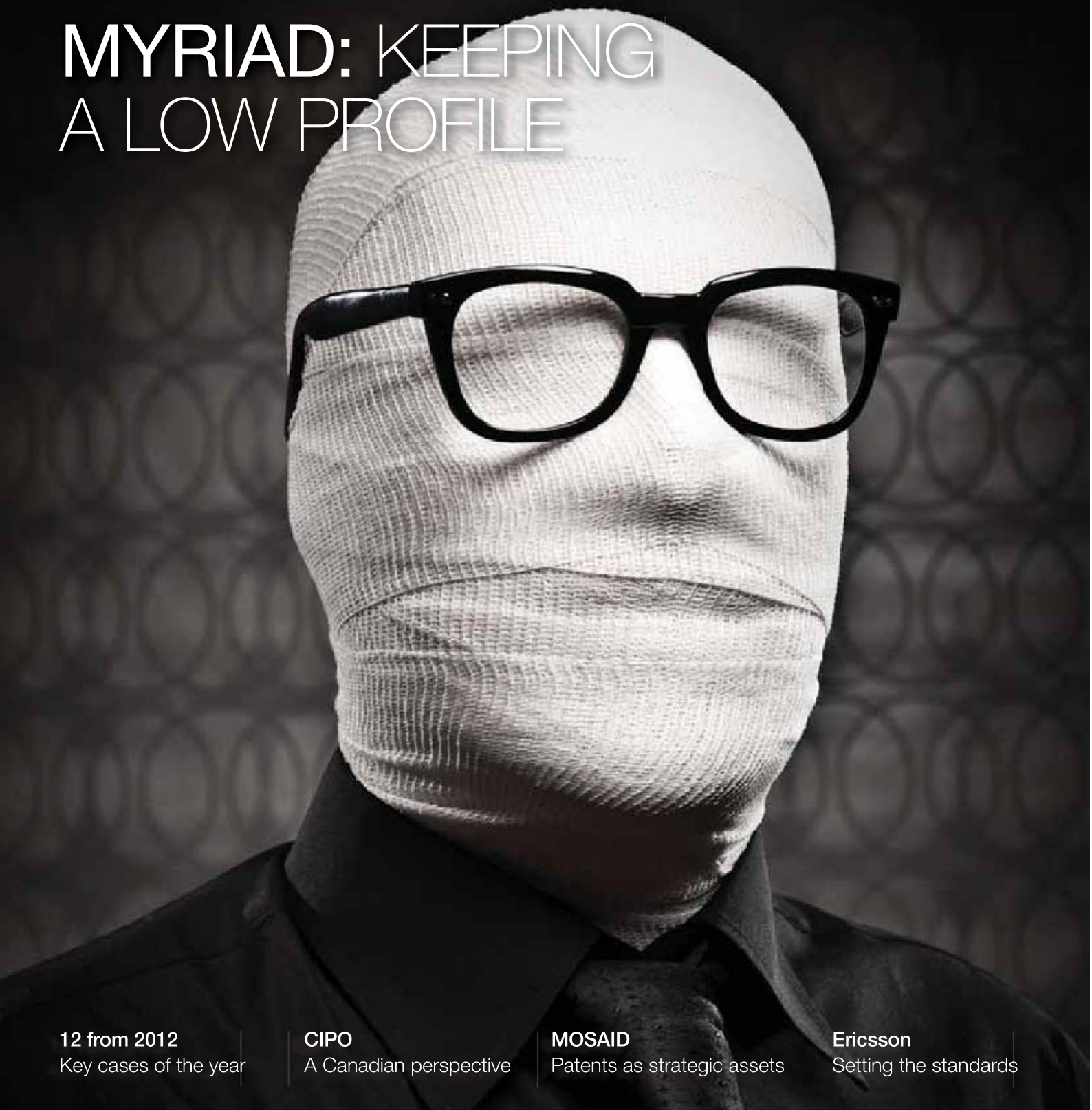


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WORLD INTELLECTUAL PROPERTY REVIEW

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ACADEMIA, REPRODUCTION AND COPYRIGHT PROTECTION



With the emergence of new economic models, the traditional education system has given way to a new academic structure where intellectual property rights play a significant role. Lucy Rana looks at how India is coming to terms with the new landscape.

While copyright issues have existed for more than a century, their prevalence in academic institutions has never been so great. Academic publishers Oxford University Press, Cambridge University Press and Taylor & Francis recently initiated proceedings against Rameshwari Photocopy Service, a photocopy shop located in the Delhi School of Economics, Delhi University and the University of Delhi, seeking prohibition against unauthorised photocopying, reproduction and distribution of copies of their copyrighted books.

Barriers to copyright protection

The first Copyright Act was enacted in India in 1847 and has been amended eight times to meet technological and socioeconomic changes. Scholars, however, believe that copyright protection cannot permeate the education sector

as much as it has other artistic fields. There can be several plausible explanations for this, including the general Indian mindset of not propagating knowledge for commercial gain, a tolerant and lenient approach towards enforcement of rights and a refusal to accept the act of copying material to create and distribute 'course books' as violation of rights because ultimately these 'copied' books are meeting the objective of knowledge dissemination.

The alarms and protests raised by students and teachers against the petition filed by the publication houses bears testimony to this. It is contended that a prohibition on photocopying would be a great loss as not all types of student could afford to buy original books in order to read a particular chapter. A 'Campaign to Save DSchool Photocopy Shop' has been launched on a social networking site.

Protection afforded by the Copyright Act

Although copyright subsists in all original and creative expressions, literary works are of particular concern in academia. Section 13 of the Indian Copyright Act (read with Sections 40 and 41) affords protection to original literary, dramatic, musical and artistic works. The publication houses' main contentions against the photocopy shop and the University of Delhi were that the shop was not only engaged in 'cover-to-cover' reproduction of their publications, but was also selling unauthorised compilations of substantial extracts from the publications by compiling them into 'course packs'/ anthologies for sale. The teaching faculty at the university was directly encouraging students to purchase these course packs instead of legitimate copies of the publications and were recommending

course packs for reproduction by the photocopy shop. Furthermore, the university library was issuing books to the photocopy shop for reproduction.

Exceptions under the Copyright Act

Section 52 of the Indian Copyright Act provides a statutory exemptions and limitations provision, which has so far been used to address issues regarding use of copyright material in educational institutions. While reproduction of any work by a teacher or pupil in the course of instruction continues to be permissible under the act, the proceedings initiated by Oxford University Press, Cambridge University Press and Taylor & Francis raise issues regarding the legality of the extent of reprography. The Delhi High Court decision in this case would therefore play a significant role in defining the ambit of Section 52 especially where the entire work is reproduced by way of photocopying and where the premises of the academic institution is used.

This becomes more pronounced when Section 51 is also taken into consideration—*inter alia*, it states that copyright in a work would be deemed to be infringed when any person permits for profit any place to be used for the communication of the work to the public where that communication constitutes infringement of copyright.

Role of intermediary agencies

As pointed out by a study of the Ministry of Human Resource and Development, piracy in the form of mass photocopying of books is largely prevalent in India, especially in and around educational institutions. While the study mainly holds the price of the book and its popularity as the major factors responsible for such piracy, it further went on to state that institutions turn a blind eye to this kind of piracy. It is here that strategies such as differential pricing of books may prove to be effective, especially in developing countries like India where the price of the scientific and technical books is deemed to be quite high.

Intermediary agencies may also play a significant role by providing fair photocopy access to the academic institutes and students while ensuring equitable remuneration and returns for authors and publishers. Worldwide, these intermediary agencies have flourished as “reproductive rights organisations” and provide licences on behalf of the rights holders to

“AT THE TIME OF DEVISING THEIR SYLLABUSES THE INSTITUTES CAN SEEK PERMISSION (EITHER BY WAY OF LICENCE OR ROYALTY) FROM THE PUBLISHERS/ AUTHORS FOR SUCH COMPILATIONS AND DISTRIBUTION IN THEIR PREMISES.”

reproduce their work. The Indian Reprographic Rights Organization (IRRO) is one such copyright society in India that is authorised to issue blanket / transactional reprographic usage licences for foreign and Indian authors and publishers in India by the Department of Copyright, Government of India, under section 33(3) of the Copyright Act, 1957. The University of Delhi and its libraries have reportedly agreed to take the licence of IRRO and pay an annual fee to photocopy academic books which is otherwise illegal under the copyright norms.

As far as the ‘course pack’ is considered, the price of the books should not be taken as an excuse for illegitimately copying and distributing protected work. At the time of devising their syllabuses the institutes can seek permission (either by way of licence or royalty) from the publishers/authors for such compilations and distribution in their premises. This would undoubtedly strike a balance between effective protection of copyrightable work and its availability to the students.

Conclusion

Scientific publisher Elsevier BV has agreed to offer its entire collection, including 9,000 journals and books covering a wide range of subjects such as mathematics, engineering and life sciences, to innovators in 105 developing

countries free of charge (or at low cost) through WIPO’s Access to Research for Development (ARDI) programme. The ARDI programme was launched by WIPO in 2009 in cooperation with 12 major publishers, including John Wiley & Sons, Oxford University Press, Nature Publishing Group and Taylor & Francis, to provide free online access to major scientific and technical journals to local, not-for-profit institutions in the least-developed countries and low-cost access to IP offices in developing countries across the world.

In a country such as India, where the right to education is a fundamental constitutional right, a programme like ARDI is needed. Major publication houses and academic institutes may also contemplate devising dynamic new policies to keep pace with technological progress and facilitate access to educational materials that does not infringe the statutory rights of the copyright owner and is within the legislative framework of the government. ■

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Lucy Rana advises *Fortune 500* companies and some of the world’s most esteemed corporations in multifarious fields and has actively contributed to growth in every sphere of the firm, from prosecution to successful litigation. Rana, who majored in Japanese language and business management, has channelled her innovative and pioneering strategies for delivering efficient, high quality and cost-effective results to clients.