

**UMUC Center for Intellectual Property**  
**8th Annual Symposium**  
**“Copyright Monopoly: Playing the innovation game!”**  
**May 28-30, 2008**

**2008 Symposium Roundtable Sessions**

Introduction:

The Center for Intellectual Property’s 8th annual symposium—“Copyright Monopoly: Playing the innovation game!”—was held May 28-30, 2008, and explored the relationship between the U.S. copyright monopoly, technological innovation and higher education institutions. The program focused on the tension and high-stakes conflict between copyright law and culture occasioned by two facts: 1) the default rules in U.S. copyright law encourage exclusive ownership and create a limited monopoly; and 2) today’s technological and cultural landscape encourages sharing and collaboration. Speakers and participants probed such questions as: Where do higher education interests reside? Participants discussed these issues in the context of: The Development of User Generated Content; Mass Digitization Projects; The Transformation of "Authorship"; and the Use of Wikis, Blogs and other Technologies in the Development of Scholarship.

On May 30, 2008, the attendees assembled to identify benchmarks that would assist in managing copyright in their daily work activities. In addition, they worked to articulate standards of practice that may better help their colleagues and students’ reach their goals of effective teaching and the creation of academic scholarship. This unique gathering of librarians, academic administrators, curriculum and IT professionals broke into four best practice topic discussions including:

- A. Avoiding Income & Luxury Taxes: Best Practices for Handling Copyright Issues When Creating Content for Your University or Library
- B. University Innovation & Copyright: How to Become an Effective Advocate and Move Your Community from Baltic Avenue to Park Place
- C. Creating a Community Chest: Best Practices for Expanding Public Access to Creative Content at Your Institution
- D. Best Practices that Guide Mass Digitization Projects

Participants in each of these four topical groups discussed challenges and concerns and shared some of their perspectives and experiences in each of these respective areas as well as suggesting their ideas for standards of practice. Summary excerpts from the full document, notably the Collected Standards of Practice, are available separately on the 2008 Symposium archive page. The full outcomes of their discussions, including the Standards of Practice, follow below.

## Collected Best Practices Topic A.

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### Avoiding Income & Luxury Taxes: Best Practices for Handling Copyright Issues When Creating Content for Your University or Library

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Universities create large amounts of copyrighted content each year. Faculty conduct research and develop courses. Librarians and course developers assist in the development and delivery of course materials and digital resources. And students constantly develop creative and scholarly works. All of these works often include third party copyrighted materials.

**Part I.** The participants were asked to come to a consensus about the top copyright issues facing universities in their development of scholarly and creative works. The identified issues included:

Group work:

1. The ownership of materials in the academic environment is unclear
  - a. Tracking ownership of media files
  - b. Ownership in university archives
  - c. Ownership of copyright in courses and coursework
  - d. Course syllabi
    - i. Often the university claims copyright, but some pass to faculty
2. Risk assessment for institutions and the individual
3. Clear policies are needed at the institutional level
  - a. Policies are unknown or create confusion
  - b. Institutions sometimes don't recognize the need for policies
  - c. Need clear policies on technology, ownership, creating derivatives
4. Lack of access to academic general counsel
5. Managing 3<sup>rd</sup> party content across the institution
  - a. How to regulate what faculty do without policing university (Blackboard?)
6. Education and marketing of policies and responsibilities
  - a. Professors may not know much about copyright
  - b. Cluelessness, mythology & apathy among faculty, student, staff and administration.
  - c. Copyright 1<sup>st</sup> responders need copyright education also
  - d. How to integrate copyright education
    - i. NIH mandate, EDT's and Institution repository development creates "teachable moments".
7. Time & expense of copyright management
8. Lack of an understanding of the copyright law in general; this leads to lack of a perception of a problem.
  - a. rights and responsibilities of individual creators and users
  - b. What is copyright?
  - c. Derivatives -- When does something become new? And the impact on technology?
  - d. Fair use -- What is teaching vs. marketing? Unclear situations.

- e. Librarians see fair use as a sword; lawyers see it as a shield; a last resort.
- 9. Lack of technical infrastructure to track usage.
- 10. Dealing with changes in technologies
- 11. Permissions from 3<sup>rd</sup> party owners
- 12. Archiving student works, especially theses
- 13. Copyright issues relating to student works
  - a. Student created vs. Student collected copyright works (P2P)
  - b. Ex. Newspapers & yearbooks. (e.g. At Georgetown, students keep rights but university retains for archives)
  - c. Can institutions digitize student works?
- 14. Faculty confusion over what content they can post digitally as part of the course packages they are creating

Individual additions:

- 1. Digital commons & orphan works
- 2. Foreign content complications
  - a. Licensed materials
  - b. Reconstituted & derivative works
- 3. Use of library materials, reserves

**Part II.** Are there university policies or specific standards created by associations that your university follows? What best practices would you like to share?

Suggested standards of practice that might help clarify the previously identified issues included:

- 1. Create internal documentation of procedures. Often effective procedures are not maintained.
- 2. Model training and resources created beyond the institutional level
  - a. Use materials already created outside associations
    - i. National Association of College and University Attorneys (NACUA) (<http://www.nacua.org>)
    - ii. North Carolina State University Scholarly Communication Center (<http://www.lib.ncsu.edu/scc/>)
    - iii. Scholarly Publishing and Academic Resources Coalition (SPARC) (<http://www.arl.org/sparc/>)
- 3. Seek more input from creators on policies
- 4. Keep policies up to date
- 5. Develop a collection of model policies
  - i. Non-profits (e.g. Scholarly Publishing and Academic Resources Coalition [SPARC] (<http://www.arl.org/sparc/>))
  - ii. Harvard University (e.g. Office for Scholarly Communication -- <http://hul.harvard.edu/osc.html>)
  - iii. Domains -- physical
  - iv. Consider connecting to Federal realms officers
  - v. Recognize that there may not be one "right model"
- 6. Provide education & updates on copyright law (brownbag sessions)

7. Develop boilerplate or a standardized list of copyright practices, policies and procedures that all can share or upon which they can build
8. Develop standard negotiating points for licensing
9. Suggest opting out of standard copyright agreements and arrangements (e.g. Creative Commons)
10. Provide for users more clarification of their rights & relationships
11. Turn to associations, organizations and conferences for ideas
  - a. Association of Research Libraries (ARL) -- "Know your Copy Rights" brochure (<http://www.knowyourcopyrights.org/>)
  - b. North Carolina State University Scholarly Communication Center (<http://www.lib.ncsu.edu/scc/>)
  - c. National Association of College and University Attorneys (NACUA) training database on intellectual property (<http://www.nacua.org>)
  - d. Center for Intellectual Property, UMUC (<http://www.umuc.edu/cip>)
12. Develop better communication about best practices across the profession
13. Involve students in best practices discussions
14. Assess fees to cut off runaway reproduction fees
15. Promote more open discussion of university policies and practices
16. Set up copyright first-responders
  - a. Campuses don't have structures in place to address copyright concerns

**Part III.** What changes, modifications or additions to the Copyright Act might you envision, that would better facilitate the creation & use of new works and the types of copyrighted content developed by universities?

1. Clarified, more detailed fair use
  - a. Metric or checklist
2. More guidelines; less unwritten practices and rules
3. Orphan works legislation in the Senate
4. Roll back copyright extension act; shorten the copyright term
5. Broaden the Classroom Exemption, fair use for educators
6. Lessen consequences and penalties for innocent infringement & reasonable due-diligence
7. Contractual solutions (May circumvent or go around the law)
8. Develop a mechanism to find copyright ownership information for licensing.
9. Greater specificity, more clarification
10. More liberal guidelines for derivative works; allow for innovation
11. Click-thru licenses
12. Address the implications of author's rights & the ownership food chain

## **Collected Best Practices Topic B.**

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### **University Innovation & Copyright: How to Become an Effective Advocate and Move Your Community from Baltic Avenue to Park Place**

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As students and faculty begin to use new technologies (Flicker, Facebook, Second Life, etc.), we are charged with understanding the associated copyright concerns. What barriers have you run into when promoting the proper use of copyrighted materials within the campus community? Are the challenges different for new technologies, the online classroom or online course matter? Is there a difference between being an effective advocate and being an effective copyright educator or "point person"?

#### **Part I.**

##### **A. Outline the specific technologies or applications that present copyright concerns on your campus.**

1. Peer to peer (P2P)
  - a. IT department autocratic -- incorrect copyright conclusions
  - b. Quantitative rules/conclusions rather than understanding the spirit of the copyright law.
2. Course management systems
  - a. Blackboard
  - b. D2L
  - c. Sakai
  - d. Passes responsibilities to faculty who may have no knowledge of copyright policies and laws
  - e. TEACH
  - f. Streaming
3. Reformatting issues
  - a. analog to digital
  - b. VHS to DVD
4. Application of TEACH Act
5. E-repositories
6. Dissertations
7. Podcasts
8. Captioning
9. Personal web pages -- Not sure we want to know what content is included.
10. Blogs
11. Streaming video
12. Disappointing legislative process
13. Cumbersome permission process
14. Downloading services
15. Distance learning
16. Handouts -- creating own packets (particularly part-timers)
17. Social networks
18. E-reserve system -- an opportunity to educate.

## **B. In what areas are you experiencing difficulties expressing the importance of appropriate copyright use with faculty or students??**

1. Faculty use
  - a. Faculty communicating misinformation to students
  - b. Faculty overzealously protecting or claiming ownership of course material
2. Users want hard fast rules and quantitative conclusions rather than a fair use analysis
3. Inconsistent application of copyright law
4. Side-stepping the copyright holder (publisher) and going directly to the author or peer
  - a. Is it too difficult to get to publisher?
  - b. Does it take too long to get permission?
  - c. Owners may say "no", then what?
5. Social networks and university system resources are seamless to undergrads and they do not see a copyright concern
6. How to get administration to take copyright concerns seriously
7. How to keep one's self current & educated
8. New technology and services brings new copyright, or at least "re-thinking", copyright issues and resolutions.
9. Access to media and other educational resources before class sessions.
10. Changing teaching approaches and styles
11. Legal paradigm -- should be what we can't do, not what we can do
12. Legislative process (often ineffective) -- forces to replicate the physical
13. Lack of understanding within community
14. Not enough resources to fund and support copyright expertise
15. New Media curriculum puts pressure for expertise on librarians
16. Diversity of communities seeking advice from librarians not yet equipped.
17. Faculty resistance to IP issues and their lack of understanding.
18. Copyright educator vs. Advocate vs. Copyright Cop
  - a. Library does fair use analysis and run permission checks for patrons
  - b. Policy enforcement vs. advocating for fair use, getting IP discussions & citizenship issues into classrooms
  - c. Be visible, everyone knows name and face so that we can be approached informally with questions
19. New faculty orientations in community colleges allow you to reach full time faculty, but it is "impossible" to reach 700+ part-time faculty. Part-time faculty reached once at the beginning of the semester
20. (Military Library) All administrative assistants were invited to a presentation where they explained "here's what we do, what we need". This has eased some issues. They understand timelines now & the need for permissions.
21. Copyright policy update every couple of years
22. For writing teachers:
  - a. 1<sup>st</sup> day of class: "here's the policy"
  - b. Need faculty buy-in
23. Content Creators:
  - a. Coursepacks go to the bookstore

- b. For some faculty CMS to avoid any concern with copyright
  - c. Video on Blackboard
    - i. Because faculty can place themselves
    - ii. Some use IT assistance
    - iii. Some use the library for help
24. Faculty Attitudes:
- a. "I'm a scholar, why should I worry about copyright?"
  - b. "This is not what I do; this is someone else's job".
25. Libraries are seen as obstacles
- a. Can we use this mindset to reach faculty?
26. Copyright Clearance Center (CCC)
- a. Are educators aware of the CCC can and cannot do?

## **Part II.**

### **A. What is your experience being a copyright educator or advocate for the proper usage of new technologies?**

1. No centralized copyright education department
2. It becomes the business of the library by default
3. It's just under the radar, need more resources.
4. Disconnect with IT department
  - a. Do they see it as a concern?
  - b. Will they cooperate with libraries?
5. Academic technology unit -- partnership with technology
6. Apathy on part of faculty -- also in caring & students
7. Lack of institutional commitment (beyond policy)
8. Library has no jurisdiction; and are sometimes not centralized

### **B. Do you think universities need copyright advocacy or educational principles for the deployment of new technologies and media? If so, what would be included in these educational principles?**

1. Education over policing proper or improper use
  - a. This allows users a chance to explain and understand decisions
2. Get message to students over many access points
  - a. Prior to activating accounts
  - b. In libraries
  - c. In Courses (f2f and online)
3. Provide guidelines and teaching modules for faculty
  - a. Confusion by faculty over differing rules for different media
  - b. Develop relationship with faculty
  - c. Invite faculty to copyright presentations
4. Cultural shift -- the community needs to recognize importance of copyright and become part of the core mission
5. Promote e-reserves as a service
6. Ethics based -- core purpose of copyright law dialog
7. Copyright tutorial online course

8. Student Affairs Council (SAC) interaction with student groups
  - a. Legal/ethical discussion with student groups
9. Overcome notion of the "fear" of copyright
10. Work to resolve issues and questions by faculty and students
11. Know what the law says
12. Consider the ethical and social context
13. Be an advocate for application of fair use
14. Have the support of the institutional General Counsel
15. Promote dialogue re: "Copyright is part of the business of the university"
16. Develop and share the principles about one's own content use
17. Videos for educators
18. Lesson to teach
  - a. "If you were to publish, would it bother you if someone took your work?"
  - b. Ask faculty to consider: "If you want your work to get out there, consider what the publisher is requiring of you. Can you keep permission to teach with it?"
  - c. Urge them to negotiate
19. Be aware that the legal jargon of publishers can be intimidating for some faculty
20. Create new paths to tenure
  - a. Institutional support to open access initiatives (e.g. Harvard University)

## Collected Best Practices Topic C.

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### Creating a Community Chest: Best Practices for Expanding Public Access to Creative Content at Your Institution

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We create content while using the content of others. Each time new content is created, we face the decision of whether – and when – to open up access to and use of that content for public uses. Public access initiatives include the establishment of institutional repositories, the publication of scholarly research in open access journals, the use of *Creative Commons* licenses for electronic content, etc.

**Part I.** What is the best example of an academic public access project (e.g. Open courseware; institutional repositories, open publishing license agreements, etc)? Outline disciplines, methods, media, and projects that you feel would better promote an open and active academic environment on your campus.

1. Open courseware
  - a. Yale courses
  - b. MIT Open Courseware
    - i. Syllabi, lectures, content, images, graphs
2. Faculty addendum
3. Course materials for language instruction
4. Online tutorials
  - a. iTunes U
5. Educational Games
6. Digitization of archives and archival collections
  - a. History of institution
7. Libraries making special collections available.
  - a. Subject guides and pathfinders
8. Courses in Second Life
9. YouTube videos
10. Use of public domain materials?
11. What you might put into Institutional Repository Systems (IRS)
  - a. Dual submission
  - b. Dissertation/ProQuest
  - c. Thesis
  - d. Scholarly output
  - e. Yearbooks
  - f. Tutorials & educational games
  - g. Syllabi
  - h. Course materials
  - i. Subject guides pathfinders & TIP sheets

**Part II.** What principles would you suggest should guide open access initiatives, information commons or the development of institutional repositories on your campus? What established practices would you like to share? (e.g. Should depositing be mandatory? For all materials? What about file formats for preservation? Duration of license terms with publishers? Etc.)

1. Embargoes
2. Encourage a pro-active constituency
3. Mandatory deposit requirements for faculty (which can also be an obstacle)
4. Deposit final copy for which author holds copyright
5. Promote "contributing is for the common good!"
  - a. Extensive access
  - b. Sharing
  - c. Preservation
  - d. Promotes creativity
  - e. Answer the question: "How do we accomplish this?"
6. Be tenacious in seeking contributions
7. Develop systems to ensure quality of content
8. Encourage collaboration with IT and other departments on campus
9. Share data sets between organizations
10. As necessary, unbundle rights
11. Negotiating timeframe for inclusion in database
12. Develop author addendums for multiple uses (e.g. distributing at conference)
13. Be NIH compliant; (Can other agencies follow suit?)
14. Develop standards for:
  - a. file formats
  - b. metadata tags
15. Subsidize access and creativity in the public venue
16. Promote awareness of established standards among faculty, librarians and students
17. Consider how to handle that some digital projects don't fit into either open courseware or repositories
18. Sharing teaching materials and resources makes it easier to teach, especially in subjects with few resources
19. Promote broad access policies
20. Ensure preservation of contents
21. Marketing is important to longevity and success

**Part III.** What are the greatest obstacles to expanding public access or creating open access initiatives at your institution? What method of access to information (databases, repositories, blogs) can be used to promote the use of public domain materials?

1. Ownership of issue (copyright, repository, commons)
  - a. Who sets priorities?
  - b. What are the priorities?

- c. Can collaboration take place when necessary?
2. Constituents need to understand the purpose of the repository
3. Workflow integration processes
4. Rights issues moving from local to global
5. Broad based buy-in by faculty & staff
6. Financial requirements for implementation
  - a. Cost recovery
7. Staffing requirements for implementation and maintenance
8. Time requirements
9. Sustainability and preservation issues
10. Usefulness and ease of use
  - a. Getting appropriate metadata
  - b. Search capability
11. Guidelines
  - a. For use
  - b. Format
12. Adjustment of current tenure requirements with regard to scholarship
13. Impact on scholarly associations
  - a. Impact on author's attitudes
14. Need an economic study of the permission industry
15. Scholarly associations; also have a great impact on author's attitudes
16. Cultural resistance within the university
17. Smaller institutions may have to take relatively small steps toward moving content into the public domain and making it searchable
18. Sometimes getting people to create and submit content for open access is a problem
  - a. faculty & staff (buy-in)
  - b. For example not everyone takes SL or the content created therein seriously.
19. Expanding from local level to global access & rights issues
20. Technological infrastructure

## Collected Best Practices Topic D.

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### Best Practices that Guide Mass Digitization Projects

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The process of digitizing information involves thinking about the rights and responsibilities involved in the use of both the previously existing work and the digital copy. On a large scale, these issues can be compounded by outside factors, such as licensing agreements, collaborations with for-profit entities, and institutional policies.

**Part I.** What are the biggest drawbacks in the implementation of mass-digitization projects (e.g. Google Book Search, Microsoft Live Search Books and the Open Content Alliance)? Imagine that commercial partnerships were “off the table:” how would you go about successfully implementing a mass digitization project?

1. Resources
  - a. Financial \$
  - b. Staffing
  - c. Equipment
2. Sustainability – S-curve
3. Integration -- across project
4. Different definitions of “Mass”
5. Quality control
6. Legal concerns
7. Procedural concerns
8. Term extension & clearance issues for the public domain
9. Commercial interest may pull pot of projects
10. Lack of precedent in case law
11. Lack of precedent and examples of successful projects
12. Orphan works uncertainty
13. Technological literacy
14. Storage
15. Metadata
16. Preservation
17. Selection & access
18. Promoting use
  - a. Awareness
  - b. Marketing of digital collections
19. Bargaining power between libraries / common entities

**Part II.** Identify standards of practice that may help clarify these issues. What principles would you develop to ensure that mass digitization projects continue to serve your users and you as a researcher?

1. Defining the scope of a project at the onset
  - a. Outline contents
  - b. Allow for growth
  - c. Assess costs
2. Transparency of contributor and user rights & responsibility
3. Identifying user needs
4. Community practice
5. Organization
6. Capital replacement
7. Provide for robust metadata and search capability
8. Learn from private, federal and educational institutions
9. Evolving content & services = continuing to stay relevant
10. Provide model license agreements
11. Develop awareness of legal counsel expertise, esp. litigation
12. Comply with technological standards that consider interoperability and access

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## **OVERALL SUMMARY**

\* Have clear, accessible, up to date policies that are shared between institutions with input from stakeholders

- Transparency, communication, good faith!