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Higher education today faces many challenges. Adequately opening the doors of social mobility for students from diverse and non-traditional backgrounds.[1] Rising tuition that has resulted in an entire generation of students emerging from college with student loan debt that can seem insurmountable.[2] Declining state support of public institutions.[3] Increased calls for institutions to contribute to local economies through job creation and workforce development.[4] A growing administrative class in higher education that often only adds to bureaucracies and mounting costs instead of alleviating them.[5] An increasing reliance on adjunct professors to teach core subjects and dwindling numbers of tenure-stream faculty.[6] Urgent needs to comply with governmental regulations—often in areas, like Title IX, where institutions are virtually guaranteed to upset someone, no matter what they do.[7]

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1. *See, e.g.*, Mitchell J. Chang et al., *Beyond Magical Thinking: Doing the Real Work of Diversifying Our Institutions*, ABOUT CAMPUS, May–June 2005, at 9 (arguing that the diversity rationale that undergirds the Supreme Court's landmark decision in *University of California v. Bakke* has fallen victim to "magical thinking").

2. *See, e.g.*, Jeffrey J. Williams, *Debt Education: Bad for the Young, Bad for America*, DISSENT, Summer 2006, *available at* https://www.dissentmagazine.org/article/debt-education-bad-for-the-young-bad-for-america (calling student loans "the new paradigm of college funding," and student debt "the new paradigm of early to middle adult life").

3. *See, e.g.*, William R. Doyle & Jennifer A. Delaney, *Playing the Numbers: Higher Education Funding—The New Normal*, CHANGE: THE MAGAZINE OF HIGHER LEARNING, July–August 2009, at 60 (describing declining state appropriations to higher education).

4. *See generally* HOLDEN THORP & BUCK GOLDSTEIN, ENGINES OF INNOVATION: THE ENTREPRENEURIAL UNIVERSITY IN THE TWENTY-FIRST CENTURY (2nd ed. 2010) (describing the new demands that universities face to foster innovation in ways that translate to jobs and regional growth).

5. *See, e.g.*, BENJAMIN GINSBERG, THE FALL OF THE FACULTY: THE RISE OF THE ALL-ADMINISTRATIVE UNIVERSITY AND WHY IT MATTERS (2011) (examining and lamenting the rise of deans, "deanlets," and "deanlings" in higher education over the past thirty years, at the expense of faculty self-governance).

6. *See, e.g.*, Jordan Weissmann, *The Ever-Shrinking Role of Tenured College Professors (in 1 Chart)*, THE ATLANTIC, Apr. 10, 2013, http://www.theatlantic.com/business/archive/2013/04/the-ever-shrinking-role-of-tenured-college-professors-in-1-chart/274849/ (depicting the growth of part-time adjunct faculty and the decline of full-time, tenure-track faculty as a percentage of higher education's instructional staff since 1975).

7. *See, e.g.*, Robin Wilson, *As Federal Investigations of Sex Assault Get Tougher, Some Ask if That's Progress*, CHRON. HIGHER EDUC., Oct. 8, 2015, http://chronicle.com/article/As-

Amidst these very real concerns, institutional treatment of intellectual property may seem deserving of less attention. Yet in truth, the treatment of intellectual property has never been more important to higher education than now. As the United States leads the world in a move toward an information- and knowledge-based economy, the pressures to lay claim to intangible and intellectual outputs are only increasing. As the progenitor and guardian of much of this output, colleges and universities confront important choices as they attempt to further the public good while not stifling the rights and freedoms of their faculty and students.

This special symposium issue of *Duquesne Law Review* brings together fresh thinking on the subject of intellectual property and the university from leading scholars in the field. The articles published in these pages were first presented in draft form to fellow participants in a two-day symposium on the topic, held at Duquesne University School of Law on April 19–20, 2015. Contributors span the academic ranks and hail from schools of law, business, and public policy across the nation. Broadly speaking, the diverse set of works in this issue analyze the policy and legal implications of intellectual property ownership, use, and related disputes involving faculty, students, and institutions of higher education.

Professor Christopher Hayter's article opens the issue with a comprehensive and long-overdue macroscopic assessment of the state of technology transfer under the Bayh–Dole Act. Through historical analysis of practice and scholarship, he demonstrates how universities have overwhelmingly adopted one specific (and narrow) interpretation of Bayh–Dole, what he terms the "Patent-Centric Linear Model." Professor Hayter persuasively argues that this narrow conception of university responsibility to the public is socially irresponsible. Influenced by and borrowing from the corporate social responsibility literature, Professor Hayter presents the array of options actually available to universities striving to improve the social good through research and commercialization. At heart, his article serves as a call to action for a reconceptualization of how we define the goals, aptitudes, means, and metrics of success for universities working to achieve knowledge dissemination through commercialization of research.

Professor Daniel Cahoy's article—co-authored with his Smeal College of Business colleague, Professor Anthony Kwasnica, and

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Federal-Investigations-of/233698 (noting that "federal inquiries into how colleges handle sexual assault are growing longer, tougher, and more damning").

doctoral candidate, Luis Lopez—examines the potential for universities to generate revenue by auctioning rights to their patent assets. Recognizing that most university-owned patents go unlicensed, these authors outline the potential benefits to universities that utilize auctions as an option for licensing university intellectual property, which stand in contrast to the often costly and time-consuming process of one-on-one license negotiations. They consider in detail the experience of their own institution, Pennsylvania State University, which in 2014 offered over 180 patents for license in two university-run auctions that received national attention. The auctions netted three licenses, and Cahoy and his colleagues' article reveals survey data from those licensees and other participants, providing insights into how industry actors view university patent auctions. Their timely article concludes with a thoughtful examination of how auction structures can be improved for efficient use in higher education, particularly to account for the concern that university patent auctions may unwittingly lead to patent trolls acquiring rights to university patents.

Professor Emily Morris's article rounds out this issue's coverage of patent law. Professor Morris examines what she terms "the many faces of Bayh–Dole," offering a comprehensive look at the main roles that university patenting can play in the larger innovation economy. She reviews scholarly arguments concerning both the benefits and the detriments to university engagement with the patent system before offering her own perspective, which is that Bayh–Dole patenting may be largely irrelevant, particularly in science-based fields such as biotechnology and nanotechnology. Professor Morris's article stands as a reminder that, thirty-five years after the passage of the Bayh–Dole Act, the legislation's merits and effects are still subject to ongoing understanding and vigorous debate.

Shifting to copyright, Professor Deidré Keller's article—co-authored with Professor Anjali Vats, of Boston College—examines the morass that is the application of fair use in higher education in the wake of the Georgia State "e-reserves" litigation. These authors respond to Professor Peter Jaszi's suggestion that educators must come to view unlicensed uses of copyrighted works in courses as transformative uses. They view his suggestion as unworkable given (1) the high cost of copyright litigation, (2) the inherent uncertainty involved in fair use law, (3) the risk aversion of academic administrators, and (4) the potential monetary damages that private colleges and universities could be forced to pay if they make incorrect fair use determinations. As an alternative, they propose proactively

placing educational exceptionalism before Congress, ultimately in the form of amendments to the Copyright Act, as opposed to reactively before the courts. Their proposed policy platform, and attendant calls for data to bolster the need for action, set the stage for amending statutory law to encourage learning.

Professor Brian Frye's article offers a provocative examination of the social wrong of plagiarism, particularly in the academy. His article unpacks the presumed justifications for the social norms that have led to an academic environment in which plagiarism is always deemed deviant. Students everywhere—and perhaps academics, too—may be gleeful to learn that he finds the scarlet letter of plagiarism to be unwarranted, amounting essentially to an extrajudicial form of rent-seeking that works to benefit academic insiders over the public. His findings challenge one of the oldest and most generally accepted manifestations of academic exceptionalism. His conclusion is that the vague and often hard to define prohibition against plagiarism in the academy reflects indefensible moralistic choices to institute attribution norms that go well beyond the protections of copyright. Professor Frye's incisive piece speaks volumes about the slippery notion of academic authorship, and the even more elusive concept of originality itself.

Finally, my contribution to the volume reviews the scholarship related to copyright in higher education. I make the case that historic scholarly attention to copyright on campus has predominantly focused on two issues: (1) the question of who owns copyright, with particular focus on the rights of faculty versus the rights of institutions; and (2) the question of copyright use in higher education—i.e., what kinds of uses of copyrighted material in higher education are fair uses, what kinds of uses should be fair uses, and why fair use is important in higher education. My goal is that the article will help future scholars situate normative proposals for improving the function and application of copyright law within higher education. To that end, I conclude by identifying two avenues of scholarly inquiry that hold great promise for amplifying our knowledge in this area. The first involves principles of copyright ownership on the modern campus. The second involves the need for empirical scholarship on copyright in higher education. I intend to pursue both in future work.

I would like to conclude this introduction with a few words of thanks and reflection about this symposium issue. First, our law school's dean, and Duquesne University's next president, Ken Gormley, deserves special recognition. Dean Gormley has been a stalwart supporter of our intellectual property law curriculum, and

from the beginning viewed this symposium issue as a logical indicator of our faculty and student interest in intellectual property. Second, this symposium issue would not exist but for the steady support and encouragement of Professor Jane Campbell Moriarty. Professor Moriarty served as our associate dean of faculty scholarship when the symposium that gave rise to this issue was envisioned and then implemented. Her enthusiasm for the symposium, and savvy sense for how to make it a success, were indispensable at every turn. Third, I thank the entire staff of *Duquesne Law Review*, and in particular, third-year students Tami Mack and Adam Tragone, for their tireless and careful work in bringing this issue into production. The articles are better because of our students' dedication.

Finally, as the member of our faculty with oversight over our intellectual property program, I would be remiss if I did not express my excitement about the breadth and quality of the work published in this issue. Long-time readers and those familiar with our school may know that *Duquesne Law Review* has not historically been a hotbed of intellectual property scholarship. Although early volumes in the 1960s did publish prescient works on the topic,[8] and the writing of noted copyright scholar Raymond Nimmer graced these pages in the year 2000,[9] for the most part, *Duquesne Law Review* has turned its scholarly attention to other topics through the years. As the importance of intellectual property only continues to grow, including in our region of southwest Pennsylvania,[10] and the nature of higher education in the knowledge economy increasingly implicates matters of intellectual property, the articles in these pages should read well into the foreseeable future.

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8. *See* Robert Freedman, *Is Choreography Copyrightable?: A Study of the American and English Legal Interpretations of "Drama"*, 2 DUQ. L. REV. 77 (1963); Raymond C. Nordhaus, *Antitrust Laws and Public Policy in Relation to Patents*, 3 DUQ. L. REV. 1 (1964).

9. *See* Raymond T. Nimmer, *Through the Looking Glass: What Courts and UCITA Say About the Scope of Contract Law in the Information Age*, 38 DUQ. L. REV. 255 (2000).

10. *See, e.g.*, *California Company Varian to Pay Pitt $35M to Settle Patent Infringement Lawsuit*, TRIBUNE REV. (Apr. 13, 2014, 9:00 PM), http://triblive.com/news/allegheny/5938156-74/university-varian-patent#axzz3ub6RXyWf (describing settlement paid to University of Pittsburgh by medical device manufacturer after federal appellate court affirmed a finding that the company had infringed patents owned by the university); Justine Coyne, *CMU's $1.54B Award Reduced in Marvell Case*, PITTSBURGH BUSINESS TIMES (Aug. 4, 2015, 2:48 PM), http://www.bizjournals.com/pittsburgh/news/2015/08/04/cmus-1-54b-award-reduced-in-marvell-case.html (describing federal appellate court ruling that a manufacturer of semiconductor chips must pay at least $278 million to Carnegie Mellon University, after a federal jury in Pittsburgh found the company had infringed a patent owned by the university, and the trial court awarded the university $1.54 billion in damages).