

DRAFTING COPYRIGHT POLICIES: THE UNIVERSITY EXPERIENCE

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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

CAMPUS POLICIES

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**Ownership &
management
of ©**

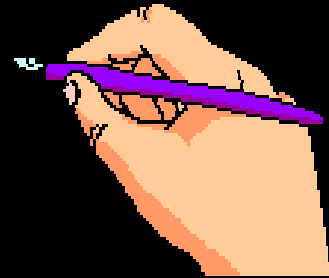
**Use of the
©'d work**

WHY HAVE A COPYRIGHT OWNERSHIP POLICY?

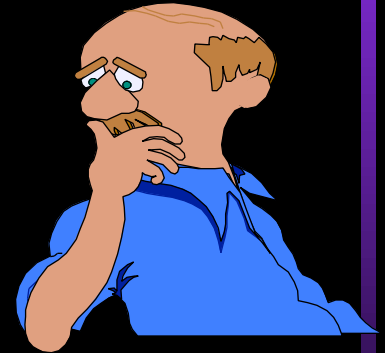
- To protect the university
- To protect the faculty member
- To clarify the rights of staff
- To protect the rights of students
- To deal with issues before a dispute arises

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

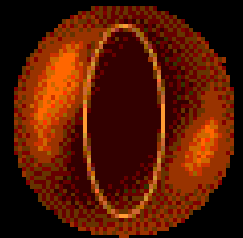


WORKS FOR HIRE: DEFINITION

- 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**