ISSUE 8 ■ 18 NOVEMBER 2008

QUFA
Queen's University Faculty Association

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Copyright

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Article 16

The new Collective Agreement devotes even less space to copyright than its predecessor, but what it does say marks the difference between your intellectual property rights and those of employees in most other contexts.

Section 13.3 of the *Copyright Act* states that when a work is created in the course of employment, the employer is the owner absent an agreement to the contrary. Confirming longstanding practice in universities, but resisting pressure to vest Intellectual Property ownership in the university, the Collective Agreement is an agreement to the contrary, stating in Article 16.3.1 the default rule that "all Intellectual Property is owned by the Member(s) who create(s) it." Exceptions must be created explicitly in advance by individual contract. For example, a Member may agree to write a correspondence course or a piece of software under terms that include conveyance of the copyright to the university, but this will only happen with the prior agreement of the Member. A funder might insist on transfer of copyright, but this is acceptable under the Collective Agreement only if the funder insists, if plans are made in advance of the creation of the work, and then only if the terms are "acceptable under prevailing University guidelines for contract research."

An important change in this version of the Collective Agreement is the removal of Article 16.3 of the previous Collective Agreement, which granted the university "a non-exclusive, royalty-free, fully-paid-up licence to use for non-commercial educational and research purposes, all intellectual property developed by Members." This might have meant, for example, that any teaching materials you generated could be used by other instructors without your permission, a scenario of particular concern to anyone working at Queen's on a contractually limited basis, such as former Sessional Adjunct Members. The removal of this clause strengthens Members' rights to the work they create.

The previous Collective Agreement was explicit that "the owners of intellectual property have the right to make all the decisions concerning the development and use of their property, including commercial use"; it also stated that "no creator is obliged to engage in commercial exploitation." The removal of these sentences makes no difference, however: since you own your copyright, all decisions regarding it are yours whether or not they are elaborated in the Collective Agreement. And the new Collective Agreement does still state that "an owner of Intellectual Property is free to publish or use other means to place the Intellectual Property in the public domain": in other words, you may give your copyright away if you wish.

Implications

What are the implications of faculty ownership of copyright? Here are a few:

- **You have the right and responsibility to express your own views without interference.**

As the only owner of your work, you need not check with your unit head before publishing something. You represent your views, not those of Queen's University. The treatment of Intellectual Property (IP) in Section 16 of the Collective Agreement thus underscores Section 14, on Academic Freedom.

- **You have the right and responsibility to decide how and if to transfer your copyright.**

When a journal asks you to sign away your copyright, don't do it blindly. Do they really need it all? Copyright is a "bundle of rights": make sure you at least keep the right to contribute your article to an electronic archive, and don't be shy about asking for a pdf of the final version of the article. See http://www.arl.org/sparc/bm~doc/Access-Reuse_Addendum.pdf, a contract rider developed by SPARC (the Scholarly Publishing and Academic Resources Coalition) which you might consider sending back along with your publisher's contract. If you have a choice of journals, you might consider an Open Access journal, which makes its content freely

available online, or a journal with a "moving wall," that makes the material free after a few months. This will increase your exposure, and also contribute to an effort to control exorbitant journal costs and make knowledge available to scholars in developing countries or outside universities.

Don't forget too that you have moral rights in your work, namely the right of attribution and the right of integrity. These cannot be assigned, but they can be waived. Think twice about waiving them.

You make the decision about royalty rates and other forms of payment, and have to negotiate these on your own. For some of your work, such as teaching materials or Web sites, you might consider a Creative Commons license, which can prevent commercial reuse of your work while facilitating its wide dissemination: see http://creativecommons.ca.

- **You have the right and responsibility to decide when and how to ask for permission for work used within your own.**

Know that you may rely on fair dealing (*Copyright Act* Section 29) to quote portions of work for the purposes of criticism, review, research, or private study. (The American counterpart is "fair use.") Don't assume that you have to ask permission for every little snippet: overzealous permission practices erode the principle, which promotes freedom of expression. There are no set quantitative limits for fair dealing; the Supreme Court in *CCH v. LSUC* (2004) observed for example that one may need to reproduce an entire photograph in order to criticize it, and that this could in some circumstances constitute fair dealing. Any "10% rule" or "2% rule" you may hear is thus false. The *CCH* case is the definitive statement on fair dealing at present (see http://www.canlii.org/en/ca/scc/doc/2004/2004scc13/2004scc13.html, paragraphs 50-60).

There are likely other issues that ought to be discussed by the Joint Committee on Intellectual Property before it makes its recommendations. Please consider sending your concerns to QUFA if you wish them to be put on the table.

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Know Your CA *is edited by Robert G. May.*