Intellectual Property

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INTRODUCTION

The study and generation of knowledge is a fundamental focus of education. With changing technologies, digital publication, and information access, the issue of intellectual property has become increasingly important. Some of the issues that have to be dealt with are the transition from a paper-based "economy" of knowledge and publication to a digital economy and understanding. Indeed rather than a transition, this change needs to be more fully understood as a transformation.

On several accounts the very dimensions of intellectual property have exploded with the digital information age. And as we continue to lunge forward into rapid technological change, we cannot attempt to know what it will be in the future. Not only does the scope of information extend far beyond what we could comprehend in an analog knowledge society, but the development of new knowledge also expands at a rate that would be previously incomprehensible.

It is immensely curious that at this time, the most mission-centered function of educational institutions—creation of knowledge—is perhaps the least formally documented activity on the organizational level. This article will describe the issues of intellectual property and knowledge management, a prominent, effective approach to the development and management of intellectual property within organizations.

BACKGROUND

Intellectual property is the right to protect the published or unpublished work of the person who created it. Such work may include patents, trademarks, designs, and copyrighted materials (including literary, dramatic, musical, artistic, and certain other intellectual works) (see www.copyright.gov, para 1). Rights to a work may be assigned or licensed in part or in full to others for a specific period of time or indefinitely. Because of this situation, intellectual property is a controversial topic which has many interpretations; but the best solutions bring people back to clear documents that are authorized by the relevant governing bodies.

The digital and information age has created not only a global economy, but also a closely connected global community. Information is shared transparently across most of the globe through various networks of connectivity and makes time zones, geographic barriers, and immigration limits transparent and/or irrelevant at times.

While this article addresses specific examples from the United States of America (USA), other countries have their own intellectual property legislations and practices, or they may have adopted those of other countries or national unions (i.e., European Union (EU)). Caslon Analytics (2006) provides a well-researched, clearly written, and well documented online reference regarding international intellectual property laws and practices (http://www.caslon.com.au) which will be referenced in this discussion.

Certainly all nations of the world do not function under the guidelines of the USA, but it is an indicator of some prominent perceptions and government policies on this topic in 2006. This brief examination of U.S. intellectual property law and practice in light of educational application is meant to provide a point of reference for discussion.

Intellectual property is a basic right in the USA which is protected by the Constitution. As described by lawyer Judith Silver,

intellectual property rights originated with our Founding Fathers in Article 1, Section 8, Clause 8 of the U.S. Constitution which states that Congress shall have the power "to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." The right to exclusive ownership and use of one's inventions and the monetary rewards from giving others permission to use them work in conjunction with the other beliefs of our Founders. (2003, para. 2)

Yet the protection of such rights is far from simple. The very basic issues in the situation include balancing the rights of the creator/author and the rights of any related organization. However most creators of intellectual property do not want their content to be locked away; instead they want others to access it, continue to develop it and, in many cases, also pay them for use of it. Given this situation the complexity of the situation increases:

- How does a knowledge based global community protect the rights of the author/creator?
- How are these rights protected while providing for dissemination and access to information to libraries and users?
- How can colleagues be encouraged and protected in sharing information in order to further build the field of study, without compromising any of the above?

In the USA, the USA Patent and Trademarks Office coordinates intellectual property concerns. Visiting their online resources reveals the wide extent to which the Internet has impacted this governmental agency (http://www.uspto.gov), policies, and issues related to intellectual policy.

Coping with Intellectual Property in Education

Where does intellectual property arise in the life of educators and educational organizations?

Consider the following situations and same question with each:

- Who owns intellectual property?
- Faculty members design distance learning courses. Does it make a difference whether it is part of the usual compensation, as a separate stipend, or as a course release assignment?
- Outside consultants design distance learning courses.
- Adjunct faculty design distance learning courses.
- Faculty members create their own Web pages on the university Web site.
- Faculty members edit and publish a journal for a professional association. Does it make a dif-

ference if the journal is hosted on the university Web site?
- Faculty member publishes a book? (or an article, departmental report, or university accreditation report).

Who owns the national, international, and digital rights?

- Faculty member writes a grant for the university on the university Web site as part of their usual compensation, as a separate stipend, as a course release assignment.
- Faculty member co-authors a grant, but her institution is a partner, not the lead applicant.
- Faculty member creates a new scientific patent (such as a medication) while under usual compensation, separate stipend, course release, or while funded by grant monies.
- A university team of faculty and administrators create a new patented design (such as a mechanical design).

Based on experience in this burgeoning digital age, intellectual property and copyright were always matters of concern in terms of plagiarism and attribution. But the above examples bring different concerns to the surface than the traditional print media, and for those involved in distance learning, these issues arise every week. In distance learning and technology, the matter of intellectual property, ownership, compensation, and royalties has become a very hot and make-or-break issue.

Thompson (1999) addresses the critical risks that are inherent to intellectual property identification in an institutional/organizational setting. Any organization which is intent upon supporting the development of new intellectual property must have standards and processes to ensure the accuracy, appropriateness, and fairness of that which is publicly identified and claimed as its intellectual property. There must be a reliable procedure which is put into action and applied in the same manner for each case. This need raises the question as to what support is needed for educational organizations to cope with intellectual property matters.

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