OWNERSHIP POLICY: THE CAROLINA EXPERIENCE

Lolly Gasaway
November, 2001

COPYRIGHT OWNERSHIP

- The University of North Carolina (system) adopted a new copyright ownership policy 11-10-00
  - Applies to all 16 campuses – some local campus tweaks within the policy
  - Culmination of 15 months of hard work
  - Policy not perfect, but pretty darn good
    - Process is almost as important
    - We got the process right

PRIOR POLICY -- 1978

- UNC had an old policy that basically said faculty and staff own the copyright in the works they create
  - Little interest in claiming rights in faculty-created work
  - Oddly, no reported problems over ownership of staff works
CHANGING ENVIRONMENT

• Interest in access to faculty-created instructional materials
  o Traditional works as well as digital
  o Also portions of courses or even distance education courses
• Greater University involvement in the works
  o Creation of the works
  o Commercialization of the works
• Cross institutional collaborations on courses and other materials

BACKGROUND

• A committee of university attorneys from General Administration (GA) & the campuses had begun work on a policy
  o No faculty involvement at all
  o Would affect a fundamental “right” of faculty, i.e., copyright ownership
  o Some faculty on one of our campuses found out

PERSONAL INVOLVEMENT

• Two things converged
  o My own interest, teaching & writings about copyright had lead to advising institutions about their copyright policies
    ♦ I went ballistic when I learned of the work to draft a new policy without faculty involvement
  o I was chair of the UNC Faculty Assembly at that time so was in a leadership position at that time
    ♦ I had access to the president because of the Faculty Assembly
LEADING UP TO THE TASK FORCE

- Faculty Assembly colloquium on copyright
  - Faculty
  - Librarians
  - Administrators
  - President there all day!
- Outcome – called for a Task Force to develop a policy – majority of membership to be faculty

INTELLECTUAL PROPERTY TASK FORCE

- Membership considerations
  - Majority member to be faculty
  - Various academic disciplines
  - Arts as well as sciences, social sciences, etc.
  - Representation of types of campuses
  - Staff
  - Legal counsel
  - Technology transfer officers
- Funding
  - Travel (in state)
  - Staff support
  - Meetings support
- Co-chairing of the committee
  - Faculty member
  - Member of GA staff

IMPORTANT ISSUES

- Was a uniform policy for all 16 campuses necessary?
- How detailed should the "use" part of the policy be?
- How could smaller institutions educate their campuses about copyright?
- What resources would be available from the system?
**TASK FORCE STEPS**

- Met monthly in Raleigh (4-6 hour session)
  - Appointed subcommittees: Use, Ownership, Education, Tech Transfer
  - Conducted much work by email
- Educated the IPTF about copyright
  - Shared responsibility for sessions
  - Website created
- General
  - Developed much respect for one another
  - Work was not easy
  - Strongly held opposite views over appropriate ownership
  - Many disagreements & hard work to reach consensus

**RANGE OF OPINIONS**

- Let the attorneys do it all
- Let the faculty do it
- Let the University own everything
- Let the faculty own everything
- Let the staff own their works – even those created within the scope of their employment
SUBSTANTIVE ISSUES

- Uniform ownership policy
- Doing what’s fair for both faculty & University
  - Faculty ownership especially for traditional works
    - Faculty ownership = the default in the policy

UNIVERSITY OWNERSHIP OF FACULTY WORKS ONLY WHEN:

- Exceptional resources used to create work
- Faculty seeks help to commercialize work
- Directed work
- Contract or grant requires University ownership

DEFINING EXCEPTIONAL RESOURCES

- University support for the creation of the work with resources of degree or nature not routinely available to faculty or EPA-non-faculty (professional) employees
**EXCEPTIONAL USE**

- Waiver of fees normally required to use specialized facilities
- Institutional funding or gifts in support of work’s creation
- Reduction in levels of teaching, service or other University activities (e.g., course load, student advising, departmental meetings, office hours, administrative responsibilities)
- Does not include:
  - Ordinary or limited use of
    - Computers
    - Lab space
    - Libraries
    - Office space & equipment
    - Routine secretarial services
    - Telephone
    - Other informational resources

**RELEASE TO CREATOR**

- If department chair agrees, work may be released to creator
  - University retains nonexclusive royalty free license to use the work [Shop Right]
  - If work is commercialized & generates income, creator either:
    - Reimburse the University or
    - Shares the income with the University
  - Could agree to joint authorship

**Directed works**

- Works specifically funded or created at the direction of the University, including but not limited to works for hire created by faculty/EP&A staff
  - Need not constitute exceptional use of University resources
- Ownership = University
  - Where practical in estimation of department chair, creator may retain nonexclusive, nontransferable, royalty free license to use the work for education or research
• Sponsored or Externally Contracted Works
  o Any work developed using funds supplied under contract, grant or other arrangement between University and 3rd parties, including a sponsored research agreement
  o Ownership = creator if agreement does not expressly require ownership by University or 3rd party
    ✦ Condition of employment: grant shop right to University

WORKS BY SPA STAFF

• Most are considered “works for hire” & are owned by University
• Statutory definition = a work prepared by an employee within the scope of employment; or

• If the parties agree in signed written agreement, a work specially ordered or commissioned for use as:
  o a contribution to a collective work,
  o part of a motion picture or other audiovisual work,
  o a translation,
  o a supplementary work,
  o a compilation,
  o an instructional text,
  o a test or answer material for a test, or
  o an atlas.
• University ownership may be waived.
WORKS BY INDEPENDENT CONTRACTORS

• Works by independent contractors are works for hire owned by the University

Student Works
- Papers, computer programs, theses, dissertations, artistic & musical works & other creative works
- Ownership = student unless
  - Work for hire
  - Sponsored or externally contracted work
  - Classroom, lab notes and other academic materials generated by the student in the instructional process

DISPUTE RESOLUTION

• Each campus has to have a dispute resolution process
  - Copyright committee
  - Intellectual property committee
  - Regular grievance committee