

Case Study: Intellectual Property management in the eMuseum of Sport

Bianca Gama *et al.*

In a society ruled by knowledge, protecting the creations of the human spirit -- whether related to the arts, science, or technology -- through Intellectual Property (IP) has become strategic and crucial for nations' technological, economic, social, and cultural development. However, since the end of the 20th century, there is a component that broadens the scope of IP, which was the insertion in our lives of content that arrives through cellphones, tablets, and other electronic devices, via cyberspace.

In this cyberspace reality, a new environment appeared in which a new type of museum, known as virtual, is located. Since the last decade of the 20th century, this sort of museum has received numerous names, such as cyber-museum, web museum, online museum, electronic museum, hyper-museum, and digital museum (SCHWEIBENZ, 2004).

Virtual museums are a part of the digital assets field, as per an international consensus expressed by UNESCO (2003). Thus, they are part of a group that shares many different kinds of information, which originates from different sources and certainly needs to have its intellectual property rights preserved, both regarding the sources as well as the museums themselves, which can focus on many subjects, including those related to sports. Thus, museums with a focus on sports began to appear and, among them, the one that is the subject of the current discussion, the eMuseum of Sport.

Considering the educational and cultural preservation roles played by museums, the IP management of virtual museums has very specific characteristics and includes challenges that conventional museums do not have to deal with. To add complexity, the Covid-19 pandemic caused an increase in the importance and the interest placed in such museums, at the same time in which it created obstacles which hindered the work that needed to be done, though it also generated opportunities.

This work presents a case study referring to the eMuseum of Sport project from the standpoint of IP management. The main objective is to record and evaluate the experience obtained in the eMuseum of Sport as an empirical source that can support decision-making in similar situations, as well as increase the body of knowledge on the

subject. The starting point was the evaluation of the eMuseum's protective assets: trademark registration and software registration.

Methodological Procedures

To fulfill the objective proposed by this study, besides using bibliographic research, documental analysis was also chosen to evaluate the eMuseum of Sport's protected assets through a search that was conducted in the databases available on the National Institute of Industrial Property (INPI) website. The INPI is a federal autarchy which is responsible for conceding invention and utility model patents, and promoting the registration of trademarks, industrial designs, computer programs, geographic indications and the registration of contracts and franchises. Documental research is different from the other types as it works with information that is available electronically, and not directly obtained from other people, as is the case with official documents and reports, among others (GIL, 2010).

After identifying potential assets, four meetings were held to discuss the previously mentioned IP assets, with the goal of guiding the discussion with the eMuseum's directors regarding the usage strategies for the assets in intellectual property management. In these themed meetings, the eMuseum's consultancy and management were able to align their knowledge and experiences to create a strategic plan with the goal of sustainably using the IP assets according to the degree of development of the eMuseum's plan of action during the next years.

1 – Intellectual Property (IP)

In the era of knowledge, the economy grows, among other reasons, through the valorization of intellectual property. As mentioned before, all assets that need to be protected stem from the capability of individuals to innovate, developing products, processes, or services to obtain competitive advantages. The benefits of the IP system are usually proportional to the size of companies and institutions, which does not mean that small businesses should not invest in the protection of their IP assets. In fact, this type of protection provides, aside from market differentiation, a new front for new businesses that include partnerships, franchising, and IP rights licensing.

IP is divided into three large groups, or families of assets:

- 1) Industrial Property, which includes Trademarks, Patents, Industrial Design, Geographic Indications.
- 2) Copyright Law, which includes the rights of authors in any field and the rights that are connected to authors' rights, such as those of translators, for instance. It also includes protection for computer programs, which are authors' rights that can also be registered with the INPI.
- 3) *Sui generis*, which contemplates plant varieties (Cultivars), genetic assets, traditional knowledge, and the topography of integrated circuits, which can also be registered with the INPI.

In this study, the analysis will be directed specifically towards the eMuseum's protected assets, which are trademark registration and software registration, as well as authors' rights.

Trademark

According to Law 9279/96, known as the Industrial Property Law (LPI), distinctive signs that are visually noticeable and are not forbidden by law can be registered as trademarks. They can be divided into product or service trademarks, which have the intention of differentiating competitors and informing the origin of a product or service; certification trademarks, which can attest the compliance of a product or service with certain laws or technical specifications; and collective trademarks, which identify products or services from members of a certain community (BRASIL, 1996).

Trademarks, according to INPI guidelines, can be nominative, figurative, mixed, or three-dimensional. The first group is characterized by the use of words. The second is known for the absence of words and the dominance of a figurative element. The third group can be characterized by the graphic representation of a word or by the combination of words and figurative elements. The last group contains three-dimensional forms that are distinctive by themselves and commonly include the product's shape or its packaging. Trademark protection is performed through registration with the INPI, as the system adopted in Brazil is considered legally attributive; that is, trademark protection is only obtained through the registration granted by the INPI, which is the autarchy responsible for granting the rights over the sign after examining it in accordance with the LPI.

Copyright Law

The field of protection afforded by copyright law is vast and includes literary works, musical works, artistic works, including digital ones, maps and technical drawings, photographs, audiovisual media, and computer program applications. This legislation is applicable to almost all means of communications, such as publications, diffusions, film production and distribution, as well as being applicable to computer programs (software). Furthermore, copyright law protects internet and website content, which is normally the collection of various works, adding a degree of complexity due to the overlapping layers of copyright law protection (PANTALONY, p. 45, 2017).

The author is a physical person and all the relationships said author creates with society under this condition should be mediated by contracts. Thus, in its property aspects, an author's work may be ceded or licensed by its creator. It is understood that authors' rights unite moral and property aspects. According to the former, authors possess some rights which are inalienable and incontrovertible, such as paternity rights, access to a single copy, and the right to remove a work from circulation. Property aspects, on the other hand, have to do with the alienable rights an author possesses, which allows said author to negotiate their creation through cession and licensing contracts.

Computer Programs

Computer programs are equal to literary works for copyright protection purposes. This equivalence is typified in article 2 of the LS, which states: "The type of intellectual property protection afforded to computer programs is that which is afforded to literary works by the laws connected to author's rights and related rights in this Country's current legislation, in compliance with this Law". The LS is a law that specifically protects computer programs, and the LDA serves to fill any gaps that may appear. As the author clearly states, the subject of computer program protection remains relevant in the context of current society, in which information rules (SANTOS, 2008). Considering the possibilities of virtual collections, in which applications and software can play a significant role, it is necessary to truly understand how they are protected in order to strengthen their economic exploitation.

Industrial Design

According to the LPI, industrial design corresponds to the “artistic form of an object or the ornamental assembly of lines and colors that can be applied to a product, providing a new and original visual result for its external configuration and can serve as a model for industrial manufacture” (BRASIL, 1996).

If the creation of a mascot or character is attributed to a third party or uses recognizable elements, permission for use must be obtained from the copyright holder.

2 – The eMuseum of Sport

The choice to examine the eMuseum of Sport is pertinent because it is a project that was created during a period marked by the novel coronavirus pandemic, with lockdowns going on around the world, leading to online culture consumption platforms gaining protagonism regarding content and entertainment consumption (PENA et al., 2020b). At a time in which circulation was halted and visits to museums and other locations of leisure were forbidden in an attempt to control the pandemic, the eMuseum, as well as digital platforms in general, became viable alternatives for cultural development and maintenance.

The eMuseum of Sport was created by the Gama Assessoria startup with support from the Technological Incubator for Social Enterprises and Social Cooperatives (ITECS) at Rio de Janeiro State University (UERJ). It has the goal of providing entertainment, culture, and education through technology and innovation, in order to encourage the whole population to actively cooperate with the creation of national memory through the creation of virtual museums, galleries and virtual exhibits with national reach, providing the entire country with a sense of belonging. It has content for different publics of all ages, in an inclusive manner without any sort of distinction.

UERJ provided assistance for the protection of part of the eMuseum’s intellectual property. This assistance included the creation of documents (term of confidentiality, term of authorship, the cession of image rights, partnership agreements with partners/collectors), as well as asset protection (trademark and software) alongside the INPI.

Regarding museum tradition, the eMuseum of Sport became a hybrid organization after it unfolded into a publisher, which includes in its purposes the production and dissemination of knowledge through publications linked to the sports world. In these circumstances, the eMuseum of Sport articulated the production of its

digitalized exhibits supported by studies and investigations conducted by the exhibitors themselves and by invited authors, with a total of four works being published in 2020 (PENA *et al.*, 2020a).

All the eMuseum's content stems from its partnerships with sports entities that provide their largest asset; that is, their collections of photos, videos, trophies, medals, and other such objects, for exhibition in the eMuseum of Sport.

There are currently four manners of engaging in content generation for the eMuseum of Sport, all of which are free.

The first manner of participation is by creating a collection on the eMuseum's portal. Anyone can tell their story and share their personal collections, as long as they consent for their content to be shared. Among the partners, the population stands out with a strong level of participation in sending personal collections.

The second opportunity for engagement involves the eMuseum's exhibits. In 2020, nine exhibits were held, involving 101 content partners, including sports entities, sports committees, non-governmental organizations, and civil society.

The third form of participation happens when the eMuseum invites sports entities to create virtual galleries. These galleries are exclusive, personalized environments that are provided so each collector has the opportunity to create their own narrative. The platform is available in English and accessible to people with hearing and visual impairments, thus guaranteeing ample access to its contents.

The fourth manner has to do with the travelling truck, which travels among Brazilian cities.

Results

The eMuseum of Sport's existing IP assets are two trademarks and one software, all duly registered with the INPI.

Trademarks registered by the eMuseum of Sport

There were two trademark registration requests: one figurative and one mixed trademark. The former is an isolated letter "e", which comprises the figurative trademark.

The latter is the “eME – eMuseum do Esporte” (eME – eMuseum of Sport), registered as a mixed or composite trademark.

As for copyright law, the eMuseum registered the software that was created for its platform.

Final Considerations

The innovative nature of the eMuseum requires sophisticated IP management. It is possible to reach some conclusions through this case study, which can be summarized in the following recommendations for initiatives of this nature.

The IP policy requires time and resources in all of its stages, guaranteeing the necessary conditions for the engagement of both the directors and the teams that are involved. Although the legal matters are strategic, the legal technique should be left for the final stage of this process, when the policy has already been created, so that the lawyers can identify the risks related to its implementation and its practice. This policy must establish a relationship with inventory and audits, or there is the risk of an eventual conflict hindering the operability of the institution’s IP.

Finally, the hierarchization and balancing of the IP portfolio are inserted among the best practices for IP management. It is important to adopt methods that fulfill the goals established by the management. Furthermore, it is necessary to systematically review its guidelines to promote their alignment with the internal and external changes happening at that time.

Book: Novos Modos de Fazer Negócios.