ASSESSING THE AWARENESS LEVEL ON INTELLECTUAL PROPERTY (IP) KNOWLEDGE IN KUCHING

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ASSESSING THE AWARENESS LEVEL
ON INTELLECTUAL PROPERTY (IP) KNOWLEDGE
IN KUCHING

By

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This project is submitted in partial fulfilment of the requirement for the Corporate Master in Business Administration (CMBA) programme

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UNIVERSITI MALAYSIA SARAWAK
2015
Statement of Originality

The work described in this Corporate Business Project, entitled

"ASSESSING THE AWARENESS LEVEL ON INTELLECTUAL PROPERTY (IP) KNOWLEDGE IN KUCHING"

is to the best of the author’s knowledge that of the author except where due reference is made.

29 May 2015

Ivy Anak Romeo
14030051
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ABSTRACT

ASSESSING THE AWARENESS LEVEL ON INTELLECTUAL PROPERTY (IP) KNOWLEDGE IN KUCHING

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The objective of this research is to assess the level of awareness level on intellectual property (IP) knowledge in Kuching. The importance of this study is due to the increased number of IP infringements due to the latest technology and this normally would result in damages in terms of image and reputation, and money to those who are related. A questionnaire is constructed and be used as instrument to collect the information. The questionnaire requires information on respondent demographic, questions related to IP knowledge, and an open-ended questions to acquire opinion from the respondent. There are six hypotheses developed to test the specific objectives of the study. Generally, the study involved any public in Kuching, choose by random to answer the questionnaire. A total of 200 questionnaires has been distribute but only 157 questionnaire were returned and used as sample. The data are collected and are analysed using the Special Package for Social Science (SPSS) software. The findings then would revealed whether there is any relationship between the IP terms with the questions related to the term. Last but not least, from the findings too, the solutions to overcome the problems or improved the level of awareness are being discussed in the last chapter.
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CHAPTER ONE

THE INTRODUCTION

1.0 Introduction

The Intellectual Property (IP) refers to the creation of minds in which will be put into a physical form that can exist in many form of tangible and intangible property. The World Intellectual Property Organization (WIPO) refers an IP as a creation of the mind: inventions; literary and artistic works; and symbols, name and images used in commerce. The IP are divided into two (2) categories which is the Industrial Property, and Copyright. The Industrial Property consists of Trade Mark, Patents, Industrial Designs, and Geographical Indication. Established in 1970, WIPO is a self-financed organization and generate its income through international registration and filing systems, through publications, arbitration and mediation services as well as fund contribution for Member States. WIPO act as a platform and serves it Member States in establishing and harmonizing rules and practices for the protection of Intellectual Property Rights (IPR). Apart from that, WIPO provides global registration systems for Trade Mark, Industrial Designs and appellations of origin, and global filing system for patents. WIPO plays a role in helping the treaty negotiation, legal and technical, assistance, providing trainings and information related to IP. The IP in Malaysia is consists of five main component namely the Trade Marks(TM), Patents, Copyrights (C), Industrial Designs(ID), Geographical Indications (GI), and Layout-Design of Integrated Circuits. All of these IP component are protected by its own IP Act to ensure these IP work are protected. Currently, the Intellectual Property Corporation of Malaysia (MyIPO) is appointed to administer and regulate the IP legislation matter, and to supervise any IP issue in Malaysia.
In brief, all registered Trade Marks in Malaysia are protected under the Trade Mark Act 1976. A trade mark is a sign used to distinguish the good or services of one trader from those of another. A trade mark can be in words, pictures, names, letters, numbers, logos or a combination of these (WIPO). A registered and considered valid mark in the Register uses the ® symbol together with the trade mark. It is an offence to misleading or falsely indicate the ® symbol to an unregistered mark. The usage of TM symbol on a mark indicates that the given sign is a Trade Mark. However, it is not a registered or protected mark. The registration of Trade Mark would allow the IP owner to use their mark in trade, and are able to take legal actions to those who have infringe or uses their mark without consent. There are five (5) types of mark namely Trade Mark, Certification Mark, Well-known Mark, Service Mark, and Defensive Mark. A Trade Mark is a mark used to distinguish goods or services from one trader to another. For example: Munchy is a trade mark for a company that produces baked products. A Certification Mark is used to distinguish goods or services that comply with a set of standards in respect of origin, material, quality, safety, or other characteristics given to a competent body or authority. For example; SIRIM mark is used to show that any goods produces are according to the standard procedures or quality set by an appointed authority. A Well-known Mark is considered to be well-known in a market and as a result-benefit from strong protection. For example; Malaysia Airlines System uses the Wau symbol. A Service Mark is a mark used to distinguish certain services as those provided by other trader. For example, TV3 is a given name for one of the local Malaysia channel. A Defensive Mark is a mark consists of invented word(s). This Defensive mark would have protection for any non-use goods or services. For example; Petronas is a brand name for one of Malaysia Oil and Gas industry. The protection under Defensive Mark means no other trader can use or create
the same or similar mark with Petronas A Trade Mark registration is valid for ten(10) years from the date of application and is renewable every ten(10) years.

The Patents approved by the government are protected under the Patent Acts 1983. A patent protection granted is an exclusive rights given for an invention. The invention here refers to a product or process that provides a new way of doing something, or offers a new technical problem (WIPO). The Patent owner has the right to stop others from manufacturing, using and/or selling the owner’s invention in Malaysia without the owner’s consent or permission. The Patent protection is territorial which means the protection is limited to the country in which the application is filed. The requirements for a patentability invention are the invention has to be new to the world, involved an inventive step, and an industrially applicable. The non-patentable invention includes discoveries, scientific theories and mathematical methods, plant or animal varieties or essentially biological processes for the production of plants or animals, schemes, rules or method for doing business, performing purely mental acts or playing games, and methods for the treatment of human or animal body by surgery or therapy, and diagnostic methods practiced on the human or animal body. A patent is protected for twenty (20) years from the filling date of an application.

Patent law in Malaysia is contained in the Patents Act 1983. The objective of the Patent system is to encourage invention and innovation as well as to encourage the growth of new industries. By creating new invention, it gives impact to customer especially in providing more customer choices and this could help to improve the customer life standard.
The criterion of patentability is clearly stated in the Patent Act 1983. An invention patentable if it is new, involves an inventive step and is industrially applicable (Section 11, Patent Law 1983). In general, the Patent law would prohibit the patenting of an invention of an insignificant addition or modification of existing or already known invention. Thus, an inventor must demonstrate that the invention or discovery is useful, novel, and nonobvious. Novelty means, an invention is new if it is not anticipated by prior art (Section 14, Patent Act 1983). Prior art means the idea of the technology or discovery are disclosed to the public at anywhere in the world, by written publication, by oral disclosure, by use or in any other way, prior to the priority date of the patent application claiming the invention.

A patent protection would allow its owner to exclude others from using the owner’s invention. However, it does not guarantee for the invention to be sold. To obtain a patent, an inventor must file an application with the Intellectual Property office in the country desired. The invention should be describe specifically and will be reviewed by patent examiner, if approved the patent will issue. The owner of registered patent shall have the exclusive right to exploit the patented invention, to assign or transmit the patent, and/or to conclude license contracts (Section 36(1) Patent Law 1983). No people are allowed to exploit any of patented invention without getting a proper consent from the patent owner. The exploitation act of a patented invention includes the making, importing, offering for sale, selling or using the product, and stocking such as product for the purpose of offering for sale, selling or using and also using the process of the granted patent. However, there is a limitation of patent rights to the owner. The right shall be extended to acts done for industrial or commercial purposes and in particular not to acts done only for scientific research (Section 37, Patent Act 1983). The
right shall not be extent to use on any foreign vessel, aircraft, space-craft or land vehicle temporarily in Malaysia.

All of the Copyright application is protected under Copyright Act 1987 which means an exclusive rights is given to the owner by the law to control the use of their works in Malaysia. Unlike other IP component, the Copyright application is based on owner voluntary basis to protect their own works. The scope of Copyright protection includes literary works, musical works, artistic works, sound recordings, broadcast and derivative works. The author’s rights is transferable by assignment, testamentary disposition or by operation of law. The works is protected irrespective of their quality and purpose for which they are created. However, the protection of the work can also be done by preparing the affidavit, statutory declaration, and the use of safety deposit box. The protection of Copyright is shown with the © symbol. The exclusive right is given to the owner and the protection given is depending on the type of work, either the life of the author plus fifty (50) years, or fifty (50) years after the publication or making of the work. The protection is protected automatically upon fulfilment of conditions provided under the Copyright Act 1987. The Copyright laws protect the original works of authors or owner of ideas in which it is fixed and express on tangible medium (Fromer J.C, 2012). These tangible medium would automatically protected and is not compulsory to be registered to gain the protection. The Copyright owner would have the exclusive right to sell, reproduce, and prepare derivative works for the life of the author plus fifty years or fifty years at the publication of the making of the work depending on the type of work (MyIPO). This protection period is applicable in Malaysia and the Copyright protection varies from one country to another.
Copyright does not protect the facts, ideas, slogans, recipes, systems, although it may protect the way these things are expressed. However, the idea of protecting the works may be confusing to some people. For example: Government documents have been viewed publicly and anybody can use government document without permission for reports and paper. Any creation of work is considered copyrighted and is not compulsory to be registered with the Copyright Office. The work is protected under the Copyright at the moment it is created and fixed into a tangible form. Registration is recommended if the owner of work wish to have the facts of their copyright on the public record and have a certification of registration. However, Registration of the work would provide more advantage in terms of better legal framework to defend against infringers. Anything that is virtually available on the internet is easily download and copied. However, virtually information on the internet is copyrighted and cannot be copied freely without permission. People always mistakenly that anything that is available in the internet are public domain. In the case of infringements, a plaintiff must prove two things which is the ownership prove of the copyright or any impermissible invasion by the defendant at one of the exclusive rights afforded.

Malaysia is not excluded in facing copyright infringement. The International Intellectual Property Alliance(IIPA) in 2012 Special Reports on Copyright Protection and Enforcement recommends that Malaysia will still remain on the Watch List under the Hard Good Piracy. The Hard Good Piracy normally involves the distribution of illegal burned CD-Rs and DVD-Rs of optical disc that continues to rise until today. According to the report, the top retail pirates are active in several location in Klang Valley, Penang, and Johor Bahru. The Ministry of Domestic Trade, Cooperatives, and Consumer Affair(MDTCC) plays a role as an enforcer body to control the act of piracy. The MTDCC have seizure pirated disc and the
effort continues until today. In an essay on Copyright law which is written by William
Landes and Richard Posner's argue that the IP product are easily copied. This would cause
'unease' situation and 'unfair' for the owner as they spend time and effort to write or
composed their works while copyist steal and used low cost of production to distribute the
works to consumers at a lower price. The Copyright law allows the authors to protect their
literary and artistic work including novel, poems, plays, reference, work, newspapers,
advertisements, computer programs, databases, film, musical compositions, choreography,
paintings, drawings, photographs, sculpture, architecture, maps and technical drawing. The
beneficiaries of the right comprises of performers such as an actors and musicians, the
producer of phonogram's in their sound recording, and broadcasting organization in radio and
television programme.

To Copyright owner in Malaysia, there are two(2) ways of getting the Copyright
protection. A Copyright creator shall deposit their works to the IP Office and a certificate will
be granted to acknowledge the work. The certificate of registration is accepted and valid to be
used as prima facie evidence in court. Another way of getting the Copyright protection is by
declaring the original work through statutory declaration. A plaintiff would considered his or
her work has been copied by others if there is substantial similarity between his or her work
and that of the defended especially if the defendant had access the plaintiff copyrighted work.
This means, the infringing work must derive from a copyrighted work. An independent work
is considered not involved in infringement work even though it might similar or identical to
the copyrighted work.
The Industrial Design(ID) is protected under the Industrial Design Act 1996 which is the protection given that covers overall appearance of an article or a product produced by an industrial process which gives the article or product a unique look (MyIPO). The ID product and design can be in shape and configuration form (3-Dimension), pattern and ornamentation (2 Dimension), or in combination of both features of 3D and 2D. The importance of the ID protection is it enable the IP owner to make, import, sell, hire out or use any article for the design to be use of applied for the purpose of trade or business. The requirement for registration is, the Industrial Design must be new and not disclosed to public anywhere in Malaysia, and are not recorded in the Industrial Design register. The non-registerable Industrial Design are the designs that does not have clear aesthetics appearance, the method of construction, a designs features solely by function, integral parts which consists features that depend upon the appearance of another article, differ only in immaterial details or in features commonly used in the relevant trade, or the designs are contrary to public order or morality. The Industrial Designs maximum protection is fifteen (15) years from the filling date.

The Industrial design law in Malaysia is contained in the Industrial Designs Act 1996 (Act 552) & Regulation. Referring to the Act book, Industrial design means features of shape, configuration, pattern or ornament applied to an article by any industrial process or means, being features which in the finished article appeal to and are judge by “eye”. The design may consists of two-dimensional features such as pattern and ornamentation or three-dimensional features such as shape and configuration.

In general, the criteria of a register able industrial design is the design must be new and the design are not disclosed to the public anywhere in Malaysia before the priority date of
that application (Section 12(2a), Industrial Design Act 1996). The Industrial Design should not be disclosed to the public for six (6) months preceding the filling date of an application for registration including appear in an officially recognised exhibition. A design in which is contrary to public order or morality shall not be registrable. The registered Industrial Design owner shall have the exclusive right to make or import for sale or hire, or for use or the purposes of any trade or business, or for sell, hire or to offer or expose for sale or hire, any article to which the registered industrial design has been applied (Section 32(2), Industrial Design Act 1996).

The Geographical Indication(G.I), under the Geographical Indications Act 2000, *is an indication that identifies any goods as originating in the country or territory or a region or locality in that country or territory given a quality, reputation or other characteristic of the goods is essentially attributable to their geographical origin* (MyIPO) Only producers carrying on their activity in the geographical area specified in the geographical indication register have the right to use a registered geographical indication in the course of trade. For example; Sarawak Pepper and Bario Rice originated from Sarawak, Sabah Tea and Borneo Virgin Coconut Oil originated from Sabah, and Cheese originated from Langkawi. The registered proprietor of geographical indication will gain recognition at domestic and international level for ten (10) years from the date of filling and is renewable for every ten (10) years.

The Layout-Design of Integrated Circuits *is a protection for a three-dimensional disposition of the elements prepared intended for manufacturer* (MyIPO) and is protected under the Layout-Design of Integrated Circuits Act 2000. The importance of this protection is
to allow the reproduce and the reproduction of owner circuit layout-design and this protection is automatically protected from ten(10) years from the date of the layout being used or fifteen(15) years after the layout design is created if the layout is not being commercially exploited. The right owner will have several exclusive rights which include the right to reproduce and authorize the reproduction of the protected layout, to commercially exploit and to authorize the commercial exploitation.

The Traditional Cultural Expression (TCE) is often the product of inter-generational and social and communal creative processes, reflect and identify a community's history, cultural and social identity and values (MyIPO). The TCE knowledge are normally handed or passed down from one generation to another either orally or by imitation. TCE's consists of reflecting a community's cultural and social identity and it consist of community heritage. The TCE is normally made by 'unknown authors' by communities or by an individual’s communally recognize as having the right, responsibility or permission to do so. TCE is consistently evolving, developed and be recreated within the community, but often not for commercial purposes. The Traditional Cultural Expressions (TCE) defines the subject matter related to any form of traditional culture which are expressed either in tangible or intangible form where knowledge are express in terms of knowledge, appeared, or manifested(WIPO). These also extend to verbal expressions, signs, symbols used in traditional dance, rituals, and even arts. This somehow links to the expression of the creativity to continue in producing a material into hands craft, music instrument, and architectural forms that represent the characteristic of a community identity and heritage. It has been pointed out that the current definition of TCE used by WIPO is a departure of an earlier WIPO working definition of ‘traditional knowledge’ which covered the knowledge related to environment, traditional