

Copyright Ownership Issues and Policies Project Update April 1999



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Introduction

It has become both the tradition and mission of higher education in American society for faculty to disseminate knowledge for the benefit of scholars, including students and for the greater good of society. The generation of new knowledge is especially fluent at a research University where intellectual discoveries are the product of faculty devotion to research within one's discipline.

The fruits of such knowledge are usually disseminated through a variety of venues including teaching, professional presentations, and publication. The intellectual value of research and teaching has always been well understood and a cherished tradition of anyone who has pursued an academic career. The characterization of a faculty member's labors as "property" and the corresponding considerations of who owns it and what legal rights and responsibilities are afforded, however, raise issues that are not easy to reconcile in the modern research University. Intellectual property is not an altogether foreign concept to some members of the faculty or University administration. University faculty members have been the source of numerous patents. The process for determining ownership and managing the corresponding rights and responsibilities for inventions has been routinely fulfilled by the research arm of the University.

Increasingly, technology transfer organizations carry out such duties. However, until recently there has not been an equivalent process or organization for managing copyright. While many institutions had intellectual property policies in place, there has been no uniform practice or policy position in the area of copyright ownership. Several recent events have brought new focus to this issue.

The Digital Revolution

The influx of digital technologies into the higher education scene has created an exciting environment for both learning and research. The advent of the Internet

brings promise of new ways of communicating knowledge, delivering educational content, and reaching remote learners. Most of the focus to date has concerned faculty as users of copyrighted materials and the corresponding rights and responsibilities under copyright law, including questions of "fair use" and securing licenses or permission to use copyrighted materials in digital formats. However, attention has now turned to faculty as creators of copyrighted materials and questions of ownership have emerged. Asynchronous learning, the process of providing educational content at any time and any place, is becoming commonplace through the placement of syllabi and course materials on the World Wide Web. Again, the fixing of one's original work into digital format and mounting it onto the Web is forcing the question of who owns the copyright. Distance education is about reaching remote learners who are not presently being served by our higher education system. Electronic delivery of academic content usually requires resources, including technical support, which is above and beyond what is typically provided to faculty. Consequently, the University may seek to recoup its investment in such activities.

Commercialization

Remote learners are also seen as an untapped revenue source. University administrations have an eye towards the bottom line and are seeking new revenues at a time of declining state and federal government funding. The movement to commercialize higher education has already been happening in the area of patent administration and is also evident in other areas of campus life such as athletics. However, the commercialization of the traditional intellectual activities of a University - instruction and research - is complex and controversial. Some faculty members are on guard for how the commercialization of their intellectual property will intrude upon their academic freedom. In other words, how will questions of ownership influence what has traditionally been the free reign of academics: to control their intellectual discoveries and pursuits. If University administrations gain an ownership interest, how can faculty members protect their ability to research, write, and speak about controversial topics. Administrators, on the other hand, question the appropriateness of faculty members making a profit or benefiting from materials developed while under the employ of the University.

Scholarly Publishing

Faculty have been signing over their ownership rights for years to publishers who will in return print their writings in scholarly journals so that faculty can gain the professional status that is necessary to receive tenure, promotions, and other academic rewards. It is a process that has been ongoing virtually without question or challenge. However, librarians through organizations such as the Association for Research Libraries have been complaining about the rising costs

of print publications, especially science and technical journals, which often contain the intellectual discoveries of faculty from their member institutions.

For-profit publishers have gradually gained a monopoly over scholarly publishing that has strangled the ability of research libraries to afford the necessary holdings. Faculty members often complain about inadequate library holdings but don't always appreciate how they have contributed to the library-funding crisis.

Project Phases

Participants in this study include institutional members of the Association of Research Libraries (ARL) and/or the Association of American Universities (AAU). The resulting research will be reported on a Web site that has been created to serve as a resource on copyright ownership for the higher education community. See <<http://www.umd.edu/copyown/>>.

The first phase of this project - to conduct a search for policies of ARL/AAU member universities and link to them from the Web site – has been completed and results can be found in the "policies" section of the Web site. The second phase - to survey ARL/AAU members to confirm their institutional policies and seek further information to better inform our understanding of what is happening on campuses – is in process and will be used to update the "policies" and "issue" section of the site. The final phase will be to conduct an analysis of those policies and campus activities to provide a "snapshot" of what is happening across the country. A summary will be available from the "model approaches" section of the Web site. Along the way, links will be provided from the "resources" section for other campuses that are in the process, or will soon begin the process, of studying these important issues. It is also hoped that visitors to the Web site will participate in the on-line discussion that is available from the Web site's "open forum."

Conclusion

There are perhaps many more issues that influence the present controversy. In fact, we are certain there are perspectives that are not adequately represented in the brief synopsis above. It is our hope that the information and discussions that result from this project, combined with on-campus dialogue and debate, will illuminate the issues and shed light on the solutions that are best suited to ensuring policies and practices that are thoughtful, flexible, and fair.