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Symposium Introduction / A Conversation and Colloquia Concerning "Who Owns Your Digital Creations?"

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A Conversation and Colloquia Concerning "Who Owns Your Digital Creations?"

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The birth of a revolutionary technology is rarely recognized as such at the time of its creation. The invention of movable type was certainly an economic labor saving device over the time intensive one of a kind reproduction of manuscripts. The voyages of Columbus were initially wreathed in disappointment that sailing West brought the discovery of a New World, rather than easier access to the old. Edison's electronic inventions, protected by patent, could scarcely have anticipated the changes from live performances personally observed, to the fixation and distribution of images and sounds far removed from the original audience.

The Internet, at its inception, was conceived as a mechanism for the horizontal rather than the vertical distribution of information. The necessity for intermediaries and packagers, from universities to governmental structures, was lessened. No one anticipated the cataclysmic effect that the Internet and its corollary, the World Wide Web, would have on settled notions of property, jurisdiction, national borders and boundaries, and cultural protection and differentiation. These latter effects were recognized within fifteen years from the Internet's initiation.

For centuries, universities have operated in an economy in which the production of knowledge, the discovery of new knowledge and its applications, and its dissemination to the public beyond classrooms and laboratories, was dedicated to the public domain. University professors and researchers were compensated by teaching salaries and the prestige that attached to public dissemination of their writings and discoveries. What modest remuneration was accrued by the commercial publication of their works was assumed to accrue to professors, and universities benefited by the prestige.

For the past 50 years, universities have become increasingly entrepreneurial in the commercial exploitation of knowledge, discovery and invention results authored by faculty. Allocation of income from discoveries and inventions became the subject of individual contract. For non-patentable works, the rule remained that off campus exploitation was the province of individual faculty members. Ten years ago, the digital, or more properly the binary, revolution changed the nature of the relationship between universities and their faculties. The nature of academic work changed as well. A professor's performances were no longer confined to a specific audience in a specific classroom or laboratory. Distant learning expanded teaching to students and audiences far removed from the physical environment of the classroom. The distribution of a professor's performance and her research now could occur instantaneously and globally, and furthermore, could be archived and redistributed wherever received. The traditional dividing lines between patent, trademark, copyright and moral rights have become blurred in the global distribution of digital content. These developments have been slowed, temporarily, by the passage of the Digital Millenium Copyright Act.

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As universities began to reexamine and revisit both the nature of academic work and the respective ownership and exploitation rights to professorial output, it became clear that the architecture of the present Copyright Act did not take into account the organization and operating practices of universities and their faculties. Simple reliance on "work for hire" classification, which would vest the economic value of professorial work in universities as employers, was sanctioned neither by history or practice. There were no federal appellate cases that directly examined this issue, and the legislative history did not enlighten the investigation.

The global distribution of academic work, made possible by the Internet, and the efforts of universities to redefine their entrepreneurial role with regard to such work, was the basis for *A Conversation and Colloquia Concerning "Who Owns Your Digital Creations?"* which was presented at McGeorge School of Law on March 29, 2003. It built on an earlier program at McGeorge in November 2002 on Ethics of the Digital Downloading of Music, jointly sponsored by California Lawyers for the Arts.

The colloquium brought together professors, university administrators, and a number of representatives from the media and performing arts industries. Professor Emeritus Charles Nash, from the University of California, Davis, Professor Jed Scully of McGeorge School of Law, and Grace Bergen, former General Counsel of Tower Records, presented papers at the colloquium. President Joseph Subbiondo of the California Institute of Integral Studies, Professor Jay Dougherty of Loyola Law School, Professor Andrea Johnson of California Western School of Law, Faye Jones of McGeorge School of Law, Gwen Hinze, a staff counsel with the Electronic Frontier Foundation, and Ellen Taylor from the California Lawyers for the Arts also participated. Representatives from the arts and the publishing communities who appeared as panelists included: Larry Dee of Larry Dee Productions, art gallery owner Lauraine Bacon, record producer Roberta Donnay, Greg Gordon, President of Audio NET and a board member of the Recording Academy, and Marcus Barone of Marcus Barone Music and SFXX Productions.

Of particular interest was the examination and discussion of faculty's role in the enactment of the Romero Bill (California Education Code sections 66450 et seq.) which provides that no person shall prepare and distribute, for any commercial purpose, any notes or contemporaneous recording of any academic presentation, which is not already in a fixed format. Although this legislation was aimed at commercial notetakers distributing class materials for popular courses via the Internet, there appear to be no exemptions for university assertion of distribution rights for a professorial lecture without the contractual agreement of a particular professor. Professor Hughes' article and presentation outlined the genesis and successful enactment of this legislation. There were four sessions presented in the colloquium: the Intellectual Property Rights of University and Faculty Members, Intellectual Property Issues in Digital Teaching and Learning, The Afterlife of Academic Work—Intellectual Property Rights in Sequels and Updates, and State University Immunity from Federal Intellectual Property Liability. Members of the Seminar in Advanced Intellectual Property prepared working papers for the colloquium.

We contemplate that the interest generated by this academic conversation will continue as universities and faculty orient their relationships to the realities of a borderless digital universe, without the protections of real or virtual ivied walls.