COPYRIGHT TOWN MEETING: Eugene, November 19, 2001

Creating Policy: Copyright Policies in the University
University of Oregon, Eugene

Meeting Report

Presentations:
J. Q. Johnson, Setting the Stage
Laura Gasaway, Creating Policy in the Real World
Georgia Harper, Getting the Ball Rolling: You Can Make Something Happen
Gerald Barnett, Technology Transfer and Intellectual Property

Workshop:
Georgia Harper: Initiating the Policy Process
Laura Gasaway: Negotiating the Hot Issues

J. Q. Johnson, Setting the Stage

See PowerPoint presentation (Acrobat PDF):

J. Q. Johnson opened by citing Corynne McSherry's *Who Owns Academic Work? Battling for Control of Intellectual Property* that sees the notion of scholarly communication as a form of gift exchange challenged by a new commodification of academic production. By buying into the model of the ownership of goods, were we undermining the goal of academic freedom and the broad pursuit of knowledge?

The Scope of the Meeting

Johnson surveyed the broad territory of intellectual property policy, within which this meeting was situated. Intellectual property policy was bound to cover not only copyright law but also patent, trade secrets, trademark, licenses and contract law. In higher education it should also cover accepted academic standards and practice (such as citation practices etc.).

Higher-education bodies concerned with IP policy include the super-institutional (state government, state university system, professional organizations); the institutional (faculty senate, the library) and the sub-institutional (academic departments, service units like the computing center, and individual faculty). All might have their own stated or unstated policies.

Universities played many (often conflicting) roles: as users and as creators of intellectual property; traditional and online publishers; teachers and administrators of intellectual property law and ethics; and advocates for policy and legislation.

Policy issues could include: ownership of material created by faculty and graduate students in their research and teaching (including patent and trademark); the use of the copyrighted work of others; the securing of rights and permissions for faculty; asset management; institutional trademarking; technology transfer and new forms of scholarly publishing.

This meeting would focus on higher education institutional policies, with a special interest in courseware and copyright. However, Johnson stressed the need to be aware that these were embedded in a larger context.

Policy and Courseware

Johnson then discussed Kenneth Salomon's Checklist of Issues for Electronic Courseware, noting that, although it was rhetorically prescriptive, it was useful as a description of key components of a policy. Key questions included:

- Do you have a policy at all; if so, whose is it; does it get enforced; and where does a faculty member go to get started?
- Given that you have a policy on courseware, where is it addressed (in intellectual property or other policy documents, or in the terms and conditions of employment)?
- If an intellectual property regime is based on the work-for-hire doctrine, is a work considered part of faculty job responsibility or is it addressed in collective bargaining agreements?

Many would argue that IP policy should tackle the difference between courseware created independently and that created within the scope of employment. The classic case dealing with this conflict (of faculty from one institution creating courseware for another institution) is that of Harvard Professor Arthur Miller (see Jane Ginsburg's discussion of this in the 2000 New York City Town Meeting). Policy should be clear about this issue and about what happens to courseware once a professor leaves for another institution. Many institutions start by assuming that all faculty works are work-for-hire, but then relinquish rights to the faculty authors except in cases where substantial institutional resources are used in the preparation of the works.

Johnson declared that it was important that policy distinguish among different kinds of intellectual property: inventions and discoveries, scholarly works, traditional course materials and electronic courseware. It follows that courseware policy should be related to patent policy, trademark, software licensing, asset management and to the provisions of the DMCA. And overall, Johnson concluded, it was important to ask whether the policy tracks the larger goals of the university, such as academic freedom and the wide creation and dissemination of knowledge.

Laura N. Gasaway, Ownership Policy: The Carolina Experience

See PowerPoint presentation (Acrobat PDF):

Laura Gasaway was a key player in the development of a system-wide and institutional intellectual property policy adopted by all 16 campuses of the University of North Carolina in late 2000. It took 15 months to create and her main messages were that the process is almost as important as the product and that the key to success is to have not only active faculty participation but also faculty leadership.

Gasaway reported that historically there had been little institutional interest at UNC in claiming rights to faculty works. However, with faculty-created electronic instructional material, there was new interest, often triggered by the investment universities make in establishing digital production centers and help desks. The university was interested both in recouping this investment and in making money through commercial development.

It was in this context that university attorneys at UNC were engaged in the somewhat secretive development of new IP policies. As chair of the Faculty Assembly, Gasaway was upset when she heard of these developments and immediately took the issue to the President of the system, who called for an official review. A substantive copyright colloquium was held with faculty, the university librarian, university administrators and legal counsel from all 16 campuses along with the president of the UNC system. Shortly afterwards there was a call for an Intellectual Property Task Force to prepare an inclusive new system-wide policy.

Though the Task Force numbered 21 people, and proved cumbersome at times, Gasaway asserted that it was imperative to be as inclusive as possible. The Task Force included faculty of all types from the campuses, staff, legal counsel, librarians and technology transfer officers.

The important issues for the system included: how uniform and how detailed the policy document should be across the system; and what resources would be available to educate the faculty, especially at the smaller institutions, and to implement the new policy? Some of the questions the Task Force asked of itself included: could it create a policy within a year when it met only once a month; and could a fair policy be "sold" to the faculty? But, through the active use of subcommittees, a lot of email, a shared website, and a surprising amount of education, consensus was reached, even though members sometimes held strong and opposing positions.

The substantive issues on which agreement was reached included a uniform ownership policy, which Gasaway found was perhaps unusually "faculty-friendly". The default of faculty ownership of traditional work (what was normally produced) was reasserted but it was agreed that the administration has a justifiable interest if it invested exceptional work, money and facilities in creating it, or if faculty sought help to commercialize a work. The kind of "exceptional" resources employed were defined as: "University support for the creation of the work with resources of a degree or nature not routinely available to faculty or EPA-non-faculty (professional) employees."

Even within this agreement, a department chair might agree to the release of the rights to a work back to the creator, even if exceptional resources had been used. In this case, even if the university doesn't care about owning the work it might still want to be able to use it - they would ask for a nonexclusive royalty-free use - a "shop-right".

Other key points of the policy included:

- Although "directed works" are owned by the university, as it has directed faculty or a department to create it, faculty may have the right to use it;
- Under the "Works by State Personnel Act" employees (applying to staff generally), all works are considered works for hire, using the Copyright Act's definition, but university ownership still may be waived;
- Students own their work unless it's work-for-hire, sponsored or contracted work, or classroom notes.

All campuses had organized presentations on the policy for their faculty and staff. Each campus had to implement the policy and report back to the system General Administration about its choice of a dispute mechanism. Legal counsel at the General Administration then signed off on each campus policy.

Finally, Gasaway reported that creating the policy had been a very positive and productive experience. She also reported that the state had hired an intellectual property attorney for the university system, which would ensure that smaller institutions and faculty would have a voice to help assist them in their deliberations.

In answer to questions, Gasaway said that in the complicated area of joint faculty-student production, the default was that faculty would own the rights. She affirmed that computer resources owned by the state could be used by faculty to create works in which the faculty member will hold the copyright. She declared that state law differentiated between faculty and staff (staff are state merit employees under North Carolina law), while non-faculty librarians were considered under work for hire law, although a distinction is drawn between work for hire and any scholarly work that librarians may do outside their normal job assignments.

Georgia K. Harper, Getting the Ball Rolling

See PowerPoint presentation (Acrobat PDF)

Georgia Harper focused on the problem of what to do when an individual clearly has a copyright problem but feels powerless to make any changes in university policy: how do you get the ball rolling? Her three-stage advice was to:

- describe the problem — articulately, with detail;
- suggest a solution; and
- find the people who will be able to implement a solution.

Although the policy itself can quickly become the focus of discontent, Harper stressed the importance of clearly describing the problem. She cited, on one hand, individuals' reluctance to create online materials when they are unsure of what they'll be able to do with them and, on the other, the reluctance of administrators to invest in potentially lucrative course materials when they are unsure what faculty might do with them. In addition, there was usually no clear dispute resolution process should any problem arise.

Typically, Harper said, policies were too vague. They fail to adequately address an issue or, if they do, they are difficult to understand. She quipped that the first inescapable part of any solution is to read and know the available policy. She stressed that one doesn't have to understand the whole policy, but must understand how an institution deals with a problematic issue. In this meeting, the material and exercises would focus on the ownership and use of faculty-created courseware. However, understanding the techniques for critiquing policy and developing a solution can be applied to any issue.

Harper examined statements extracted from three policy documents.

- The Vague Policy: "The Board owns the intellectual property developed within the course and scope of employment… including instruction … [but] the Board releases to the creator, [subject to] university license to use …online courses … on a case-by-case basis." Harper commented that this offers no help to faculty debating whether to develop courseware or not: it simply leaves consideration until a later date.
- Ignoring the Issue: "This policy shall apply to intellectual property of all types except for faculty- or staff-authored written work that is not produced either as work-for-hire or as part of the regular work responsibilities of the author." This doesn't answer the question about work-for-hire or normal faculty production and continues by addressing inventions. It is clearly adapted from patent policy with no understanding of the differences between patent and copyright. Harper stressed the point made earlier by Johnson of the importance for policy to distinguish between IP regimes.
- Confusing: "The Board will not assert an interest in textbooks, scholarly writing, … and literary works … unless such work is a work-for-hire." This sidesteps the issue of whether a product is done under work-for-hire. This also looks as if it was drafted by someone who knew patent law but not copyright.

Solving the Problem

Harper reiterated that the first step in redressing a problem was to describe it - in detail and with examples. Then you should confer with others: ask faculty what they are and are not doing with online courses and ask students whether their needs are being met. Having described the particular problem, you then need to relate it to current policy statement and describe what the disconnect is. Here, it is very helpful to look around for a good example of a policy that does deal with the issue in a clear and satisfactory manner. Thankfully, Harper said, there were many good policies and the University of Maryland's CopyOwn web site was one excellent place to survey them. She reiterated that one wasn't trying to find the perfect policy, just one that helps with a particular issue. It's also helpful to ask what the goals of a policy appear to be. The ultimate goal of an online education policy should be the development of a robust distance learning program.

Harper offered some tips for reading a policy:

- Examine the Table of Contents or the Headings for, in this case, any section dealing with Ownership & Use.
- Read and summarize the appropriate section, focusing here on how the policy deals with the issue of who owns faculty-created courseware and under what circumstances? Who has the right to use courseware even if they don't own it.
- Mark-up the text, indicating how different sections work together.

The group then worked on an exercise using an example drawn from the Arizona Board of Regents copyright policy.. Harper guided the group through the sections dealing with university sponsored projects, with assigned rights and "employee excluded works." In this case, it was quite clear that the university asserts its rights to all work-for-hire and regards all faculty production as work-for-hire. In addition, the policy states that the university owns all material for which any university equipment or resources are used. Looking closely for a waiver or return of rights to faculty, or for a statement that faculty have the right to use material, the group found nothing.

Harper found this particularly unhelpful: the university thus owns thousands of courses and doesn't allow faculty to use them – except on a case-by-case basis, which is very inefficient and does not encourage faculty to develop their own courseware. Even state law that forbade state resources to be used for material that it would not own, would allow faculty use of those materials, even if they left the state.

A comment from the audience noted that one should also take into account the description of the scope of work that appears in an employment contract. That scope of work for most faculty would not include creating a textbook; so those creating courseware would be going outside their scope of work. Harper commented that one could argue forever about what was included in "work-for-hire" but the point of policy is that it should define it and that would minimize disputes. The law, she said, tends to give either all or nothing. Policy, on the other hand, can craft practical mechanisms for giving people what they need: for example, use of material, under certain conditions, that they may not own the rights to.

Harper commented that she had reviewed the IP policies of many institutions and particularly recommended those of Cornell, the University of Virginia, and the University of North Carolina, but even these often don't address what faculty can do with a university-owned course. She recommended her web page "Developing a Comprehensive Copyright Policy to Facilitate Online Learning" that had links to the policies referred to in this workshop and to many others.

Who do you give it to?

After articulating the problem, and analyzing the appropriate policy statement, to whom do you hand your complaint? Harper recommended distributing it to as many people as possible: to the legal office, high-level administrators, faculty senate or advisory group. It was crucial to make a presentation (allow 30 minutes) and to make sure the target understood the problem and the many paths to fixing it. Equally important is the follow-up to check on the status and progress of your proposal.

Richard Linton, Welcome

Richard Linton, Vice President for Research & Graduate Studies at the University of Oregon, was interested to discover that one-third of the meeting participants came from out of state with another third from non-University of Oregon institutions and the rest from the University. He introduced the university as one that was transforming itself, especially in the liberal arts & sciences, and one that was increasingly interested in economic development and the entrepreneurial efforts of faculty. In the last year, he said, invention disclosures had quadrupled to 30 a year and licensing revenues had increased by 50%. Technology transfer was thus an increasingly appropriate concern for the institution.

Gerald Barnett, Technology Transfer and Intellectual Property

See PowerPoint presentation (Acrobat PDF)

Barnett opened with an image from the 1960s movie, "Hallelujah Trail:" a wagon train is bringing liquor to Denver; the cavalry has been sent to protect it; the temperance women are against its coming; citizens go out to meet it early; and Indians plan to intercept and take it over. All parties meet in a sandstorm and the wagon train is lost. Intellectual Property policy, he said, is like the sandstorm: many groups want to manage and use precious resources heading towards an institution - but there's a "world of weather" that interferes with the reasonable operation of thought. Barnett's goal was to explain the interests and capabilities of universities' technology transfer offices in the context of developing and sharing the potential wealth of intellectual property.

He proposed that IP policy was at root about how an institution respected, supported and directed innovation. He thought intellectual property works best as a management tool between organizations in academic institutions: it's not so crucial in protecting property as it is in enabling and managing relationships that will enhance productivity. He defined technology transfer as that class of relationship-building activities that develop the potential for the deployment of innovations: in moving from research to sustainable private use, investment and development.

As far as patent rights go, the 20 years since the Bayh-Dole Act have seen the creation within universities of an effective infrastructure for securing and licensing patent rights to industry. Institutions now expect policies that assign them the patent rights of the inventions of their employees. Federal funding requires the assignment of rights either to the federal agency or to the institution. With industry-sponsored research, in which agreements are most often about the ownership of any resultant inventions, the tech transfer office helps to manage the competition for IP rights, so as to prevent, for example, double licensing situations where industry-sponsored research and federally-funded research might collide in their assignment requirements or be complicated by other background rights that belong to the broader context of any one piece of research.

Barnett described two generations of tech transfer: the goal of the first is to assert and develop patent rights and commercialize them. The second tends to bypass the obvious commercialization route in order to discover the future of an asset in the community: how can it be distributed effectively to the most appropriate audiences; and how can it be built to foster subsequent organizational interest, whether for-profit or non-profit? For Barnett, the interesting conversation is how you build this next generation in managing university assets, which the tech transfer offices see as being held as a public trust.

He considered copyright management at academic institutions to be still bedeviled by the concept of the individual author, while most meaningful academic production today is collaborative. Barnett thought it more useful to look at group production and to consider how a group will manage the value of what it builds collaboratively. In policy writing, he criticized the tendency to adopt language from other institutions' policies rather than examining how the premises, on which policies are constructed, have changed. Here he felt that a tech transfer office had much to offer, due to its thousands of hours of examining how IP relationships work.

He argued that it was critical for tech transfer to work for integration between the different IP regimes and to manage the differences between them, rather than simply trying to make bridges between them. For example, a scholar may advocate for strong fair use implementation in a specific case, in which rights need not be cleared; but from a tech transfer viewpoint, the resultant article may be unpublishable as it might not so strictly log its sources or have permissions necessary to permit distribution.

The big five things to be kept in mind in any rights administration relationship are: ownership, control, money, attribution and risk. These always haved to be considered; they often come in binary pairs (for example, if you are talking ownership you are also likely to be talking about control.

Within the broader landscape, Barnett wanted to emphasize the increasing number of federal information management policies that are starting to control our activity in this area. As examples, he mentioned the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Family Educational Rights and Privacy Act (FERPA), both of which highlight the question of where responsibility lies in managing the guarantee of privacy in the maintenance of personal information. Other examples here included the Americans with Disabilities Act (ADA), the DMCA itself, Export Control (the regulations that apply if there is any constraint on any set of information); and UCITA.

Summarizing his review of technology transfer, he declared that it controls an institution's patent policy; it is extending into grant work; increasingly it manages copyright ownership of technology-based as well as invention-base properties; it is involved in conflict of interest review and in data management; and, as it emphasizes the importance of trying to integrate the different IP regimes, it may drive new questions, such as "is that fair use position one you want to take if you want to publish?"

As a final word, Barnett emphasized that intellectual property should be viewed more productively as a springboard for creating relationships that matter with industry and other organizational partners. Although an IP policy might sort out who owns what, it is more important that it gives people incentive to work together to accomplish something that matters. In his closing image, Barnett declared that IP policy should have less to do with how the pie is carved up than with how it is served, so that it keeps people working productively together and doesn't interrupt the drive and mission of the university.

Deb Carver, Introduction

Deb Carver, interim university librarian at the University of Oregon, introduced the library and gave a thumbnail sketch of its involvement with copyright issues. These had effectively started with its tackling reserves policy in 1992 and had developed quickly in recent years with developing a faculty instructional tech center in the library and assuming responsibility for a media center and the issues stemming from that. She was optimistic about the policy that would emerge from the work initiated at the town meeting and workshop. She stressed that the Oregon system had a strong history of faculty governance and interest so trusted that faculty would play an active role in transforming the university's intellectual property policy.

WORKSHOP

I Georgia Harper, Getting The Ball Rolling

Georgia Harper introduced the first part of the two-part workshop. The exercise for the group was to read through IP policies from six universities and to summarize their position on electronic courseware.

The following comments were made on the policies read through by the group:

Cornell University The Cornell base is faculty-ownership of course materials, with exceptions for directed works and other specific situations. Electronic work is to be equitably shared. The group noted that the policy is very complex and ambiguous. After close reading it appeared it was some ten years old and language originally meant for software production ("encoded works") is now being applied to courseware. The policy is generous with the "right to use" (balancing the university's right to use faculty-owned work and vice versa).

University of Virginia Virginia's policy also offers faculty ownership of traditional works but has an exception for situations where a project uses significant university resources. There is generally no interest in faculty work unless it makes money. The policy covers the university's own use of faculty material but but not faculty use of university-owned material.

Louisiana State University The default at LSU is that the university owns everything, but the policy opens up the possibility for case-by-case negotiation.

University of North Carolina At UNC, the default is that faculty own their material, with the university having the right to use it on a non-exclusive, royalty-free basis for internal use. The exceptions to this again include the

situations where exceptional institutional resources are used in the production of work. In the cases where the university owns material, the creator has the option of joint authorship with a nontransferable right to use.

There was a discussion at this point about "shopright," as a shorthand for describing the situation at the Chapel Hill campus where the policy added the right of faculty to use electronic courses developed on campus at another institution, but with no right to develop and commercialize it. One issue here, though is that the originator could give away the content but could separate their own value-added services in teaching it. This essentially is what is at the core of the MIT "give-away" of distance-education material: the material still needs to be activated by skilled faculty.

University of Chicago It was clear that the Chicago statement is not a policy, but rather a set of very general and vague recommendations. The basic premise is that the university owned everything, but the statement was considered to be confusing and inconsistent. To be improved it needs clarity, definitions and logistical details.

University of Oregon: Oregon Administrative Rules; Internal Management Directives; Faculty Handbook. The Oregon policy declared that it owns everything, as if it were a regular corporation, despite a preamble that stated the importance of putting works in the public domain. The policy treats everyone as though they were staff employees: there are no distinctions and everyone has to agree to assign all copyright to the university. It seemed clear that this was another case of a document designed for patent being used for copyright.

Discussion

Someone asked whether the Oregon policy could be changed as it was built on the "administrative rules" for the state of Oregon. It was pointed out that the rules were adopted by the Board of the system and could be changed by the Board. Someone else pointed out that it was generally recognized that changes need to be made; just how is on the table.

The issue of inconsistency and confusion within policies was identified, as well as inconsistency between policy and standard practice. Georgia Harper reiterated her point that even if ownership of the rights to materials was off the table, there would always be plenty of room for negotiating the terms of use of that material.

The suggestion of taking the issue to legislators was generally seen as an effort that might seriously backfire. It was deemed essential to involve key faculty, perhaps comprised of small groups who could review and make recommendations for specific changes.

Laura Gasaway, Ownership Policy Drafting Exercise

Laura Gasaway led the group through the second part of the workshop: an exercise in drafting policy in response to certain situations. Each group was assigned a situation and 30 minutes to create a policy draft about how to deal with the issue. You will be asked to report for your group.

**1.	Assume faculty ownership of copyrighted works such as distance learning courses. If a faculty member develops a course and then leaves the college or university, what should happen? Should the faculty member have sole rights to the course? Does the institution have any rights? Who should have the rights to update the course? Whose name does it carry?**

No consensus------but a possible framework:

If single author, little university resources, faculty owns but required to assign to institution limited bundle of use rights

- time frame
- rights to sublicense
- rights to derivative work preparation (update work)

Faculty rights

- portability of course
- author's name associated with course if faculty wants rights
- monitor course & how it is being used

2.   Regardless of the division of ownership rights between faculty and the university, disputes will arise. How should ownership disputes between the institution and a faculty member be handled? What administrative office or faculty/staff group should have or share this responsibility?

Use regular dispute Board

- The person hearing dispute has a Board of advisors from which to draw (special knowledge of intellectual property)
- Person hearing determines what the reasonable needs are of each party involved
  - Use regular dispute resolution process for appeals from this decision

3.   Assume faculty ownership of copyrighted works they create. What about staff employees? Are their works considered works for hire? Should professional and administrative employees be treated differently than clerical and support staff?   Is there a way to provide for negotiations to alter the basic policy in particular situations?

Treat all staff employee works as works for hire

- Except for works created independently, no university resources & not within scope of employment
- University will consider negotiations on a case-by-case basis

     * At request of staff

   University (or reviewer) will determine if staff need is reasonable

4.   If your policy recognizes faculty ownership, how will your institution advise faculty who are required by publishers to transfer their entire copyright in order to have the work published? Will you differentiate between scholarly articles, monographs, textbooks, etc., in the advice? Who will provide the advice?

Advice provided by:

- Large institutions – VP for research
- Smaller institutions – Provost or legal counsel
- Generally would be scholarly articles

Outlets for publications that do not require transfer of the entire copyright: SPARC, Tempe, Associations, etc.

Online publications – recognition for publication online in promotion and tenure policies.

5. **Assume faculty ownership of the copyright in works they create and college or university ownership of works created by staff members within the course of their employment, i.e., works for hire. How should the institution deal with works created by students either as course assignments or theses and dissertations? If the student collaborates with a faculty member under a grant, who should own the copyright in any resulting works?**

In general, student model should follow the faculty model: student ownership

- Course assignments
- Theses & dissertations: consider use of university resources

Could be extensive use of university resources, but the student must own the data in order to publish the dissertation in order to publish it

- Rights of use to the university
- Rights to the university of any underlying invention

Funding authority may want to own the underlying data

Student/faculty collaborations depends on nature of the collaboration

- If for pay = work for hire by student
- If under grant, faculty and student are working as colleagues, consider use of university resources, share the right

6. **How will your institution educate members of the academic community about copyright? What methods should be used with various constituencies?**

Who are the constituencies?

- Varies for art, performing arts, science & technology, etc.

Website for providing general information

Look at points of use for education, e.g., Center for Teaching & Learning to help faculty understand both use & their own rights

* Departmental committee on libraries to educate

Don't put the educational materials on copyright in the new faculty handbook

Yearly letter on copyright from the Provost – short

Brown baggers, receptions, open houses – go out to the faculty

- Bring the deans in first
- Then department chairs
- Faculty senate; faculty advisory council

Hide the fact that the issue is copyright – call it something else (?)

Try to adjust the effort to the faculty in an area – hit their interests

Student education is also important

- Use courses (component of information literacy)
- Emphasize that students are also creators of copyrighted works

Departmental executive administrator is the best person to contact (than the department chair)

7.   If the basic model is faculty ownership, how should the policy deal with situations in which the college or university has invested exceptional resources in the creation of the copyrighted work?   If the model is institutional ownership, should the faculty member have any rights in the work she created with exceptional use of college or university resources? What institutional resources are not considered exceptional? How will exceptional use of resources be determined?

Simple model: ownership should not matter – should be determined by a small group of individuals such as a deans' council

- faculty retain ownership

* does it matter when multiple people involved in creating the work? (usual circumstance)

* joint authorship could be a model among the faculty members

- grants back to the university irrevocable, nonexclusive right to exercise the ß 106 rights

If commercial opportunities arise, parties renegotiate a new license

irrespective of amount of resources invested by either party

Adaptable to all employees not just faculty

University ownership addressed similarly

Disputes handled by one faculty member, one administrator and a knowledgeable IP person – process to decide when resources are exceptional

8.   What model do you think will work best for drafting a copyright policy?   Does it differ depending on the type of university or college? Can you suggest models for different types of institutions?

Law faculty member who specializes in intellectual property

Someone from State Attorney General's Office or State Department of Justice

Oregon might come up with a unique model – think outside the box of the seemingly restrictive policy that seems to work okay despite the wording of the policy

Discussion and statement of principles of what the policy should be based upon (include applicable state law, etc.)

Recognize differences in campuses for resources

Be careful about how the policy is going to affect the institution

  - Resources the institution will commit to implementation of the policy

Difference between policy and guidelines

- Policy = guiding principle or flagship
- Guidelines can be more detailed

OPEN FORUM

Liability

To a question on the university's liability for online infringing activity, panelists responded that indeed as an ISP, the university is ultimately responsible and that this tends to make university attorneys cautious. However, the panel recommended the development of a fairly broad Acceptable Use Policy that does not police and make judgment on individual postings but that clarifies what is and is not acceptable use of university resources. To that end, another commentator said that the university had a responsibility to provide the tools necessary to achieve the goal of enabling individuals to see the larger picture of online behavior and of understanding and respecting each others' rights.

A questioner asked how intimidation by large corporations played into this picture. He raised the issue of Mattel's complaint over a Barbie parody on a web site at Rice University. Rice did not contest and took down the page. One panelist said that universities should have a different perspective than AOL, for example, and should judge whether a university's values were compromised. Another panelist replied that it might depend on the academic or classroom significance of a parody: is it cool or is it important? On the other hand, is the principle of fair use not more important than the content of an individual case? Is fair use not being marginalized through the brute force of large corporations complaining over what they don't like? Barnett's advise in all this was, if you're going to do such parody then do it really well, so the university feels strong in its defense. Gasaway added her voice to the importance of strengthening parody as a legitimate defense with academic significance - in this case both its art component and its social criticism.

Policy

When asked how long it took for university IP policies to be fully created and implemented, Georgia Harper said it took 18 months from the time she heard about a particularly troubling issue (that had been around for 2 years). Laura Gasaway said that although the task force and UNC took 15 months to do its work, it was almost 3 years before the whole process was finished.

Gerald Barnett had the last word in emphasizing that for him the key to creating effective policies was to be led by the future. Too many policies were only about analysis and forensics. There needed to be more logistics about how to create something for the future: how do you rally the resources to make things happen. He advised the group to ask of any policy: "What is the future that is incentivized by this policy?"

Christine Sundt closed the meeting by thanking everyone who had helped in thinking it through and putting it together.