

## **Robert Baron**

*Comments prepared for the  
NINCH Copyright Town Meeting Saturday, February 26, 2000*

Welcome to the Fourth Annual Copyright Town Meeting sponsored by the National Initiative for a Networked Cultural Heritage and the Committee on Intellectual Property of the College Art Association. My name is Robert Baron, I am the chair of the College Art Association Committee on Intellectual Property and, with David Green, the Executive Director of NINCH, who will address you soon, am co-chair of this session.

Before I do anything else I wish to thank the Museum of Modern Art who so graciously has provided their lovely and spacious auditorium for us today, and wish to extend a special thanks to **Josiana Bianchi** of MoMA, **Emmanuel Lamakis** and **Katie Hollander**, from College Art who facilitated the arrangements.

Before we begin, I'd like to know how many attending today are not here because they are associated with the CAA convention. A show of hands, please. [Response: about half of the attending 65.]

Here is how the program is set up: I'll say a few words by way of introducing the topic. Next, David Green from NINCH will speak about the Town Meeting series. I'll return to introduce the speakers. Hopefully, we will have some time for Q&A before we adjourn at 12:00. We will reconvene again at 12:30pm at the Hilton Hotel for further discussion, where we will undoubtedly be joined by additional conference-goers.

### **Introduction**

I have a few general contextual observations to make in order to establish the setting for the comments of today.

Everyone knows that we would not be seated here today were it not for the rise of the Internet. It is the Internet that is holding out a promise to many would-be creators that those works once consigned to dusty corners of library shelves or to overstuffed file cabinets may have enough new-found attraction when released to a world-wide audience to garner significant attention. For the individual, this is the core promise of the Internet: to offer release from the chains of obscurity; to give someone a chance to make his mark in the world.

It is the same Internet, which, with but a flick of a mental switch, fills the entrepreneurial dreams of so many creators with lofty expectations of glory, fame and, not least of all, money.

No longer sentenced to lead lives of cloistered anonymity, today, professors of modest and monumental talents and experts on subjects of micro- and macrocosmic proportions, alike, have become seduced by the Internet and hope to expose their intellectual wares to the sunlight of public view and be awarded the celebrity long denied derided academe.

I have a confession to make: On my own personal web-site there is a small article; my first and perhaps (hope some) my last article of scholarly pretence. This is not an especially brilliant article, and had it been written ten years ago, it would certainly have been cast into the trash of academic twiddle. But, every morning, like clockwork, dutifully (ritually even) I check its usage statistics for the preceding twenty-four hours, and I do it with the same passionate dedication one would employ had it been 10,000 shares of Microsoft.

Discovering that yesterday, say, fifty or 100 or sometimes 200 people looked at the title page, or that within the last few months more than 35,000 pages were turned over, one confronts a remarkable truth about oneself. How many people read this article when it appeared in a small scholarly journal? Fifteen, perhaps. No wonder the Internet economy of mass distribution and free choice evokes visions among faculty, university and publishers. The Internet turns the economics of creation and distribution upside-down. No longer does access to the object inhibit access to its content. Not since Guttenberg has a technology promised, and has caused, so much change.

Back in the 1970s (my frame of reference, alas), when Jerry Brown was governor of ALL of California, he told the professors of the State University System that teachers there did not need the extra pay for which they were asking. They had something much better than that, he said. They had PSYCHIC benefits; they earned "psychic bucks".

Like the governor, universities and publishers, habitually, instinctively, have become quite adept at awarding the "psychic" benefits of professorhood. So good, in fact, were they that teachers in some disciplines, anyway, happily oblige publishers and universities alike by regularly underwriting the costs of their own publications and of their own research; after all, this is their corner of the world of the intellect. They own it as surely as they own their own home, and tend it like they tend their own gardens. No wonder teachers all over stand in consternation when they hear their university claim rights to their work, to their study guides, to their examinations.

Today, the Internet is minting a new currency, a new form of exchange whereby the "psychic bucks" of yesteryear may be traded for the "cyberbucks" of today. It stands to reason that teachers are beginning to notice new claims upon their traditional rights to determine the status of their own intellectual property. Suddenly, out of the blue, whatever it is, it is worth money. But, let's face it; the day of the individual scholar is fading. How rare a breed is the lone scholar these days, the scholar hold up in the archives of some forgotten era; like a protagonist in an M.R.James ghost story. The scholar painted by Montague Rhodes James usually unearths some link into a forgotten spirit world, unleashes some terrible demon against which he must do battle. Today, it is the Internet that is the messenger from (and to) another world. Will it be friendly or demonic, we ask ourselves with ever increasing frequency.

Today we discuss the mechanisms by which individuals - faculty primarily - can claim possession of their life's work. Part of that story, of course, concerns those who package intellectual content - the publisher and the university - and that story will be heard too. But I'm not going to deliver you to our speakers before I share with you my suspicion of the consequences of ceding education to the Internet. The modern-day scholar, seizing upon the Internet's power to multiply his works without cessation, may very well be unleashing a force so destructive that its consequences will be impossible to stop. Is the use of the Internet - the creation of Distance Learning products specifically - ultimately self-destructive?

With increasing frequency, intellectual products have become the creations of team efforts with multiple levels of contribution and multiple creators, where technical expertise and resources are provided by the university, by research institutes and by a multiplicity of granting agencies, where research exists, less to increase understanding and more to present understanding, and where research proceeds according to the Procrustean dictates of work-flow diagrams in a world where project coordinators micro-manage one's every creative instinct.

Today we investigate the evolving status of faculty intellectual property, to isolate the issues of the moment, to survey the battlefield boundaries where these conflicts are being played out -- to discover what kinds of responses to these issues are upcoming, to match typical situations to the law, and to survey the array of opinions being expressed.

Our speakers look at this issue, if not necessarily from different perspectives, at least from different vantage points. Our first speaker **Christine Sundt** will survey these issues as they have evolved since our participation in the Conference on Fair Use (CONFU) and how they have manifested themselves and evolved as topics of conversation in Internet Discussion groups. Next, **Jane Ginsburg** will analyze several notorious disputes that are currently near litigation. Finally, two speakers, **Sanford**

**Thatcher** and **Rodney Petersen** will address two institutional efforts to head these problems off at the pass - to solve problems before they arise - by establishing policies and guidelines that all participants hopefully might recognize as fair.

I think you'll find, contrary to the implication I so slyly made to a "Tug of War" in the title of this meeting, that sincere efforts are afoot to unbind the bundle of rights that heretofore accompanied the creation of institutional intellectual property. Authorship is now but one ingredient in the amalgam called "distance education" - a product to which many contribute creatively.

Some of you in this room may have noticed, about two weeks ago, in the *New York Times*' "Week in Review," a front-page article by Jacques Steinberg and Edward Wyatt, on the call that e-commerce is making on educational institutions and on faculty to package courseware and to employ the power of the Internet to market and distribute these properties. Universities, this article reports, see on the horizon increased revenues, lower costs, increasing interest within the general population as they cash in on the cachet of their name. Faculty members, too, the article reports, hope to receive (at last) the compensation they believe they so justly deserve.

What, we must ask, is the real cost of select educators receiving so much in the way of dividends, flowing, from the heavens, as it were, like Zeus' shower of gold onto an unsuspecting Danae. How will the prospect of receiving unearned income such as what used to be called "rents" (but here called "royalties") for the distribution of intellectual property affect what is taught. Will this new paradigm create an aristocracy of intellectuals subsisting on royalties? What kind of education flows from educational aristocracies. True enough, there is promise of a new more equitable age here, but at what price; what are the socio-educational dimensions of this enterprise?

Jacques Steinberg's article suggests that among the losers in this revolution will be the smaller educational institutions of higher learning from whose student bodies will be siphoned those who might wish to obtain a cheaper education on-line. Perhaps this is just a case of water seeking its own level. Yet, the result of increased teaching efficiency and of decreasing cost-per-student must certainly create an educational vacuum. I fear nothing less than an implosion of our higher education establishment, spewing a new glut of ex- and once-future professors into the market-place.

When "Distance Education" is divorced from "face-to-face" teaching, the lessons taught also change. Distance Learning as suggested in the *New York Times* article, crystallizes the roles of teacher and the student; it ignores benefit of direct contact education where the teaching process is frequently two-way - one in which teachers learn from their students - and, the other, in which students learn their most important lessons from watching their teachers learn from them. What will our world be like

when one teacher has lectured to ten thousand and when a thousand teachers have taught nobody.

I hope that when the dust settles these prognostications prove to be wrong, that there will be unrealized compensating factors, and that all parties benefit from the new economics of education. But there is also a chance that in that process students will fall into rank as a new exploited caste, delivered to educational consortia just like TV viewers are delivered to advertisers there to be manipulated for someone else's gain..

Wrapped in the arrival of "Distance Education" one suspects to find anti-democratic motives lurking, feeding a mechanism that might make it easier, or worse, desirable to control thought and speech nationwide and globally, might make it easier to impose political, religious and ethical views under the cover of applying standards, of adhering to "best practices," and of practicing that unimpeachable virtue for which there exists no civilized rebuttal - responsibility. Will the centralization of the creation and distribution of educational wares serve to inhibit the expression of dissent and to quash the promulgation of opposing and oppositional views. When education becomes a commodity, as in any commercial arena, content can be bent to the perceived needs of financial interests. Uniformity becomes a virtue; and, individuality or customization a liability. We enjoy the distorted metaphors of advertisements because we look down at them from above; can we tolerate them in our education when we experience them from below? These are warnings; the fight for the equitable ownership of rights in which we are now engaged may pale in comparison to the future fight to save our educational souls.