Section 13 of the Copyright Act lists copyrightable works. The creator of the academic material becomes the copyright owner. Registration is not mandatory to secure copyright for the author/creator, but it accrues from the date of its creation. Chapter X of the Copyright Act provides for the process of registration of works. Though registration is not mandatory, registering a work with the copyright office is advisable because such registration would provide statutory evidence accepted by the courts during copyright infringement litigation.

While librarians are tasked with digitising manuscripts, its author might long be dead. Sometimes, the author might not be known (for instance, in the case of scriptures on temple walls or in thala patris). Determining the authorship of the digitised work becomes essential: would it be the original author of the manuscript or the one who actually converts it into digital format. If it's the latter, can they enforce copyright against infringers is another vexing issue challenging librarians in the digital humanities. However, if the work is owned and controlled by the government (for instance, government reports or legislations, etc.) then such works can be used without permission [Section 52(q) of the Copyright Act]. But if the work is on a property owned by a government department (for instance, scriptures on archeological sites), then entering such property without written permission for accessing and digitising would amount to trespass. To illustrate the issues associated with the librarians working on digital humanities, the authors would like to discuss the case of digitising the Maratha manuscripts of Thanjore district in Tamil Nadu, India.⁹

Marathas had an established base around Thanjore region of Tamil Nadu, starting from 1675 till 1855.¹⁰ During that time they had created extensive records relating to their administrative processes, which were catalogued year-wise and maintained within the Saraswati Mahal Library, the erstwhile palace of the Maratha descendants. Some of these records also dealt with tax collection, preparation of Indian and English food, routine administration, and also cataloguing of ailments of both humans and animals and medicines used for their treatment.

After independence, the Government of India setup the Indian Historical Records Commission in 1950 which was entrusted with the responsibility of collecting, cataloguing, archiving, translating and documenting all native records from all parts of India. This Commission collected and classified the records into three categories: class A – very important and politically sensitive documents that were supposed to be archived in the Tamil Nadu archives at Chennai; class B-selectively important documents relating to social and cultural activities that were supposed to be archived in the Tamil Nadu archives at Chennai; class C-Non-important documents that were supposed to be destroyed, in this case in Thanjore by the district administration.

Though such categorisation was supposed to be based on the importance of the document, the members of the Commission could not understand the importance of certain documents due to difficulty in understanding the language (Modi language) because of which certain documents were misclassified and stored locally. For instance, one of the documents dealt with the Marathas pledging the natural port in Karaikal with French rulers for two lakh pakhodas (gold pieces). Such pledging document was classified as a class-C document and was stored and earmarked for destruction, instead of being stored at the Tamil Nadu archives in Chennai.

The Government of Tamil Nadu, in consultation with the Government of India, formed a Committee of 12 members including the District Collector of Thanjore, the Vice Chancellor of Tamil University, One Royal Family Member, the Education Secretary of Tamil Nadu, the Secretary of the Department of Culture Government of India, the Director of the National Archives at Delhi, among others, to administer the Saraswati Mahal Library where these documents have been stored. The Thanjore Collector, who had no interest to safeguard them at the expenses of the government, allowed transferring the records to the Tamil University for safeguarding. With efforts from researchers like Prof. Vivekananda Gopal, all other documents that belonged to Thanjore District, but were lying not only in the Tamil Nadu Archives at Chennai but also spread all over Tamil Nadu, were brought to Thanjore District and stored for safeguarding at the Tamil University. The class-C documents that were retained by the Saraswati Mahal Library is still preserved there.

Many of these documents were translated by Prof. Gopal and published as volumes of books by Tamil University in Thanjore. The latest work consisted the

original documents relating to the pledging of Karaikal to French rulers, and its translations into Marathi, English and Tamil by Prof. Gopal in a volume published by the Saraswati Mahal Library.

Copyright provides users with two kinds of rights: economic rights and moral rights. The author can transfer the economic rights to others for commercial consideration (Section 18 and 19 of the Copyright Act), while the moral rights (also known as paternal rights) cannot be transferred to others (Section 57 of the Copyright Act). These provisions provide for the authorship to be separated from ownership. Authors hold the moral rights perpetually on the work during copyright's life, but he could transfer the ownership rights and all the economic rights associated with the work to others for commercial consideration. This provision poses an important challenge to librarians working in digital humanities.

For instance, as the Thanjore Maratha documents were created over a period of roughly 180 years, ascertaining its authorship becomes difficult. But as the royal descendant was alive and these documents were under his custody, he could exercise his rights on the documents and claim copyright protection on all derivative works emerging from them. Alternatively, if the author is not identified or if the author is long dead, then finding the true owner holding commercial rights of such works becomes difficult without which digitisation activities cannot happen. This becomes more challenging as the copyright law does not insist on affixing copyright notices on the work nor is there a central repository for searching the copyright status and ownership in abandoned and orphan works. When corporations insisting on secrecy own the work, tracing ownership becomes extremely difficult for the librarians.¹¹

Section 14 of the Copyright Act provides for six different kinds of commercial rights that can be transferred to others: (a) right to make copies of the original work; (b) right to make derivative works (ex: a book converted into a movie, or a drama); (c) right to distribute copies of the work; (d) right to perform the works publicly (ex: giving a public lecture); (e) right to display the works publicly; (f) right of public performance of sound recordings (ex: converting a book into an audio book, which can be transmitted on radio).¹² These rights pose specific challenges to librarians involved in digital humanities. For instance, if a researcher wishes to access a manuscript to create a derivative work (like a movie or a drama) and the librarian hasn't secured those rights from the author/owner, then the researcher cannot create such derivative works. Same situation would happen, if the librarian hasn't secured the right to convert the manuscript into a book for the institution. For instance, if the Tamil University had not secured translation rights then the Royal descendant could have prevented the translation of the Thanjore Maratha manuscript (the district administrator transferred them without any restriction). But if such famous manuscripts is handed over to the university without any proper copyright assignment, the true owner of such manuscripts could object to the university translating or creating any

derivative works from such manuscripts. Librarian should negotiate for a complete copyright transfer including the right to sue for infringements from the author or their legal heirs. In addition, librarians should seek clarifications of all previous publications or sharing or licensing of the work by them, so he could track and inform authors of such works about such bequeath.

Librarians face an additional challenge while dealing with manuscripts donated by a family trust or a legal heir, who inherited it through a will or by conducting a family partition. To avoid future risks, librarians should ensure that the donor has clear titles to such works through proper due-diligence before accepting such donations. On clearing the due-diligence the librarian should execute a transfer deed or a gift deed and ensure that all associated rights gets transferred including the right to make it accessible (ex: converting it into braille format, audio-video mode, posting it on the website). Providing access to such manuscript under 'Creative Commons' license could protect the library against future infringement claims¹³, which has to be specifically negotiated for and transferred by the donor of the work.

Chapter V of the Copyright Act deals with the term of copyright. If the author is an individual, then copyright extends to the entire life of the author plus an additional sixty years after author's death. The legal heirs could transfer the work to others for commercial consideration, like any other asset. This poses specific challenges to librarians working in digital humanities. The author could have published, shared, or licensed the work with others during his life or his legal heirs could have received the right under a will or a family partition, after which they could have transferred it to others. Before accepting the donation, librarians should clear due-diligence to ensure effective and complete transfer of the work from all the multiple owners who might have a claim on the work.

Chapter XI of the Copyright Act deals with Infringement of Copyright. Copying the work without express or implied permission amount to copyright infringement and results in damages as well as imprisonment. Section 51 of the Act deals with various circumstances of infringement. However, Section 52 provides for circumstances under which certain actions not considered as an infringement. Within academic settings, making copies of a copyrighted work for teaching in a class, or for using it in the question paper doesn't amount to infringement. Education and private research is provided an exemption (called fair use or fair dealing) from the boundaries of copyright liability.¹² Librarians are expected to be thorough in both the copyright law and the principles and constraints relating to fair use in copyright law, not only for digitising manuscripts, but also for allowing researchers to access and use it in their research work.⁸

To summarise, copyright law affects librarians working in digital humanities significantly by making them responsible for scouting relevant manuscripts, conducting due-diligence as to its authorship and ownership, taking measures to legally getting it transferred to the university, using

appropriate technologies to digitise such manuscripts, protecting it using relevant technologies, providing its access to researchers and others for proper utilisation as authorised by the transfer deed, and also licensing it using appropriate licensing terms. Librarians working in this field are expected to work closely with lawyers (either internal or external) specialising in copyright law to implement these measures appropriately for the university.

4. PATENTS AND TRADEMARK

Patents protect inventions that are new, not obvious, and useful in any field of technology. In India Indian Patent Act, 1970, as amended in 2005 governs patents. Digital humanities library sciences generally see inventions relating to equipment used to digitise manuscripts, OCR technologies to read content/translate content, artificial intelligence and machine learning technologies that could understand and decipher manuscripts, technologies for indexing manuscripts as a database, software programs, library access software programs, etc., all of which could be patented, if they fulfill the patentability criteria. Ryderberg-Cox provides details on the patentable technologies applied in digital humanities.

If such technologies are indigenously developed at the university, librarians have to guide the inventor to appropriately patent them. Alternatively, if others have patented such technologies, then librarians have to secure necessary licenses to use them as part of their project on digital humanities. Such license agreements could impose restrictions in terms of usage, access, storing, and copying the data, reverse engineering the software program, researching the software/database for education purposes. Librarians should monitor that use of such technologies are strictly as stipulated in the license agreement. They should guide researchers to include licensing costs as part of their budget seeking funding for conducting digital humanities project.

Trademark protects the distinctive identity of an organisation. Trademark Act, 1999 governs trademark protection in India. Librarians working in digital humanities could secure trademark protection to the logo, brand name, brand identity, or the color associated with the university. Based on the digital humanities project, this could either enhance the reputation of the university or it could help popularize the project because of the reputation of the university. For this, Librarians should engage with the management to create a distinct logo, brand, and color that is not similar to other universities in the region, and then portray that in the application to the Trademark office.

5. SUMMARY AND CONCLUSION

Library services department universally is undergoing enormous changes both in technological development and in the way library services are offered to its users. Digital humanities altered the role of librarians from being at the periphery of the university as custodians of knowledge resources to a person at the center of knowledge creation. They are now assuming key role in acquiring manuscripts

that requires digitising, to actually digitising it, and then providing access to such content to researcher. One area that significantly affect this activity of librarians is the field of intellectual property rights. As purveyors and custodians of knowledge, it becomes pertinent and imminent upon the librarians to not only understand and implement the latest developments in the field of technology, but also adopt and integrate the intellectual property practices in their activities.

In this paper, the researchers have tried to discuss some of the important intellectual property issues that affect digital humanities, like sourcing the manuscript and conducting due-diligence of its ownership, executing a comprehensive transfer/gift deed, securing licensing rights for various kinds of uses, communicating and clarifying about the transfer of ownership, getting such manuscripts digitised and translated, getting such works published, publicising about such works to researchers, and facilitating access of such works by researchers to create new knowledge for the society. To successfully achieve this, librarians are expected to develop a thorough understanding and application of the intellectual property laws like copyright, patents, and trademark. In addition, they are also required to coordinate with management of the university and liaising with outside lawyers on these matters, while negotiating with the donors of such manuscripts and knowledge resources.

In this article we have examined, the basics of copyright, patent and trademark laws as applicable to digital humanities. We have also discussed the skills that librarians need to develop to adapt themselves to the demands of the field. Future researchers could explore these topics with greater depth.

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