

IP Rights & Innovation in the 4th Industrial Revolution: Toronto, March 23, 2016

Session 7: Ethical Considerations for IP Lawyers in the Commercialization of Emerging Technologies

**“Misunderstanding the Legal Nature of Risk
surrounding 3D Printing”**

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Balancing specialized knowledge with our responsibilities to other lawyers...

- **The *Rules of Professional Conduct of the Law Society of Upper Canada***,* in Chapter 7 on “Relationship to the Law Society and Other Lawyers,” (for example) provide guidance to those of us called to the Bar in Ontario that we should:
 - “avoid ill-considered or uninformed criticism of the competence, conduct, advice or charges of other legal practitioners, but should be prepared, when requested, to advise or represent a client in a complaint involving another practitioner.” [see Commentary to Section 7.2 “Responsibility to Lawyers and Others”]

But how should we best approach situations where criticism may be warranted in good faith?

When our specialized knowledge might well inform a situation involving members of the public, including clients of other lawyers?

Where our colleagues at the Bar are in no way intentionally misinforming their clients but may have an incomplete understanding of their clients’ situations that leads them to a less than complete analysis of their clients’ needs?

And perhaps we could help?

But how should we best approach situations where criticism may be warranted in good faith?

The misnomer of “3D Printing”

- Of course, traditionally, “printing” has fallen under the Copyright Act... and the Copyright Act has extensive users’ rights provisions, exceptions from the rights of the rightsholders.
- Many users of the new 3D Printing technology are happy to conduct themselves as though there are many users’ rights or exceptions from rightsholders’ rights associated with this exciting emerging technology...

BUT

- 3D “printing” is not about “printing” at all: **it is about manufacturing objects...** And raises a number of issues entirely different from those raised by printing: under areas of law such as patent, trademark, economic torts and industrial design
- Patent, trademark, economic torts and industrial design don’t have nearly the same extensive framework of exceptions as found under the Copyright Act

3D Printing in Canadian Institutions:

- There are various users' rights exceptions available to individuals and institutions in connection with many **COPYRIGHT** aspects of 3D Printing processes.
 - In a recent canvas of Canadian libraries (fall 2015), it was found that a number of libraries have developed good documentation to insulate themselves further from copyright liability that might arise outside the framework of exceptions in the Copyright Act.

3D Printing in Canadian Institutions:

Among the libraries that had, by fall 2015, developed various models of documentation to insulate themselves further from copyright liability that might arise outside the framework of exceptions in the Copyright Act were the following:

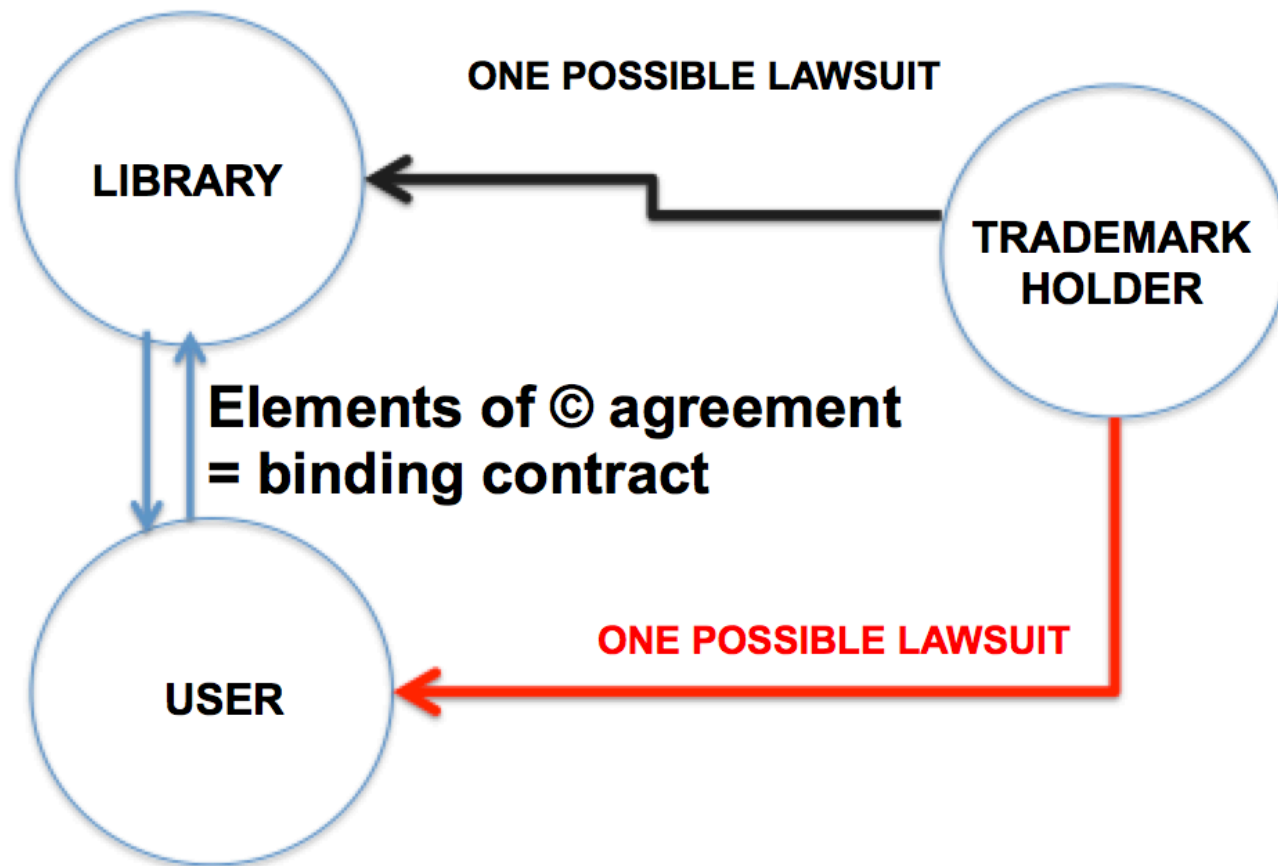
1. **Toronto Public Library** “Digital Innovation Hub 3D Printing Agreement, Release and Indemnity”
2. **Ottawa Public Library** “Imagine Space Customer Agreement”
 - Referred to at <https://bibliooottawalibrary.ca/en/using-the-equipment>
3. **Oakville Public Library** “3D Printing Agreement and Waiver”
 - See http://opl.ca/pdfs/misc-forms/3DPrinter_Waiver.pdf
4. **University of Calgary Library** “Submit 3d print form”

Each of these examples would have been reviewed by counsel.

3D Printing in Canadian Institutions:

- There is, however, **potential for liability** for infringement by users and institutions in the **TRADEMARK** and **PATENT** (and no “users’ rights exceptions in the statutes).
- To limited extent, there may be **risk of liability** for institutions in **economic tort**.
- And, finally, there is potential for liability for infringement by users and institutions in **INDUSTRIAL DESIGN** but because very few potential owners of industrial design protection actually avail themselves of it – and the protection if held is only for 10 years, so if institutions can satisfy themselves that there is no registration on something that would be industrial design – or that there is a registration and it is more than 10 years old – an institution would not need to worry about that infringement because the design would be in the public domain and available for any use, including 3D printing.
 - **In the recent canvas of Canadian libraries, no libraries were discovered to have developed any documentation adequate to insulate themselves from liability in any of these areas.**

If course, if a contract is about copyright only, it will have no effect on other types of lawsuits, if launched.



3D printers are NOT analogous to photocopiers!

- If “**3D Printing**” had become known, instead, as “**3D personal manufacturing**,” – a term easily grasped by lay persons -- or even, more technically, as “**3D additive manufacturing**,” more people generally would have realized that it engages many more areas of law than simply copyright.
- And, if more lawyers in corporate practice had had the opportunity to see the technology demonstrated before advising their clients about it, such opportunity would almost certainly have changed their advice to their clients...

Now, however, how can we best help?

1. How can we get word out that “3D Printing” is “3D Personal Manufacturing” (or “3D Additive Manufacturing”)?
2. And that “3D Personal Manufacturing” requires consideration of risk in areas such as Industrial Property and Tort?
3. That it requires treatment as other than simply involving copyright?
4. How can we reach corporate counsel, in particular?

Thank you. ...Some resources:

ABOUT 3D PRINTING:

- Q & A : The Legal Implications of 3D Printing. Professor Margaret Ann Wilkinson and Western Law Alum Jaime Holroyd speaking to Susanna Eayrs.

http://law.uwo.ca/news/2016/q_a_the_legal_implications_of_3d_printing.html

- December 4, 2015 workshop from [OLA Copyright Users' Committee](#) [speakers included lawyers Professor Wilkinson, Harj Mann, Jaime Holroyd, and Ken Farrell]: all 7 associated powerpoint presentations may be accessed at:

http://www.accessola.org/web/OLA/Events/Signature_Events/Copyright_Symposium/Program/OLA/Events/Signature_events/Copyright_Symposium_event/Program.aspx?hkey=057afd6b-2583-4b04-ac0c-42b56eccbfc7

ABOUT OTHER RECENT TOPICS:

- Margaret Ann Wilkinson and Tierney GB Deluzio, “The Term of Copyright Protection in Photographs,” (2016) 31 *Canadian Intellectual Property Review*, 95-109.
- Margaret Ann Wilkinson, “International Copyright: *Marrakesh* and the future of users' rights exceptions,” Mark Perry (ed) *Flux in the Force: Intellectual Property Facing the 21st Century* (New York: Springer, 2016) – *in press*.