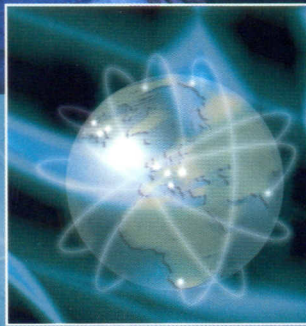
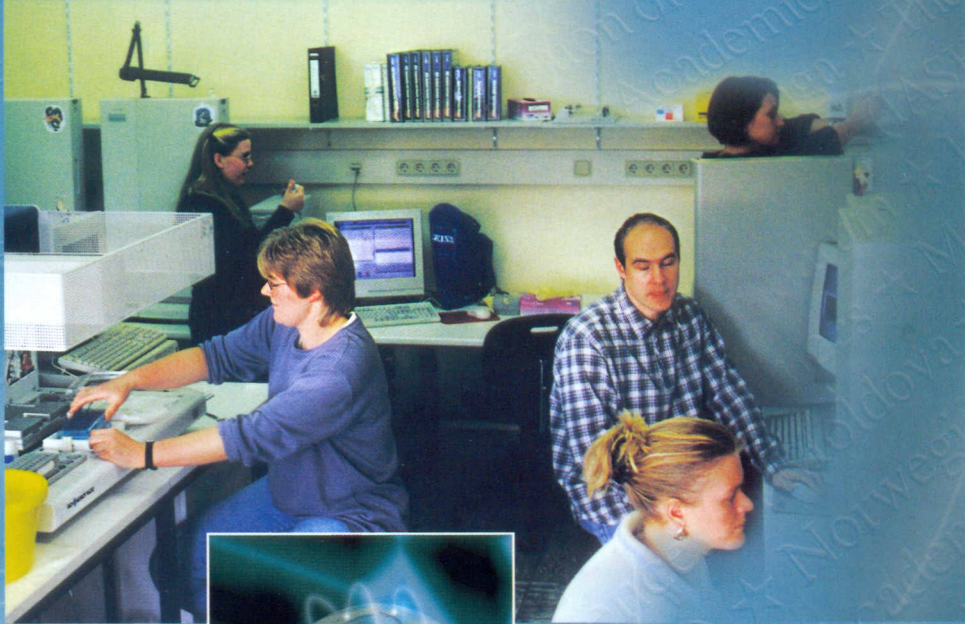


Intellectual Property Rights in Europe

ALLEA's Standing Committee



ALLEA Reports

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Intellectual Property Rights in Europe

*Reports from the ALLEA Working Group and
the ALLEA Standing Committee*

Preface

Recent developments have caused ALLEA to make its reports on Intellectual Property Rights available to a number of institutions in Europe and to the scientific community. These are: the report of the ALLEA Task Force 3 at the General Assembly of ALLEA in Munich on March 27th, 1998 and a recent report of the ALLEA Standing Committee on Intellectual Property Rights. It is hoped that ALLEA can contribute with this publication to the current discussion on intellectual Property Rights in Europe.

Prof. Dr. Gerhard Gottschalk
President of ALLEA

Draft Report of the Working Group by ALLEA to give further consideration to Intellectual Property Issues.

I. The group took as background the report of ALLEA Task Force 3 on Intellectual Property dated June 1996 and reaffirmed its main recommendations. It now wishes to draw attention to the following aspects of Intellectual Property Rights, which are of general importance for ALLEA, its member academies, and the European scientists they represent.

- i) As potential users of the Intellectual Property Rights protection systems covering patents, copyright and other IPR, ALLEA and its members require well functioning easily accessible and financially affordable protection systems which balance the specific needs and obligations of scientific researchers. On the one hand the system should allow the early publication of research results together with free and open access for other researchers to allow them to contribute effectively to the expansion of human knowledge in the public good. On the other hand the system should offer effective protection, without any discrimination, for potential inventions in whatever field (such as biotechnology, electronics, computer software etc.).
- ii) As potential users of their own research results which are protected in some way for third parties, scientists have a vital and legitimate interest in easy access to scientific data and literature and they, therefore, require clearly defined exemptions for teaching and (non-commercial) research from the legal restraints of the IPR protection system. In the case of copyright material and its related electronic forms, they require the concept of “fair use” to be interpreted widely.
- iii) ALLEA researchers as potential owners of Intellectual Property Rights, as well as potential users of protected research results of third parties, need to be educated in the basics of intellectual property law. They also require the provision of adequate professional advice and financial assistance when seeking protection.

II. The Group noted a number of developments which had recently taken place and which cause concern:

- i) A number of derivatives emanating from the European Parliament and Council had recently been adopted without any direct involvement or participation of ALLEA or any other European association of academic re-

searchers, although these legal instruments have significant effect on scientific research and the exploitation of its results. In particular the Database Directive (96/9/EC) could pose significant restraints on access to scientific data which has traditionally been freely available.

- ii) In this connection it is anticipated that a further directive dealing with exceptions to copyright laws and specifically with “fair use” is expected shortly, again without any consultation with the scientific constituency. The discussion of the proposal for the Directive on the Legal Protection of Biotechnological Inventions was similarly conducted without the involvement of the scientific community.
- iii) The EU Commission has recently published a Green Paper on the State of the Patent Protection Systems in the Community in which issues relating to the further structure of the patent system, its costs, judiciary instruments and relevant subject matter has been published. It is completely silent in regard to the needs of academic researchers in Europe. This is in extreme contrast to the repeated reference to the needs and wishes of industry and of small to medium size enterprises and is totally different to the attitude of the US Congress which paid considerable value to the strength of innovation and hence competitiveness in that country. As a result US legal instruments in support of acquisition, maintenance and exploitation of Intellectual Property Rights of publicly funded institutions (Bayl-Dole Act, Stevenson-Wydler Act and the Technology Transfer Act) achieve a more appropriate balance.

III. The Group therefore recommends that:

- i) ALLEA should establish the necessary institutional infrastructure for timely and effective representation of the interests of its members to the competent international institutions, primarily those of the European Union.
- ii) ALLEA should establish mechanisms to co-ordinate the actions of its member academies at the national level in order to achieve the necessary support.
- iii) ALLEA should consult with and take appropriate note of similar activities of other regional organisations, the National Academy of Sciences in the US, the Third World Academy, the appropriate bodies in Japan, as well as international bodies such as ICSU and UNESCO in matters of Intellectual Property Protection.
- iv) ALLEA should prepare suggestions to be passed on to its national members and their institutions of higher education as to the extent in which students should be educated in intellectual property matters.

- v) ALLEA should prepare suggestions as to the best practice for handling the protection and exploitation of research results. In drawing up guidelines it might compare the practices of the Max Planck Society, CNRS, some UK universities, MIT and like institutions.
- vi) ALLEA should advise its members of the necessity of including patents when the scientific achievements of academic researchers are being evaluated.

IV. The Group, therefore, proposes the following specific actions in relation to the European authorities:

- i) ALLEA should make a submission to the European Parliament and the EU Council together with DGXII, DGXIII and DGXV of the EU Commission requesting the introduction of a grace period into the harmonised patent law similar to that in the US law. This "grace period" should precede the 12 months Paris convention priority term. Efforts should be undertaken to introduce such a grace period on an international universal level. This will eventually create the conditions to put European scientists on a footing with their US and Japanese colleagues. In this submission attention should be drawn to the changes derived from the new information and communication technologies which make a grace period more essential for safeguarding IPR. It should also specifically address the deplorable situation for European participants in the Human Genome Project who are now required to release sequence data immediately onto World Wide Web thus, in principle, losing the possibility of protection in Europe. It should be noted that Recital 35 of the draft of EU Biotechnology Directive (Doc.COM(97)446 final) addressed this issue and requested the Commission to report on the issue of the grace period within two years. These concerns apply equally to researchers employed in industry as to those in the academic sector.
- ii) ALLEA should make a direct submission to the EU authorities to the effect that the legitimate interests of the scientific community appear to have been largely ignored in drafting recent directives on Intellectual Property Rights, specifically those on database protection, copyright exceptions, biotechnological inventions and patent harmonisation and request to be informed and consulted on all IPR issues which directly or indirectly affect academic scientists, both as potential IPR owners and users of protected inventions, copyright works etc.
- iii) ALLEA should draw this initiative to its members and seek the support of national academies to influence EU Directives via their national governments.

This statement has been prepared by a working group appointed by ALLEA. It was presented at the General Assembly of ALLEA in Munich, March 27th 1998, which adopted this report and strongly recommended that it should be published as a contribution to public debate and understanding.

The report represents the views of the task force members, not necessarily those of the constituent members of ALLEA.

**ALLEA Working Group
on
Intellectual Property Rights**

Szilveszter E. VIZI	Chairman, Hungarian Academy of Sciences
Sir Roger ELLIOTT	Oxford University
Julius RAJCANI	Slovak Academy of Sciences
Joseph STRAUS	Max-Planck-Institut für ausländisches und internationales Patent-, Urheber und Wettbewerbsrecht
Csaba SZÁNTAY	Society of Hungarian Inventors
Mrs. SÜMEGHY	Hungarian Patent Office
Janos PUSZTAI	Hungarian Academy of Sciences
Mr. Klara PAPP	Hungarian Academy of Sciences

Report of the ALLEA Standing Committee

The ALLEA Standing Committee on Intellectual Property Rights wishes to draw attention to the following aspects of Intellectual Property Rights, which are of general importance for ALLEA, its member academies, and the European scientists they represent. In this field there are a number of developments, which had recently taken place which caused ALLEA Standing Committee concern:

As potential users of the Intellectual Property Rights protection systems covering patents, copyright and other IPR, ALLEA and its members require well functioning, easily accessible and financially affordable protection systems which balance the specific needs and obligations of scientific researchers. On the one hand the system should make possible the early publication of research results together with free and open access for other researchers to allow them to contribute effectively to the expansion of human knowledge in the public good. On the other hand, the system should offer effective protection, without any discrimination, for potential inventions in whatever field (such as biotechnology, electronics, computer software etc.).

As potential users of their own research results which are protected in some way for third parties, scientists have a vital and legitimate interest in easy access to scientific data and literature and therefore they require clearly defined exemptions for teaching and (non-commercial) research from the legal restraints of the IPR protection system. In the case of copyright material and its related electronic forms, they require the concept of “fair use” to be interpreted widely.

Privatisation of knowledge vs. making use of the knowledge for the common good

A number of directives emanating from the European Parliament and Council had recently been adopted without any direct involvement or participation of ALLEA or any other European association of academic researchers, although these legal instruments have significant effect on scientific research and the exploitation of its results. In particular the Database Directive (98/9/EC) could pose significant restraints on access to scientific data, which has traditionally been freely available. In this connection it is anticipated that a further directive dealing with exceptions to copyright laws and specifically with “fair use” is expected shortly, again without any consultation with the scientific constituency. The discussion of the proposal for the Directive on the Legal Protection of Biotechnological Inventions (98/44/EC) was similarly conducted without the involvement of the scientific community.

Patent system in Europe

The EU Commission has recently published a Green Paper on the State of the Patent Protection Systems in the Community in which issues relating to the future structure of the patent system, its costs, judiciary instruments and relevant subject matter has been outlined. It is completely silent with respect to the needs and importance of academic researchers in Europe. This is in extreme contrast to the repeated reference to the needs and wishes of industry and of small to medium size enterprises and is totally different to the attitude of the US Congress which paid and continues to pay considerable attention to the importance of non-industrial publicly funded research because of its perceived value to the strength of innovation and hence competitiveness in that country. As a result US legal instruments in support of acquisition, maintenance and exploitation of Intellectual Property Rights of publicly funded institutions (Bayl-Dole Act, Stevenson-Wydler Act and the Technology Transfer Act) strike a more appropriate balance.

The ALLEA Standing Committee therefore proposes to the European authorities; the following specific urgent actions:

Introduce a grace period

ALLEA would like to request the introduction of a grace period in the harmonized European patent law similar to that in the US law. This grace period should precede the 12 months Paris Convention priority term. Efforts should be undertaken to introduce such a grace period on an international level. This will eventually create the conditions to put European scientists on an equal footing with their US and

Japanese colleagues. Attention is drawn to the changes derived from the new information and communication technologies which make a grace period more essential for safeguarding IPR. Publish and not patent or patent application followed by publication policy in Europe should be changed for publishing and patenting; it would allow presentation of results at meetings and have other's opinion. At present, for instance, European participants in the Human Genome Project who are required to release sequence data immediately onto World Wide Web, in principle are losing the possibility of protection in Europe. It should be noted that Article 16 (2) of EU Biotechnology Directive (98/44/EC) addresses this issue and requests the Commission to report on the issue of the grace period within two years. These concerns apply equally to researchers employed in industry as to those in the academic sector.

Free access to database

ALLEA asks EU Authorities to change their policy and pay adequate attention to the legitimate interests of the scientific community, which, as it appears, have been largely ignored in drafting recent directives on Intellectual Property Rights, specifically those on database protection, copyright exceptions, biotechnological inventions and patent harmonization and requests to be informed and consulted on all IPR issues which directly and indirectly affect academic scientists, both as potential IPR owners and users of protected inventions, copyright work etc.

Teaching

Scientists should be in the position to benefit of what they have discovered. To be informed of the problem of "first to invent" vs. "first to file", scientists should be made aware of basic knowledge of intellectual property rights.

To be the first on the market, or just to be successful on the market depends on R. & D. But the innovation chain (road from the discovery in the lab and its publication in an international journal of high impact, to the filing of an application in an patent office to put the product on the market) is still long. Not as long as it used to be. Among the younger generation of scientists there is a view that their discoveries are increasingly applied by the industry, which is good, and exploited without reward which is not fair. ALLEA researchers as potential owners of Intellectual Property Rights, as well as potential users of protected research results of third parties, need to be educated in the basics of intellectual property law. They also require the provision of adequate professional advice and financial assistance when seeking protection.

Special fund for licensing

It is recommended that a special fund should be set up for licensing (follow the American example) at national and EU levels.

ALLEA Standing Committee

E. Sylvester Vizi (chairman)
Budapest (Hungary)

and

Joseph Straus
Munich (Germany)

Statutes of ALLEA

Principal goals of ALLEA are:

- ⇒ To facilitate the exchange of information between the national academies in Europe.
- ⇒ To advise and assist national academies whenever necessary in building up and maintaining their relations in Europe.
- ⇒ To develop activities geared to strengthen the role and position of the national academies.
- ⇒ To develop views on issues that concern the development of science and scholarship.
- ⇒ To give advice and make recommendations in the area of scientific policy to governments, the European Community, and national, international and supranational organisations, whenever it is more effective for academies to do so collectively than individually.

All above mentioned activities are always undertaken with due respect for the independence, the competence and the interests of the respective national academies.

Member Academies of ALLEA

Albanian Academy of Sciences ★ Österreichische Akademie der Wissenschaften
★ National Academy of Sciences of Belarus (NASB) ★ Académie Royale des
Sciences, des Lettres et des Beaux Arts de Belgique ★ Koninklijke Academie
voor Wetenschappen, Letteren en Schone Kunsten van België ★ Bulgarian
Academy of Sciences ★ Croatian Academy of Sciences and Arts ★ Academy of
Sciences of the Czech Republic (ASCR) ★ The Royal Danish Academy of
Sciences and Letters ★ Estonian Academy of Sciences (EAS) ★ Finnish Academy
of Science and Letters ★ Académie des Sciences, Institut de France ★ Académie
des Inscriptions et Belles Lettres ★ Académie des Sciences Morales et Politiques
★ Georgian Academy of Sciences ★ Union of the German Academies of Sciences
and Humanities (The seven German Academies of Sciences) ★ Hungarian
Academy of Sciences ★ Visindafelag Islendinga ★ The Royal Irish Academy ★
The Israel Academy of Sciences and Humanities (IASH) ★ Accademia Nazionale
dei Lincei ★ Pontifica Academia Scientiarum ★ Latvian Academy of Sciences
(LAS) ★ Lithuanian Academy of Sciences ★ Macedonian Academy of Sciences
and Arts ★ Academy of Sciences of Moldova ★ The Royal Netherlands Academy
of Arts and Sciences (KNAW) ★ Norwegian Academy of Science and Letters ★
Polish Academy of Sciences ★ Academia das Ciências de Lisboa ★ Academia
Romania ★ Russian Academy of Sciences ★ Slovak Academy of Sciences ★
Slovenian Academy of Sciences and Arts (SASA) ★ Real Academia de Ciencias
Morales Y Politicas ★ The Royal Swedish Academy of Letters History and
Antiquities ★ The Royal Swedish Academy of Sciences (RSAS) ★ The
Conference of the Swiss Scientific Academies ★ Swiss Academy of Humanities
and Social Sciences ★ Swiss Academy of Medical Sciences (SAMS) ★ The
Turkish Academy of Sciences (TÜBA) ★ The National Academy of Sciences of
Ukraine ★ The British Academy ★ The Royal Society of London

Scientific organizations related to ALLEA:

Academia Europaea, London ★ Deutsche Akademie der Naturforscher
Leopoldina, Halle ★ Academia Scientiarum et Artium Europaea, Salzburg ★
European Academy of Arts, Sciences and Humanities, Paris ★ European
Commission, Brussels ★ European Science Foundation (ESF), Strasbourg ★
Interacademy Panel for International Issues (IAP), London ★ International
Council of Scientific Unions (ICSU), Paris ★ National Academy of Sciences,
Washington DC