

THE BASIC COPYRIGHT POSITION

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IPRS OF RELEVANCE

- Copyright
- Database rights
- Moral Rights
- Performers' rights, especially of academics' lectures, also music, dance, etc. for some material
- Trade marks (registered and unregistered) and patents – not considered in this talk
- N.B. tension between IPR owners and users – but HEIs and FEIs are both creators and users

COPYRIGHT

- This talk is based on the assumption that you know a fair bit about copyright, e.g., it is automatic, its lifetime, the restricted acts, exceptions to copyright
- So I want to focus on issues especially associated with research and learning repositories

OWNERSHIP

- The law states that the owner of copyright is the person who created it, unless it was created by *an employee in the course of their employee duties*
- Are academic staff in the course of their duties expected to create teaching materials?
- Are they expected to create research output?
- Are there contracts in place by which the HEI asserts ownership in such materials?

NON-ACADEMICS

- RAs, technicians are arguably employed to create materials
- Students are most definitely NOT employees, and so own the copyright themselves
- Any contract with a student forcing them to assign copyright to the HEI where they are studying is (in HEFCE's Learned Counsel's opinion) not worth the paper it is written on as it is an unfair contractual term

OWNERSHIP ISSUES

- Who is the owner of the copyright?
 - institution or author (academic); RA's? Students? Sponsors?
- Issues raised by joint ownership of copyright:
 - need to obtain all joint owners' permissions to exploit the work
- Trend away from assignment of copyright in research output to publisher towards licence to publish, copyright retained by author
- Even when copyright is assigned, permissions can be retained by author/HEI

RETAINING RIGHTS IN RESEARCH OUTPUT

- based on amending standard publishers' assignments or licences:
 - retention of rights to, e.g.,
 - mount a work on departmental intranet
 - mount a work on institutional repository
 - mount a work on subject repository
- Or based on “green” publisher; N.B. ROMEIO listing of “friendly” publishers – now maintained by Project SHERPA.
- JISC/SURF Knowledge Bank Project has developed journal and CTA conditions list

ISSUES

- Guidance for academics on assignments/licences so that retention of required rights is encouraged
- Amendment of an assignment/licence must be done properly to have the desired legal effect – JISC/SURF advice coming
- Institutions need to decide how to deal with publishers who refuse to accept amendments, and academics will be concerned about this
- Potential academic freedom and employee contract issues

MORAL RIGHTS

- Moral rights issues are important to authors, especially:
 - paternity right (right to be identified as author)
 - integrity right (right not to have work amended in such a way as to impugn reputation, e.g., quoted out of context)
- Attribution, citation, peer esteem and impact are more important to many authors than enforcing copyright or possible plagiarism of their work (shown by ROMEO survey of authors)

AN ACTION PLAN

- Develop policies on:
 - first ownership of copyright
 - joint copyright ownership issues
 - Use of particular publishers
- Encourage and guide academics to:
 - retain copyright, if possible
 - negotiate amendments to agreements, e.g., to retain e-distribution rights
 - actively support journals and publishers that have liberal copyright policies, including open access journals

COPYRIGHT IN TEACHING MATERIALS

- Whoever owns it, are you concerned about possible piracy of it by others? (MIT isn't...)
- If you are, should you be putting it up on a repository at all?
- My JISC Rights and Rewards project is looking at priorities and concerns of teaching staff re placing their teaching materials on a repository

USEFUL SOURCE

- HEFCE 2003/08 Good Practice Guidance for senior managers Covers intellectual property rights in e-Learning programmes, written by the working group set up by HEFCE, Universities UK and SCOP to investigate this issue. It is in the process of being expanded and updated and the new document will be launched in a few weeks' time. See: http://www.hefce.ac.uk/pubs/hefce/2003/03_08/03_08.doc

THE NEED TO PROTECT YOUR INTERESTS IN ANYTHING YOU MOUNT

- Active policy to check whether your material is being copied illegally?
- Terms and conditions needed for:
 - Preventing copyright abuse
 - Moral rights issues
 - Protection of metadata
 - Policy on item withdrawal/removal if material is defamatory, infringes third party copyright, is pornographic, etc.
 - Protection of metadata
 - As well as other issues, such as acceptable use, click through licences for liability issues, disclaimers, privacy policy

DATABASE RIGHT

- Database defined as:
 - “a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means”
- To get database right, creation of database must involve:
 - “substantial investment in obtaining, verifying or presenting the contents of the database”
- Object of database right protection is to:
 - “prevent extraction and/or re-utilization of the whole or a substantial part, evaluated qualitatively or quantitatively, of the contents of that database.”

IS A REPOSITORY A DATABASE?

- In general, Yes!
- It enjoys both database right AND copyright, because there has been skill and effort in deciding what to put in and how it is indexed
- Database right would be owned by the Institution as “maker” of the database
- Database right would probably become a rolling period of permanent protection
- Metadata will also be protected under this right

OTHER IPRs

- Performers rights – the right to prevent copying of any performance, including lectures
- Not subject to the employee approach of copyright
- May have to negotiate separately to get clearance

A NEW MODEL FOR DEALING WITH COPYRIGHT?

- Creative Commons
- Anyone can copy; name of originator must remain with the material
- Various licences regarding commercial use, derivative works and sharealike
- Depending on the type of repository material, may or may not be useful – it's not necessarily a panacea
- N.B. work on science commons for e science data.

THE FINAL SLIDE

- Copyright is just one of the many legal issues associated with repositories
- Other IPRs may get involved
- The Institution as publisher is a major concern that is not sufficiently recognised
- See you in Court!