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**ORGANIZATIONAL PLACEMENT AND PERCEIVED LEGITIMACY AND AUTHORITY  
OF COPYRIGHT INFORMATION DISSEMINATION AND MANAGEMENT IN THE  
RESEARCH UNIVERSITY**

A Dissertation in

Higher Education

by

Rebecca S. Albitz

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The dissertation of Rebecca S. Albitz was reviewed and approved\* by the following:

Robert M. Hendrickson  
Professor of Education  
Senior Scientist, Center for the Study of Higher Education  
Dissertation Adviser  
Chair of Committee

Michael J. Dooris  
Affiliate Associate Professor of Higher Education

Roger Geiger  
Distinguished Professor of Education  
Senior Scientist, Center for the Study of Higher Education  
Professor in Charge, Higher Education Program

John T. Harwood  
Associate Professor of Information Sciences and Technology

\*Signatures are on file in the Graduate School

## ABSTRACT

Copyright plays a central role in numerous activities within higher education, and educating a university community about copyright law should be a priority, if only to protect the institution from lawsuits. But, based upon a literature review, institutions devote a more resources to other intellectual property activities—plagiarism detection, technology transfer and illegal file sharing management—than for general copyright education activities. Utilizing Mintzberg’s organizational model and its discussion of organizational placement and legitimacy as a conceptual framework, this study explores the current copyright education structures among the universities that comprise the Consortium on Institutional Cooperation, otherwise known as the CIC or the Big Ten, to determine whether organizational placement, credentials of individuals, and resources devoted to this activity affect the legitimacy of the office and the authority of copyright officers to fulfill their responsibilities. The results of this study suggest that organizational placement, while it plays a role, is not nearly as important as the credentials of the individual in the position in conveying legitimacy. A credential not only suggests a level of educational attainment and expertise; it also, perhaps more subtly, conveys to a community that the institution is willing to commit resources to this activity in the form of salary expenditures. In fact, shifting an activity such as copyright information management closer to the administrative core, and thus lending it more legitimacy, could backfire, resulting in fewer faculty members and graduate students willing to partake of the service due to their concerns about administrative motivation and interference. Thus, the recommendations offered, based upon this study’s results, include placing general copyright education within the university library, which Mintzberg defines as a support unit, but reclaiming legitimacy that may be lost in this placement with the appointment of a copyright officer who holds a Juris Doctorate, and preferably a Master’s in Library Science as well. In order to give this individual the authority to

conduct their work, a clear delineation between copyright information management and scholarly communications activities needs to be made in order to minimize conflict between these two areas.

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## Chapter 1. Introduction

The Copyright Law of the United States 17 U.S.C §§ 101-1332 (copyright law) is vague and complex, yet it permeates almost every activity that occurs within higher education. And Corporations that own the copyright to music, films, journals, and books are more than willing to defend their copyrights, even when their materials are being used for educational purposes. This is why every college and university ideally needs an office from which reliable copyright-related guidance and policy are readily available. Such an office also needs the strong support of an institution's administration to provide it and the information it disseminates with legitimacy. Without such a structure in place, a university or individual employees operating under the aegis of the institution could become a target of a lawsuit, resulting in a large legal bill as well as public embarrassment. With a strong, centrally-supported copyright office in place, however, a university can establish policies and procedures that protect the institution and individuals, offer sound, practical advice, and readily defend against claims of copyright infringement.

The reality, however, is that copyright management offices are often located in support units—libraries or information technology departments (specifically addressing network abuse issues such as illegal downloading or file sharing)—which do not have the administrative positioning to lend weight to their operation. In addition, individuals who are responsible for such departments frequently do not have a law degree, which further reduces the perceived legitimacy of the office and the information it delivers. Both of these shortcomings are the result of a lack of resources committed to copyright education and management. Institutions without legitimate, appropriately-staffed copyright information management offices place the university at legal risk, yet few universities devote the financial and administrative resources to create such an office. This dissertation will explore this organizational and administrative problem, with the

intent to discuss existing copyright education and management models, highlighting those that serve their institutions most effectively.

In higher education, the application of copyright law governs the creation, assessment and use of intellectual property for all participants in the pursuit and application of knowledge. Researchers utilize the works of others in their field, building upon knowledge already created or discovered to develop new knowledge. Students learn to do the same as they incorporate reliable information sources into their own works to defend their positions on a variety of topics. Auxiliary services, such as libraries and information technology units, provide access to content in support of teaching and research within the parameters established in copyright law, through services such as interlibrary loan, course reserves and content management systems. And, teaching faculty utilize such services, along with their personal collection of information resources, to develop reading lists that best present content to their students. In all of these instances, the content used is almost always protected by copyright law, as codified in Section 17 of the United States code. The parameters within which the use of this material is lawful, however, are well beyond the knowledge of most academic faculty, staff, and students. Because of the ambiguous nature of copyright law, no one has been able to clearly and succinctly define what is legal and what is not in an educational setting. While many believe this ambiguity is a strength, allowing for flexibility, others find it to be an impassible hurdle. “Just tell me how much I can use” is a common refrain.

The immediacy of the problem this ambiguity creates is readily apparent. Ignorance about permissible use of copyrighted content can lead to the misuse of these materials, which in turn can place the university at legal risk. For example, according to Bay-TSP, a company that provides digital copyright tracking services, in 2008 “MIT had 2,593 infringements of media

owned by Bay-TSP's clients. The University of Washington and Boston University ranked second and third, with 1,888 and 1,408 infringements, respectively" (Read, 1999). The illegal downloading of music on institutional networks continues to draw negative attention to colleges and universities, even though they are not legally or financially liable for the activities of their students. In other cases, the institutions themselves, in the persons of high-level administrators, have been the targets of legal action when copyright violations are viewed to be systemic. In one such case, *Cambridge University Press et al v. Becker et al* case number 1:08-CV-1425 (N.D. Ga. April 15, 2008) (Cambridge, 2008), scholarly publishers claim that individuals at Georgia State University participated in "systematic, widespread, and unauthorized copying and distribution of a vast amount of copyrighted works . . . through a variety of online systems and outlets utilized and hosted by the University for the digital distribution of course reading material" (Cambridge, 2008, p. 2). In the May 11, 2012 ruling on this case, Judge Evans determined that most of the uses outlined in the original complaint (70 out of 75) would be considered Fair Use, meaning that no infringement occurred, because no one actually read the digitized content. Judge Evans also ruled, however, that using ten percent of a book with fewer than ten chapters, or a chapter from a longer book, constitutes Fair Use, which eliminates the flexibility with which some interpret Fair Use. Judge Evans' ruling was also highly restrictive in the type of materials she examined—only non-fiction monographs—thus leaving use of journal articles and fiction works unaddressed (Cambridge, 2012). In another case, *Association for Information Media and Equipment and Ambrose Video Publishing Inc., v. The Regents of the University of California et al* case number CV10-09378 (C.D. Cal. December 7, 2010) (AIME), educational filmmakers represented by the Association for Information and Media Equipment (AIME) in late 2009 claimed that UCLA's practice of digitizing entire media works and

transmitting them through a protected course management system to students for educational purposes violated their copyrights. UCLA claimed that this practice falls specifically under the Fair Use provision of the copyright law. In this case the trial judge dismissed the case without addressing any of the issues of interest to those working with copyrighted content in higher education, stating that UCLA is immune from the suit because of sovereign immunity and AIME lacked standing to file the suit. So, in both of these very recent cases, the rulings offered little to no guidance to the higher education community.

Within this context of ever-increasing legal action against institutions of higher education and individuals affiliated with these institutions, this study will pose three research questions:

- What is the organizational structure in place to disseminate copyright information to members of the institution's community, including the credentials of the staff and resources provided?
- How does the organizational placement of the office responsible for this communication and/or the organizational role of the communicator effect the legitimacy of the information provided and the authority of the person providing that information?
- Based upon the perceptions of participants and the researcher, what is the relative effectiveness of one structure compared with another?

For the purposes of this study, I am using the term authority to mean power that a supervising entity has granted to another individual or department. Therefore, if a copyright officer has the authority to do her work, it is because her supervisor, and to some degree university administration, has granted her that power and supports her. Legitimacy refers to the perception of accurateness of the information the copyright officer supplies. For example, the information a

faculty member receives from a copyright officer may seem more accurate if the person delivering the information has a specific academic credential or if that person reports to a particular department head. In both cases authority and legitimacy are qualities perceived by others and by the copyright officer; they are not strictly defined.

The importance of providing accurate, intelligible copyright information to the higher education community is three-fold. The first is our responsibility, as individual researchers and teachers, to follow the law and model that same behavior for our students at all levels. The second is an institutional responsibility to conform to government mandates to instruct graduate students in ethical research practices. Finally, providing and promoting accurate copyright information helps protect the university from potential lawsuits based upon illegal, institutionally sanctioned activities or services.

### **Review of United States Copyright Law**

The initial introduction of copyright law in the United States is found in the Constitution. Section 8, which outlines the powers granted to Congress, states, “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” (U.S. Constitution). These powers were then codified in the United States Code in 1976, under Title 17. All but one of the sections of the law most relevant to this examination appears in Chapter 1 of the law, “Subject Matter and Scope of Copyright.” Within this chapter, four sections are particularly germane: section 106, which outlines the exclusive rights the copyright owner holds; section 107, which outlines the concept of Fair Use, and when Fair Use can be applied to the use of others’ copyrighted content; section 108, which addresses when and how much libraries can copy others works; and section 110, which establishes the parameters within which one can show

media within the classroom and copy and stream the same media in an online course. Finally, Chapter 12 section 1201 prohibits the reverse engineering of any copy protection measures in place to prevent the reproduction of a copyrighted work. All five of these segments of Title 17 directly impact how research universities conduct business on a daily basis.

The language used in section 106 is fairly straightforward. It reads:

Subject to sections 107 through 122, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

- (1) to reproduce the copyrighted work in copies or phonorecords;
- (2) to prepare derivative works based upon the copyrighted work;
- (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
- (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission (17 U.S.C. §106 2009).

These are the rights, for example, that the author of a journal article or a book would have over the work they have written—unless she has signed away any or all of these rights to the work’s publisher as part of a contract agreement. Sections 107 through 122 mentioned in the first line are exemptions to these exclusive rights, or how others are permitted to use another’s copyrighted work legally.

Section 107, otherwise known as the Doctrine of Fair Use, is the exemption to section 106 that governs almost all use of copyrighted content in an educational setting. One invokes Fair Use as a legal justification when another’s content is copied. This section reads:

Notwithstanding the provisions of sections 106 and 106A, the Fair Use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an

infringement of copyright. In determining whether the use made of a work in any particular case is a Fair Use the factors to be considered shall include —

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of Fair Use if such finding is made upon consideration of all the above factors (17 U.S.C. §107 2009).

The law does not elaborate further. For example, no “amount” is specified to help guide one in determining if the amount used would be considered legal or illegal under subparagraph (3).

Only through court decisions are such parameters established. Yet, university faculty and staff invoke Fair Use to justify everything from including quotes from supporting sources in research to digitizing entire feature films and streaming them to distance education students—if any justification is offered at all. And faculty and staff make these statements with little to no understanding of the doctrine itself or relevant case law. In fact university affiliates who have any knowledge of Fair Use often believe any use of copyrighted content is legal merely because the use is for “nonprofit educational purposes,” as mentioned in subparagraph (1), rather than considering all four factors when evaluating the legality of that use.

One library service that has become integral in how course materials are provided to students, and one that is based upon the Doctrine of Fair Use is the electronic reserve reading system. Reserve readings were originally intended to provide student access to supplemental information not found in an assigned textbook. Libraries would make a copy of the designated reading, within parameters established internally based upon national guidelines, and have the physical copies available within the library for students to access. More recently this service has been expanded to digital versions of course readings which are scanned and posted on a

restricted web site. For some libraries, policies governing this service include paying royalties to content owners after a specified number of uses of the same reading for the same course. These policies are designed to either keep the university in compliance with copyright law as it is locally interpreted, or to provide a viable defense if the activity is legally challenged. As technology has made digitized content available anywhere and anytime, use of reserve reading services has evolved. In some cases faculty have substituted reserve readings for other student-purchased publications, such as textbooks. Other faculty members, once they have a copy of the scanned version of the reading the library created, may choose to circumvent the library altogether, posting these same readings in a course management system or even on their own web sites in subsequent semesters. In doing so, faculty are, likely unintentionally, circumventing their libraries' attempt to work within the law, as, at least in the case of the research library with which I am most familiar, the library pays royalties on subsequent uses of a copyrighted work for the same course. The logic behind this policy is that the first use is a Fair Use, and, as a practical matter the library may not have the time to clear rights. Any subsequent, sequential use for the same course, however, does not generally qualify as a Fair Use under the libraries' reserve services policy. Whether this interpretation of Fair Use is too narrow or too broad is a matter than can be, and is frequently, argued, but the overarching goal of any such policy is to protect the institution from litigation.

Section 108, which outlines the rights libraries have to replicate copyrighted content for preservation and resource sharing is relevant to this discussion, as it is within this section that libraries are permitted to offer interlibrary lending services. The relevant portion of this section reads:

(d) The rights of reproduction and distribution under this section apply to a copy, made from the collection of a library or archives where the user makes his or her request or



from that of another library or archives, of no more than one article or other contribution to a copyrighted collection or periodical issue, or to a copy or phonorecord of a small part of any other copyrighted work, if —

(1) the copy or phonorecord becomes the property of the user, and the library or archives has had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research; and

(2) the library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation (17 U.S.C. §108 2009).

This system of lending and borrowing of materials among libraries was developed because, of course, no single library can subscribe to all published journals or purchase all books. While helpful to libraries and their users, this network of borrowers and lenders created a great level of unease among publishers, as they saw the potential for substantially reduced revenues as more libraries relied on the few who could afford to subscribe to expensive journals and purchase esoteric books. This conflict escalated with the wide-spread availability of photocopiers, and culminated in *Williams & Wilkins Co. v. United States*, 420 U.S. 376 (1975) (Williams & Wilkins). In this case Williams and Wilkins—publishers of medical journals—sued the National Library of Medicine for providing articles to other libraries. The results of this case, the context for which will be discussed in more detail shortly, were a more clearly delineated law outlining permissible interlibrary loan activities, and a set of guidelines, developed between libraries and publishers, which operationalize Section 108.

The last section of Chapter 1 which will be discussed here is related to the display of images and performance of media within the classroom setting. The first two paragraphs of section 110 describe in detail how within the course of teaching either in a face-to-face setting or through the Internet, one can integrate still images or motion media into course content. Unlike section 107, section 110 is much more proscriptive about which formats can be digitized, the

means of content delivery, and policies and practices which a university must have in place in order to offer digital delivery of media.

Notwithstanding the provisions of section 106, the following are not infringements of copyright:

(1) performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made;

(2) except with respect to a work produced or marketed primarily for performance or display as part of mediated instructional activities transmitted via digital networks, or a performance or display that is given by means of a copy or phonorecord that is not lawfully made and acquired under this title, and the transmitting government body or accredited nonprofit educational institution knew or had reason to believe was not lawfully made and acquired, the performance of a nondramatic literary or musical work or reasonable and limited portions of any other work, or display of a work in an amount comparable to that which is typically displayed in the course of a live classroom session, by or in the course of a transmission, if —

(A) the performance or display is made by, at the direction of, or under the actual supervision of an instructor as an integral part of a class session offered as a regular part of the systematic mediated instructional activities of a governmental body or an accredited nonprofit educational institution;

(B) the performance or display is directly related and of material assistance to the teaching content of the transmission;

(C) the transmission is made solely for, and, to the extent technologically feasible, the reception of such transmission is limited to —

(i) students officially enrolled in the course for which the transmission is made; or  
(ii) officers or employees of governmental bodies as a part of their official duties or employment; and

(D) the transmitting body or institution —

(i) institutes policies regarding copyright, provides informational materials to faculty, students, and relevant staff members that accurately describe, and promote compliance with, the laws of the United States relating to copyright, and provides notice to students that materials used in connection with the course may be subject to copyright protection; and

(ii) in the case of digital transmissions —

(I) applies technological measures that reasonably prevent —

(aa) retention of the work in accessible form by recipients of the transmission from the transmitting body or institution for longer than the class session; and

(bb) unauthorized further dissemination of the work in accessible form by such recipients to others; and

(II) does not engage in conduct that could reasonably be expected to interfere with technological measures used by copyright owners to prevent such retention or unauthorized further dissemination (17 U.S.C. §110 2009).

Section 110 creates a number of challenges for anyone interested in using media in higher education and within the construct of the law. The complexity of the section itself likely deters many from reading, let alone conforming to, the parameters noted. The institutional requirements enumerated in the second paragraph are many, and an individual faculty member probably would not know if her institution has all of the programs and safeguards in place that would then permit her to copy and deliver media content through online means. The language in the second section in particular is vague and confusing. For example, what is the difference between a “performance” and a “display?” This distinction is critical, as the law says that you are restricted to “perform” reasonable and limited portions of “dramatic literary or musical works”, but are allowed to “display” content “in an amount comparable to that which is typically displayed in the course of a live classroom session.” If read one way, you could “display” a movie in its entirety, but if read another you would be permitted to “perform” only a reasonable and limited portion of the same work. Again, these complexities come into play only if the faculty or staff member is aware that copyright might play a role in the gathering of course content for either online or face-to-face delivery. Many either do not even consider copyright, or if they do, they assume that their activities are permitted because it is, as noted earlier, for nonprofit educational purposes.

Chapter 12 section 1201 addresses a topic that on the surface may seem tangential, but is integral to the ability to copy content that is protected by some form of digital rights management (DRM) software. This section prohibits anyone from decrypting any software that prevents the duplication of a digital file.

(a) VIOLATIONS REGARDING CIRCUMVENTION OF TECHNOLOGICAL MEASURES. —

(1)(A) No person shall circumvent a technological measure that effectively controls access to a work protected under this title. The prohibition contained in the preceding sentence shall take effect at the end of the 2-year period beginning on the date of the enactment of this chapter.

(B) The prohibition contained in subparagraph (A) shall not apply to persons who are users of a copyrighted work which is in a particular class of works, if such persons are, or are likely to be in the succeeding 3-year period, adversely affected by virtue of such prohibition in their ability to make noninfringing uses of that particular class of works under this title, as determined under subparagraph (C).

(C) During the 2-year period described in subparagraph (A), and during each succeeding 3-year period, the Librarian of Congress, upon the recommendation of the Register of Copyrights, who shall consult with the Assistant Secretary for Communications and Information of the Department of Commerce and report and comment on his or her views in making such recommendation, shall make the determination in a rulemaking proceeding for purposes of subparagraph (B) of whether persons who are users of a copyrighted work are, or are likely to be in the succeeding 3-year period, adversely affected by the prohibition under subparagraph (A) in their ability to make noninfringing uses under this title of a particular class of copyrighted works (17 U.S.C. § 1201 2009).

For example, almost all commercially available DVDs are protected by some form of DRM, so the purchaser cannot make a second copy of the film. This provision was added to the 1976 copyright law in a 1998 update, which is called the Digital Millennium Copyright Act Pub. L. no. 105-304 §112 Stat. 2860 (1998) (DMCA). If a faculty member were interested in excerpting a segment of a DVD for her class to view through a course management system, this prohibition in the law would prevent her from doing so, even though posting such a clip would be legal under section 110. Confusing matters further is subparagraph (C), which outlines a process requiring the Librarian of Congress to consider requests for exemptions to this non-circumvention clause. During the comment period, which takes place every three years, people who believe they need to be able to circumvent copy protection measures in order to use copyrighted content under Fair Use (section 107) have to present their case. The most recent ruling occurred in August 2010, in which faculty members at accredited, non-profit institutions of higher education and students studying film were granted this exemption in order to integrate

clips from DVDs into their courses or into materials created to fulfill the requirements of a course. The previous exemption in 2006 provided this exemption for film and media studies faculty only, and only to create compilation DVDs for use in the face-to-face classroom. So the more recent ruling has expanded the class of people permitted to circumvent copy protections and the uses they are able to make of this content. Again, however, only those who have a keen interest in the topic, or even know about this exemption and the process involved, would be aware of the anti-circumvention provision or the exemptions granted to it.

### **Chronology of Copyright-related Court Cases Relevant to Higher Education**

Throughout this study references will be made to a number of court cases, each of which has had some influence on how copyright law is interpreted within the higher education community. The following is a chronology of those cases, including a summary of the issues addressed and the affect the ruling has had on application of the law.

*Williams & Wilkins Co. v. United States*, 420 U.S. 376 (1975) (Williams & Wilkins). Williams & Wilkins—now known as Lippincott Williams & Wilkins—was a publisher of medical journals in the mid-1970s, when photocopiers began to proliferate within academic libraries. With the availability of photocopiers, libraries no longer had to rely on institutional subscriptions to provide access to individual articles for their faculty and students. Instead, libraries began to share this content, through an activity that is known as interlibrary loan. Publishers were uneasy about this practice, as it resulted in lost revenue. In an attempt to curb the copying and sharing of copyrighted content, Williams & Wilkins sued the National Library of Medicine, claiming copyright infringement based upon their photocopying and sharing of journal articles. The result of this case was that libraries were permitted to continue lending

copies of journal articles, although guidelines delineating parameters for volume and frequency of lending were established to ease publisher concerns about lost revenue.

*Columbia Pictures Industries v. Redd Horne*, 749 F.2d 154 (3rd Cir. 1984) (Columbia Pictures). *Columbia Pictures* was a case that helped define the parameters of a public performance for a motion picture (be it in film or video format). A business set up a video screening facility where clients could select a video they wished to view. They were assigned a private viewing room with a monitor. Employees of the company would control playback of the video from a central system—clients never handled the actual video. Columbia Pictures, the film studio, sued Redd Horne, claiming that the facilities were publicly accessible, and thus these screenings were public performances of their content, for which they were not receiving payment. A factor supporting this claim was that staff members were controlling playback, not the clients, thus placing the employees in the position of enabling and thus authorizing the screening. The court ruled in Columbia Pictures' favor, establishing the precedent that a publicly-accessible space, even if it is perceived as private, can be considered public. The impact on higher education is the delineation between a public space and the classroom, for the purposes of applying Section 110 of the copyright law.

*Columbia Pictures Industries, Inc. v Aveco, Inc.*, 800 F.2d 59 (3d Cir. 1986) (Aveco). The primary difference between *Columbia Pictures* and *Aveco* is the way in which the video content is delivered to the private screening room. Again, a business offers the public the ability to view video recordings in private rooms, but in the *Aveco* case, the customer is given the physical video cassette and controls the playback. The intent was to shift the authorization of the playback from the business to the individual. The court ruled, however, that by providing the playback equipment, Aveco was still the authorizing agency, and these performances were still

considered public. This case reinforced *Columbia Pictures* and the importance of the physical location in determining if the educational exception in Section 110 could be applied.

*Basic Books, Inc. v. Kinko's Graphics Corp.*, 758 F.Supp. 1522 (S.D.N.Y. 1991) (Kinko's). Kinko's Graphics is a photocopying business which provided, and continues to provide coursepack compilation for colleges and universities. When first offering this service, Kinko's would compile reading anthologies using copies of articles and book chapters which the faculty member provided to them, but did not pay royalties to the copyright holders for the right to reproduce their content. Basic Books, one of the publishers whose content was included in these anthologies, filed suit claiming copyright infringement, while Kinko's claimed their use of this content fell under Fair Use. The judge ruled for Basic Books, utilizing the four-factor analysis, which involves applying the factors described in Section 107 (previously discussed on page 6) in order to determine whether the use being examined would be considered a legal use or an infringing one. After this ruling, commercial businesses that create course packs are required to pay royalties for the content they use. Another result of this ruling is a clearer definition of Fair Use and how it can be applied to course readings in higher education.

*Princeton University Press v. Michigan Document Services, Inc.*, 99 F.3d 1381 (6th Cir. 1996) (MDS). Michigan Document Services was also a commercial entity, and also produced coursepacks without paying copyright holders royalties for the reproduction of their works. Princeton University Press sued them, and prevailed, reinforcing the Kinko's ruling that a commercial business must pay royalties on content used in coursepacks, even if those coursepacks are to be used in a non-profit, educational context.

*Cambridge University Press et al v. Becker et al* case number 1:08-CV-1425 (N.D. Ga. April 15, 2008) (Cambridge, 2008). While both *Kinko's* and *MDS* addressed the creation of

commercially-created coursepacks for student readings, *Cambridge*, more commonly known as the Georgia State case, addressed readings offered through a library electronic reserve reading system and the institution's course management system. Cambridge University Press, SAGE, and Oxford University Press sued individuals affiliated with Georgia State University in their roles within the institution, claiming systematic unauthorized copying of protected content. The ruling in this case was almost entirely in Georgia State's favor, with almost all challenged uses ruled as legal. The implications of this case in higher education are of import, because the judge specified the amount of content that can be copied to be within Fair Use parameters (10 percent of a book with fewer than ten chapters or a chapter from a longer book). What the ruling did not do is address use of journal articles, nor did it address use of fictional or creative content.

*Association for Information Media and Equipment and Ambrose Video Publishing Inc., v. The Regents of the University of California et al* case number CV10-09378 (C.D. Cal. December 7, 2010) (AIME). UCLA, claiming Fair Use, digitized and streamed entire media works through their course management system for educational purposes. The Association for Information Media and Equipment, claiming to represent a number of independent educational filmmakers, and Ambrose Video sued to stop this practice. Unfortunately for those attempting to navigate copyright issues in higher education and looking for guidance on the amount of media that can be digitized, the court dismissed this case with little comment on the issue at hand, stating that AIME had no standing to bring the suit and UCLA could not be sued because it is a state institution and thus protected by sovereign immunity.

What this analysis of the current state of copyright law in the United States shows is the lack of specific guidance court rulings related to copyright issues offer higher education. While elements of each of the cases described above have some level of correlation with the use of



copyrighted material in higher education, no one case ruling provides direct and specific guidance to those of us who incorporate copyright materials into our research and teaching activities. Because of this ambiguity, and the wide-spread use of copyrighted content in education, an institution that has an interest in remaining compliant with the law needs to have either an office or an individual in place to educate the university community about copyright issues. What a literature review reveals, however, is that institutions are not as focused on investing resources into copyright information dissemination as they are in managing other intellectual property issues. Specifically, a great deal has been written about funding and staffing commitments dedicated to technology transfer activities, plagiarism detection, and illegal file sharing and downloading. The dearth of literature on copyright management is telling in comparison.

In an attempt to fill this void, this dissertation explores the individuals and resources institutional members of the CIC have committed to copyright education. The number of staff and their credentials, along with other resources devoted to this activity, offer some sense of this level of commitment, and institutional commitment are a factor in determining how much authority a person responsible for copyright management has. Another factor that, at least according to the organizational theorist Henry Mintzberg, should have an effect on copyright information legitimacy and the authority of the individual running the program is organizational placement. The proximity of a particular unit to an institution's core has an effect on that unit's perceived authority and power within that organization. Mintzberg's theory of organizational structure provides a useful construct through which data gathered from each institution's web site and from individual interviews is viewed, in order to see what the primary factors are in establishing authority for these educational programs.

In order to explore this question, the copyright program in each institution within the CIC is examined individually. Information is gathered both through web analysis—exploring each institution’s site in order to determine who is responsible for copyright education and how readily available this information is to the naïve user—and through individual interviews with each person identified as the primary copyright contact. These results are then examined together, in order to determine if a particular combination of factors create the most effective copyright information management program.

## **Chapter 2. Literature Review**

The following literature review is comprised of two components. The first is a summary of two court cases, the decisions for which have had a direct effect on how copyrighted content can be used within the educational environment. The second part is a review of the literature discussing the organizational position and the resources allotted to four intellectual property-related activities within the academy: plagiarism detection and education; technology transfer; illegal file downloading and sharing; and general copyright management and instruction. The literature discussing the first three activities was selected to illustrate the lack of institutional standing and resources devoted to the fourth topic, as demonstrated by what is included in the general copyright literature.

### **Representative Court Cases Addressing Copyright Issues in Higher Education**

While the actual copyright law as written in the U.S. Code is neither precise nor clear, neither are the court rulings that apply the law and begin to establish parameters defining the legal uses of copyrighted content within the classroom. Until very recently a review of court cases that have addressed use of copyrighted content, as well as the literature that discusses these decisions, would have shown that no case has involved an academic entity directly, although the rulings have had implications for higher education. This changed only in 2012, with rulings in both the Georgia State case and *AIME*, both of which will be discussed shortly. Columbia University Libraries Copyright Advisory Office has set up a web site that discusses several court rulings related to Fair Use and their applications to higher education-related activities in general (Columbia University Libraries). For purposes of this study, I have selected two cases, one reviewed on this site and the other not, which address two activities directly related to use of copyrighted content in classroom teaching activities. The first of these cases is perhaps the most

well-known, and addresses issues related to photocopying and selling course packets for specific university classes—*Basic Books, Inc. v. Kinko's Graphics Corp.*, 758 F.Supp. 1522 (S.D.N.Y. 1991) (*Kinko's*). In this case Kinko's, the photocopying service, was charged with twelve instances of copyright infringement when they created reading anthologies at the direction of professors teaching specific courses, sold those anthologies to students, earned a profit on this activity, but did not pay any royalties to the copyright holders. Kinko's claimed that this activity was legal for four reasons: the activity was educational and thus legal under section 107 or the Doctrine of Fair Use; the copyright holders established a standard that did not permit the use of their content without permission and royalty payment; the same publishers had known of this service, which Kinko's had provided for over twenty years, and had not defended their copyrights; and in two of the cases the copyright holders had not recorded their copyright ownership prior to filing the lawsuit.

The United States District Judge who ruled on this case evaluated the claim utilizing the four factors outlined in the Fair Use statute. In evaluating the purpose and character of use, Judge Motley noted that both were commercial in nature, and the creation of coursepacks was not transformative (using the original in a different manner so that its use creates more value than the original). Neither of these uses support a Fair Use claim. She noted that the nature of the copyrighted work included in these anthologies was primarily factual in nature, which supported Kinko's claim. The amount and substantiality of the portion of copyrighted works used in these course packets “ranged from 14 to 110 pages, representing 5.2% to 25.1% of the works” (*Kinko's*, section 3). Motley noted that in almost all cases entire chapters from books were copied. They were intended to “stand alone” as readings, and therefore were “in addition to being quantitatively substantial, are qualitatively significant” and thus the amount used did not

support a Fair Use claim. Finally, the creation of these anthologies meant that students did not have to purchase entire books from which chapters were taken, thus Kinko's behavior had a negative effect on potential markets for or value of the copyrighted work. In weighing these four factors, Motley determined that Kinko's invocation of Fair Use was inappropriate, as three of the four factors did not support Kinko's' claim.

The implications of this ruling in higher education have become more noticeable as we have migrated from the print realm into digital information delivery. In the print world, faculty members would not have made physical photocopies of every assigned reading, and in fact were, and continue to be, prohibited from doing so under the *Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions*, which was derived from the legislative discussions surrounding the 1976 Copyright Act. These guidelines allow faculty to make and distribute copies of readings only to members of their class, if those readings meet tests of "brevity, spontaneity, and cumulative effect" and if each copy contains a notice of copyright (United States Copyright Office, 2009, p.6). The obvious challenge this guideline raises is in the lack of definition of the terms "brevity," "spontaneity," or "cumulative effect." Is it permissible to use a reading once, or in consecutive semesters, or in non-consecutive semesters without paying royalties? Is one chapter permissible, but two chapters would violate the definition of brevity? The ambiguity of these terms continues to raise issues, because they are only defined in specific instances when a judge rules on a specific complaint. Additional issues arise in the digital world, however, because copies are no longer physical, and constraints such as cost and time disappear. Faculty members can easily scan and post all readings required for a course on a web site, requiring little time, effort or cost. The *Kinko's* ruling could be interpreted as prohibiting this type of activity. The difference between these two activities, however, is that

Kinko's copying was done for a profit, while the latter example would generate no profit.

Colbert & Griffin (1998) raise this very issue in their discussion of Fair Use in higher education and the implications of both *Kinko's* and the similar *Princeton University Press v. Michigan Document Services, Inc.*, 99 F.3d 1381 (6th Cir. 1996) (*MDS*). An area of concern for academia is "whether publishers will legally venture into the previously uncharted ground of academia, suing institutions and/or individuals whom they believe violate their copyrights? Will a campus-owned copy center soon take the place of the Michigan Document Services as defendant?" The courts have not ruled on a case that makes the distinction between a for and not-for profit copying service, again, illustrating the problems created due to the lack of a clear definition of Fair Use in higher education.

The second case, *Columbia Pictures Industries, Inc. v. Aveco, Inc.*, 800 F.2d 59 (3d Cir. 1986) (*Aveco*), addresses in part the issues surrounding the definition of a "public performance" of a work of motion media. Aveco Inc. operated two businesses in central Pennsylvania, both of which offered video rental services as well as room rentals for screening videocassettes on site. Customers could select a video to take home, or could take the same cassette into one of the rooms and view it in private or with friends. The video equipment was in the room, so the customer could control the playback. Columbia Pictures and a number of other motion picture production and distribution companies filed against Aveco, stating that these "nickelodeons" as they were called violated the studios' exclusive rights under section 106 to publicly perform their works. Aveco's defense was that these rooms were private, not public, and the customers were the people who "performed" the work, since they controlled the playback equipment. This is a key distinction from an earlier case, *Columbia Pictures Industries v. Redd Horne*, 749 F.2d 154 (3d Cir. 1984) (*Columbia Pictures*), in which a similar business had a central system where staff

controlled the playback of the videos. Columbia Pictures was successful in this prior case. The two key issues in *Aveco* were whether Aveco was authorizing a performance of the videos and whether the rooms in the facility were considered public spaces. This court agreed with the district court which ruled that by supplying the means to play back the video, Aveco was authorizing the performance (*Columbia Pictures*, p. 4). In determining whether the private rooms in these businesses were considered public or private spaces, the judges in this case relied on the precedent established in *Redd Horne*, stating that a space would be defined as public if it was open to the public. “A telephone booth, a taxi cab, and even a pay toilet are commonly regarded as ‘open to the public,’ even though they are usually occupied only by one party at a time” (*Columbia Pictures*, p. 5).

In Kheit’s (1999) discussion of the “public place analysis” conducted in the course of evaluating *Aveco* and other cases, one factor which arose was the intended purpose of the venue. If the general public is encouraged or invited into a space for the purpose of viewing displayed images or performed motion media, then the display or projection would be considered a public performance. Such a case would be an auditorium or, in the case of *Aveco*, private video viewing rooms. On the other hand, if the primary use of a space is intended to be private, even if its occupants at different times are unrelated, such as a hotel room, then any viewing of copyrighted media in that setting would be considered a private or home viewing. Kheit’s analysis is much more complex, and involves an additional analysis of “substantial non-infringing use” of the space (would *Aveco* have been decided differently if people tended to use these rooms to read a book rather than watch a video, and this non-infringing use of the space were advertised in this manner?), but it also does not address the issue of public/private space in an educational setting directly.

*Aveco* relates to issues in higher education in two ways. The first is that it more clearly defines the difference between a public performance and what is permitted within the classroom in section 110. An explicit exemption is provided for the screening of copyrighted motion media in a classroom, as long as the requirements outlined in Section 110 are met. Secondly, *Aveco* shows that other screenings of the same kind of material which fall outside of the classroom exemption are considered public performances. For example, the screening of a French film offered as part of a French Club meeting, which is advertised across campus and open to the university community, would be considered a public performance and require either permission of the copyright holder or payment of a screening fee. In applying Kheit's analysis, the space in which this screening would occur would be open to the public and the primary use, at least at that time as defined through the advertisements distributed across campus, would be to screen copyrighted content, thus making this a public screening. Not charging admission is irrelevant to the status of the screening, as the *Aveco* ruling indicated indirectly, because the court considered two issues only: whether or not a work was "performed" and who authorized that performance, and whether the physical location where the work was performed was considered "public." What *Aveco* did not help define was the extent to which the educational nature of a performance might blur the line between a public performance and a performance which qualifies for exemption under Section 110. Taking the same French club example—if someone were to give a lecture on some aspect of French culture which is illustrated in the film, and then hold a discussion afterward, would this qualify the screening for the classroom exemption, even if the screening was open to the public? Most believe not, but some argue that the educational nature of the activity should allow for more flexibility in interpretation of this segment of the law.



While *Kinko*'s did address a higher education-related case, almost all other court cases that help define the parameters of Fair Use, such as *Aveco*, appear to have no relationship with the issues those in higher education face when utilizing copyrighted materials. This adds an additional layer to the complexity inherent in managing and conveying copyright information for a university. It is an easier task to apply a court ruling to a specific activity when the ruling speaks directly to that same activity than it is to interpret and apply a ruling to one activity when the ruling addressed a similar activity in a disparate context. This additional complexity is the reason why universities need a legitimate entity within their organization, be it a person or a department, to offer advice and guidance on copyright issues.

### **Institutional Resources and Intellectual Property**

Much of the activity one associates with higher education—publication, research, teaching—involves issues related directly to intellectual property law. Appropriate use of copyrighted content in both the classroom and in publications requires faculty members and students to have a basic knowledge of the vague laws which provide limited guidance, as well as court decisions which offer specific guidance in the applications of these laws in highly-defined situations. In addition, faculty members conducting research, particularly in the sciences, will have a strong interest in and motivation to create new, patentable processes or products. In light of the explosion of electronic information sources, the ease with which students can copy and paste other people's copyrighted work into their own, plagiarizing either intentionally or not has become a highly public issue. Finally, students have been identified as the primary perpetrators of illegal music and film file sharing, as they have ready access to high-speed networks. All of these activities can be classified as related to intellectual property management, yet they are not treated in a like fashion within higher education. This literature review will examine the variable

resources devoted to deterring plagiarism and illegal file sharing, managing technology transfer activities, and educating about basic copyright law. The literatures that examine each of these activities indirectly identifies staff and resources institutions devote to them, and explains the practical reasons why plagiarism deterrence, illegal file sharing detection and technology transfer are supported more substantially than basic copyright education. By looking at the institutional resources (money, staff, physical plant) designated to each of these activities, one can see the level of interest in and commitment to their management. On the other hand, an examination of the literature which discusses copyright management in higher education reveals a dearth of references to resource investment. Logically, an administration is going to commit more resources to activities which they consider more important, and thus which have more perceived legitimacy and authority within the organization.

Intellectual property is an overarching term which includes concepts such as copyright, patents, trademarks, and trade secrets. Just as copyright is an integral part of most activities within higher education, the broader concept of intellectual property is further integrated into all aspects of educational activity, particularly within research. “Intellectual property refers to the intangible items that typically produce or create products, processes, expressions, marks, or nonpublic information” (Sun & Baez, 2009, p. 1). Intellectual property law, which includes copyright law, is broader in that it not only includes expression, but processes, products, and marks—the area of patent and trademark law. In Sun and Baez’s (2009) *Intellectual Property in the Information Age*, the issues surrounding the role of intellectual property and relevant laws are clearly outlined. They are interested in how policies and practices within higher education institutions related to intellectual property are influenced. Three forces—economic, political, and social—shape these policies. Economic forces refer to the financial benefit derived from the

commodification of the results of research and teaching. In an information society, knowledge and the manifestation of this knowledge in some physical form are the primary economic drivers. Such institutional economic benefits from intellectual property development might include potential income from a patent a faculty member develops or course content which could be exploited through on-line delivery. Political forces influencing institutional policies and practices focus on the role of governmental regulation and laws which control the use and distribution of intellectual content. Finally, social forces focus on the balance among the costs of creation, the rights of the creator, and the public good. When writing the Constitution, the authors gave copyright holders a short-term monopoly control over their works in order to “encourage the production of science and the useful arts” (U.S. Const. art. I, § 8). The same monopoly, however, can restrict the ability of the public to use this content in a manner that could possibly achieve the same end. These conflicting social forces help determine broad intellectual property policy in higher education.

Sun and Baez then discuss factors that have a more direct influence on institutional policies: legal parameters, technological advancements and competing interests. Legal parameters are the laws that affect how one can utilize another’s intellectual property. Technological advancements influence policy, as they affect what one can easily do with someone else’s intellectual output. For example, the ability to copy and paste text easily from an electronic journal article into a student’s paper could have an effect on how policies addressing plagiarism are written and enforced. Finally, competing interests play a central role in policy creation. Whether the faculty member or institution owns the content of a course will determine if and how the institution can repurpose that same content. In this examination of the creation of policies and procedures related to intellectual property, however, Sun and Baez do not examine

the roles of specific administrative units within the university. Their discussion remains generic, focusing on responsibilities at the institution rather than the unit level. Lane and Healy (2005) articulate influences on institutional response to intellectual property issues in different words, but their perspective is quite similar to Sun and Baez.

Review of literature, news reports, and congressional documentations suggests three basic questions that shape institutional response: (a) What is required of the institution by law?, (b) How does the response position the university in the eye of the public?, and (c) What ethical responsibilities exist in the context of the institutions mission and core values? The nature of the institutional response varies depending on which questions frame the institution's strategy (p. 541).

In order to examine effectively how copyright education, management and enforcement are handled within a research university, specifically at the unit level, and what resources are committed to these activities, I explore through this literature review how similar activities are institutionalized in order to provide both context and opportunity for comparison. Three areas of current, relevant interest are plagiarism, technology transfer, and illegal music file sharing, and downloading on campus networks. All three of these activities are related to intellectual property, and, as the relevant literature illustrates, responsibilities for educating about, managing, and enforcing policies related to these activities consistently reside within particular administrative units. The units responsible and resources allocated, whether selected for practical or political purposes, I would argue, convey to students, faculty and staff the level of commitment the administration has to addressing these issues. For example, the resources devoted to supporting technology transfer within an institution indicate the level of interest in and commitment to supporting patent development. The literature that discusses anti-plagiarism, technology transfer, and anti-music piracy activities in higher education, while only indirectly addressing organizational placement and institutional support, still demonstrates a stronger, more centralized institutional interest in these activities than in copyright education in general.

**Plagiarism.** As access to electronic information sources (journal articles, books, research papers or web sites) has increased, so too has the percentage of college students who admit to plagiarism. According to McCabe—cited in Chao, Wilhelm & Neureuther (2009)—forty percent of students questioned admitted to copying text from another source, using it in their own work and not citing the original author. This statistic, however, reports only those students who admit to having plagiarized. Many others likely have done so but might have not realized that what they were doing would be considered plagiarism. “For example, although most students understand that quoting someone’s work word for word demands a citation, they seem to be less clear on the need to cite the presentation of someone else’s ideas when the students present them in their own words” (McCabe et al., 2001, p. 221). Whether these students understood that they were plagiarizing or not, they likely did not see anything wrong with their behavior. “In the Center for Academic Integrity survey, 68 percent of students surveyed believed using someone else’s ideas, words, or sentences without acknowledging was not a serious problem” (Chao et al., 2009, p. 32).

One way in which universities attempt to teach their students about plagiarism and other academic integrity issues occurs through institutional documentation. Many institutions either have academic integrity policies, honor codes, or both, as well as educational materials available on their web sites. Research from the mid-1960s indicates that the existence of an honor code is associated with a lower level of cheating. Research indicates that this correlation still exists, although the influence has been reduced (McCabe et al., 2001). “Clearly, code students sense that they are part of a special community that demands compliance with certain standards in exchange for the many privileges associated with honor codes” (McCabe et al., p. 227). Just having a general academic integrity policy in place, or a specific policy on plagiarism, available

either on an institutional web site or within a student handbook, however, likely has little effect, as students have little reason or incentive to seek out and read such a policy.

Perhaps the most effective manner to convey information about plagiarism to students is through course instructors, as they both hold a position of authority and are the people who will, at least initially, determine that plagiarism has occurred. McCabe (2001) reports on a previous study he conducted which outlines a variety of methods faculty members can employ to reduce plagiarism in their classroom, “including clearly communicating expectations regarding cheating behavior, establishing policies regarding appropriate conduct, and encouraging students to abide by those policies” (p. 229). This can occur verbally, or through a statement on the syllabus, which at Penn State is now required. Landau, Druen, and Arcuri (2002) conducted a study of undergraduates to whom they provided different levels of plagiarism education. Those groups that were given some level of instruction about what constitutes plagiarism showed improvement in their ability to detect whether something had been plagiarized and to avoid plagiarism in their own work. For these results to translate into an actual classroom, however, students would have to be plagiarizing unintentionally and want to correct that behavior. Those who plagiarize intentionally are not going to correct their behavior simply because they are aware of it.

Another cost, more difficult to quantify than dollars spent on institution-wide educational materials, is the emotional toll plagiarism takes on instructors who are placed in a position to monitor and enforce policies. Liebler (2009) and others have identified these costs and grouped them into four categories. The first, emotions, refers to the stress a faculty member experiences when confronting a student about potential plagiarism. Difficulty, the second category, has more to do with logistics, or the “time and effort” required to address an incident of plagiarism (p. 719). Fear and denial, the final two costs, capture the fear of reprisal from administrators,

colleagues and parents, and the belief that nothing really needs to be or can be done about the behavior. For these reasons, Liebler notes, many faculty members choose not to address plagiarism at all. When these costs result in non-enforcement, students begin to understand there to be little or no consequence for indulging in plagiarism. “The lack of consistent enforcement of academic honesty policy by faculty members and university administration may have fostered a culture of cheating” (Chao et al., 2009, p. 32).

The third methodology many universities employ to detect plagiarism is licensed software, such as Turnitin, designed to search an input paper and compare the language used against a database of published works to locate duplication. This type of product has been used in two different ways: to give faculty a tool that allows them to detect plagiarism in completed assignments, and to give students the opportunity to pre-screen their papers prior to submission. The former can be seen as both a method to detect plagiarism leading to punitive measures and as a deterrent, when students are informed that their papers will be screened as part of the evaluation process. When plagiarism software is used as a deterrent, the amount of plagiarism appears to decrease. Martin (2005) conducted a study over the course of five semesters. At the beginning of each semester students were informed that TurnItItn would be used to review their papers in order to detect plagiarized content. During the first semester 50 percent of papers reviewed were shown to contain plagiarized content. At the beginning of the second semester, students were not only informed that Turnitin would be used, but also that plagiarism had been detected the previous semester, and the offending students’ grades had been reduced accordingly. The results after the second semester showed little improvement. But, in the third, fourth, and fifth semester, the level of plagiarism detected was significantly lower than recorded during the first two. Martin surmises that no change occurred in the second semester because students were

not convinced that Turnitin would detect their plagiarism. After two semesters, however, students saw the impact of the program and changed their writing habits accordingly. Martin's study also noted that faculty devoted only a little additional time to this process, loading the content and running the reports.

Once plagiarism is detected, and a faculty member chooses to move forward, the literature indicates that most institutions have some codified method for addressing the issue. According to Lipka (April 10, 2009), a common model is to have a student-conduct office or judicial affairs office review such charges. Charges that are deemed legitimate are then forwarded to a panel, consisting either of students and faculty, or in some cases a panel of only students (common at institutions where honor codes are in place), to be reviewed and appropriate action taken. At other institutions the department or even the individual faculty member has the final say in determination of guilt and punishment. A more recent trend in the United Kingdom, according to Macdonald and Carroll (2006), is the establishment of an Academic Conduct Officer. Having plagiarism review activities centralized in one office results in "greater consistency, fairness and transparency in how punishments are allocated" (p. 238).

So, to educate about and manage plagiarism, colleges and universities have devoted institutional resources to developing documentation, creating special offices, and licensing software. And, software licensing such as Turnitin can be no small investment, costing up to \$80,000 annually.<sup>1</sup> Faculty members are central to the process as well, and their time and expertise are not inexpensive. Having central funds and resources committed to plagiarism detection and management signals to students and faculty that universities take the issue seriously and are willing to commit substantial resources to curtailing this activity.

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<sup>1</sup> This is the amount paid for an annual Turnitin license for a large Research I institution. Disclosure of the institution and its actual costs would violate confidentiality language of the product license.



**Technology transfer.** The second intellectual property-related activity in higher education I will examine is technology transfer. Technology transfer is a process that takes faculty research and moves it out of the academy and into the for-profit sector. This is often done through patenting of faculty research processes then licensing these patents to commercial entities. The result is income for the parent institution and the exposure of research to a broader audience, which then allows further exploitation. As Geiger (2004) notes, patenting has occurred within universities for decades, from the founding of the Research Corporation at The University California, Berkeley in 1912 to the establishment of the Wisconsin Alumni Research Foundation in 1925. The passage of the Bayh-Dole Patent and Trademark Amendments Act 35 U.S.C. § 200-212 (1980) further increased the opportunities for universities to patent research findings funded through federally-subsidized research, by allowing non-profit organizations to retain, register, and license patents their faculty develop. Prior to the passage of this act, obtaining permission from the government to retain the patents developed through government-funded research was complicated, as processes were inconsistent from agency to agency (Dai, Popp & Bretschneider, 2005). Also, there was concern that the government was not able to efficiently and effectively take the patents they retained and integrate them into the wider research arena, depriving other researchers of the benefits of their colleagues' findings.

Because of governmental restrictions, university applications for patents based upon government-funded research were few. "University approaches to patenting were passive and conservative" (Geiger, 2004, p. 317). Most of those patents that were filed went through external agencies such as the Research Corporation, which had the staff and expertise to file the paperwork to obtain the patent and license the patent to third parties. Because of the costs associated with patent filing, and the small chance that a patent would prove profitable, such

external corporations were just as conservative as the universities for which they worked (Geiger). After the passage of Bayh-Dole, the number of patents granted to universities began to increase. From 1980 to 1995 “university patenting grew at a rate nearly ten times higher than patents from industrial sources” (Dai, et. al., 2005, p. 580), and government funding for research and development occurring at universities increased 51 percent (Mendoza & Berger, 2005). In order to more aggressively pursue patenting opportunities, counteracting the more conservative approach of third-party patent managing organizations, universities began to develop their own, in-house mechanism to apply for and manage patents. The reasons for the development of such offices are three-fold. Geiger and Sa (2008) note that the two primary missions of technology transfer offices are contributing to local economic development and serving the faculty. These two missions, however, are not the ones other authors have associated with these offices. They indicate that the lure of potential income generated through the commercialization of patents has encouraged universities to devote substantial resources to this activity. “As faculty engage in research with commercial potential and as the number of partnerships [*sic*] academia-industry grows, university administrators have invested a significant amount of resources in appropriate infrastructure to promote commercialization of research as a means to generate revenues through royalties and licenses” (Olivas, as quoted in Mendoza & Berger, p. 3). While Geiger and Sa (2011) acknowledge income generation as a motive for technology transfer activities, they note that the goal is not only extra income for the institution as a whole, but to support the office itself, as a self-sustaining unit (p. 3).

The establishment of technology transfer offices was the primary way university administrators invested in patent management and exploitation.

Today, most research universities and a growing number of comprehensive institutions have well-developed technology-transfer programs, replete with staffs of licensing

professionals (which more than doubled between 1996 and 2005) and a burgeoning array of support elements, including seed-capital funds to support start-up companies, business incubators, and related economic development infrastructure (Powers & Campbell, 2009, p. 43).

Investment in physical plant and infrastructure for such an operation would be substantial, even before one considers staffing. These are offices that employ highly skilled individuals to conduct complex processes. According to Powers and Campbell (2009), the salaries for those professionals employed in these offices ranges from \$60,000 a year to salaries in the six-figure range, as many of the most highly paid employees hold law degrees. Expending the money and resources on running such an expensive operation, however, would be considered an investment in potential income for the university. And many universities believe that a higher level of investment in technology transfer staff and resources means increased revenue (Powers & Campbell). As Powers and Campbell indicate, there are very few institutions that have made substantial returns on their investment, with only ten institutions accounting for 77 percent of all technology licensing income in 2007. Heher (2007) offers another way to evaluate the success of technology transfer offices. His data shows that the bottom 50 percent of institutions operate their technology transfer offices at a loss, the middle 50 to 95 percent break even or see a slight profit, and only the top five percent see a large amount of profit. The rankings in this study reflect universities' percentage of license income. As these studies indicate, there are a number of colleges and universities losing money and wasting resources in the establishment and maintenance of technology transfer offices. Based upon the investment institutions make in the technology transfer office, not considering other resources devoted to research in general, the value placed upon patent creation and management is quite high, even if, as Heher notes, the possibility of recouping the investment is slim. Whether the mission of the technology transfer office is to provide local economic development opportunities, faculty services, self-preservation

or income generation, institutional commitment to this activity is quite strong, if the value vested in that activity is measured through financial investment.

**Illegal music downloading.** While universities invest in technology transfer departments in the hope of generating income, they invest in illegal file sharing detection and management programs to protect themselves from potential lawsuits related to their students' misuse of institutional computing networks. While the activities encompassed in illegal music file sharing are copyright violations (copying and distributing digital music without the copyright holder's permission), I am singling them out because universities do invest substantial resources in an attempt to educate students about and curb this specific activity. As noted above, the special interest paid to illegal file sharing, as opposed to other copyright-violating behavior, is due to one specific factor—the aggressive manner in which the copyright holder, in this case the Recording Industry Association of America (RIAA), defends its property and pursues copyright violators.

In 1998 the Digital Millennium Copyright Act (DMCA), was passed, bringing this issue to the forefront for academic institutions. Congressional intent in updating the copyright law through this act was to bring the law into alignment with technological advancements, particularly the widespread availability of the Internet and digital content. One portion of the DMCA addresses the liability of Internet Service Providers (ISPs), or those who manage networks across which illegal digital copying and distribution occur. An ISP qualifies for the “safe harbor” provided in the DMCA, eliminating or limiting liability for a user's activity on its network, if it meets a set of criteria outlined in the Act. Institutional responsibilities and conditions include: appointing a single primary copyright infringement contact whose information is supplied to the U.S. Copyright Office 17 U.S.C. § 512 ; deriving no institutional

financial benefit from the activity; lacking institutional awareness of the infringing behavior; and taking down or blocking offending content immediately upon receipt of notice from a copyright holder. These and other provisions outlined in the DMCA are not mandatory, but institutions will have a stronger defense against claims that they support copyright violations if they comply (Wada, 2008).

The DMCA was passed prior to the development of Napster and other peer-to-peer file sharing services. According to the recording industry, they lost over one billion dollars to illegal file sharing between 2001 and 2002 (Carlson, 2003). With ready access to high speed network connections, college students and their affiliated institutions became the logical target of the RIAA as they attempted to combat this activity. One of the tactics the recording industry and the entertainment industry in general have employed to wage this war was increased pressure on Congress to address the issue with universities and colleges. According to a lawyer from the Electronic Frontier Foundation, “the entertainment industries had been pressuring the university community, and they felt that they weren’t getting as much cooperation as they wanted, so they engineered a hearing in which several university administrators were just short of publicly lashed” (Carlson, 2003, p. 3). Graham Spanier, former president of Penn State University, became the public face of the academy’s attempt to curb illegal music file-sharing as the chair of a committee consisting of university administrators and members of the entertainment industry, convened to develop solutions to the problem. He enacted network monitoring on his campuses to locate and shut down illegal downloading activities and licensed access to a legitimate popular music service, the resurrected legal version of Napster, for the university community.

Other universities have also attempted to curb illegal music file sharing through proactive monitoring of their networks and by licensing alternative music products. Unfortunately, neither

solution is inexpensive to implement or sustain. While Penn State never released the amount they paid annually to license Napster, it was likely substantial.<sup>2</sup> And, neither option has fully curtailed this activity. In 2008 colleges and universities saw an increase in the number of DMCA-driven takedown notices, resulting in even more staff time devoted to responding to the RIAA. “Responding to RIAA notices used to be part-time work for one person, said William C. Dougherty, assistant director for systems support at Virginia Tech. ‘Now he’s doing it full time and has an assistant,’ he said. ‘Our attorneys are also involved on almost a daily basis, as am I’” (Rampell, 2008, p. A1). The RIAA then began to send “presuit settlement” letters to universities. The recording industry would track illegal file sharing to a specific Internet protocol (IP) address owned by a college or university. The institution is then contacted and asked to identify the user of the IP at the time the illegal activity occurred. The RIAA then sends a letter offering to allow the student to settle for \$750.00 in damages per song rather than be sued for copyright violations. Most of these cases settle for between \$3,000 and \$11,000 (Loomis, 2008). 4,543 letters had been sent to 160 campuses by May of 2008 (Loomis, 2008). Sifting through usage logs to determine who was on a specific IP address at a specific time is laborious, and becomes even more so the larger the institution. According to Illinois State University, it costs “\$76 to process a first claim of copyright infringement and \$146 for a second” (Wada, 2008). Finally, other activities to address infringement have occurred systematically across academic institution in the United States. According to Educause, ninety percent or more of their institutional membership have anti-piracy policies in place, and “the University of Wisconsin-Madison estimates that through April [2008] it had spent \$300,000 on educational

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<sup>2</sup> The costs for an undisclosed major research institution to license and provide access to Napster for their students was approximately \$350,000 a year.

efforts, follow-up on notices of infringement and settlement letters, responses to subpoenas, and the like” (Loomis, 2008, p.3).

The institutional investments documented above will likely increase as the renewal of the Higher Education Opportunity Act Pub. L. no. 110-315, 122 Stat 3079 (2008) (HEOA), includes a number of provisions designed to curtail illegal file sharing. Based upon the regulations instituted to operationalize these provisions of the HEOA, in order to participate in the federal financial aid program colleges and universities are required to:

disseminate an annual disclosure to students that (1) states that unauthorized distribution of copyrighted material, such as through peer-to-peer networks, may subject students to civil and criminal penalties, (2) describes the penalties for such violations, and (3) includes the institution’s policies on peer-to-peer file sharing. Institutions must also develop a plan to combat unauthorized distribution of copyrighted material. In developing the plan, institutions must consider technology-based deterrents. Report language accompanying the law explicitly states that technology-based deterrents include “bandwidth shaping” and “traffic monitoring to identify the largest bandwidth users.” Institutions must also offer, “to the extent practicable” and in consultation with the chief information officer, alternatives to illegal downloading (American Council on Education, 2008, p. 5).

While a number of larger institutions will already have many of these policies and procedures in place, others may have only pieces, and some smaller institutions without a large information technology department might be unable to conform to the requirements to monitor traffic or employ technology-based deterrents. As Lipka (February 13, 2009) notes, referring to the HEOA, “community colleges and other institutions that largely escaped the Recording Industry Association of America’s mass lawsuits against students accused of violating copyrights may not have developed those policies as fully. And some that do have policies are unsure whether their approaches will comply with the new rules” (p. A19). Thus, even more resources will need to be devoted to monitoring, educating about, and punishing illegal music file sharing on all university and college campuses that wish to continue being eligible to receive federal student aid.

As shown through the above analysis of three different intellectual property issues in higher education— plagiarism, technology transfer and illegal music file sharing—universities are investing large amounts of resources in their management. The reason these three areas are of particular interest and thus worth the staff and money devoted to them is because they are a high priority to these institutions. To paraphrase Lane and Healy (2005) again, some form of institutional response is necessary because institutions have a moral obligation to address them based upon their mission, they want to address them to maintain a positive public image, and they are required by law to implement programs and policies. Not included in Lane and Healy's list are those factors associated with the development and maintenance of a technology transfer office, be they local economic growth, faculty support or self-funding. It is evident, however, that institutions are more willing to invest in activities in order to deter negative consequences or reap the benefits from positive public relations or even income flow. Other intellectual property-related activities where neither positive nor negative external or internal influences are present, just a moral obligation, do not receive the same attention or have the same level of central institutional resources devoted to them, as is illustrated in examining the literature related to how general copyright information is administered.

**General copyright education and management.** The literature that discusses general copyright law and its application to higher education is vast.<sup>3</sup> Most of it falls into the category of descriptive discussions of the law itself: what it says and how it can be applied to the higher education context. For example, discussions about what the law says and its impact on teaching and research are common shortly after the passage of the Digital Millennium Copyright Act, (Walther, J. H., 1999; Diotalevi, R. N., 1999; Lide, C., 1999; Van Horn, R., 2002; Alexander, S.,

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<sup>3</sup> The literature search conducted for this portion of this paper purposefully excluded libraries or any other specific unit. The intent was to examine the copyright literature in higher education in general, not focusing on the topic as it relates to any specific unit or activity.



& Baird, D., 2003). These articles are usually aimed at a generic audience—anyone who has an interest in the topic—rather than a narrowly-defined readership. They do not discuss specifically an organizational unit within an institution that would be responsible for gathering information and teaching others about copyright law and its application within the academy. Two exceptions are evident. A few of the articles note that Distance Education, either as an activity or a unit, should be central to copyright management on campus (MacKnight, C. B., 2000; Wallace, 2004). Overwhelmingly, however, when any unit is identified in the general literature as being central to conversations about copyright, it is the library. This affiliation becomes more evident when one examines the extensive copyright literature written by librarians, aimed at a librarian audience or focused on library activities (Dukelow, R.H., 1992; Bielfield, A. & Cheeseman, L., 1993; Gasaway, L.N. & Wiant, S.K., 1994; Gasaway, L.N., 1997; Crews, 2006; Greenhow, C., Walker, J.D., Donnelly, D., & Cohen, B., 2007). These writings do not suggest that librarians take on the role of managing copyright education within higher education; they assume librarians are already responsible for that activity. Yet, nowhere does the literature discuss any additional fiscal or administrative resources to ensure either the effectiveness or legitimacy of a librarian's role as the mediator for copyright information.

How did librarians become the *de facto* copyright experts on many university campuses, despite the fact that few have law degrees or any type of academic training in legal issues? The simple answer is that librarians are the keepers of copyrighted material. By being associated with the physical pieces that are being copied, librarians are expected to know how this content can be used legally. Another related reason that librarians have become central to copyright is the existence of photocopiers within libraries themselves. So, both the content and the methods by which an individual can reproduce a copyrighted work are within the same unit. A more detailed

answer involves the various internal and external responsibilities librarians have to the academic community. One heavily-used service, interlibrary loan, is by definition an activity that often involves the copying of entire journal articles and book chapters and sending them to researchers at institutions where the content is not available. When this content is still protected under copyright law, as codified in section 108 discussed earlier, librarians are exercising various exceptions to the monopoly rights a copyright holder has to their content, under the philosophy that sharing this information is for the greater good of society.

Interlibrary loan activities, and a court ruling related to them, were issues which led to Congress' passage of the 1976 Copyright Act. In 1973 the Supreme Court ruled on *Williams & Wilkins Co. v. United States*. This case involved the National Library of Medicine's (NLM) photocopying of articles from Williams & Wilkins journals for interlibrary loan purposes. The publisher accused the NLM of systematically making copies from their journals and sending them to requesting libraries, and thus violating their copyright. While the Supreme Court ruled in the NLM's favor by not overturning the lower court's decision, they indicated that they were uncomfortable basing their decision on the Copyright Law of 1909. They encouraged Congress, which at that time had a committee in place to examine library photocopying and copyright revision in general, to address the issue. As Chief Justice Davis noted in his decision:

The truth is that this is now preeminently a problem for Congress: to decide the extent photocopying should be allowed, the questions of a compulsory license and the payments (if any) to the copyright owners, the system for collecting those payments (lump-sum, clearinghouse, etc.), the special status (if any) of scientific and educational needs. Obviously there is much to be said on all sides. The choices involve economic, social, and policy factors which are far better sifted by a legislature (Williams & Wilkins, 1972).

The importance of libraries and photocopying to the new iteration of the copyright law can be seen by the sheer number of subsections that are devoted specifically to library activities. As Thomas Brennan notes, "Consequently, during this period (of the *Williams & Wilkins* ruling) it

became obvious that the Congress would have to have a specific library photocopying provision in the Copyright Revision Act. We now have one. It began as one of the shorter provisions of the bill and it ends with nine subsections” (White, 1978, p. 22).

While *Williams & Wilkins* focused on interlibrary loan activities, which were expressly addressed in the 1976 Copyright Law revision, libraries also engage in another copying-related activity which is not directly addressed—reserve reading services. Reserve readings were originally intended to supplement primary texts such as text books, which the student purchased. Libraries would make photocopies of journal articles or book chapters and make them available for brief check-out periods, during which students could either read the material in the library or photocopy it. Today, while some physical, print reserve readings are still maintained, most of the content is scanned and made available through a password-protected web site. The nature of the content has changed as well. While some faculty members still view reserves as supplemental reading, others use reserves to provide all primary readings for their classes. In addition, some institutions do not have policies or procedures in place that require obtaining copyright permission for repeated use of the same readings in subsequent semesters. Because libraries manage reserve reading services, one can easily assume that librarians understand the nuances of Fair Use, the section of the law under which this type of copying is defended.

Oakley, Pittman, and Rudnick (2007) articulate well the position most academic librarians hold vis-a-vis copyright:

Members of the university community often turned to library staff for their copyright questions, and library staff frequently faced similar questions in their own day-to-day work. Due to the nature of their responsibilities, librarians were in a position to know and keep up with fundamental copyright principles, though no one on the library staff was qualified or claimed to offer legal advice (p. 2).

Because of their position in overseeing copyrighted content, offering interlibrary loan services and managing electronic and print reserves, librarians have become the purveyors of information related to general copyright issues in higher education. Although not qualified based upon lack of legal credentials, librarians also may embrace copyright as part of their responsibilities because of a sense of responsibility and the existence of an institutional vacuum.

Thus, the minimal direction at the university level, the changing nature of copyright enforcement, and increasing questions and complexities faced by the library staff prompted the Libraries to launch a copyright initiative as a strategic priority for two consecutive fiscal years, 2005–2007. This objective was just one component of the Libraries' strategic plan, in which the library was called to "provide leadership and expertise for the university community as scholarly communication systems are transformed" (Oakley et al., p. 2).

Unlike the other intellectual property issues discussed earlier, the copyright/higher education literature does not directly or indirectly discuss central institutional resources that have been devoted to general copyright education and management. The implication of this void in the literature is that higher education institutions are unwilling to devote resources to general copyright activity at the level they do to plagiarism detection and education and illegal music file sharing alternatives and education. They willingly, however, allow librarians and staff to accept the responsibility of establishing policies and providing education about a complex, vague area of the law without relatively high levels of administrative support. The implication of this situation is that those individuals who accept responsibility for general copyright do not necessarily have the institutional resources, and consequently the legitimacy, as perceived by their colleagues within the institution, to efficiently and effectively do their jobs.

While copyright is inextricably tied to core higher education activities, in particular teaching and research, discussion about institutional resources committed to educating about it is highly limited. The above literature review and overview of relevant court cases illustrates the

lack of resources and attention paid to general copyright management, despite the direct impact copyright has on the educational enterprise. Of the court cases related to copyright in higher education examined, little practical, concrete guidance can be gleaned from the decisions. And, having examined the literature relevant to specific intellectual property issues in higher education, I have found that while much discussion exists concerning resource commitment to certain areas—plagiarism management, technology transfer and illegal music file sharing—little to no mention is made about commitment of similar resources to copyright education and management. The inference can be made that the relative value of general copyright education to higher education is quite low when compared to these other activities.

This study explores what copyright education programs are in place within the Consortium on Institutional Cooperation, whether the resources allotted to those programs is adequate, and whether, based upon organizational placement, the individuals or departments providing copyright education have institutional support, and thus the perceived legitimacy, to do their job. The goal is to offer recommendations on the implementation of a copyright education program that will have the authority to provide information to the institutional community. The next chapter will outline the methodology used in this study to investigate these issues.

## **Chapter 3. Research Methodology**

### **Introduction to Problem and Problem Statement**

Because there is no possibility that every individual on campus who uses copyrighted works could remember all relevant laws, court rulings, and standard practices, some individual or office becomes, either officially or not, the clearinghouse for copyright-related information. Guidance on copyright issues within an institution can be found in a variety of different forms, and administered through different offices. Some institutions have attorneys on staff charged with providing copyright information and guidance to the university community. In these cases university administrators have made the conscious decision to centralize copyright policy and practice within one office, and have provided that office with the power to speak with authority on behalf of the institution. In other institutions such offices do not exist. Instead, copyright information expertise has developed within units in a relatively ad hoc manner, fulfilling a need not satisfied elsewhere. Some copyright expertise may reside in information technology areas because employees in these departments manage course management systems and provide assistance in digitizing content. Others can be found in libraries, as the locations that not only house most of the content used for research and teaching, but also offer course reserve and interlibrary loan services, both of which are governed by copyright law and related guidelines. Those managing these activities within the library need to have some knowledge of copyright law in order to conduct daily operations. Having the same person assigned to offer copyright guidance to the rest of the university community is a natural extension, even though, almost to a person, those given these responsibilities within a library or technology unit will neither have a

law degree nor any academic training in areas related to intellectual property.<sup>4</sup> They tend to be people with an interest in the topic and a willingness to learn the issues on their own. Where this expertise lives within an institution, however, is an empirical question that needs to be answered in order to provide insight into the administrative support the institution is willing to commit to copyright compliance, and the amount of validity the information received from that office will be given. The problem explored in this study is the increasing threat of legal action against research universities due to a lack of readily available, valid, accurate copyright information. To address this problem, three specific research questions will be explored:

- What is the organizational structure in place to disseminate copyright information to members of the institution's community, the credentials of the staff providing this service, and the resources allocated to this activity?
- How does the organizational placement of the office responsible for this communication and/or the organizational role of the communicator affect the perceived legitimacy of the information provided and the authority of the person providing that information?
- Based upon the perceptions of participants and the researcher, what is the relative effectiveness of one structure compared with another?

### **Conceptual Framework**

One of the research questions this study poses is whether the placement of copyright management within the organizational structure has implications for the legitimacy of information disseminated through this unit. The theoretical framework I will use when looking at data associated with this question is Henry Mintzberg's *The Structure of Organizations: A*

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<sup>4</sup> This conclusion is the result of a survey conducted at an American Library Association, Association of College and Research Library Copyright Discussion Group meeting, where over 60 attendees responsible for copyright management at their institutions were asked if they held a law degree. Only two indicated that they did.

*Synthesis of Research* (1979). As an organization become more complex, the need for a more elaborate administrative structure results—not just “managers of operators but also managers of managers. An administrative *hierarchy* of authority is built” (p. 219). Alongside this administrative and operational core are two auxiliary units consisting of the “technostructure” and “support staff.” Analysts who are responsible for standardization and contextual adaptation make up the technostructure, while the support units “take resources from the larger organization and, in turn, provide specific services to it. But they function independently from the main operating core...” (p. 32). Mintzberg then takes this general framework and adapts it to take into account the vagaries of an academic setting, calling this variation on his theme the “professional bureaucracy”. The professional bureaucracy relies on highly trained, “indoctrinated” professionals (teaching faculty, doctors, accountants), gives them a great deal of autonomy within the organization, as their professional behavior is expected to adhere to standards established usually by an external professional body, and expects them to produce specific results (educated graduates, cured patients, completed tax returns). The true power of such an organization lies within the operational core, because “not only do the professionals control their own work, but they also seek collective control of the administrative decisions that affect them” (p. 358). Through faculty senates, search committees and peer tenure and promotion committees, teaching faculty essentially control the operating core of an academic institution.

Because of the high level of independence granted to professionals in a professional bureaucracy, the role of the administrator is very different than it is in a standard production-oriented organization. In order to have legitimacy, or the belief by her peers that she is knowledgeable about the operations of the organization, the front-line administrator will frequently be a member of the profession, perhaps even being elected by her peers. Those higher



in the administrative structure may also be “former” professionals who have elected to move into administration, or they may be professional administrators. Because they cannot control the day-to-day activities of each professional, administrators, according to Mintzberg, focus on two key activities: handling disturbances within the organization and managing interactions with entities external to the organization. Because a professional’s primary goal is to practice her profession, and not be concerned with external or peripheral issues, she is willing to cede some power to the administration. But, as Mintzberg stresses, an administrator “keeps his power only as long as the professionals perceive him to be serving their interests effectively” (p. 363).

Within Mintzberg’s professional bureaucracy the two supporting sections of the organization, the technostructure and support units, play a slightly different role than they do in his more general organizational structure. He notes that the technostructure is quite small—consisting of planning units, while the support units are quite elaborate. It is within the support structure that both information technology units and libraries are placed—units that are critical to the overall functioning of the organization, but are not directly contained within the hierarchy which manages the primary operation of the university.<sup>5</sup> The positioning of both university libraries and information technology units in the support structure, outside of the direct line of authority within the strategic apex, may offer some insight into the levels of both support from central administration and legitimacy within the core operational unit of the university. If one considers classroom education and research as the two primary operations within a Research I institution, those with power and control over those specific operations would have more influence over those who are directly involved in the core operations—teaching and research

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<sup>5</sup> In a corporate structure, it is possible to identify the library as part of the technostructure, as staff in that area conduct research, which would allow them to “standardize the intellectual work of the organization...and carry out operations research studies of informational tasks” (p. 31). For the purposes of this study, however, I will specifically refer to Mintzberg’s placement of both the library and information technology department in the support staff realm within the professional bureaucracy (p. 355)

faculty. Those in the support units, while assisting in the formalization of activities which support the educational process, would not have the level of legitimacy that those operating in a unit within the central structure would have over policy and practice, because these individuals are usually not “professionals” in the sense that they do not hold Ph.D.s and have not been practicing members of the faculty. They also may not have the same perceived level of authority because faculty operating within the organizational core retain such great autonomy.

Mintzberg’s conceptual framework is the most applicable to this study, as others who discuss organizational theory within higher education rarely address the role of support units. Duryea, as cited in Brown (2000) describes the university as evolving into two different segments: the academic and administrative organizations. This split occurred because presidents of growing colleges were unable to handle both activities, therefore vice-presidents were appointed to manage the administrative functions, and deans were assigned to take over more specific academic activities. In early incarnations of the academic structure, support services such as the library were fully integrated into the central academic structure, as librarians were usually also professors. But, as the organizations became more complex, libraries would have moved over to the administrative side of the organization, becoming complex organizations unto themselves. “Librarians had established themselves on a full-time basis and had begun to employ assistants—in contrast with the years previously” (Brown, 2000, p. 9). What Duryea’s model does not take into account is the interrelationship among highly complex units all designated as “administrative” in nature. For example, both libraries and information technology units in Research I institutions are extraordinarily complex, each employing hundreds of people and providing a myriad of services. To group them under a single administrative structure does not account for the multiplicity of relationships such units have across the entire institution, both

academic and administrative in nature. Mintzberg's model attempts to illustrate those relationships, as well as the relationships inherent among various organizational units grouped within a highly complex support structure.

### **Sample Population**

The institutions that comprise the sample in this study consist of the Committee on Institutional Cooperation (CIC). The CIC, commonly known as the Big Ten, consist of 13 large research universities, primarily located in the Midwest: University of Chicago, University of Illinois, Indiana University, University of Iowa, University of Michigan, Michigan State University, University of Minnesota, University of Nebraska, Northwestern University, The Ohio State University, The Pennsylvania State University, Purdue University, and the University of Wisconsin-Madison. The institutions which are being included as the sample for this study were selected utilizing purposeful sampling. Purposeful sampling is defined as the selection of "information-rich cases whose study will illuminate the questions under study" (Patton, 1990, p.169). Patton further breaks down this definition into ten specific types of purposeful sampling. For this study, the sample selected could be considered homogeneous, as all of the institutions are research-intensive. The usefulness of homogeneous sampling is "to describe some particular subgroup in depth" (Patton, p. 173). Because they are so large and research-focused, these institutions would have the resources to commit to the establishment and maintenance of a high-level copyright support office. Yet, within the same sample enough variation exists to provide the opportunity not just to look for similarities but also differences among similar participant organizations. One variation among these institutions is status—some are private and some public, and among the publics, some are land-grant. Another variation is administrative structure—some are multi-campus and others are located in a single geographic area. Finally,

the size of enrollment varies from 14,000 full-time equivalent (fte) at the smallest institution to 75,000 fte at the largest. Another reason for selecting this specific sample is a matter of convenience. As a former library faculty member at one of the thirteen CIC institutions, and responsible for copyright management during a portion of my tenure, I am familiar with the institutions involved, have knowledge of some of their copyright management structures, and am acquainted with individuals who are responsible for these activities. My position and experience provided me with broader access to individuals and informed the questions I pose.

### **Multiple-case Study**

The research method employed is Yin's multiple-case study (2009). A single case study is defined as "a detailed examination of one setting, or a single subject, a single deposit of documents or one particular event" (Bogdan & Biklen, 2007, p.59). The benefit of the case study is that it allows the researcher to not only observe what is occurring, but also supports determining how or why a particular event occurred (Yin, 2009). In particular, utilizing this design allowed me to observe not only what is currently in place through exploration of the web sites, but also how and why that particular structure is in place through interviews. I selected the multiple-case study design, as I examined in-depth the copyright management infrastructure for each of 12 of the 13 CIC institutions listed above.<sup>6</sup> Employing this variation on the single-case design was appropriate because it was the variations within each institution's copyright management infrastructure which were of interest, not the "rare" or "critical" case. When the data gathering process was replicated across the 12 institutions being studied, the findings differed, providing multiple opportunities to compare and contrast various copyright management structures. As Yin notes, however, this methodology does not increase the

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<sup>6</sup> Because I have served in the role of copyright librarian at Penn State University, I have chosen to exclude this institution from the study, as I would be unable to be objective in my observations and analysis.

generalizability of the results. “First, case studies are not the best method for assessing the prevalence of phenomena. Second, a case study would have to cover both the phenomenon of interest and its context, yielding a large number of potentially relevant variables. In turn, this would require an impossibly large number of cases” (2009, p. 56). On the other hand, in a multiple case study each case is conducted individually, with the results reported, and then each conclusion is compared and contrasted with the rest, allowing the researcher to draw conclusions from a pre-defined set of subjects. The data collection methodology outlined below follows Yin’s replication process (p. 57).

### **Methods of Data Collection**

This study took a two-pronged approach to data collection. The first step entailed a systematic review of the web sites of the sample institutions. This web site review process was undertaken from the position of the naïve information seeker—someone looking for copyright guidance but unaware of resources available to her. The following steps were followed:

1. Beginning from the university’s home page, “copyright information” was searched using the institution’s general, site-specific search option
2. The results pages were reviewed, looking for a link that appears to provide any general or specific copyright information directed toward faculty or students.
3. Once such a site was located, the link to that page was followed. The resulting web site was reviewed to determine if another, more general informational site was available. If so, that link was followed. The entire path taken during this process was recorded.
4. When the primary copyright information page was located, the following information was noted: who is responsible for information on the site, what information is made

available, and what mechanism is available that allows a person to ask specific questions.

The information gathered during this part of the research process provided data to help answer the first and second research questions—whether copyright information is readily available and which department has public responsibility for providing this information.

The second step in this process consisted of unstructured interviews beginning with those whose names appear as the copyright contact on the universities' websites. When needed, this sample was expanded utilizing snowball sampling, a process in which the original interviewee recommends another, more knowledgeable person to the interviewer. The information that was gathered from these interviews included:

1. Who is responsible for copyright education, where that person is organizationally placed, and what credentials does that individual hold;
2. Whether this individual has enough resources to do her job;
3. Whether the organizational placement is appropriate in providing this individual and their department a needed level of perceived authority on campus;
4. What the ideal copyright management structure would be?

Responses received during the interview process were analyzed individually, following Yin's protocol, and then were examined across all institutions. The purpose of utilizing both processes was to determine how much of a role context plays in each institution's current structure, and then to develop a model copyright information management program. Both individual case evaluation and review across institutions also provided insight into potential improvements in the organizational structure which could increase the perceived legitimacy of these positions, and

thus provide data in response to the third research question. Both steps—web analysis and interviews—will be replicated for each institution in the sample.

### **Data-gathering Process**

In order to gather the data which is analyzed in this dissertation, I established a series of steps to identify who the appropriate copyright contact at each CIC institution would be. Upon entering an institution's main web site, I conducted the search "copyright information" utilizing each site's local search engine. Upon reviewing the results, I had to determine which, if any, link would then provide contact information for a person or department responsible for providing copyright advice. In some circumstances the site leading to the sought information was quite obvious. In others no clear contact information was evident, even if a general copyright information page resulted. When the former occurred, I utilized the contact information to request an interview with the person who responded. In cases where the latter occurred, I utilized a general "help" function on the web site and asked for contact information for the person who provides copyright help. In all cases I was successful in identifying the appropriate individual or department.

After identifying the appropriate persons, I contacted each and requested a phone interview, scheduled to take between 20 and 30 minutes. Informed consent documents were sent to the participants, signed, and returned. The interviews were recorded and transcribed with the permission of the subject. Questions used to guide the interview are included in Appendix A. To encourage frank responses from each participant, their identity and the identity of each institution has been masked as thoroughly as possible. Each institution is identified by a randomly-assigned number, and any traits which would allow for the identification of any specific institution have been removed. In order to retain individual participant and institutional

anonymity, generalized terms will be used. MLS will be used to identify either a Master's of Library Science or a Master's of Library and/or Information Science. All participants will be referred to as copyright officers or COs. Heads of libraries will be identified as deans, even if librarians at that institution do not hold faculty status, and associate or assistant library directors will be indicated using the terms AUL or assistant university librarian. Any unit within an institution that handles patents will be called a technology transfer office, and finally, any unit on campus that officially represents the institution in legal matters is called the general counsel's office. Additionally, for ease and additional identity masking, all interviewees will be identified as female rather than with gender-accurate pronouns.

### **Survey Instrument**

A copy of the survey instrument used to gather information from the interview participants is available in Appendix A. Because these were interviews conducted over the phone, and the direction each interview took was unique, this protocol was not followed exactly. Each participant, however, did provide information related to almost every question. The following is a brief analysis of the questions posed, and which research questions they were designed to address.

Background information. One question (question three) was designed to gather general background information related to the individual's responsibilities. The goal was to provide an opportunity for the subject to speak freely about their role on campus, leading potentially to broader discussion about the positioning of this individual within the unit and within the university at large.

What is the organizational structure in place to disseminate copyright information to members of the institution's community, including the credentials of the staff and resources



provided? Questions one, two, five through eight, and ten all were designed to elicit responses addressing this research question. These include questions concerning the credentials of the person being interviewed, their placement organizationally within their institution, the fiscal and staff support their unit receives, and other units on campus that provide some level of copyright education and information support. This information not only establishes the context in which each person and their unit operates, but also explores whether there are other units competing for resources and legitimacy within the institution.

How does the organizational placement of the office responsible for this communication and/or the organizational role of the communicator effect the legitimacy of the information provided and the authority of the person providing that information? Questions four, nine, and eleven were designed to elicit the subjects perceptions about the level of perceived legitimacy they have within their organization and the authority they believe they have been granted to execute their responsibilities. Question four does this by exploring whether the person was originally hired to fulfill the role of copyright officer, or if they were reassigned. Either experience may provide some insight into whether the person believes their institution has granted them authority.

Based upon the perceptions of participants and the researcher, what is the relative effectiveness of one structure compared with another? Finally, questions 12 through 15 all were designed to have the subject consider their current experiences and speculate about the components of the ideal copyright information management structure. This discussion included not just organizational placement, but the ideal credentials of a copyright officer and their responsibilities.

## **Human Subjects Research Approval**

Prior to conducting the interviews, I submitted my study plan to Penn State's Office for Research Protections. Because human subjects are used in this research, my study had to be reviewed and approved in order to ensure that no harm would come to those who agreed to participate. My study did receive approval from this office. Each subject was asked to sign an informed consent document (Appendix B), which all participants did. The information contained on that document was also verbally conveyed prior to the interview. Finally, all participants were provided with a transcript of their interview and were invited to make any changes or clarifications.

## **Limitations**

The design of this study resulted in limitations on data gathering, results and their generalizability. One limitation in the design was my reliance on the information on institutional web sites as the starting point for data gathering. If these sites were not current or provided incorrect or misleading information, the amount of useful information I would be able to gather could be reduced. The design of this study also relied on the web site to locate the appropriate person within the universities who could best respond to this study's research questions. If the initial contact either believed they were the appropriate person to answer my questions or were unwilling to provide additional information, again, limited or incorrect data would result.

Another design limitation was created based upon the research sample. While addressed in the validity section, the small size and the homogeneity of the sample group limit the ability to generalize the results. Very different data would likely be gathered from a sample of small private colleges, community colleges, or even master's level regional universities, based upon

the mission of the institution, the resources available, and the extent to which copyright violations are perceived as a threat to the institution.

### **Validity Issues**

There are validity issues associated with this study as well, and, of course some of these validity issues are also limitations in the research design. Generalization is one of the casualties when purposively selecting a sample group, particularly one consisting only of thirteen members. This becomes a validity issue only if the intention of such a study is to generate broad, generalizable results. As Patton (1990) states, “The validity, meaningfulness, and insights generated from qualitative inquiry have more to do with the information-richness of the cases selected and the observational analytical capabilities of the researcher than with the sample size” (p. 185). The intent of this study is to examine the copyright information and dissemination mechanism among research-intensive institutions within the CIC. Perhaps the results will prove informative to others interested in the topic and evaluating their own organization, but the intent is not to have the results be applicable to a broad spectrum of institutions.

Another possible validity threat would be my misinterpretation of the data. I may draw one conclusion from information I glean from an individual institution’s web site as an external reader that has no basis in its practical application for individuals within that organization. One way to reduce this potential threat is to conduct member checks. Through the interviews I conducted with those responsible for conveying and managing copyright information, I either corroborate my interpretation of the information or reassessed it.

My position as a researcher from within one of the selected institutions, and with knowledge of both departments and individuals involved in the activity being studied could also raise validity concerns. The intent is to have those with whom I discuss the usefulness of their

institution's copyright structure be willing to openly and honestly share their experiences with a colleague. One ethical concern could be the perception that I am using previous interactions with individuals as a "tool or strategy for gaining access to data, rather than as a connection," as quoted in Maxwell (2005, p. 84). One means of reducing this potential threat is to approach each interview in a manner that makes the respondent a part of the conversation rather than just an information resource. Offering them the opportunity to review my transcriptions of our conversations would be one means of accomplishing this, which I did as part of my finding review.

Finally, the potential for researcher bias exists in all types of studies. In this particular instance, my experience as a copyright information manager created the possibility that I might be looking for a specific result when gathering data, influencing my interpretation of that data to support my personal experience. While it is impossible to eliminate my experiences, and perhaps not useful to do so, as these experiences generated my interest in this topic, I do need to be aware of the potential negative influence my personal position could have on my research results. Using some of the same tools, such as member checks and comparisons of results among the sample institutions, will help verify results and reduce the effect of researcher bias. In addition, just being aware of my potential bias prompted me to review results carefully.

The application of Mintzberg's organizational theory to examine a unit's level of authority within a higher education institution provides a useful framework in which to explore the dynamics among organizational placement, individual authority, and legitimacy. And, selecting the member institutions of the CIC provides a rich sample population of organizations. Consisting of public and private, very large and smaller, urban and land grant, the CIC offers unique opportunities to explore various copyright organizational structures. Their status as large

research institutions also means that they have the resources and, theoretically, the need, to have a copyright information structure in place, in addition to the other intellectual property-related offices and activities discussed in the literature review (technology transfer, network security and plagiarism prevention). Utilizing the multiple case study approach acknowledges the uniqueness of each institution, and allows for an examination of varying institutional cultures which have an influence on how each organization is structured.

Because so little has been written on general copyright information management, secondary resources can provide only a context within which it can be explored. Primary data need to be collected, and utilizing both web site reviews and telephone interviews with the copyright offices at each of the CIC institutions provides that information needed to answer the research questions posed. The web site reviews of each institution provide two pieces of information: how easy/difficult is it to locate copyright contact information and who is that primary contact. Interviews with those primary contacts offer both objective information—credentials, reporting lines, organizational placement—but also their individual perceptions about the influences of these items on their legitimacy and authority. Of course, when conducting any type of research, some questions about limitations inherent in the methodology and validity of results arise. Acknowledging those limitations and structuring the study to counter their impact are ways in which to minimize their effect on the study's outcome.

## Chapter 4. Interview Results

Before analyzing the results, two terms used throughout the interviews require definition and some background information. Within the CIC institutions copyright management is often conflated with another area called scholarly communications. While that term has different meanings depending upon the individual or institution, it generally refers to the life cycle of scholarly publications. Cullen and Chawner (2011) define scholarly communications as, “the creation of new knowledge through research and scholarship, the submission of findings to a journal in the discipline, rigorous peer review, publication and dissemination (usually through library subscriptions), making new knowledge available to a community of researchers who can further build on it” (p. 461). More specifically, when discussing the responsibilities of someone designated as a “scholarly communications” professional, the meaning tends to focus on managing the intellectual output generated by an institution’s faculty. This does not include patents, which are treated separately within technology transfer operations, but publications specifically. Included in these responsibilities would be assisting with the negotiation of publication contracts to permit an individual to retain their copyright or to permit some version of their work to be posted within an institutional repository, and educating faculty about options and opportunities related to copyright retention. The goal is to allow more control over works, rather than automatically transferring publication copyright to a commercial publisher and giving up all rights to use it subsequently in ways permitted under copyright law. Scholarly communications activities are, within the targeted institutions of this study, managed in the university library by librarians. In the following interviews, the distinction between these two responsibilities will be made clear, as while both copyright and scholarly communications are

concerned with copyright, the latter does not necessarily include general copyright education responsibilities.

The second term requiring definition is “open access”, which refers to a specific manner in which scholarly information is disseminated. According to Drott (2006), “one of the widely influential definitions of open access come from the Budapest Open Access Initiative (BOAI)” which met in 2004 (p. 79).

By “open access” to this literature, we mean its free availability on the public internet, permitting any users to read, download, copy, distribute, print, search, or link to the full texts of these articles, crawl them for indexing, pass them as data to software, or use them for any other lawful purpose without financial, legal, or technical barriers other than those inseparable from gaining access to the internet itself. The only constraint on reproduction and distribution, and the only role for copyright in this domain, should be to give authors control over the integrity of their work and the right to be properly acknowledged and cited.

This publication and distribution model is in sharp contrast to the traditional scholarly publishing model, in which a commercial or society publisher manages the peer review, editing and dissemination process, and then charges subscribers a fee for access. The BOAI offers two strategies that can be used to make open access material available. The first is self-archiving, meaning authors retain the right to post pre- or post-publication versions of their works and make that version freely available through some type of repository. The second is to publish in open-access journals. These are journals that do not charge subscriptions or access fees, but shift the publication costs either to the researcher or to institutions through membership fees, or both.

The reason why one interviewee refers to open access as a political issue is because some librarians, as a potential antidote to the high cost of serials pricing, encourage faculty members to either negotiate their publishing contracts to permit pre-or post-print versions of their articles to be archived, or to seek out open-access journals, thus advocating for one form of publishing over another.

### **Institution One**

For each institution, as noted earlier, a search was conducted on the university's website, consisting of the simple phrase "copyright information". The first result on institution one's website was the university's copyright office (exact department names will not be used, again, to mask institutional identity). On this resulting page specific contact information for the copyright officer is provided: name, email address, phone number and departmental address. In this instance the availability of copyright information and guidance, as well as the identity of the person responsible is clear.

The copyright information office identified within institution one is located within the university's library, reporting directly to the Dean of Libraries. The person in this role holds both a master's in library science (MLS) and a Juris Doctorate (JD), and thus is classified as both a librarian and a member of the faculty, as librarians have faculty status. The interviewee noted that while she reports to the Dean of Libraries, she is the copyright officer for the entire university, and thus there are times when she works directly for the provost or the president on issues.

Copyright is the sole responsibility of the copyright officer at institution one. She stated that her role is to "advise and educate [the institutional community] on copyright issues." This includes providing one-on-one consultations, teaching instructional sessions for various groups, guest lecturing in classes and monitoring copyright-related legislation to ensure institutional compliance. She noted that dealing with "ownership of works created here" does not constitute a large part of her position, meaning that scholarly communications issues do not consume a significant portion of her time, although a change is occurring. "This is where I am seeing the tide turn in the past two or three years, is the whole ownership issue, with faculty trying to retain



some of their rights, whether it's to deposit in the IR (institutional repository), or whatever it might be." This CO is also the official contact who receives Digital Millennium Copyright take-down notices from external copyright holders, but in fact those notices are handled through the information technology department on campus, which manages network security and enforcement.

Information technology is the only other unit on campus that has any copyright education responsibilities according to this copyright officer, although their work is focused more on copyright as it applies to content being uploaded into the institution's course management system. Because the copyright officer has been in her position for twelve years, she has had the opportunity to build strong relationships with information technology colleagues. "We have a good relationship with the enforcement piece, the security piece, as well as they have a whole educational team and development team and so if there is something that is coming on, I have my contacts in there and they know me."

CO 1 noted that her long tenure in her position not only has helped build relationships with information technology, but also with campus faculty and staff. But, despite this long tenure, campus-wide knowledge of her position and the role she plays is limited. Even though she sends brochures outlining her services twice a year to faculty, and originally gave a number of presentations across campus, this copyright officer finds that knowledge of her services is not universal. "It's more word of mouth at some stages, because if you help someone in a department, it kind of floats through everything else." As a practical matter, however, because of a lack of resources, meaning other staff devoted to this same activity, CO 1 understands that she cannot possibly offer services to the entire university community at a single time.

When I first started, I met with all the different deans and department heads, and I did presentations at all the faculty meetings, but after a while it gets too crazy, and there is a

balance. I'm only one person, and you have how many thousands of people there. So, I want business, but I don't want too much. I want to be able to give good advice and respond in a timely manner. And, the likelihood of them hiring, er, giving me an assistant with another JD in here is slim to none.

The only other person who is part of this copyright management office is a part-time staff assistant.

When asked about what works well about her current organizational placement, institution one's CO commented that it is important that her office serves a university-wide constituency, rather than just the library and its faculty and staff. She noted that it is important, at her institution that she is a member of the faculty, as that gives her more leverage when working with her fellow faculty members. She also articulated the value of having someone with a law degree holding the office. One of the challenges about the current structure, she said, is that it does reside organizationally within the libraries, and consequently some people believe that its intent is to serve only the libraries. When asked what her ideal copyright information/management office would look like, she gave a two-part answer:

If there's in-house counsel [a University-employed attorney officially representing the University], I think that's where it should be, but it should be dedicated to that. It should not be an associate General Counsel that deals with many other things and copyright just happens to be one of them. If there is not in-house counsel, then I think the Provost's office would work well, depending upon who the provost is and what the initiatives are.

Finally, when asked if she feels she has administrative support to do her job, this CO believes that financially she has the resources she needs, depending on the current state of the university's budget. Because she also has direct contact with both the provost and president, with whom she works when an issue is broader than the libraries, she believes that administratively she has the authority to speak for the university on copyright education issues. The only concern she has is that her advice is not always taken. But, when this occurs, she is comfortable that she has

provided the best advice possible, she documents her position, and then allows the university to take whatever action the administration deems appropriate.

## **Institution Two**

After searching for “copyright information” on institution two’s website, I located the web page which provides information resources related to acceptable use of copyrighted content was the fourth result. Higher ranking sites included a Healthcare site, an unfinished page and a site related to distance education. The fourth site takes you to a general information page managed through a central university office. No specific department can be determined when examining the URL. This second site provides information not just on copyright, but on broader web tools and resources. A specific link on this page, under the heading “Policy”, takes one to a page labeled “Copyright, Fair Use and Infringement.” This link goes to a site entitled “Useful Web Resources on Copyright Law and Fair Use” which the university’s information technology department manages. A brief overview of Fair Use is provided, then links to other resources, the first of which is to a university library’s managed web page entitled “The Copyright Law and Fair Use.” Buried under four layers of very general web sites, with no indication of contact information, is a web site that offers one link for contacting a person, which is a “Getting Help” link on the header of the page. Selecting that takes you to another web page that has a link for general questions, which generates a form to email a librarian.

In order to make direct contact with the person responsible for answering copyright questions, I submitted a general question asking how much of a video I can digitize and make available to students without violating copyright law. I received a response from a staff member in the libraries which referred me to yet another web site at Stanford University. I responded to that email directly, explaining this research project and asking for a contact name at institution

two. I was then referred to the institution's Office of the General Counsel, whom I then contacted. They refused to participate in this study, citing a lack of time.

### **Institution Three**

The initial result after performing the "copyright information" search on institution three's website was the institution's Copyright Information Center. The site provides general information resources defining Fair Use, requesting copyright permissions and distributing copyrighted work. These resources were gathered as a cooperative activity among the library, information technology, the provost's office and the general counsel's office. Interestingly, of all of these units, the site refers those who have additional questions to the general counsel's website. Navigating to this site reveals seven attorneys, one of whom is responsible primarily for intellectual property issues, including copyright and technology transfer. This is the person who was interviewed from institution three.

Copyright officer three, as a member of the Office of General Counsel's staff, does have a JD. She reports to the general counsel, who is a vice president at this institution and reports directly to the president of the university. As the primary intellectual property contact for the university, CO 3 states that her responsibilities include, "dealing with any legal issue that regards intellectual property, including copyright at the institution, from policy formation and revision to answering daily questions about Fair Use or about need for permissions or about publications." This institution has an active university press; therefore CO 3 works closely with this unit to ensure permissions are in place to reproduce works as well as protections for the copyright of works produced through the university press. One activity lacking in this CO's portfolio is education of the university community through presentations. While she states that she does them, they are rare.

When asked if she has enough resources, including staffing, to conduct her work, CO 3 indicated that she did not. Because copyright information management is just a part of this CO's responsibilities, she noted that she does not really have the time or resources to devote to any of her areas. This is the case, even though other units on campus provide similar copyright information dissemination services. Both the university library and the university press provide extensive copyright information on their individual web sites. And, representatives from both of these organizations, the visual learning center and the provost's office, along with the CO, comprise a campus-wide copyright working group, which "generates educational content on copyright issues for the library's website. We work on copyright policy for the institution and address other higher-level copyright questions as they come up." Even with this working group in place, members of which represent different units across campus, CO 3 indicated that decentralization of copyright information can be a challenge. She stated,

I think there can be a lack of consistency and a lack of coordination in instances where consistency and coordination are a good thing. Consistency and coordination are not always a good thing! Finding the right balance between a centralized place where these issues get raised but without unduly restricting the necessary flexibility that certain parts of the university need to have in order to do what they have to do is the challenge.

Another challenge, beyond consistency and coordination, is accuracy of information provided. CO 3 knows that others on campus are providing copyright guidance, and has some concerns about the validity of this information, although she also acknowledged that a number of people on campus, particularly librarians, are very knowledgeable about copyright issues.

The organizational placement of copyright information management at institution 3, according to the CO, creates a high level of legitimacy, both for the office itself and for her in her role as CO. In discussing the benefits of having her department administratively located directly below the president of the university, CO 3 stated "this office is well respected within

the administrative structure of the university, and so what we say is paid close attention to. And, I think having those kinds of decisions made by an office that is viewed as having the authority to make them is a key thing.” And, the institutional respect for the general counsel’s office is reflected in the authority CO 3 believes she has to perform her job. If someone on campus chose to question her guidance, and appealed to her supervisor or the provost, she feels confident that her expertise would be respected and her position upheld.

Finally, in spite of the level of legitimacy and authority CO 3 ascribes to her office, she believes that improvements could be made to copyright information management at her university.

I think it would be really handy if we had—I’m not talking about somebody in the legal office—but if we had an office or person either in the library or in the provost’s office who was either primarily or exclusively the copyright person for the institution—who had the authority across the institution to address copyright-related issues. That would be great, because sometimes when you are a lawyer, you need to have a client, and sometimes someone in the library calls and wants to know if they are doing or creating a policy that says X is o.k., it’s sometimes nice to have a centralized person who has the responsibility for the institution as a whole and keeps the big picture in mind for the institution—to bounce things off of and to advice, rather than just answer the discreet question. I think you would end up with more continuity and deeper thinking and better resources around copyright issues if we had somebody in that kind of position, and we don’t.

This person, according to CO 3, would find it very helpful to have a JD, but acknowledges that it would not be essential. She could be a librarian or someone with other credentials, but, to retain the legitimacy of the office, CO 3 noted that this person should not be administratively under the library, but should be located in the provost’s office.

#### **Institution Four**

The standard copyright information search conducted from institution four’s main website resulted in a specific page entitled “Copyright Information,” located on the university library’s site. This guide provides a number of resources, including local contact information,

general copyright website links, and a bibliography of recent publications on the topic. I contacted the librarian responsible for putting together this guide but is not the official copyright officer. She provided contact information for the person responsible for copyright information, whom I then contacted.

CO 4 is a librarian who has worked for institution four for over 23 years, but took on copyright responsibilities only five years ago. Her primary responsibilities focus on distance learning—providing technical assistance to remote students and supporting the course management system and other on-line learning tools. CO 4 indicated that copyright information management comprises about ten percent of her portfolio, and was added only when the person previously responsible left the institution. Copyright-related responsibilities include providing advice and training and managing a newly-hired assistance copyright librarian, who does not have a legal background. CO 4 also works with a loose coalition of others, both in and outside of the libraries, who manage activities with copyright implications. They include the person who compiles coursepacks and assists faculty in clearing rights for online course content and a member of the general counsel's office. Members of this coalition are obviously not under a single person or unit, which creates a level of decentralization CO 4 believes creates challenges for the rest of the university community. While some units have moved under the library, such as coursepack creation, others still operate independently. Even the library's own reserves department, which clears rights for electronic reserve content, operates outside of CO 4's purview.

When asked if she believes she has the authority to do her job, CO 4 noted that she has been on campus for a long time, and has built the relationships necessary to perform her copyright-related responsibilities effectively. The fact that she works closely with online course

designers and manages the helpdesk for online courses means that she is aware of infringing activity. She does not address these issues directly, however, unless a situation arises that would provide her with the opportunity to discuss course content with that faculty member. This does not mean that faculty members listen to CO 4 when she raises copyright issues. When asked what she does when this happens, CO 4 indicated that she does not pursue the issue, but does document. “Remember, all of my opinions are in writing. If that guy gets caught, the first thing they are going to ask here is did you work with the copyright librarian? I’ll be contacted, and I’ll say yes, and this is what I said.” This response indicates that CO 4 has her institution’s authority to provide copyright advice, and supports her when someone discounts her opinion.

Despite her success in gaining the authority to speak on copyright issues for her institution, CO 4 does not believe that the current organizational structure of copyright management is effective, although she is comfortable with its location in the library. “I really think there should be one all-encompassing unit within the library that handles everything related to copyright. No matter who it reports to—probably the director would be a good thing—and if we could incorporate even other aspects of intellectual property like scholarly communications in with this whole thing—that would be so perfect.” And when asked who should run such a unit, CO 4 said that whoever that person is, they should be devoted full-time to copyright information management, generally defined. In terms of credentials for such a person, CO 4 thinks it would be useful if they held a JD, because with the credential comes a level of respect. But, she also notes that many people would much rather not speak to an attorney. “I’ve had units on campus say ‘No! I want to talk to you—I don’t want to call the attorney.’ ... a lot of people here simply feel that, I just want a quick answer. I don’t want somebody to drone on and on at me and to exacerbate or extenuate this process any more than it has to be.” When asked if putting such an



office under a different administrative unit would give it more authority, CO 4 said that she thought it would not matter, as long as it was widely known that whoever was in the position had a strong working relationship with the general counsel's office and would have their support if needed.

### **Institution Five**

Institution five has a Copyright Resource Guide, which is the first result when searching for copyright information on their website. On this page is a link to contacts, which takes you to a site that provides contact information for a variety of copyright-related issues, including copyright complaints against the institution, teaching and learning questions, use of institutional logos and trademarks and policies on intellectual property. For the purposes of this study, I selected the Teaching and Learning contact—where I would likely look if I were a faculty member with a copyright question. That link took me to a site where a web form is available to submit questions to someone in this institution's information technology unit focusing on teaching support. The person who responded to my query provided the name of the copyright contact, with whom I conducted the interview. This person is a librarian, reporting to the associate university librarian responsible for collections and scholarly communications.

CO 5 has held a position within the library since 2003, beginning as a reference and instruction librarian and then moving to access services, where she was acting head for three years. At that point the library eliminated the position, and asked CO 5 to take on copyright management as part of her portfolio. Her professional background in access services, which includes course reserves and interlibrary loan—both copyright-intensive activities—made her the logical candidate. In order to establish knowledge of copyright beyond these two areas, CO 5 participated in the Center for Intellectual Property (CIP)'s copyright and leadership certificate

program, where she completed both levels during her first two years in this new position.<sup>7</sup> She has held the position now for five years.

CO 5's copyright responsibilities focus on institutional repository-related issues. She helps to develop policies related to local journal publication and dissemination and for her institutions digital library program (digitizing library collections and making them available online through the institution's repository). Also part of her responsibilities is conducting outreach to faculty members on a variety of copyright issues related to publication, teaching and research. Outreach activities include sending postcards to faculty on campus and conducting seminars for both faculty and graduate students on scholarly communications issues, copyright being one component. On rare occasion she will also help with licensing resources, although institution five has a licensing librarian who manages most of that activity. To help manage these activities, CO 5 has the help of a graduate assistant who is shared among all who work within the scholarly communications department, with which CO 5 is organizationally and managerially affiliated. CO 5 defines her position very narrowly, in the sense that she will participate in policy creation—offering guidance on wording, for example—but does not consider enacting such policy as part of her portfolio.

While other units on campus provide copyright-related management services, CO 5 works primarily with the staff in the office of general counsel, who also respond to faculty questions. She noted that “they tend to be fairly slow, which is how we decided to get started in this in the first place.” Information technology at this campus tends to respond more to network abuse issues, such as illegal downloading and DMCA responses, but the people in this

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<sup>7</sup> Managed by the University of Maryland's University College, the CIP's mission is to provide “a critical forum for authoritative information and programming about intellectual property management.” (CIP website <http://www.umuc.edu/cip/about.cfm>). The CIP offers a number of educational opportunities, including an annual symposium and their certificate program.

department do not provide copyright guidance to the campus community, which is the responsibility of CO 5 and legal counsel. There is also another library employee on campus, based in the music library, whose responsibilities mirror those of CO 5 in the area of clearing copyright permissions, but she does so strictly for music and recordings, not for other materials.

CO 5 believes that her current placement within the scholarly communications department within the library at her institution makes sense, because copyright issues are integral to the broader issues managed within this department. She also believes that she would be administratively supported were a faculty member to disregard her advice and create issues for the institution. Her most interesting response came when asked what changes she would make to the current copyright management structure. “I’ll be honest—if someone else were doing it.” Because she was moved into this position, rather than independently selecting it, and because of her initial lack of expertise, CO 5 feels very uncomfortable serving in her current position. “I’ve just never felt horrendously confident because I was moved and spent the first two years learning. I can see that things need to happen—more outreach could be done and I just haven’t felt confident enough to take that next step.” When asked what she thinks would have made her more comfortable, she said that if she were more outgoing and more confident in her knowledge, she believes she would be more effective. Interestingly, however, CO 5 does not believe that the person who should have her job would need a JD. While she believes the knowledge gained in law school would help the individual understand the intricacies of legal cases and the legal system, she does not see a similar value when interacting with faculty.

There’s a lot I just don’t understand about how the legal system actually works that I think could be beneficial. Whenever I get asked to write anything about the Google case, I don’t really understand all of the ramifications if this happens and how these motions get filed—I just don’t understand that end of things. And, I think that would be very useful from a policy end of things. As far as advising the faculty, I can’t say that it’s been all the useful (having a JD). I read a lot about court cases and the law, and I feel

that I have a pretty good understanding of Fair Use and use in the classroom and all of that. So, I feel that I can answer those types of question. Really, where I think it hinders me is where it comes to other policy-type questions.

Finally, when asked what her ideal copyright management structure would be, CO 5 indicated that having it in the library serves a useful purpose, because so many copyright issues originate within that environment. She also noted that people on campus see the library as a “more neutral” source of information, rather than university counsel, which “is only interested in protecting their assets.” But, when asked if a different organizational placement, such as in the provost’s office might make those on campus more prone to adhering to the advice offered, CO 5 states, “I do, actually, and I think also if it were to come from legal counsel it would also lend more credibility, so there is that aspect. They also would likely be a bit more conservative, I think, than what I might be. I’m not very far out there, but I do try to get people to use Fair Use completely and not shy away from it.”

### **Institution Six**

The first page I retrieved when searching institution six’s website was for their copyright office. This website is part of the university’s library website, and provides a generic copyright@...edu email address to send questions or requests for instruction. In response to my email requesting an interview, I received a phone call from a half-time librarian, who provided the name and contact information for the head of this department.

CO 6 holds a JD but no library science degree, although she refers to herself as a librarian. She has been in this position for four years, and during that time has administratively been reassigned several times within the library’s organization, from reporting to an associate university librarian responsible for publishing activities to the dean of the library, and back to a different associate university librarian. “It’s moved around a lot for a lot of odd, quirky

administrative reasons. I'm not sure it's in the right place, but I'm not sure where it belongs myself." Her responsibilities are similar to other COs. Consultation is a large part of her portfolio—from teaching questions to faculty publishing issues. The challenge this raises for CO 6 is that, because she is an attorney, she needs to constantly clarify with people that she is not providing legal advice, but guidance in how to think through issues. Another component to CO 6's position is helping to develop policy. For example, this institution is acquiring a digital video management system, and policies need to be established in order to delineate what can and cannot be made available through this system. The primary challenge in this area is institution six's aversion to establishing policy related to copyright.

It is very difficult to get that (policies) here, which means I frequently feel like I'm reinventing the wheel over and over until somebody at the top says, 'wait a minute—why don't we have a policy?' You have to gently remind them that it is because you didn't want one. There is a sense that if you have a policy and you don't follow it, then you are in worse shape than if you don't have one at all, which is sort of borne out, but not having policy is really an inefficient, poor approach.

The third primary component of CO 6's position is outreach. She conducts seminars and workshops on general copyright and Fair Use-specific issues, as well as programs on special topics such as exceptions to copyright law. Finally, unique to this institution, CO 6 is the primary investigator on a grant related to copyright, which consumes approximately 20 percent of her time.

CO 6's office provides centralized copyright assistance; no other unit on campus offers the same services, which CO 6 finds preferable. "I do think that (having a centralized office) is better, rather than having disparate advice all over campus." If specialized advice is needed, CO 6 believes the best solution is to retain an expert in that field, rather than rely on advice from someone internally who may not have the in-depth knowledge necessary to provide sound guidance. Information technology does manage DMCA take-down notices, which is common

among the CIC, although at one point CO 6 was asked, at the time of a retirement, if she wanted to take over that role as well. She indicated that she does not have the resources to fulfill her current responsibilities, so taking this on would not have been wise. CO 6 has one half-time librarian who is permanently assigned to her unit, and two who work exclusively on and are funded by the grant she manages, but no secretarial assistance, which she finds to be a burden. She does, however, indicate that having a greater number of people reporting to her would not improve the situation. “I, right now, would not want a bigger office. Like, if you said to me here is a bunch of money to go hire three more people, I don’t know who I’d hire.” This statement speaks directly to CO 6’s perspective on credentialing a CO.

When asked about whether someone in her role should have a JD, CO 6 provided great insight into the varying issues related to holding this credential.

There was a terrific woman doing this role before me. She had a publishing background, not a lawyer, and had started working part-time at the library while she was at the School of Information, so she got this function launched. The reason I mention this is that there is a distinction between having a lawyer and a non-lawyer in the role. At a certain point the library felt that, and I cannot speak highly enough of this woman, but they felt that they wanted to have somebody with more chops.

The value of having the JD has little to do with the capability of the individual in the role, but does have an effect on the weight that individual’s advice carries. CO 6 is concerned that, because copyright management is the “candy of the day” that unqualified people are being moved into positions similar to hers, and are being given inadequate training.

I have the sense—I don’t know if it is borne out—there are librarians who really have library backgrounds who are being moved into these roles, and I think the scope of their experience is not broad enough. I went to one of the CIP (Center for Intellectual Property) meetings a few years ago, and I thought it was pretty good. I’m actually kind of troubled by what they are doing, because I think it implies a lot of knowledge and experience, I mean people walk away with those certificates thinking they’ve got what they need.

Another concern CO 6 expressed is the perspective librarians tend to bring to such a position. While an attorney tends to view a copyright question in terms of the law, CO 6 believes a librarian may provide advice based less upon the law and more upon a professional agenda.

I think people coming out of the schools of information are more confident about their judgment, and I think it's kind of myopic. I also think they are coming out of political environments where open access is a political statement. And, unfortunately, I think it undermines the ability to move these things forward. Man—they drank that Kool-Aid.

These statements do not mean that CO 6 is completely against a librarian holding a position similar to hers. She discussed at length one particular person who is an expert at copyright management but does not hold a JD, expressing her great admiration for the work she does. But, CO 6 also indicated that this person is the exception, not the rule.

In a related conversation, CO 6 offered insight into why, in her opinion, despite the value of having a JD in the role of copyright officer, many libraries do not hire someone with this credential. Academe, but libraries in particular, are not willing to compensate an attorney serving as a copyright officer at the same salary as that attorney could earn outside of a university setting.

Some of us are really undercompensated for what we bring to it. I would consider myself, for a librarian at institution 6, I am very well compensated. For what I actually represent and what I bring—not even close. I want to be really clear—I love my job. But, I'd like to get paid. I've had that conversation privately with a couple of colleagues in this group (university copyright lawyers), and I think the idea that you could hire a librarian out of a school of information for 43-45-46,000 (dollars). Even at twice that, you're not getting what you need.

The message CO 6 offers is that the need to have a copyright officer in place, either to offer some level of service or to show that issues related to copyright information and management are important to the institution may be made without the willingness to fiscally support it. The literature review suggested that this is the case, at least relative to other intellectual property

activities. A counter position, as CO 6 noted, is that in this case and others, a JD in this position is not considered a practicing attorney, as they are not permitted to give legal advice.

Placement of this office within the library at institution six appears to have been historical, based upon CO 6's discussion about her predecessor. She observed that, while there was a member of the general counsel's office on the search committee when she was hired, CO 6 indicated that the general counsel did not want her position to be within the counsel's office.

I know they didn't want this position there because they wanted to clarify that a) it's not legal advice and b) when you are in the counsel's office your client is the university, which could be adverse to faculty and students at times. I don't know if that is right or wrong, you know, that decision. I understand it, and I don't have a formed opinion about it.

While the general counsel did not believe hosting this position was appropriate, CO 6 stated that, in fact, the library is the best location for a copyright officer. "I think people are comfortable approaching the library. They feel supported by the library. They feel it is a place for answers, which I hope it is—sometimes with copyright it's just more questions. They intuitively understand this is a place of service, and so it is a place where they don't feel stupid asking questions." When asked if any other place might be more appropriate, CO6 states, "I don't think you would want to go to an administrative building. I also think having it in the library—you are around all of these issues all the time. I think the library actually makes a lot of sense. I can't think of a better place."

Interestingly, despite the value CO 6 places on holding a JD, and the relative "chops" this credential provides, she still does not believe that she has the authority to do her job. She notes that the level of authority she and her advice are given differ from person to person. In a particular example, CO 6 told about being asked to review a contract written for a visiting scholar whom the institution was compensating. She suggested that work-for-hire language be



inserted so that, if this person wrote something that the university wanted to use, no issue would arise. The administrator refused to accept this advice, even though the result was the potential for conflict between the scholar and the institution. “I think what frustrates me frequently, and I think it goes to your question, is that I will give advice or resources or whatever, and if they’re not wanted, like, if people don’t want to take their medicine, I can’t make them take their medicine.” The dean of the library has encouraged CO 6 to be more assertive, and to report incidents when advice is ignored, particularly when the issue relates to institutional reputation. While this suggests support from library administration, CO 6 is not sure whether she is heard or if the dean consistently follows up.

### **Institution Seven**

Searching institution seven’s website for copyright information led directly to the university library, where a link under “services” for copyright was located. This link takes the searcher to the university library copyright program site, where specific information about the CO and services she provides can be found. Utilizing information on this web page, I was able to directly contact the CO at institution seven and set up an interview.

Like CO 1, CO 7 holds both an MLS and a JD and reports to the associate director of the library responsible for academic programs, although, at times, she also reports directly to the dean of libraries. Those who developed this position believed it was important for the incumbent to not only hold a JD, but to also be a member of the bar. “I was hired having graduated from law school, but before I took the bar exam, and the library, as part of the choice of administration, was specifically that they wanted the authority of a member of the bar, even if I’m not a practicing lawyer. And so they gave me flex time to study for the bar and ...they paid for the study course.” Like many of her other CO colleagues, CO 7’s responsibilities focus on

consultation and education. She spends much of her summer hours providing individual faculty and graduate student consultations, primarily about their academic work or dissertations. She is very careful, however, not to provide legal advice, as institution seven has a very strong culture of faculty owning their own work. During the academic year CO 7 spends more of her time offering pre-scheduled and on-demand workshops, both in person and on-line. One of the demands for these workshops comes from an institutional requirement that anyone who is certified as a primary investigator on a research project is required to earn continuing education credits in responsible research conduct every three years. Two workshops CO 7 offers qualify for this credit. Also, CO 7 helps shape institutional policy related to scholarly communications and publishing issues, and works with a collaborative working group of liaison librarians who address scholarly communications issues. Finally, as a representative of her institution, CO 7 participates in national copyright initiatives and policy development.

Beyond this local collaborative working group, which does not focus on copyright specifically, three other units on campus provide some level of copyright information. The general counsel's office addresses copyright questions, but only if the university's legal interests are involved; they do not address individual faculty questions about their own research. The copyright permission center also provides some guidance on copyright issues, but their main purpose is to clear copyright permissions. Because of their limited scope, advice employees at the copyright permissions center provide may not reflect the advice CO 7 would offer.

I had a graduate student author once who came to me in frustration. She thought she had to pay to include an article she had authored herself—she thought she had to pay to include it in her dissertation, because that is what the copyright permissions center had told (her). All they had heard was “I want to reproduce this article”, and they explained how to pay for permission to do that. When I went and helped this person look at the policies of this journal in which she had published—they don't even have an exception just for student authors, they have a broad author reuse policy. This group (copyright permissions center) just doesn't know to look at an author reuse policy.

CO 7 noted that staff in information technology may also provide some copyright guidance to faculty working on projects. She communicates with these people frequently, and if they encounter a question they do not feel comfortable answering, they refer them back to her.

The fiscal support CO 7 receives from the library is highly limited, although the administrative support is strong. Like CO 6, CO 7 has no support staff, and finds that this can be a tax on her time, but she does not see it as an undue burden. “Most of the time the lack of administrative personnel is not a big problem, partly because I’m not particularly good at delegating things.” Unlike CO 6, however, she does not have any additional professional staff to assist her.

I am the only one who can give the workshops that I give. I have no backup on that. We’ve talked about trying to see if any of the other liaison librarians would like to learn to deliver the content, but both (my supervisor) and I are kind of skeptical that anyone would want to do that, because the way—these workshops are set up to be delivered by somebody with a JD—by somebody with specific legal experience with copyright.

She does have funding to support professional travel, and the administration is willing to provide other funding when needed, as when CO 7 was studying for the bar. Her administrative support is more expansive—encouraging creativity and experimentation. “When I say things like I want to set up a sandwich board on the mall outside my office and see if anyone wants drop-in copyright help, my boss gives me a weird look, but says ‘yeah—give it a go!’ So I don’t feel shut down in exploring ideas.”

Within the library, CO 7 also believes she has the authority to do her job. “I actually really do feel, certainly within the libraries, that there is a lot of respect for my expertise, specifically on copyright issues from high-level administrators. I do feel like people will ask me something and hear my answer and respect that I know more about that than they do sometimes, which is a very good, strong feeling.” Outside of the library, CO 7’s JD degree provides the

authority, particularly among the teaching faculty, that having only a MLS would not provide. “Often a department liaison librarian will get some feedback from somebody in their department—some kind of static about why would we ask the libraries about something like that. Contacting them back myself and saying I have a JD seems to unravel some of that.” CO 7, however, does not think that a JD is required for this position, but does see that it is useful. “The JD works for the people who are kind of jerks about the librarian side of things, so I suspect for some of those people a Ph.D. in any field would somehow make someone more qualified than a library degree.” The JD provides more than a credential to build legitimacy according to CO 7, who noted that having a broad understanding of the legal issues behind copyright information is helpful. An alternative, though, could be someone who has worked in a high-profile position within a university and built a positive reputation. With their credibility already established, this person may be able to take on copyright management responsibilities and be effective in this role. A poor choice would be a newly minted attorney, because they likely would not have the experience of working in higher education, the kind of experience many librarians tend to possess.

Faculty response to copyright information from a librarian as opposed to an attorney is also related to the organizational placement of the copyright office in the library at institution seven, although in a rather contradictory way. Like many of her copyright officer-colleagues, CO 7 sees benefits to having the office located within the library.

I think the placement of this position in the library is particularly helpful in building good relationships with faculty. And, it’s on a number of different levels: one is that faculty members and students and other staff on campus already think of the library as people who help with issues surrounding scholarly communications, and so there is already some feeling that these are the people you go to on this stuff. That’s a factor of the existing scholarly communication work, but I think more broadly, not specific to (institution seven) there is already some feeling that libraries are places that know about copyright—just broadly in academe, and so that makes some sense to faculty too.

As others have noted as well, CO 7 indicated that being outside of an administrative unit is also useful, because faculty have an innate level of distrust for administrators and their motives.

The fact that I'm not in the general counsel's office means that for the people who are a little paranoid about the university trying to take things from them, which is surprisingly not that uncommon here, there seem to be a lot of people who are a little worried about that, for those kinds of people, I'm not university administration in a way that makes them as nervous about that sort of thing. So, I do think the positioning in the libraries has a lot of value both because these are issues that are seen as areas that libraries have expertise in, and simply because it's not located in central administration.

Another issue related to organizational placement of this office is the relative hierarchical rank of the position. CO 7 observed that her institution's general counsel is nervous about the existence of her position and her office. If she were to be of an equal rank, CO 7 believes that the general counsel would have to work with her directly, and that would prove useful to her office and to the university as a whole. This does not mean, however, that the office itself would have to be outside of the libraries.

### **Institution Eight**

At institution eight the copyright information search once again brings you to a web site the university library manages. This site provides basic copyright information, including information about Fair Use and the public domain. One tab at this site is called "personal copyright" which, when selected, takes you to a brief web page focusing on author's rights. A link on this page takes you to this institution's scholarly communications and publishing web site, where a general email is listed for general copyright questions. I sent an email to this address, and then scheduled the interview with the person who responded.

Institution eight is unlike any other within the CIC. Centralization of services, not just copyright, is not historically supported, according to CO 8. There are many people on this campus who address various aspects of intellectual property—classroom use, scholarly

communications, and patents, for example. While these various units communicate, there is no single organizational structure in place. So appropriately, CO 8 is actually not a copyright officer—in fact neither copyright nor scholarly communications is part of her title. She is a unit head, holding an MLS along with a subject master's degree. She responds to queries sent to the general copyright email address, and then forwards questions to others when appropriate. CO 8 spends between five and ten percent of her time on general copyright issues, focusing more on scholarly communications questions rather than those that have to do with instruction, but she indicates that any division of responsibility is rather informal. Copyright-specific responsibilities include conducting workshops in conjunction with the university's legal counsel and helping graduate students as they are submitting their dissertations. CO 8 has been at her institution for eight years, and her position has evolved from focusing on scholarly communications and the institutional repository to her current position. The common thread through the changes in responsibility has been retaining scholarly communications as a responsibility.

CO 8's position changes reflect the decentralized, uncoordinated condition of copyright information management at institution eight. Within the library CO 8 indicated that there are two people, herself and the individual responsible for reserves. Another librarian who holds an administrative office is considered the copyright officer for the library as a whole. These three librarians have copyright information responsibilities for only a portion of the library structure, as different subject libraries are administrated separately and have their own copyright officers. When asked about the effects of this fragmentation of services, CO 8 responded, "It is pretty typical for our campus. I can't think of a service that isn't decentralized. We have a campus that is really not into the centralization of services. While it might not be the best way, we don't have many models for it not working that way." So, within the library organization there are several

pockets of copyright expertise. Outside of the library the other unit that offers copyright guidance is the general counsel's office. They offer their own web resources and respond to copyright questions related to teaching. The general counsel's staff will not, however, respond to any faculty member's questions about publishing contracts because, like institution seven, this type of activity is deemed to be faculty-owned, and thus the responsibility to negotiate these agreements falls on the individual researcher. Information technology does help faculty create multimedia projects, but when copyright questions arise, they are directed back to the library.

CO 8 believes that she and her colleagues have the authority to do their job, and previously, because of administrative interest in copyright and scholarly communications issues, she felt she had all of the resources necessary. "Generally we don't give unsolicited advice, so if somebody is coming to me for advice, I just go into it thinking that they are either going to take it or not going to take it. And if they choose not to take it, I don't think I wouldn't be supported." But, CO 8 noted that the copyright information service they provide is primarily for the libraries—not necessarily for the university as a whole.

I'd say it's not a campus-wide clearinghouse. I mean—it is and it isn't. Our legal services also has copyright information out there. They have people you can contact through them. It is kind of decentralized so all copyright questions don't come through the libraries necessarily. I think it works well within the libraries. Whether it works well at a campus level—we've talked about that, and we struggle with that, and we still haven't come up with an answer.

There are two reasons CO 8 believes that the institution has not moved in the direction of centralizing this kind of service. One is the historic nature of decentralization. The other is a lack of desire on any one unit's part to take responsibility for providing copyright information.

Yeah, I think its part that (history) and part the complex nature of copyright, and so the institution has not been willing to say it's their responsibility. Whenever you get into legal issues, everybody gets kind of scared. And so centralizing it means somebody is responsible, and when you are talking about legal sorts of stuff, lots of times nobody ... wants to be responsible. And as an institution we don't want to be liable for certain

things, so there is a wariness, which is completely understandable when you see what's happened to other institutions.

When asked what could be improved about the way copyright information is currently organized, CO 8 offered that it would be helpful if there was a more formalized group on campus to address copyright issues more broadly. But, she does not see that the institution will ever centralize such activities under a single unit. The library is a good home to address scholarly communications issues, for example, but, because the general counsel's office will not address these issues, these two related areas—scholarly communications and general copyright instruction/information management—will continue to be managed under separate units. Developing strong relationships among these units is the more important goal, rather than centralization.

### **Institution Nine**

When searching institution nine's web site for copyright information, the first result focused on network and computer use policies. The second site was retrieved because of a copyright statement on the page. The third and fourth results, from the university's library site, addressed reserve services and the posting of public domain content. The fifth link, again to the university's library, offers copyright services for faculty. The destination site provides five contact names, each with their area of specialization in copyright issues. I selected one which seemed, more than any other, to focus on Fair Use and faculty concerns, and sent her an email asking if she was the appropriate person to contact. Her response indicated that the library had established a new center for scholarly communications, and provided the name of the center's director, who is also the primary copyright information contact.

The copyright officer at institution nine has held some position within that same organization for over twenty years. Just within the past year CO 9 was moved into a new



position consisting of two distinct jobs: head of digital collections and director of the center for scholarly communications. With this move came the additional responsibility of copyright information management and dissemination—a responsibility which was mentioned in the position description of the previous scholarly communications librarian whose position was created in 2008. According to CO 9, however, acting as the lead on copyright issues campus-wide was not part of her predecessor's responsibility, but was added to her position. Copyright-related responsibilities are still being defined, as this is a new position, but CO 9 mentioned that she is “the library's lead on providing copyright support and advice to students and faculty, and also internally to staff inside the library.” This includes providing support (not advice) and guest lecturing in classes, although that activity is still limited. CO 9 has also established a university-wide copyright working group, consisting primarily of librarians but also the head of the university's press and the associate general counsel. This group addresses both general copyright issues and also those related more broadly to scholarly communications. Beyond this working group and the general counsel's office, no other individual or unit on campus provides any copyright guidance.

Because she manages a unit within the libraries, CO 9 does have access to fiscal resources in the form of the center's budget. She also has a one-year, renewable, post-MLS fellows position and a junior librarian, both of whom work for the scholarly communications center, but neither focuses specifically on copyright issues. When asked whether she has enough support, either in terms of funding or staffing, however, CO 9 said no. “I think if—and this is true for me and for my dean—if we could afford it, we would have a lawyer librarian in the library, and this would not be part of my portfolio along with everything else. It would be a specific position.” So, CO 9, who has a master's in library science, sees the need to have

someone, preferably with both a law and a library degree, focusing on copyright-related issues, rather than having them combined with her other responsibilities. Despite her lack of this credential, CO 9 does believe that she has been granted the authority to act as the copyright officer at her institution. “On the copyright issue I’d say absolutely no problem (with obtaining support). Nobody wants to deal with that—they are more than happy to have someone else who is willing to help untangle it, so I think there is really no issue with authority.”

When asked about organizational placement, CO 9’s response was similar to others who articulated the need to keep copyright information services offered to faculty separate from any administrative unit that could be perceived as having an interest in faculty research.

Well, I do think that there is sort of a logical division that people seem to get pretty readily which is that central—the university counsel’s office—they have attorneys on staff, but their client is the university. And, because there is sort of a culture of academic freedom and autonomy of faculty as scholars, I think the fact that they retain their copyright—that’s their property independent of any interest of the university would have... I think that people generally seem to get that. If they need copyright advice, they need to seek it from someone other than the central university counsel’s office.

When asked if another location, outside of the libraries, would better serve as the location for copyright information dissemination, CO 9 stated that the only other unit she believes would be appropriate is the technology transfer office because the people in that unit are already managing patent work and helping faculty with grant applications. But, CO 9 also noted the existence of the conflict between the interests of the individual faculty member and the institution. CO 9 reiterated that the first step toward establishing an ideal copyright information program would be to hire an attorney. “I think we do need to have someone who has a law degree and a library degree—I think that would be my starting point. Someone who can speak with some authority to and has some experience on both sides of the house.”

**Institution 10**

The first web site link resulting from my standard search of institution 10's main web page was to a site that provides general copyright information. Missing from this site was any specific contact information, or an email address to which I could send a copyright question. Since the university's library web site hosts this web page, I sent a question utilizing the library's generic reference email address asking for the copyright officer's contact information. CO 10 reports directly to the dean, holds a Ph.D, and was previously employed at the same institution in a different unit, but in a position where she would have been required to have some copyright knowledge. Approximately seven years ago she moved into her current position. Providing individual consultations and offering occasional presentations are CO 10's primary copyright-related responsibilities, which she reports take approximately five percent of her time. The rest focuses on broader, scholarly communications issues. Although institution 10 does have university counsel, and CO 10 works with them, she believes that almost all copyright-related questions are funneled through her. CO 10 has no other staff nor specified financial resources to fund copyright-related initiatives, but believes she has enough financial and administrative support to fulfill her responsibilities.

When asked whether she believes she has the authority to provide copyright information to the university community, CO 10 said yes, since she only provides guidance, not official legal advice. She is happy with the placement of her position within the libraries, and does not offer any suggestions for improving the authority of the office based upon organizational structure. "I think the fact that I am not associated with any department. The fact that I'm not anybody's supervisor, so I am able to give an outsider—practically third party—advice." She also noted, "I like being at the library and I report directly to the dean. So I'm very happy with that. The

library is a central institution. We work with all departments.” When asked if a JD would assist her in executing her responsibilities, CO 10 is concerned that those who hold a JD do not focus on the practical issues, but are more inclined to converse with other JDs on a more theoretical level. She adamantly does not believe that she needs such a credential to adequately perform her responsibilities.

### **Institution 11**

Institution 11 has a copyright help center in the university’s library, which is readily located after conducting the general “copyright information” search on the institutional web site. At this site is contact information for both the director of the center and a rights management specialist. When the center’s director was contacted, she refused to be interviewed, claiming that she was too new to the position. So I contacted the rights specialist, who was willing to be interviewed, but openly stated that she has a more limited view of the issues being explored in this study. For ease and consistency, I will still refer to this person as the copyright officer, although she does not actually hold that position.

CO 11, who holds an MLS and reports to the director of the copyright center, serves as a support staff member rather than librarian. The center itself is part of the technical services department—meaning that it, along with other units such as acquisitions and cataloging, report to an assistant university librarian responsible for several units within the libraries. CO 11’s responsibilities do not differ greatly from other COs interviewed, although she tends to manage more of the actual clearing of rights rather than addressing larger policy issues. She monitors the general copyright help email address and a phone number for the center and helps maintain other information resources, such as a web site jointly managed with another library on campus. Copyright programming, either open sessions or those designed for specific departments or

groups, are offered through the center and CO 11 participates. Keeping up-to-date on copyright court cases which affect higher education and disseminating this information is a responsibility CO 11 and the director share.

Two other units on campus provide copyright support. One is the other library mentioned previously. This unit is administratively separate from the main library, where the copyright center resides. This other library has their own copyright officer, a position which was vacant at the time of this interview, who helps in maintaining the joint web site, but also handles issues unique to the needs of that department. Institution 11 also has a general counsel's office, although CO 11 specified that they are not responsible for copyright education, but for handling legal issues facing the institution. Information technology units are involved in a very minimal way—primarily to adhere to legal requirements or government regulations. There is interaction among these units, but it tends to be on a project basis.

Well, there was some involvement a couple of years ago with a streaming video service. I know we were involved in the planning and discussion on rights issues with that. I know that at least in the past my former director worked with legal affairs discussing things like when the architecture department wanted to do an open course project, and so there was discussion with that. We've worked with legal affairs on the open access policy for the libraries. We created an author's addendum and we had to take it to them for approval, so there is that kind of interaction back and forth.

Other than this type of interaction among units, the copyright center is the face of copyright education at institution 11.

When asked if the center has the authority to manage copyright information, CO 11 said she believed so. Likely, if any concern about the legitimacy of the work done in this unit were raised, it would be with the director rather than CO 11. This copyright unit is more buried in the organizational structure than any other examined in this study. CO 11 articulated that structural placement is probably less important than the web presence of the unit and the other publicity

they generate to make colleagues aware of their services. “It’s not too hard to find us on the library’s web site. I think that’s more important than where in the hierarchy we sit.” Again, this organizational placement might have an impact on the perceived legitimacy of the unit, but that would not be as important to CO 11 as her focus would be on the visibility of the center’s web site.

Copyright information management is in a state of transition at institution 11. As noted, the head of the copyright center is new, replacing someone who developed the position and had worked at this institution for a number of years. The previous director had an MLS only; she did not hold a JD unlike the current director. The JD was a requirement for the position after the previous director retired. When asked if this credential was necessary, CO 11, who was not involved in developing the position requirements or the search process, said that to some it would be important, but not to others.

I don’t know if it was necessary (to require a JD), but comparing then and now is not totally a straight comparison because the department has changed some in its focus, and now it is down to just a straight copyright-focused department, whereas previously the other director was basically running two different departments that had various activities and focuses, and so it wasn’t so concentrated. I think to some people it is probably important to see that (the JD).

In terms of where the office is located, CO 11 stated that they are in a transition period, so there is a chance that it could be moved, but at this point she is not sure if it will be or where it should go. She believes the current organizational positioning appears to be working.

## **Institution 12**

Like institution 10, institution 12 has copyright information available on its website—managed through the university’s library, but neither site had contact information which would allow one to submit a question. To locate the copyright officer, I sent a question to the library’s general reference email, and was given two names. Both individuals were contacted, and the

person I interviewed is responsible for both the institutional repository and scholarly communications. She holds an MLS along with a subject masters and has been in her current position for approximately seven years. Prior to this appointment CO 12 worked at the same institution, but in a different role—one which had no copyright responsibility. So, in taking on her current position, CO 12 had to learn about copyright as it pertains to authors' agreements with publishers, which grew into consulting with faculty, and then expanded further into providing general copyright guidance. In her role as one of two copyright information contacts, CO 12 provides general consultation as well as offering workshops related to copyright. Her colleague focuses more on Fair Use issues, so they essentially divide responsibilities between them. With the evolution of her position, CO 12's reporting structure became complex. She essentially holds two positions. As the person who works on the institutional repository, she reports to the associate dean for information technology within the library. As a member of a department that offers reference services, she reports to the head of reference. But, for broader issues outside of either of these two areas, CO 12 also has a direct reporting line to the dean of the library.

Copyright management at institution 12 is primarily focused in the library. Other units which provide limited guidance include the technology transfer unit, where copyright policy is managed, in association with university counsel. But, according to CO 12, "they cede most of the copyright conversation to the library." Information technology on campus also handles limited copyright issues. Like other CIC institutions, this information technology department handles issues related to compliance with the Digital Millennium Copyright Act. Within this unit there is a media group that is developing copyright expertise in this area, and there is a separate disability services unit which addresses copyright related to making information

resources available to that community. People in the general counsel's office provide a highly limited copyright information function. These pockets of copyright expertise across campus results in confusion, although CO 12 is seeing a movement toward cooperation, with more referrals coming from these units to the library.

The level of authority CO 12 believes she has to do her job has grown throughout her tenure in this position. "So, when the library started doing consultative services, I would say our dean was quite nervous about this, and was really hesitant about how we were presenting consultation services. Since then I think she has relaxed quite a bit." Now, CO 12 believes she has the authority to do her job, but not as broadly as she might, if she could offer direct advice, rather than just guidance.

I think I have more authority than was true in the past. I definitely don't have authority to be as proactive as I could be, because I can read a contract and say it says that you can't do this, and so if you want to be able to do this, you should ask for this. That's something that I sort of have to couch that in a more suggestive rather than proactive tone.

One of the factors that CO 12 indicated would provide her with more authority, or at least a higher comfort level, in performing her job is if she or someone else within the library had a law background, or if she had a stronger formal association with the general counsel's office.

I also feel as though I'm treading on uncertain ground in terms of, or I guess fine lines between what I can say definitively to a faculty member, and I'm sure you are hearing this from others as well who do not have a law background, so I can pull on some of the expertise of university counsel—I do have a relationship there, but that's very, very limited, and it would be very useful for us to have somebody with a law background, a legal background or a practicing lawyer on staff here.

Later in the interview, CO 12 stated specifically that she believes she would have more authority in her role if she were to hold a JD.

I think that some of the question/authority issues would be diminished. I mean, they would still be there because I would not be acting as someone's attorney, but I think in some ways yes—it would give me a greater comfort level in making more definitive



statements, and give everybody a greater comfort level. I know that there are intricacies that I probably don't understand and don't always see, so having more training and more understanding of the law would be certainly helpful.

The organizational placement of copyright management in the library at institution 12 makes sense to CO 12, because of the strong link between copyright and the larger scholarly communications area. Also, as part of her responsibility with the institutional repository, CO 12 works with the graduate college on their electronic theses and dissertation submission program. Copyright plays an important role in this function as well, both in terms of content in the dissertation and also in making that content available to the larger academic community. But, CO 12 also sees a lack of continuity between how her office handle copyright issues and how other units within the library address similar issues, because no single person is responsible for the overall philosophical approach to copyright within the library. She noted that her office might be advocating for Fair Use or the use of a Creative Commons license, but those who handle digitizing materials do not do the same. As mentioned earlier, the same disconnect among units that work with copyright exists across the campus. When asked how to improve this situation, CO 12 advocated for the establishment of a campus-wide copyright committee that would create some cohesion. This committee should report to the provost and have broad representation from the library, information technology, university counsel and educational technology. Interestingly, when asked if a single person should be responsible for copyright across the institution, CO 12 expressed concern, not that the role would exist, but with whom might be appointed to that position.

If we can have the right one! My fear is always, I mean, I'm more of a copyleft person than not. My fear is always that there is always the sense of how risk adverse are some of the—you know—our university counsel is certainly more risk adverse than some of us are in the library. So that's always a challenge—sort of balancing that. I would hate to have somebody—I mean a copyright czar would be great in terms of trying to coordinate

and to make sure the university had a more consistent approach, but it would really have to be the right person.

## Summary

The following table is a summary of the interview responses by institution:

Institution	Location of copyright office	Copyright officer's manager	Academic credentials	Hired for position or reassigned
1	Library	Dean of Library	JD/MLS	Hired
2	General Counsel's office			
3	General Counsel's office	General Counsel	JD	Hired
4	Library	Department head	MLS	Reassigned
5	Library	Associate University Librarian (AUL)	MLS	Reassigned
6	Library	AUL	JD	Hired
7	Library	AUL	MLS/JD	Hired
8	Library	Department head	MLS	Reassigned
9	Library	AUL/Dean of Library	MLS	Reassigned
10	Library	Dean	Ph.D.	Reassigned
11	Library	Head, Copyright office	MLS	Hired
12	Library	AUL/Department head/Dean of Library	MLS	Reassigned

Table 1--Summary of interview responses by institution.

What these interviews reveal, as outlined in the above table, is that almost all copyright management programs currently reside within a library, and those who provide such services at least hold a Master's in Library Science. Of those people who do not have an MLS, the most prevalent degree is a Juris Doctorate, which is not surprising given the nature of the information

disseminated through these units. Rarely is the direct contact for copyright guidance found within the General Counsel's office, despite the prevalence of attorney's serving in the role of copyright officer. If the person in this position holds a JD, it is likely that they were hired specifically to serve as copyright officer. But, if the incumbent holds only an MLS, they were probably either moved from another position into the role of copyright officer or copyright responsibilities were added to their portfolio. Finally, beyond copyright officers being located within the library, there is little consistency in their reporting structures. Some report to an assistant or associate university librarian, others to the dean of libraries, and still others to multiple persons depending upon the activity in which they are engaged. The next chapter provides a merged summary of these findings and an analysis based upon the research questions posed, and offers recommendations for the most effective copyright management structure based upon this analysis.

## Chapter 5. Data Summary, Conclusion, and Recommendations

### Data Summary

Articulating a profile for each of the copyright officers and their institutions within the CIC is a useful exercise, as it provides not just data that can be compared, but also clarifies each institutional context within which each copyright officer acts. In some of the cases above the organizational culture plays a central role in how copyright management is organizationally placed and in how much authority the copyright officer believes she holds. Examining individual data elements across institutions will help determine which configurations appear to be the most affective, in a general sense, within a larger research institution. In examining both the general summary data and the individual case studies, those considering establishing or overhauling a copyright management program should be able to find a configuration that will work for their own institution. Having such an office in place is of great importance because of the value people today place on information ownership, particularly when they believe that information has some monetary value.

Another reason such an office is of great importance is the ambiguous and fluid nature of copyright law today. As noted previously, very little is still defined in the law itself, and recently-decided court cases have done little to provide further guidance. While *Cambridge* did offer some guidance about the amount of content from a non-fiction book that can be copied within Fair Use and posted within a secure online environment, that ruling went no further. Neither journal articles nor fiction materials were addressed, and these materials are used frequently in the academic setting. *AIME*, on the other hand, provided no guidance, as the judge's ruling did not address the facts of the case itself, instead dismissing the copyright claim. While some would prefer to have specific guidelines in place defining the amount and type of

materials that can be used within Fair Use, others are content to have these remain undefined. But, if they remain undefined, then some level of guidance is needed to help the members of the higher education community remain compliant with copyright law. As institutions that create and consume information in the generation of knowledge, research universities are logical targets of copyright infringement claims. A person or an office with the institutional authority to provide accurate information provides the tools needed to educate the university community, illustrates the institution's commitment to the value of intellectual property, and reduces the risk of legal action.

Location of copyright management program

University library	10
Office of General Counsel	2

Table 2—Summary of copyright office locations

To whom does the copyright officer report?

Associate University Librarian	5
Split reporting structure—Associate University Librarian and Dean of the Library	2
Split reporting structure—Dean of the Library and University President	1
Dean of the Library	1
Vice President and General Counsel	1
Head of Public Services—University Library	1

Table 3—Summary of copyright officers' reporting line.

What credentials does the copyright officer hold?

Master's in Library Science	6
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Master's in Library Science and a Juris Doctorate	2
Juris Doctorate	2
Ph.D.	1

Table 4—Summary of copyright officers' credentials

Should the copyright officer hold a Juris Doctorate?

Yes	2 (JD) 2 (MLS)
No	1
Helpful, but not necessary	1 (JD) 2 (MLS)
Either a JD or a Ph.D.	1 (JD)
Did not respond	1

Table 5—Summary of desirable credentials for a copyright officer

What would be the ideal organizational placement of a copyright management program?

Office of General Counsel (if one exists)	1
Provost's Office	3, or 2 if an Office of General Counsel exists*
Library	6
Did not respond or not applicable	2

Table 6—Summary of the ideal organizational placement for a copyright office

\*The respondent who provided this answer would have preferred that the copyright officer be located in the General Counsel's office. But, if such an office did not exist, her second choice would be to have the copyright office located under the Provost.

Do you have enough staffing/fiscal support to do your job?

Yes	4
No	6
Did not respond	1

Table 7—Summary of responses concerning available resources

Do you believe you have the authority to do your job?

Yes	6 (5 MLS, 1 Ph.D.) 2 (JD)
No	2 (JD)
Did not respond	1

Table 8—Summary of copyright officers' perceptions of authority

**The Library and copyright management.** Currently almost all primary copyright management information activities in the CIC are found within a university library administrative unit. CO 1 articulated one reason this might have occurred, which is reflected in the comments of others interviewed for this study.

I think because librarians are much closer to the issue, and so there is a lot more discussion about copyright issues in libraries, and we deal with it in so many different ways. That's why I think it ends up here. On campus as a whole, unless there is a general counsel's office, they are discussing it, but not as units, as departments, or anything like that, whereas I think in libraries we do tend to talk more about it.

CO 6 said in her interview that the library is a “place for answers,” which is why copyright information management in the library makes sense. Faculty and students come to the library for information related to other areas; copyright is just another topic, and the library is the place to

go in order to explore new areas of knowledge. This perspective—that the library is a neutral place where people can obtain help and guidance—remains when the copyright officers were asked if another administrative unit on campus would be more appropriate. CO 1 voiced that, while she is currently located in the library, she believes that she would have more authority if her office were to move either under a general counsel’s umbrella or to the provost’s office. The only other person to indicate that their current organizational placement could be improved upon is CO 3 who is in the general counsel’s office. She believes that she currently has too many responsibilities to give copyright the attention it should have. When asked if a copyright office would have a higher level of legitimacy in the library or in the provost’s office, she replied, “I think it would need to be outside the library. Probably needs to be in the provost’s office.” All other participants who responded to this question reiterated that the library is most appropriate because of existing copyright knowledge, work in scholarly communications, and a welcoming environment that encourages people to ask questions.

**Resources.** As documented in the literature review, universities expend a great deal of resources on both technology transfer and network security issues. The same cannot be said for copyright management, as these interviews suggest. At the most one additional full-time person is assigned to assist in copyright-related responsibilities (CO 4 and CO 11). Others have a post MLS fellow position (CO 9), staff shared with other units (CO 8 and CO 12), half time professional or staff help (CO 1, CO 5 and CO 6), or no help at all (CO 7 and CO 10). The academic credential the copyright officer holds also speaks to the level of resources the institution is willing to commit to copyright management. Both CO 9 and CO 12 said that there should be someone at their institution with a JD handling copyright issues. CO 9 specifically stated that “if we could afford it, we would have a lawyer librarian in the library.” Some



institutions may choose not to hire an attorney because of the cost differential between someone with an MLS and someone with a JD. As CO 6 opined, “I think the idea that you could hire a librarian out of a school of information for 43-45-46,000. Even at twice that, you’re not getting what you need.” Even if someone with a JD serves as the copyright officer, they are not always compensated as an attorney would be. To restate CO 6’s position on this topic, “for a librarian at (institution six), I am very well compensated. For what I actually represent and for what I bring—not even close.” Interestingly, this may also be a result of the copyright officers in this study primarily being located in the library, as libraries as institutions have a history of taking on some activities which some would consider legal in nature. For example, when libraries were primarily purchasing physical objects, such as books, journal issues and media, these direct transactions required little or no legal expertise. In the last ten years, however, libraries have begun licensing content—electronic databases, books, journals, and streaming media—and purchasing less. Licensing content requires having someone within the libraries who understands how to read contracts and negotiate the terms and conditions in order to protect the interests of the institution. Electronic resource librarians have become commonplace as a specialization within academic librarianship, but in many cases these are entry level positions with no requirement for the incumbent to have a legal background (Albitz, 2002). This does not mean that electronic resource librarians or copyright officers necessarily believe they are not qualified. It could, however, reflect a tendency within librarianship to assume responsibilities that may be outside of the profession’s experience or educational scope. Overall, the majority of copyright officers interviewed for this study did not believe they have the resources they need.

**Credentials.** The copyright officers interviewed for this study hold three types of academic degrees. Six hold a Master’s in Library Science, two a Juris Doctorate and an MLS,

two a Juris Doctorate alone, and one holds a Ph.D. but neither of the other credentials. One of the two JDs without an MLS holds the copyright officer position within institution three's general counsel's office and the other has a position within the library on her campus. In discussing what the optimum credentials would be for a copyright officer, only one person, holding both a JD and an MLS mentioned the importance of the latter degree. "I don't think a JD is absolutely essential. I think it helps. I also think that somebody who just got a JD might be badly positioned because the broad knowledge of academic structures that being a librarian brings is actually quite important." Conversely, all who were interviewed except for two respondents either believe a JD is necessary or would be extremely helpful in performing the responsibilities of a copyright officer. This included all librarians except one, who did not respond to the question. The reasons behind this preference—having a lawyer respond to copyright queries—include having an awareness of how to read and interpret court decisions and understanding how the legal system works (CO 5, CO 7, CO 12), increasing the legitimacy of information conveyed (CO 4, CO 12), and ensuring that the information is not coming from someone who is not fully prepared to respond (CO 6).

Another interesting difference between those who have a JD and those who do not could be in how they interpret their role when providing copyright guidance. CO 6 addressed this directly and CO 12 indirectly, and from opposite positions. As quoted previously, CO 6 is concerned that those with library and information science backgrounds approach copyright issues with a particular agenda, specifically to advocate for open access as the solution to the high cost of journal publishing and to expand copyrights for academia in general. While advocating for open access, author's retaining copyright to their own works and alternative

publishing models are not inherently wrong, CO 6 sees them as not being the role of an attorney, and not the role of a copyright officer. To quote CO 6 again:

This also goes back to the lawyer/not lawyer issue. I think there is a rigor in the training of being a lawyer that is different. We are trained to be critical thinkers ... there is a jaundiced approach that lawyers take even when they are advocating for something they believe in, so a good lawyer, they represent their client. And here the client is the university; the client is the library; the client is a faculty member. Your job is risk management, risk avoidance, explaining where risk is.

On the other hand, CO 12's responsibilities include managing the institutional repository and encouraging faculty to contribute content to it. In order to be permitted to do so, faculty members would have to retain some level of copyright to their own works, and that is what CO 12 advocates for. When asked if a single person should be responsible for copyright issues on her campus, CO 12's response illustrates her belief that a copyright officer should be an advocate rather than basing responses on the current state of the law. It is useful to restate CO 12's position:

If we can have the right one! My fear is always, I mean, I'm more of a copyleft person than not. My fear is always that there is always the sense of how risk adverse are some of the—you know, our university counsel is certainly more risk adverse than some of us are in the library. So that's always a challenge, sort of balancing that. I'd hate to have somebody—I mean, a copyright czar would be great in terms of trying to coordinate and to make sure the university had a more consistent approach, but it would really have to be the right person.

CO 3, who works in her institution's general counsel's office, addressed this conflict in approaches between attorneys and librarians directly.

Like most institutions we've kept a close eye on our Fair Use approaches to uses of materials in the library, and there have been times when people have wanted to push for concepts of Fair Use or policies related to Fair Use that I thought were beyond the comfort zone that we should go, based on the existing legal Fair Use analyses out there, and so there have been times when I have had to say "no, we aren't going to do that. That's not consistent with well-accepted views of Fair Use."

This example is not meant to suggest that all librarians take the same position CO 12 articulates, nor that all who hold JDs support CO 6's or CO 4's perspective. It does suggest, however, that a different approach to copyright exists in these institutions, and the intent of the office needs to be articulated in order for the person holding the position to believe they have the authority to carry out their role. In fact, despite this different approach to copyright, all of the librarians interviewed for this study who responded to the question, believe that it would at least be useful, and perhaps very important, for the person serving as copyright officer to hold a JD.

**Perception of authority.** The responses to this question were interesting, given the overwhelming opinion that someone with a JD should be, or might be better suited, to handling a copyright officer's responsibilities. Only one person interviewed, the JD who is located in the general counsel's office, believes she is the "last word" on campus on copyright issues. All librarians, to some extent or another, believe that they are administratively supported, and that they have the authority on their campus to provide copyright information. Only two people interviewed believed that they do not have the authority to carry out their jobs, and both of those hold JDs. Their reason for believing that they do not have the support or authority is the same—people on campus who ask for their guidance often do not adhere to it. CO 6 provided a specific example, which was summarized earlier:

I had one situation where an AUL asked me to look at something—I think it was a guest scholar coming in who was going to be working on something that included writing—and I said—we were paying the person—and I said you have to get work-for-hire language into their contract or that person will own the work; we will not. And if your intention is to do something with it, you will have to formally get that over again, like gather it all in the beginning. I gave them a lot of detailed advice and this was like a Friday and the person was coming the next day, and I stayed late to take care of it. This is typical. I left and I get an email later that night from the head of the division saying no—he was speaking to this person—it would offend them to do this now. The end. And I'm like, o.k., here's another one where they are either going to proceed and they are not going to have the rights, and o.k., maybe nothing happens, or expectations aren't clear, and they go and want to publish their own book version of whatever they are doing. That was a

huge waste of my time and energy. So, uh, do I have the authority? I think what frustrates frequently, and I think it goes to your question, is that I will give advice or resources or whatever, and if they're not wanted, like, if people don't want to take their medicine, I can't make them take their medicine.

CO 1 offered a similar perspective.

It comes down to how much authority do you have. When it comes to the dean or the provost who says "we are going to disregard your advice and we are going to disregard our official legal counsel advice," then it is o.k. I think because I practiced before in law firms too, it is just a matter of, you have to separate it out and take the personal out of it and just say they are clients. If they take your advice, great; if they don't, fine. Here is the documentation; here is what we have discussed; here's what was advised. They chose to go another route, oh well—if we get sued, we get sued. I do feel very supported, but I just don't always think my advice is always taken—as a matter of fact, I know my advice isn't always taken.

In both of these cases, the copyright officer had been a practicing attorney in another context, and is now officially responsible for copyright at their respective institutions. As they both state, they often have their advice disregarded, despite their official role and their expertise in the area, which would logically lead to a level of frustration, certainly as CO 6 has illustrated. CO 7 articulated that she has experienced very similar situations, but her perspective on how her advice is taken is very different.

I am definitely viewed as an authority on certain issues. I don't always have decision-making authority about things the libraries are doing. It will come up before me that we are looking at a licensing term that I don't like, and I can say I don't like that, and I will actually sometimes very loudly say that this is not a good licensing term, but it is not my call whether we sign that license or not. That hasn't been a deep frustration—there are things that go along with having that level of decision-making authority that I don't want. And, it hasn't been that big of an issue all that many times.

So, the perception of authority among copyright officers with JDs ranges from absolute authority (CO 3) to believing they have little (CO 6). The reasons behind this differing perception could be the placement of the office, with someone in the general counsel's office literally having the decision-making authority; it could be with the administration within which the person works, which chooses not to adopt the guidance the copyright officer provides; or it could be the

copyright officer herself, who has the expectation that her advice will be followed, but the administrative practices do not coincide with these expectations.

The information gathered through these interviews provides an important lens through which to examine a critical issue in higher education today—copyright information management. As stated earlier, copyright plays a central role in almost all intellectual activities associated with academe, most particularly teaching, research, and publication. If a university community does not have an understanding of copyright law and the parameters it establishes around the use of materials a third party has created or owns, the institution faces potential legal issues. These can range from receiving cease-and-desist notices to being sued in federal court for copyright infringement. Another value in having copyright information resources readily available is in teaching students at all levels about ethical research practices, respecting the work of others, and showing the value the institution places on these behaviors. Having reviewed the interview results in aggregate, it is now useful to reiterate this study's research questions, in order to determine what recommendations this study should offer.

- What is the organizational structure in place to disseminate copyright information to members of the institution's community, including the credentials of the staff and resources provided?
- How does the organizational placement of the office responsible for this communication and/or the organizational role of the communicator effect the legitimacy of the information provided and the authority of the person providing that information?
- Based upon the perceptions of participants and the researcher, what is the relative effectiveness of one structure compared with another?

These questions will be addressed in the recommendations section.

## **Conclusion**

Based upon the amount of content addressing issues of copyright information management in the higher education literature, it would appear as though this issue is of little concern, at least in comparison to other intellectual property issues such as illegal file sharing and plagiarism. But, in reviewing the results of the interviews conducted for this study, at least those institutions which are members of the Consortium on Institutional Cooperation have dedicated some resources to this activity. For some CIC institutions these resources include the salary of a person with a Juris Doctorate, and perhaps also an MLS, while for others only five percent of a librarian's position focuses on copyright information dissemination. Examining the amount of resources devoted to a specific activity within an organization provides some idea of the relative value of that activity, and in some CIC institutions the creation of a copyright officer position in the recent past, and requiring that person to hold a JD suggests that the need for accurate, legitimate copyright information is seen as important to the university community. In no case examined in this study were the resources committed to copyright information comparable to those committed to the other intellectual property activities examined in the literature review, but a shifting of resources from enforcement to education appears to be occurring.

As the relative importance of copyright education grows, ensuring that the people and units assigned this responsibility are placed administratively within the organization for maximum effectiveness and have the authority to provide guidance are critical to the success of a copyright program. Mintzberg's approach to organizational theory suggests that the closer a unit is to the administrative core of the institution, the more authority and legitimacy that unit will

have within the organization. Some of the subjects of this study concurred, stating that a copyright officer would have more legitimacy if their position were under the purview of the provost, who is part of the administrative core, rather than being part of a support unit such as the library. But, the question remains—is it more important to have legitimacy organizationally, if members of the community will not utilize the service? A number of subjects indicated that faculty at their organization would be less likely to seek guidance from someone working within the administrative core, because of an inherent level of suspicion these faculty have of their administrators and their motives. Because faculty members retain rights to their own works at these institutions, people within the administrative structure are as reluctant to assist faculty as faculty are to request assistance. The alternative option is to have the copyright officer located within a support unit, where perhaps the level of legitimacy of the unit may be decreased, but the opportunity to reach more members of the community is increased. This is particularly true in this case, because the library, as a number of respondents noted, is a place where people go for help and guidance, particularly in areas where an individual's knowledge may be limited.

To balance a decrease in legitimacy, this study has shown that the credential of the person providing the information is important. Those who hold an appropriate degree, in this case a Juris Doctorate, believe that the information they provide does have increased legitimacy, particularly among faculty, who value the intellectual rigor represented by such a credential. Therefore, the combination of having a copyright office within the libraries—an accessible, neutral unit—and having the copyright officer holding a JD to signify a respected level of knowledge, is the most appropriate construct for a successful copyright information management program. This also shows that under certain circumstances, legitimacy based upon



organizational placement can not only be detrimental to the mission of a unit, but can be counterbalanced through the positioning of an individual with a specific academic background.

### **Recommendations**

Based upon the results of the 11 interviews with copyright officers within the Consortium on Institution Cooperation (CIC), the following recommendations for that position have emerged. The need for such a position does not appear to be in doubt, as each of the 12 institutions investigated have someone serving in that role. But where within the institution that person is positioned and the credentials they hold appear to have an effect on both their legitimacy and perception of the authority they hold. The goals in creating these guidelines for a copyright officer position are two-fold: to increase the legitimacy of the office itself and to establish a base-line of authority the copyright officer can expect to have when executing her responsibilities.

**Location of the office and responsibilities of the Copyright Officer.** Two recommendations concerning placement of the copyright office emerged from this study. The first is to have the copyright officer located within the library. Reasons include the perception that the library is a place where people can find help with information questions; people in the library address copyright issues frequently in their day-to-day activities; and a copyright officer in the library will be more likely to have the concerns of the individual in mind and not those of the institution. The second suggestion is to have such an office located under the provost. Some believe this will increase the legitimacy of the office itself, as Mintzberg would suggest, because central administration is a core function, which, by definition, lends more legitimacy to activities it oversees. Others, however, note that having such an office within central administration will deter some from requesting assistance, because they believe that the guidance offered will be

skewed toward the best interest of the institution and not the individual. Either location would be appropriate, although if the position remains in the library, those interviewed see the value in having that office or individual report direct to the dean of the library, rather than to an assistant dean or another administrator. This reporting structure increases legitimacy and the perception of authority of that individual. Even more ideal would be a reporting structure mirroring that of copyright officer one, who has a dual reporting role—both to the dean of the library and the president of the university—as some issues she addresses are unrelated to the library and thus need to remain confidential. Such a dual reporting structure also advertises to the university community that the office does not just address library-related issues, but copyright concerns in the broadest sense.

The responsibilities of copyright officers in this study varied, but not greatly. Components of the job description for a copyright officer would consist of: consulting with members of the educational community on copyright-related issues; educating the community through programming of various types; creating and implementing policy related to copyright; and advocating for the application of copyright law which supports teaching, learning and research. All copyright officers had some level of responsibility for consulting, either at the individual or group level, on specific copyright questions. Offering guidance on use of copyrighted content in courses and publications was the most frequently noted activity. Education, in group settings rather than at the individual level, was also common. Only CO 3 indicated that she did little of this, because of broader intellectual property responsibilities. Education consists of teaching scheduled, public programs on general copyright topics, as well as sessions tailored to the specific needs of a requesting unit. Assisting in the establishment of copyright policy or practice based upon institutional interpretation of copyright was another

frequently cited responsibility. Whether as an individual or as part of a committee, most copyright officers have some input into general and specific directions their institutions take in implementing the law based upon new court rulings and best practices. The final responsibility which was common among almost all respondents was the need to advocate for the broadest, most liberal definition of copyright in order to support teaching, learning and research on each of their campuses. The definition of advocacy, however, differed widely. Some individuals believe that it means intentionally and aggressively challenging the current status of copyright law. Others believe that it means liberally interpreting Fair Use in particular, but not to the extent that might result in placing their institution at risk. Because advocacy at some level is a central responsibility of the copyright officer, it is critical that the definition of this term is agreed upon between the individual and their supervisor prior to hire. Note that enforcement of copyright law or policy is not included in the recommended position responsibilities. The role of the copyright officer is to educate, not to enforce. Members of the campus community will naturally be more reluctant to consult with a copyright officer if they believe in any way this person is also acting as the “copyright police.” Enforcement should be at a higher level administratively—falling within the general counsel’s office or the office of the provost—but certainly not within the jurisdiction of the copyright officer.

**Appropriate credentials.** All but one person interviewed for this study believe the copyright officer should either hold a Juris Doctorate, or that this credential would prove useful. This degree lends a greater level of legitimacy to the information the copyright officer conveys and, if the position responsibilities are articulated clearly, provides the person with a greater sense of authority. But, if the latter does not occur, a copyright officer holding a JD could find that they are frustrated by the lack of authority they are granted, despite the credential. A

Master's in Library Science would be valuable in conjunction with a JD, particularly if the person or office is positioned within the library, but it is not essential. The MLS suggests, at least to one copyright officer, that the person understands both library operations and broader higher education issues, and thus would lend more legitimacy to guidance offered. And holding both degrees may overcome CO 10's concerns that attorneys are only interested in interacting with attorneys, with no interest in conveying guidance in terms understandable to the layperson. Alternatively, the copyright officer could hold only a JD, but have broad higher education experience, or this person could be hired with a JD, but obtain their MLS after being hired. Hiring a JD also demonstrates that the institution is committed to appropriate use of copyrighted content and is willing to devote the resources to educate its community about copyright-related matters, rather than just assigning someone without a legal background and hope they can learn on the job.

One of the issues that could arise if the copyright officer holds a JD is the perception that this person will be more conservative than someone without the degree. In higher education in particular, an interest in interpreting Fair Use in a manner that most effectively supports teaching is pervasive. This interest in taking advantage of the flexibility inherent in Fair Use could come into conflict with an attorney's strict, precedent-driven, interpretation of that same law. It is critical that a JD hired as a copyright officer understand the educational goals of the institution as well as the processes involved in the education enterprise, and be able to strike a balance between the law itself and the needs of the university community. This is not to say that the JD should abandon the knowledge obtained in law school and become an advocate for a particular approach to copyright that might place the institution at risk. But, she should understand higher

education and its culture, strike a balance between liberal and conservative approaches to copyright, and encourage creativity in the selection and use of copyrighted materials.

Based upon these interviews and my personal experience as a copyright officer, I would recommend that research-intensive institutions invest in hiring a copyright officer who at least holds a JD and has experience in a higher education setting. An MLS would certainly be helpful in understanding library-related issues, which arise fairly frequently, and in gaining the respect of fellow librarians. But, the library is only one constituency among many at a large university, and the JD is the more important of the two credentials in establishing the legitimacy and authority of a copyright officer among the entire university community.

**Resources.** Certainly hiring someone with a Juris Doctorate demonstrates a commitment to the office, but so does providing other resources in support of copyright information management. The range of resources currently offered to copyright offices differs among CIC institutions, with some having no additional resources beyond the copyright officer herself. In some cases the copyright officer devotes a small portion of her time to this activity, while others are committed full-time to copyright management in addition to having additional full-time staff. What emerges from the interviews is that some level of additional staffing beyond the individual is important, if only to provide back-up if the copyright officer is unavailable. This staffing would not have to be devoted to copyright activities, but be well versed enough in the issues involved to substitute if the copyright officer was not available. Also, the need for some level of administrative assistance, whether it be a full- or part-time staff member, to handle clerical tasks removes that burden from the copyright officer and allows her to focus on other, more specialized responsibilities. No one who was interviewed was interested in having a large number of employees, either because they did not see the need, or would not know who to hire

even if given the opportunity. Having a budget of some kind to cover conference travel and perhaps some campus mailings like postcards advertising workshops, was also shown as important, although no one expressed any need for a large operating budget beyond this.

**Establishing authority.** In order to both lend legitimacy and authority to the copyright office and the person holding the primary position within this office, clearly articulating their responsibilities and the goals of the office are essential. As stated earlier, particularly for a person holding a JD, delineating the extent of their authority will aid in allowing that person to believe that they have the support of their administration to perform their job. Also, having the copyright officer's role defined clearly assists the rest of the university community in understanding the goals of that position.

This issue—the level of authority a copyright officer believes she has—is directly related to the conflict between scholarly communications and copyright responsibilities. The conflation of copyright responsibilities and those related to scholarly communications were evident in several of the interviews. Those who were designated solely as copyright officers saw her role as conveying guidance with the goal of assisting individuals and the institution in remaining compliant with the law as it currently stands. Those who hold dual positions, or a position that emphasizes scholarly communications over copyright, may not be as concerned about compliance, but more interested in pushing boundaries beyond those established through the legal process. As copyright officer six noted, this creates an inherent conflict, not only for the individual, but also for those who have specific expectations of the position. In my professional experience as a copyright officer, this conflict reduced the level of authority I perceived that I held. My library administrators, believing that my position should be that of an advocate for open access and scholarly communications, were often disappointed with my guidance; I was

labeled as too conservative. My approach to my responsibilities, however, was as a copyright officer—explaining the current state of the law and how to apply Fair Use in an academic setting based upon the law and legal precedent. Had I responded to inquiries as an advocate, I would have encouraged faculty and staff to push the boundaries of copyright law. This could have resulted in placing the institution in a vulnerable position, open to infringement claims. My concerns were exacerbated by the very public position Penn State took on issues related to illegal downloading and file sharing, as referenced in the literature review. Within this context, I believed it wise to offer a more conservative approach to the application of the law, grounding guidance in legal precedent and best practices.

Therefore, in evaluating both my own experiences and those of the copyright officers interviewed for this study, my recommendation is to have the copyright officer exclusively responsible for information and guidance as the law and interpretations thereof define it, and to have scholarly communications activities under a separate unit. This does not mean that the copyright officer should not assist faculty members in negotiating publications contracts. In fact, I would suggest that licensing and contract assistance for the library and the university community (faculty and graduate students in particular) should also be the responsibility of this person or office (beyond merchandise licensing and patent work, which should remain distinct from these activities). Maintaining the separation between copyright guidance and scholarly communications will assist members of the university community in understanding what information and guidance is based upon legal precedent and what advice is given in order to advance a particular agenda. Eliminating this conflict will result in the copyright officer understanding the parameters of her position, and help the rest of the university community understand the context within which she offers information and guidance.

## Appendix A

### Interview Questions

1. What is your educational background?
2. To whom do you report and under which administrative unit?
3. Describe your copyright-related responsibilities/activities.
4. Were copyright responsibilities initially articulated in your position description when you were hired, or were they added later? If the latter, under what circumstances did this occur?
5. What resources/staffing are you provided in order to fulfill your responsibilities? (dedicated office, staff, budget, etc.)
6. Do you have enough support (financially, administratively) to do your job?
7. Are there other units on campus which provide similar or related copyright information? If so, what unit administratively manages that activity? Do you work with that person/unit closely? At all? What are the effects of this decentralized organization?
8. How does what you do coincide with the responsibilities of your information technology department/library?
9. Do you have the authority to do your job? (are you granted authority by your supervisor? Department administration? University Administration?)
10. To whom do you refer questions when you are unable to answer an inquiry?
11. If the guidance you offer were to be questioned, either by internal or external entities, do you believe you would be administratively supported? Please provide an example, if you have one, of an incident when your guidance was questioned, and the results of that incident.
12. What do you believe works well about the current organizational placement of copyright management at your institution? Why do you think this works well?
13. What do you believe could be improved, or what structure do you believe would work more effectively?
14. What would you change if you could?
15. What would be your ideal copyright information/management structure for your institution?



## Appendix B



**Title of Project: LEGITIMACY AND PERCEIVED EFFECTIVENESS OF COPYRIGHT INFORMATION DISSEMINATION AND MANAGEMENT IN THE RESEARCH UNIVERSITY**

**Principal Investigator:** *Rebecca S. Albitz*  
*126S Paterno Library*  
*University Park, PA 16802*  
*814 865-9720 rsa4@psu.edu*

**Advisor:** *Robert Hendrickson*  
*400 Rackley Building*  
*University Park, PA 16802*  
*814 865-9740 rmh6@psu.edu*

1. **Purpose of the Study:** The purpose of this research is to study where general copyright management is located within member institutions of the Committee on Institutional Cooperation, who is responsible for managing the program, and whether this organizational placement affects the perceptions of legitimacy and effectiveness of the program.
2. **Procedures to be followed:** You will be asked to answer questions about the copyright program at your institution, your role in that program, and your perceptions about its effectiveness.
3. **Duration/Time:** Completion of this interview should take approximately 30 minutes.
4. **Statement of Confidentiality:** Your participation in this research is confidential. The data will be stored and secured in the principal investigator's private office. In the event of a publication or presentation resulting from the research, no personally identifiable information will be shared.

All institutions will be identified by a number, and any unique identifying characteristics will be masked. Responses from survey participants will be associated with their anonymous institution only by their role, so no particular response can be traced back to an identifiable individual.

5. **Right to Ask Questions:** Please contact Becky Albitz at (814) 865-9720 with questions or concerns about this study.
6. **Voluntary Participation:** Your decision to be in this research is voluntary. You can stop at any time. You do not have to answer any questions you do not want to answer.

You must be 18 years of age or older to consent to take part in this research study. If you agree to take part in this research study and the information outlined above, please sign your name, indicate the date below and return this original with your completed survey.

Please make a copy of this signed form for your records.

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Vita  
Rebecca S. Albitz  
15 Evergreen Rd.  
Auburn, ME 04210

**Education:**

D.Ed.--Higher Education, The Pennsylvania State University—December 2012.  
MLS--The University of Pittsburgh--August 1990.  
MA--Film Studies--The Pennsylvania State University--August 1989.  
BA--Film Studies and English--The University of Rochester--May 1987.

**Professional Positions:**

9/2012-present--Associate Librarian for Collection Management, Bates College, Lewiston ME.  
1/01-8/2012--Electronic Resources Librarian, Pennsylvania State University, University Park PA.  
3/97-12/00--Head Librarian, Shenango Campus, Pennsylvania State University, Sharon PA.  
3/95-2/97--Assistant Archivist for Media and the Performing Arts--New York University, NY  
11/90-3/95--Media Services Librarian--University of Iowa, Iowa City IA.

**Publications:**

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