

Stop saying 'Protect our IP' in educational contexts?

At [USQ](#) here has recently been a **fair bit of talk about Intellectual Property (IP)** in relation to our distance education practice at USQ, for reasons I can't and won't go into.

Every time I hear someone say 'protect our IP' in a meeting I keep thinking of Richard M. Stallman's famous [disapproval of the term](#). He argues that IP is a misleading catch-all for a series of different legal constructs, citing copyright, patents and trademarks as distinct legal systems with very different characteristics.

In order to get this 'IP' straight in my mind I thought I'd apply Stallman's approach and have a **look at the different dimensions of IP** in our distance education enterprise. I reached the conclusion that what people are really talking about is protecting a number of things that are not actually really Intellectual Property in any meaningful sense. What they want to protect, I think, is knowledge that's held by our staff and enabled by our systems. That is what helps us keep or grow our market share and revenue. I'll go through my reasoning.

There's a government site called IP Australia which has a [longer list of constructs](#) than Stallman's three:

Intellectual property represents the property of your mind or intellect. In business terms, this also means your proprietary knowledge.

Types of IP:

- [patents](#) for new or improved products or processes;
- [trade marks](#) for letters, words, phrases, sounds, smells, shapes, logos, pictures, aspects of packaging or a combination of these, to distinguish the goods and services of one trader from those of another;
- [designs](#) for the shape or appearance of manufactured goods;
- [copyright](#) for original material in literary, artistic, dramatic or musical works, films, broadcasts, multimedia and computer programs;
- [circuit layout rights](#) for the three-dimensional configuration of electronic circuits in integrated circuit products or layout designs;
- [plant breeder's rights](#) for new plant varieties; and
- [confidentiality/trade secrets](#) including know-how and other confidential or proprietary information.

If we look at the way we run our distance education, then one kind of 'IP' stands out. Copyright. Trademark is relevant to how we use the USQ brand but hardly the biggest issue. The other thing we need to look at is this [trade secrets](#) thing. I'll come back to that.

There are two main areas where I think copyright might be relevant:

1. Copyright in our courseware.
2. Copyright in any materials which we use to support delivery of educational services.

Though given that we not only teach, but teach *teachers* I guess the lines between those are somewhat blurry.

[Update: As soon as I posted this I realized there is a huge third category – copyright in learner-contributed material. If we wanted to be like FaceBook we could assert copyright over that but I don't

think we would, would we?]

I have [argued this week](#) that one way to get benefit from our copyright is to license our materials under a creative commons license and let people use and adapt them, extending our commitment to Open Courseware. One thing I forgot to do was to point to USQ's strategy:

Our 2020 Vision:

To be recognised as a world leader in open and flexible higher education.

So, in the business of delivering distance education we want to be open. How does this fit with 'protecting our IP'?

Apart from copyright and the trademark in our logo what is there left? Do we argue plant breeding rights because we are planting seeds of knowledge in learner's brains? Patents on our teaching methods? Circuit layout rights for the computers we have soldered up to deliver our courseware?

Well, no.

We're left with "[confidentiality/trade secrets](#) including know-how and other confidential or proprietary information". The key phrase here is *know-how*, as in Knowledge. As in Knowledge Management. But you know what? USQ's know-how is no secret. This is not a factory where we can insist that certain processes remain confidential and craft employment agreements to that end. In fact one of our core values is "free intellectual inquiry" which sounds like something Richard Stallman would like.

Not only do we offer courses in flexible delivery but we have to document our processes for [AUQA](#) audits. We [publish research](#) on how we do it. And there's a constant flow of staff in and out of universities. As far as I know there is nothing in our education practice that could be considered a trade secret for which we would have legal protection.

So I have reached the conclusion that we do need to talk about copyright in our course materials. If we do that then we can think more clearly about how to best exploit it. For copyright the means for exploitation is via a license. Traditionally the license is implicitly granted to students who enroll, but what happens to the printed courseware or the CDs when they finish? The books are out there in the second hand shops of Toowoomba and presumably the rest of the globe with a standard copyright notice that forbids reproduction without permission. There is no license to say that another university could not put the thing in their library and use it in a course. But that's another conversation.

The other issue is not, as far as I can tell, IP-related in the real sense of the term. It is to do with *know-how* but not secret, confidential know-how. It's **common or garden knowledge**, like you get in any practitioner. The challenge is to maintain our education engine when parts of it keep walking out the door, and new parts with a different shape walk in to replace them, and the parts are redesigning the engine while it runs. That's much more challenging than threatening to sue somebody.

To finish up, I'd like to note that I think Richard Stallman is bang-on when he discourages use of the term "IP". Unpicking what it means for USQ has been an instructive exercise for me. I think that if we want to improve our student recruitment and retention and not have learners go elsewhere, then **referring to the way we do things as "IP" is not helpful**. The danger in using the phrase 'protect our IP' is that it encourages a world view that somehow we have a 'property' other than copyright that we can guard against theft, or profit from in direct way. Knowledge is not property and you can't 'protect' it. People have to construct it for themselves. People are not property either in Queensland, yet, but you can attract, protect and encourage them.

Which reminds me, I remember at my first job interview at USQ telling the panel that my ambition was to become CKO – that's Chief Knowledge Officer. We still don't seem to have one of those.