

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, for **Discussion A** follow below.

Collected Best Practices Topic A.

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

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 3rd 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 1st 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 3rd 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

OVERALL SUMMARY

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

- Transparency, communication, good faith!