Students' Rights in Copyright
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The personal computer, coupled with the Internet, has drastically and permanently changed individuals, corporations, and educational institutions around the world. This combination makes intellectual property [IP] available 24/7/365. By law intellectual property has legal rights.

### **Exclusive Rights**

When it comes to copyright, The Copyright Law, Title 17 of the United States Code, grants a number of rights to the holders of a copyright. These are codified in Section 106 entitled, "Exclusive rights in copyrighted works." There are five exclusive rights that are guaranteed any copyrighted work and an additional right, number six, for those works that are art works. The exclusive rights codified in the law are:

- 1. The right to reproduce the work;
- 2. The right to distribute the work;
- 3. The right to publicly perform it;
- 4. The right to publicly display it.;
- 5. The right to make derivative works; and,
- 6. The right of attribution and integrity [i.e., moral rights].

The Copyright Law protects the expression of IP. To name just a few expressions that the law protects would include literary works, dramatic works, music and choreographic works, software, sound recordings, any and all types of audio-visual works including motion pictures and multimedia works, all types of art works, architectural works and microprocessors.

#### How Do You Get a Copyright?

Copyright protects the expression of IP. And copyright protection is automatic! Since 1989 when the United States signed the Berne Convention, there are only two requirements that need to be met in order to have a copyright. These are:

- 1. The work has to be an original work of authorship; and,
- 2. The work has to be fixed in a tangible form.

It follows that copyright is automatically granted from the moment that the work is created and fixed in a tangible form and the copyright lasts, by law, for the life of the author plus 70 years. A United States Copyright Office registration is not needed. However, many benefits derive from registering a work with the U.S. Copyright Office. See the September 2003 issue of the ©opyright Forum for more information and details of these important benefits.

#### **Copyrights for Students**

From what has been mentioned above, it should be evident that the answer to student copyright is straightforward. It follows that students own all of the rights associated with Section 106 of the Copyright Law in their IP. Therefore, a student owns any and all rights in and to the works they create as part of their educational experiences. This does include any work a student creates within the scope of any particular class s/he takes. There are reasons for this ownership of IP and the reasons are legally based.

First of all, the assumption has to be that the student work is an original work of authorship. Secondly, the student's IP has been fixed in a tangible form such as a written paper or a file on a diskette or in HTML coding, or a multimedia project, etc. These two Berne Convention criteria make the student's copyright automatic. Finally, all of the exclusive rights of Section 106 pertain to the student's work. Making hardcopies and distributing them or putting the work on a website without permission violates at least two of those exclusive rights: the right to authorize the making of copies and the right to authorize distribution.

Using a student's work without permission involves copyright infringement. Please note that if the student is a minor, then permission from a parent or guardian is required for the use of that student's IP.

#### **Fair Use of Student Works**

What about Section 107 of the Copyright Law: Fair use? Fair use does apply to a student work, but fair use involves an analysis that requires meeting the Four Fair Use Factors: the purpose of the use; the nature of the work; the amount used; and the market effect. While the market effect factor would only apply to a student's work being in someway embedded in a commercial use, the third factor of fair use, i.e., the amount being used, does apply. Fair use allows a <u>limited amount</u> of copyrighted material [including student works] use for a <u>limited time</u>. Failing those limits is an infringing act. Additional information on fair use can be obtained from the University Libraries Copyright Home Page at the URL listed at the conclusion of this article.

#### **Student Works for Hire**

The situation of IP ownership by a student who is paid by a college or university for creating intellectual property can vary from institution to institution, but the majority view seems to be that students who are paid for their work fall under the work-for-hire doctrine. Muddying the waters, however, is the case of a graduate student who was paid for his work by the University of Wisconsin, Madison, and who was determined to be a joint author in a Seventh Circuit U.S. Court of Appeals decision in Seshadri v Kasraian, No. 97-1610, 7<sup>th</sup> Cir.

# Submitting a Student's Paper to a Plagiarism Site

Students, by law, have exclusive rights in the IP they create. Two of those exclusive rights are authorizing copies to be made and authorizing distribution of their IP. Submitting a paper to a plagiarism website involves making a copy of a student's work to submit to the site as well as distributing that work via the Internet to the website. Submitting a student paper to a plagiarism site without the permission of the student involves a direct violation and copyright infringement of these two exclusive rights guaranteed by the Copyright Law to any owner of any type of intellectual property.

## **Guidelines for Using a Student's Work**

Once permission has been obtained, there are some easy guidelines to follow:

- 1. Do not use, publish and/or associate a student's last name with the work;
- 2. Do not use, publish and/or associate any personal identifying material such as a picture, student ID #, phone number, a nickname, the year of graduation, a major, etc., with the work;
- 3. Do not use, publish and/or associate any web pages of a student with the work; and,
- 4. <u>Do</u> acknowledge that the work is used with the consent and the written permission of the student author, composer, programmer, etc.

Please note that permission in writing must be obtained from the student to use any of the personal information listed in 1, 2, and 3 above.

### The Bottom Line

Because of the Internet, intellectual property is available 24/7/365. But the exclusive rights granted to creators of IP are 24/7/365 as well:

Any use of a student work must be with the permission of the student. Written permission is always best.

If you are unsure or have questions about registering or have questions on other issues such as file sharing, fair use, the Copyright Law or infringement, be advised that there is help available. Assistance about these concerns and all other copyright matters is available from The University Libraries.