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Copyright ownership of teaching materials

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Copyright ownership of teaching materials

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JISC The Joint Information Systems Committee

Loughborough University

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1. Introduction

In 1998, JISC commissioned a Senior Management Briefing Paper on Copyright (JISC, 1998, p.4), which recommended that "all members of HEIs [Higher Education Institutions], whether staff or students should be educated about the basics of copyright and what is acceptable practice". A later study, also in relation to copyright in HEIs, stated that "there would seem to be a considerable gap between the legal position and what academic staff believe are their rights" (Weedon, 2000, p.16). Although this is not a recent study, the difference between the actual situation and the perceived situation amongst academics in terms of the ownership of their teaching materials is still unclear.

Project RoMEO (2003), which focused on author attitudes associated with research outputs, surveyed participants and investigated who owned the copyright of journal papers that these authors had produced. Under one third (32%) of participants did not know this, which is concerning. It is no surprise then that Cornish (2004, p.12) believes the "ownership of copyright is complex".

2. The situation within UK universities

2.1 The actual situation

Monotti & Ricketson, (2003, p.42) state that as a general rule IPR (Intellectual Property Rights) rests with "the creator of the material in question – the invention, book, design etc, as the case may be, unless there is some employment relationship subsisting between the creator and another party, in which the ownership vest in the employer". Therefore, inherently, the University owns the copyright of teaching materials because it is created during the course of employment. This is of course unless the Institution has an alternative policy stating that teaching materials are jointly owned by the academics and the institution or solely by the academics.

According to the JISC Legal Information Service (J-LIS) (Madhaven, 2006), "copyright ownership of works created by FE [Further Education] and HE [Higher Education] staff is principally dependant on the question whether the creation of the work was within the scope of his or her job specifications". A job specification of a lecturer, for example, is likely to state that it is their duty to produce material for teaching and learning purposes. In other instances it may be difficult to explicitly see what is or is not covered within a job specification.

2.2 The perceived situation

Our survey (Bates et al. 2005) attracted responses from people within 88 distinct HEIs. Figure 1 shows the survey results from the 430 respondents in relation to 'who owns the copyright in teaching material within your institution'?

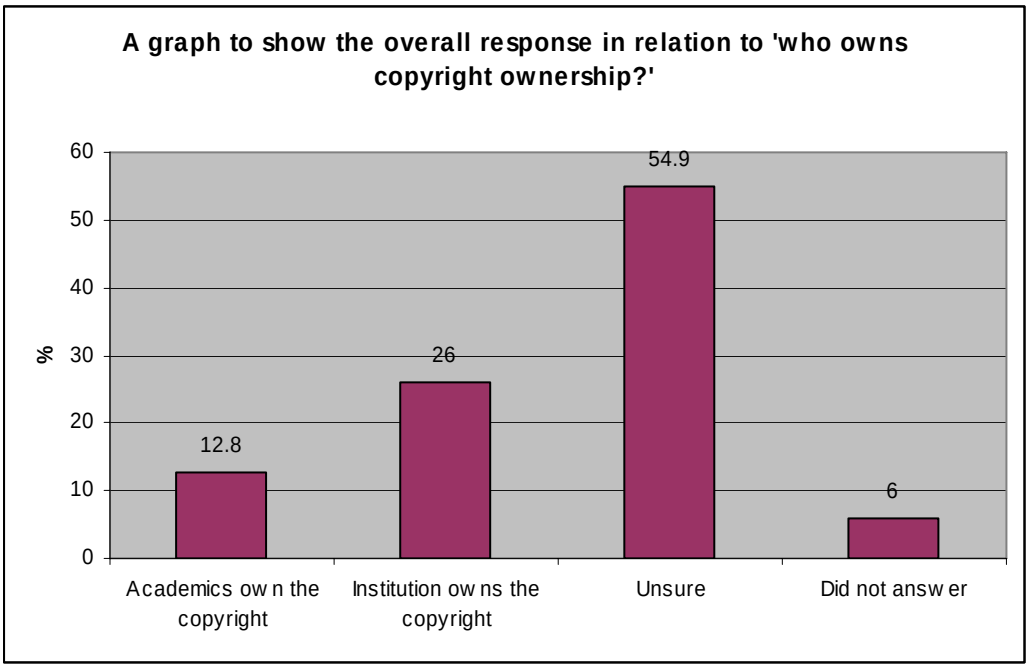


Figure 1: Overall response in relation to 'who owns copyright?'

These figures are similar to the responses from Loughborough participants in that over half (54.9%) were unsure of the copyright situation of teaching material. Just over a quarter of participants (26.0%) believed the institution owned the copyright and just over ten percent (12.8%) believed that academics owned it. The survey also highlighted that in some cases the institution and the academic jointly own the copyright of teaching materials and that there should have been an option given for this.

Table 1 shows the participants of the survey were very varied in terms of their job and that there is a general lack of awareness of the copyright ownership situation amongst those in HEIs regardless of their job role.

Table 1: Responses in relation to the question 'What is your job title?'

Description	Totals	Percentages
Lecturer	118	27.4%
Senior Lecturer / Subject Leader	106	24.7%
Professor / Chair	42	9.8%
Centre Manager / Head of Department / Head of School	38	8.8%
Research Assistant / Associate / Fellow / Reader	37	8.6%
Teaching & Learning Support	29	6.7%
Technical / computing / IT Staff	15	3.5%
Teaching Fellow / University Teacher / Technical Tutor	14	3.3%
Library / Information Services	8	1.9%
Project Officer / Project Co-ordinator / Consultants	8	1.9%
Associate Dean / Deans	6	1.4%
Other	3	0.7%
Teachers in Further Education / Colleges	2	0.5%
Senior University Management	2	0.5%
Secretarial, Clerical, Ancillary	1	0.2%
Student support services	1	0.2%
Total	430	

Over a quarter (27.4%) of participants were lecturers and just under a quarter (24.7%) were senior lecturers. Professors/chairs represented the next highest group followed by (9.8%) Centre manager/ Head of departments/Head of school (8.8%).

3. The situation at Loughborough

3.1 The actual situation

The copyright of teaching materials at Loughborough University is owned by the University as stated in the terms of service;

> "all copyright in work produced by a Member arising as a result of their work for the University other than copyright in books and journal articles shall belong to the University.
>
> If such work consists
>
> (a) of recorded educational material (including computer programs) produced in the course of a Members duties the University will negotiate with the author or artist on whether or not the Member shall enjoy or participate in the benefit of such copyright (and if so on what terms);
>
> (b) of other material the University will under the circumstances which it considers normal favourably consider granting to the author or artist the entire benefit thereof."
>
> (Loughborough University, 2006).

As stated above, there seems to be some exceptions and the University may negotiate the copyright ownership of some materials depending on the circumstances. However, these statements do seem somewhat vague in that the University will 'favourably decide' as to who owns copyright of materials and the 'negotiation' decision will rest with the University.

We held a meeting with members of Loughborough University's Intellectual Property Office (IPO) to answer some of the questions above. The main outcomes of the meeting are listed below.

- Apart from those conditions outlined in the Academic Condition of Service there are no other policies related to the copyright ownership of teaching material at Loughborough.
- Academic's and student's can negotiate with the University in many different situations, and the majority of the time the University will grant ownership, unless academic's and student's aim to use the materials for financial gain.
- Copyright ownership is a very grey area and continues to cause confusion amongst academics and senior managers.
- The problems lie where there is commercial value in the materials that are being produced. If they are commercially valuable then it is more likely that the University will not favourably decide to grant ownership to the creator of materials. If there does not appear to be any real commercial value in the materials then it is more likely that the University will allow the creator to freely distribute them.
- We should take notice of the Open University's standpoint in relation to teaching materials and copyright.

- We need a roadmap of where we are and where we want to go. This could start with raising awareness through training courses and creating a 'plain English' Ordinance for academic Intellectual Property (IP) of research and teaching materials.
- We should continue to raise awareness and continue to clarify the true situation of teaching material IP ownership.

3.2 The perceived situation

Figure 2 shows the responses from the Loughborough participants in relation to 'who owns the copyright in teaching materials produced within your institution'?

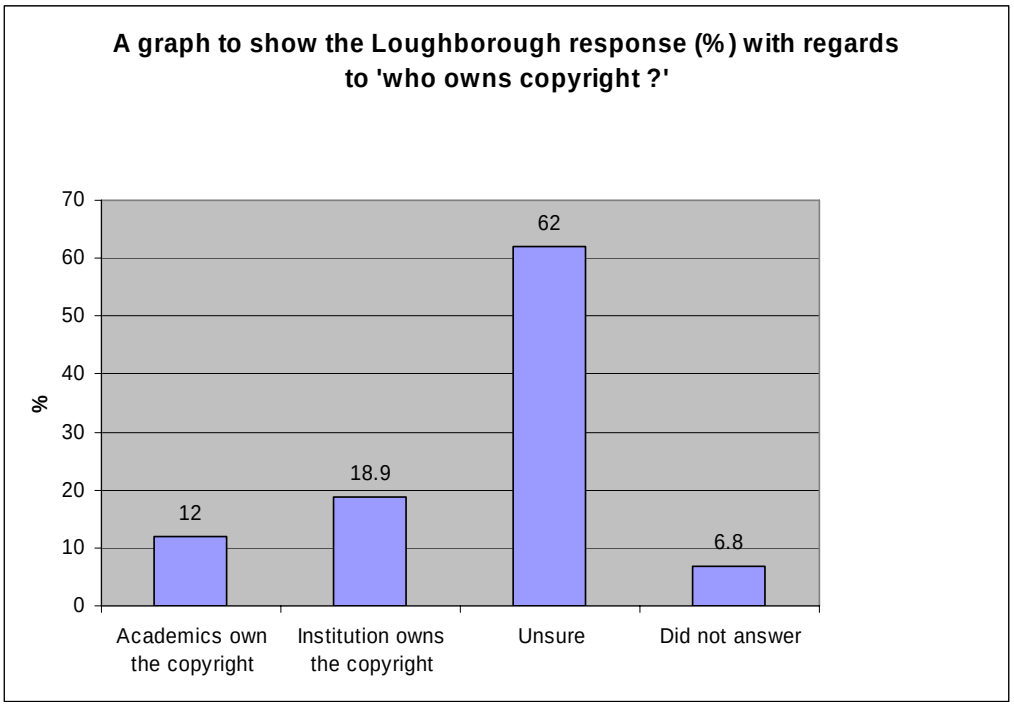


Figure 2: Loughborough response to 'Who owns the copyright of teaching materials?'

The graph shows that over half (62.0%) of respondents were unsure of who owns the copyright of the teaching materials that they produce. Over ten percent (12.0%) of respondents believed the academic owns the copyright, however, this is not always the case. The default legal position is that institutions' owns the copyright of all materials produced through the course of employment, unless an academic has negotiated with the University to retain copyright. Nearly twenty percent (18.9%) believed the institution owned the copyright, which the above also applies. Some participants did not answer (6.8%) which means that they too may have been unsure.

4. Conclusion

The situation of copyright ownership as it relates to teaching materials is unclear to many academics within HEIs. The misperception and general lack of awareness of the ownership situation of teaching materials can pose problems for repositories wanting to store and make these materials available. It is clear that relying on the academic to know about ownership of materials from conditions of service or contract of employment is unacceptable. “Often policies are buried in staff handbooks which are unlikely to be sought out and read” (Gadd et al. 2003, p.257). Therefore, there is a requirement for a multitude of advocacy and training resources to be created by institutions to clarify the copyright situation regarding teaching materials. These resources could be in the form of leaflets, letters, posters and a mixture of online and face to face training sessions. In the past, institutions have been reluctant to run courses related to copyright but it is becoming more important to do so because of the increased number of open and closed material stores that exist. Formal open access repositories (International, National etc), informal sharing methods e.g. eLGG, Flickr and peer to peer technologies such as Lionshare are known examples. These resources will be needed in addition to the licence(s) required to protect the rights of the depositors.

Unless academics’ have negotiated to retain their copyright the default legal position is that the institution owns the copyright of the materials that they produce. However, in the past, the majority of institutions have not exploited this, and indeed, have not needed a reason to exploit such rights. This explains the vagueness amongst institutional policies relating to the copyright ownership of this material, which in turn partly explains the misperceptions amongst academics.

Table 2 shows some questions that we believed needed answering when attempting to identify the ownership situation within an institution. Also, whether institutions exploit the default legal position that materials are owned by the employer if created during the course of employment. Others might find these useful to ask others or attempt to answer in relation to their institution.

Table 2: Sample questions in relation to copyright ownership

Does the institution claim copyright ownership in all teaching materials (this term should be taken to mean not just materials created specifically for teaching purposes, but also software, formats, discussion board materials, CAA tests, exam and assignment texts, etc.) created by its academic staff in the course of their employee duties?
Does the institution claim copyright ownership in all teaching materials created by its students, say as part of a project?
Does the institution claim copyright ownership in all teaching materials created by its support staff, such as administrators, secretaries and programmers, in the course of their employee duties?
Does the institution claim copyright ownership in teaching materials jointly produced by staff at the University and elsewhere?
If yes to any or all of the above questions, where is this claim asserted (contract of employment, other University documents, reliance on the law?)
What is the University's attitude to ownership of teaching materials when the employee (say) moves to another Institution?
Irrespective of the theory, does the University in practice make any claim to copyright ownership in such materials?
Have there been any cases of dispute over copyright ownership in teaching materials, and if so, how was it resolved?
What is the institution's attitude to the recent HEFCE (2006) report on "IPR in e-learning programmes"? Does it agree with the report's conclusions and recommendations?
There are an increasing number of cases where teaching materials are being misused by students, e.g. lectures being captured on video and being posted onto the Internet. Other than the 1988 Copyright, Design's and Patents Act are their any policies relating to the misuse of course materials and capturing lecturers on video without their permission?
Advances in technology have allowed opportunities for lecturers to video their own lectures and Pod cast lectures and make them available to students. Are these owned by the University or are they owned by the "performer" i.e. the lecturer. Does the University own the words that lecturer's speak and/or the materials that they produce?

Repositories hoping to store teaching material will need to provide depositors and users with supporting materials that can easily be understood and clearly explain the rights of associated parties including the repository itself. How to guides and Frequently Asked Questions (FAQs) should be coupled with face to face training sessions to ensure that users are aware of the ownership situation and the permitted and restricted uses of materials placed within the repository. By taking necessary steps to educate different parties, we can reduce the barriers associated with depositing and using digital repositories.

5. References

Bates, M., Loddington, S., Manuel, S., and Oppenheim, C., 2005. Rights and rewards project academic survey: final report. Available online at: http://rightsandrewards.lboro.ac.uk/index.php?section=21.

Cornish, G., 2004 *Copyright: interpreting the law for libraries, archives and information services*. London: Facet Publishing.

Gadd, E., Oppenheim, C. and Probets, S., 2003a. RoMEO studies 1: The impact of copyright ownership on author-self-archiving. *Journal of Documentation* [online], **59**(3), pp.243-277. http://iris.emeraldinsight.com/vl=9820490/cl=106/nw=1/fm=docpdf/rpsv/cw/mcb/00220418/v59n3/s1/p243 [accessed 13.07.06]

JISC, 1998. *JISC Senior Management Briefing Paper*, 5, JISC Assist.

Loughborough University, 2006. *Academic and related staff: conditions of service*. Available online at: http://www.lboro.ac.uk/admin/personnel/conditions/acadrel.html [Accessed 27.06.06]

Monotti, L., & Ricketson, S., 2003. *Universities and Intellectual Property. Ownership and Exploitation*. New York: Oxford University Press.

Madhaven, M. 2006. *Intellectual Property Rights Overview*. JISC Legal Information Service. Available online at: http://www.jisclegal.ac.uk/ipr/InterllectualProperty.htm, [accessed 04.07.06].

Project RoMEO, 2003. Homepage. Available online at http://www.lboro.ac.uk/departments/ls/disresearch/romeo/, accessed 27.07.06.

Weedon, R. 2000. *Policy Approaches to Copyright in HEIs: A study for the JISC Committee for Awareness, Liaison and Training (JCALT)*. Glasgow, The Centre for Educational Systems.