

Reclaiming our Intellectual Property:

Ownership and Management Issues for Scholars/Researchers and Academic Institutions

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Intellectual property is the university's most valuable commodity, and good copyright ownership and management policies are essential. The university, as a whole, needs to be able to use the works of its faculty. A diverse interpretation of "fair use" is necessary to give all stakeholders a voice, asserts Peggy Hoon, North Carolina State University Libraries Scholarly Communication Librarian and Director of the NCSU Libraries' Scholarly Communication Center. If intellectual property is not going to be interpreted as "work for hire," then an alternative policy should be crafted to ensure the rights of ownership and use.

The question of who can use intellectual property is more important than who owns it, yet faculty pay less attention when transferring copyright to a third party than when allowing the university administration to use it. Current trends in serial pricing, licensing agreements, and copyright legislation may have a negative effect on the quality of teaching and research, institutional and faculty prestige, and library collections. Whenever collection access is diminished, the effect is to threaten faculty recruitment and retention and program accreditation. Hoon encouraged faculty to increase their own awareness of these issues.

To be responsible stewards of intellectual property, all stakeholders need to know what is owned and what that means. For example, several types of ownership exist in the scholarly publishing community. These are primarily individual, joint (two or more authors intentionally combine into a single work), and "work for hire". By default, the individual author is the initial holder of copyright, and protection begins the moment it becomes a tangible work. In joint authorship, each shares ownership of the entire work. This is a difficult model for institutions to adopt when taking a work out for commercialization because third parties don't want to deal with joint authorship unless all of the joint authors are on board. In "work for hire," case law suggests a number of factors to determine whether the work is in the scope of employment--who pays the salary, Social Security taxes, or benefits, who supplies tools, who decides when and how long the person works, where the work is done, whether or not the entity assigning the work has the right to assign additional works, etc. Academic exception to the "work for hire" doctrine in universities allows faculty to keep copyright for their own publications. In the case of patents, however, universities traditionally retain copyright.

When an author signs a typical written contract, this means the author is transferring the entire bundle of rights to reproduce, display, modify, perform, or transmit the work. Further uses must be fair use or with permission. This includes course reserve,

course packs, students' copies, colleagues' copies, etc. Most university copyright policies allow faculty to retain copyright of their work.

Elements of typical copyright policies include the following:

- Ownership. It belongs to the university when substantial university resources are used. Rationale: the university wants to control the use of its name.
- Works inherently collaborative, such as digital works
- Reinvestments in research and teaching
- Protection of the university's name
- Written policy
- Early disclosure
- Principles of resource sharing and competition

UT has a faculty-friendly and innovative copyright policy. The policy allows copyright to remain with its creator unless substantial university facilities and resources are used in its creation. Such is the case of extension and public service agencies, which typically want the product disseminated under the university's name. UT retains all rights to these works.

The University of North Carolina's institutional copyright policy includes a shop right. This means UNC can use the work for nonexclusive educational or research use. When the material goes for course reserves, etc., the university has a lien on the intellectual property. During negotiations, the publisher may ask the author if anyone else has claim to the intellectual property. If the university has claim, then a publisher may not want to include the university in the contract, so the shop right may be waived to avoid penalizing faculty. In turn, faculty authors have shop right for an institutionally owned product but can't commercialize it. When negotiating with a publisher, it is probably not realistic for faculty to refuse to transfer copyright to a publisher. However, it is reasonable for the publisher to own a work to the rest of the world but to let both the author and the university use it.

Faculty should become aware of the way transfer of copyright affects access to a work involving licensing agreements. Some common license terms include limits, such as prohibiting the downloading of more than one copy or prohibiting the giving of a copy to a non-subscriber.

To shape scholarly publishing in the future, the Tempe Principles (Principles for Emerging Systems of Scholarly Publishing) were created. The goal of Principle 5 is to enhance concepts of copyright and fair use, to seek balance in the interests of owners and users in the digital environment, and to allow faculty to manage and use their own published works in research and teaching.