

OWNERSHIP POLICY: THE CAROLINA EXPERIENCE

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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
 - Traditional works as well as digital
 - Also portions of courses or even distance education courses
- Greater University involvement in the works
 - Creation of the works
 - 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
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- No faculty involvement at all
 - Would affect a fundamental "right" of faculty, i.e., copyright ownership
 - Some faculty on one of our campuses found out

PERSONAL INVOLVEMENT

- Two things converged
 - 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
 - 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?





- How could the IPTF quickly educate itself about copyright?
- Could the Task Force complete its work within the 1-year time frame?
- Could the IPTF agree on what is fair for both faculty & university?
- How could the policy be "sold" to the faculty?

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 a (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:
 - ◆ Reimburses 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/EPA staff
 - ◆ Need not constitute exceptional use of University resources



Ownership = University

- ◆ Where practical in estimation of department chair, creator may retain **nonexclusive, nontransferrable, royalty free** license to use the work for education or research

- Sponsored or Externally Contracted Works

- Any work developed using funds supplied under contract, grant or other arrangement between University and 3rd parties, including a sponsored research agreement
- 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:
 - a contribution to a collective work,
 - part of a motion picture or other audiovisual work,
 - a translation,
 - a supplementary work,
 - a compilation,
 - an instructional text,
 - a test or answer material for a test, or
 - 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


