BACKGROUND

- Recent experience in drafting a campus policy
- Co-chair of UNC 16 campus system task force to draft a system-wide copyright ownership policy
  - Adopted in November 2000
  - Implemented August 2002
- Also have consulted with other universities about their policies
WHY HAVE A COPYRIGHT OWNERSHIP POLICY?

- To protect the university
- To protect the faculty member
- To clarify the rights of staff
- To protect the rights of students
- To deal with issues before a dispute arises
IDEAL PROCESS

- Involvement of all portions of the academic community
  - Faculty
  - Staff
  - Students
  - Librarians
  - Administrators (technology transfer)
  - Legal counsel
- Deals fairly with all parties including the institution
- Not drafted solely by university counsel with no faculty/staff/student input
  - Faculty suspicious
    - If drafted by administrators
    - Even more suspicious if drafted by university counsel
IMPORTANT ISSUES

- Norm = author ownership
- Tradition for faculty is faculty ownership
  - Called the “faculty exception” to the work-for-hire doctrine
- Faculty leadership is the key
- Staff works usually are works-for-hire
- Student works are not
WORKS FOR HIRE: DEFINITION

- A work prepared by an employee within the scope of employment or....
  - Is faculty member’s contract an employment situation?
  - Factors: payment of taxes, benefits, directing what must be produced

- A work specially ordered or commissioned for use as a contribution to a collective work...
COMPLICATED ISSUES

- Grant funded research that produces a copyrighted work
  - Ownership terms of grant prevail
  - Usually specifies public domain
  - Or university ownership
- Faculty/student collaborations
  - Principal investigator on grants
- Many collaborators
POSSIBILITIES FOR OWNERSHIP

- Faculty
  - Reimbursement for investment exceptional (or substantial resources)
  - Shop right to university

- University
  - Rights of reuse by faculty member in other works
  - Rights to use after leaving university

- Joint ownership

- Consortial ownership
WHY HAVE A COPYRIGHT USE POLICY?

- To encourage faculty to be creative in their use of copyrighted works in teaching and research
- To guide faculty, staff & students
  - Encourage full exploitation of fair use privilege
  - To clarify liability issues
- To protect the university
  - Establish norms for faculty behavior
  - Educate the campus community about copyright
- To regularize procedures for seeking permission
Legal counsel most helpful here

- Critical that counsel view education & fair use as equally important to keeping university out of trouble
- Hope that they are not completely risk averse
- Attorneys also must be knowledgeable about copyright
OVERALL BENEFITS OF POLICY DRAFTING

- Helps to crystallize thinking about various policy choices
- Focuses attention on the good of the institution vs. self interest
- Interesting group exercise
  - Can involve staff at all levels
  - Working toward a document is an excellent group experience