



Strathprints Institutional Repository

Law, Derek and Weedon, Ralph and Sheen, M.R. (2000) *Universities and article copyright*. Learned Publishing, 13 (3). pp. 141-150. ISSN 0953-1513

Strathprints is designed to allow users to access the research output of the University of Strathclyde. Copyright © and Moral Rights for the papers on this site are retained by the individual authors and/or other copyright owners. You may not engage in further distribution of the material for any profitmaking activities or any commercial gain. You may freely distribute both the url (<http://strathprints.strath.ac.uk/>) and the content of this paper for research or study, educational, or not-for-profit purposes without prior permission or charge.

Any correspondence concerning this service should be sent to Strathprints administrator: <mailto:strathprints@strath.ac.uk>



Law, Derek and Weedon, Ralph and Sheen, M. R. (2000) Universities and article copyright. Learned Publishing, 13 (3). pp. 141-150. ISSN 0953-1513

<http://eprints.cdlr.strath.ac.uk/6157/>

This is an author-produced version of a paper published in Learned Publishing, 13 (3). pp. 141-150. ISSN 0953-1513.

Strathprints is designed to allow users to access the research output of the University of Strathclyde. Copyright © and Moral Rights for the papers on this site are retained by the individual authors and/or other copyright owners. You may not engage in further distribution of the material for any profitmaking activities or any commercial gain. You may freely distribute both the url (<http://eprints.cdlr.strath.ac.uk>) and the content of this paper for research or study, educational, or not-for-profit purposes without prior permission or charge. You may freely distribute the url (<http://eprints.cdlr.strath.ac.uk>) of the Strathprints website.

Any correspondence concerning this service should be sent to The Strathprints Administrator: eprints@cis.strath.ac.uk

Learned Publishing (2000)13, 141–150

Universities

and article

copyright

Introduction

In all the debates about copyright and intellectual property in recent years, the battle lines have tended to be drawn between librarians and publishers. This neglected what in some ways is the most important player of all, the employer. There seems little doubt that the university owns the copyright in articles, and universities are beginning seriously to turn their attention to this. Whether the article is in printed and/or electronic form probably makes no difference in law to ownership, but custom and practice are important here. A study has just been completed by the Centre for Educational Systems at Strathclyde University at the request of the Funding Councils to review current practice and benchmark the present position against future action. Higher education has turned itself into big business and as a result is beginning to contemplate more fully how to manage its assets. The total turnover in the sector now exceeds £10 billion pounds per annum. An 'average' university will have a turnover in the region of £120–150 million, less than half of which comes directly from the state. More than half of funds now come from a combination of overseas student fees, competitively tendered research grants, endowment income and intellectual property rights. This last can increasingly represent several millions of pounds and the figure is growing. Quite apart from some of the ownership questions raised below, staff structures are increasingly organized to allow some staff additional research time for the benefit of all. Universities have no other purpose than the creation, dissemination, understanding and development of knowledge, and it is inevitable that intellectual property asset management is an area of growing concern. Much of a university's intellectual property is already covered by rules and regulations. There are tight rules

D. G. Law

Director of Information Strategy, University of Strathclyde

R. L. Weedon

Internet Copyright Officer, Centre for Educational Systems, University of Strathclyde

M. R. Sheen

Director, ETRAC (Emerging Technologies Research and Assessment Centre), University of Strathclyde

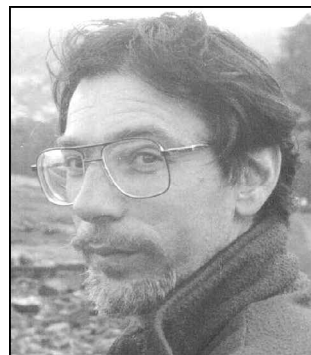
© D. G. Law, R. L. Weedon and M. R. Sheen 2000

Based in part on a presentation given at the ALPSP seminar 'Who Should Own Copyright in Journal Articles?', January 2000

ABSTRACT: *The advent of electronic publishing raises many questions about the exercise of digital rights. We examine the problem of who owns the copyright of articles in the context of university attitudes to intellectual property generally and evolving practices in the publishing arena. We conclude that the balance between author and publisher is changing and that universities, as employers, could play a larger part in shifting the balance still further.*



Derek Law



Ralph Weedon

on inventions; there are tight rules on software; there are tight rules on patents and licences; there are tight rules and/or commercial arrangements with staff on mixed media and teaching materials; many commercial research contracts have tight rules on publication; there are tight rules to withhold Ph.D. results from the public domain to allow time for commercial exploitation. In sum, the historic and present position is that any intellectual property which is perceived as having commercial value has been controlled.

Who owns the copyright of articles in higher education?

any intellectual property which is perceived as having commercial value has been controlled

The first owner of copyright is normally the author or creator of the work in question. There are exceptions to this. In law, the copyright in any work produced by an employee 'in the course of employment' is the property of the employer.¹ This means that the copyright of any article, book or conference paper written by an academic belongs to his or her university. It is perhaps also worth remembering that it is now the case in most institutions (and soon will be in all) that staff receive formal training, including training in research and in preparing material for publication.

What if an article was written at the author's home, outside office hours and using the author's own equipment? It is arguable that this is a red herring. Staff are employed to do research and to publish that research. That being the case, the work is done 'in the course of their employment'.²

A counter argument holds that academic staff often have contracts which do not make reference to the writing of articles, nor specifically state that they are employed to do research. However, that does not refute the argument that articles are produced 'in the course of their employment'. If a member of staff employed to teach and research in the area of marine biology were to write an article on Byzantine castles, then they would perhaps have a case. Here the question of where and when the work was done and the use of university equipment might come into play.³

A university can transfer copyright to an

author. It may also waive its copyright to scholarly works while asserting the general principle of ownership. A university may allow staff to transfer copyright in their work to a publisher and receive any financial gain accruing. One of the problems facing any institution that wishes to change its policy on copyright is that staff can appeal to custom and practice. Particularly where an institution has never formerly claimed copyright, the courts might take the view that academic staff are the *de facto* owners. A change in policy might be seen as an attack on 'academic freedom', a form of censorship even. The idea that an academic might be required to publish in one journal rather than another, because the former offered more favourable terms over copyright, is likely to be controversial.⁴

Staff deal with publishers as owners and the publishers have acted as if staff had the legal right to assign copyright. Publishers claim that contracts are based on the assumption that staff are acting as an 'authorized representative' of their university. Those institutions which explicitly assert their right to ownership of copyright but have waived it for certain materials may be in the strongest position to change their policy. By definition they cannot waive what they do not own. One of the problems in this area is the lack of any case law or precedent.⁵

Current custom and practice

Davenport looked at the attitudes of academics and reported that:

- Authors of scholarly articles and 'the like' generally assigned their rights to the publisher, irrespective of whether they had the right to do so or not.
- Academics' attitudes to copyright 'are characterized by indifference'.
- Most did not expect payment for their effort.
- Many academics take a dismissive view of the system as it now operates.
- Copyright's proper domain is the commercial world; it is not appropriate to academia.⁶

A recent JISC study found that many

universities either do not assert, or waive, their copyright, and academics have long been in the habit of regarding the copyright in their work as their own.⁷ Concerns rarely appear to be raised over ownership of patents where there has long been institutional involvement. This may be because patents require university backing, expertise and money to make them a reality. In addition, most institutions have some form of revenue-sharing scheme whereby the academic inventor shares in any revenues raised by the ownership of a patent. The sector has been encouraged to pursue a policy of stewardship.⁸ Institutional ownership of patents has rarely been challenged in the courts; if the same policy was followed over copyright it might be so.⁹

Institutional ownership and control of copyright is uncommon except for computer software. There is, however, considerable variation between institutions on how they handle copyright and in some cases there appears to be no defined policy at all.¹⁰ The copyright in articles is the most likely to be controlled by the author. To all intents and purposes they are the *de facto* owners of the copyright. This often goes by default or is recognized tacitly or in some cases formally to be the case.¹¹

Recent research¹²

Research has found that many academics appear relatively ignorant of copyright (both in their own work and that of others) or did not wish to enquire too much into it. Some regarded it as a constraint on their work; the desire to be acknowledged as the author of a work and the pressures to publish were of more importance than who owned the copyright. The need to publish is important to an academic's career and this has been enhanced by the existence of the Research Assessment Exercise. Many staff appear to confuse recognition of authorship with copyright, although the former does not necessarily equate with ownership of the latter.

Once an article is accepted for publication, most academics appear to sign whatever contract is offered to them. In many cases this transfers ownership of all

copyright, including digital rights, to the publisher. Publishers have argued that it is much simpler to have a standard contract assigning all rights rather than to negotiate with individuals. They also argue that in return for ownership they give a great deal of 'added value'. They provide editing, peer-review mechanisms, publication, printing and distribution plus marketing.¹³ However, some of the major journal publishers are making substantial profits, which have been increasing in recent years.¹⁴

One problem with the present arrangement is that higher education institutions (HEIs) have to buy back the work of their staff in the form of subscriptions to the journal in which an article is published. On top of this, unless there is an agreement to the contrary, the author must seek permission from the publisher to adapt the article or even make multiple copies of it for teaching. Admittedly this fact seems to be more honoured in the breach than in reality.¹⁵

The JISC study highlighted the fact that there are other options available. One is to retain electronic rights, while surrendering those to a printed version. Another is to licence the publisher to produce and distribute the article in a journal. An alternative would be to licence back certain rights from the publisher.¹⁶ The retention of the right to use materials in teaching may meet with a positive response, but the other options are less likely to be accepted by publishers.¹⁷

If institutions seek to own and manage copyright, the question will be asked: is such expenditure worth it? There are some doubts over patents whether universities can make a significant income from their possession, given the outlay. Institutions favour more co-ordination on copyright and a united front by the sector in any negotiations with other stakeholders.¹⁸ At the same time, institutional autonomy needs to be respected and no one strategy on copyright is likely to suit all institutions. The JISC report recommended that each university review its position on copyright and adopt a clear policy on its ownership and management. It also advised that staff and

no one strategy on copyright is likely to suit all institutions

students have ready access to information on copyright and dealing with publishers.¹⁹

The JISC survey²⁰

The majority of CVCP institutions had an explicit IPR policy but 26% did not. In terms of who took responsibility for the copyright in journal articles and books, it was often the individual academic alone. When asked if the university waived copyright in such materials, 80% of those responding answered 'yes'.

Internal debates on copyright ownership were indicated by 54% of HEIs. In one institution we visited, where their policy documents were available, we learnt ownership of IPR had been the subject of a year-long review which included consultations with the AUT. Not all matters were resolved, particularly those relating to copyright and electronic material, but on the ownership of articles the institution in question waived its rights.

Policy documents²¹

An analysis of these supported the findings of the survey, that many institutions currently waive their copyright to scholarly work. Over half the policies explicitly waived copyright and it is likely that in the rest the institution did not assert their rights and/or they were effectively waived by custom and practice. Yet at the same time 69% of the policies highlighted the institution's general claim to ownership of all IPR produced by staff.

Examples

One 'new' university policy noted 'It is not intended that these regulations should apply in relation to scholarly works such as books, papers and works of art.' The policy does not deal with copyright explicitly, except that in software and video material. A postwar university guide to IPR makes no reference to the waiving of copyright in any material, indeed it states 'If the work is created during the course of your employment or studies, it belongs to the university.' However, in the survey the university's copyright officer

noted that they did waive their copyright in scholarly works.

An 'old' university quoted the 1988 Copyright, Designs and Patents Act to the effect that the employer was the owner of works produced by an employee. However, 'The university will not in normal circumstances seek to benefit from any rights it may have as employer in the academic publications of members of academic staff.' They do not actually transfer ownership, merely say they will not seek to benefit.

At another 'old' university, the policy notes the 1988 act and asserts the institution's ownership of copyright in computer software but 'the university agrees that members of academic staff, in accordance with past practice, will be the owners of copyright in works produced in the course of their academic duties'. This comes close to transferring ownership. One 'old' university completely waives its copyright. It 'makes no claim to any intellectual property created by its employees in the course of performance of their normal duties'. Over copyright it notes 'In respect to books, articles and other traditional forms of publishable scholarly writing, the university will usually have no role to play.'

At a second 'new' university the policy asserts ownership of 'all copyrights, including copyright in software and material circulated electronically, e.g. via the World Wide Web. Except as agreed in writing, the university claims ownership of the intellectual property created by staff in the course of the duties specified . . .' There is no reference to scholarly works, although in the survey the university reported that it did waive its rights in this area. The assertion of rights to material on the web could make it easier to assert ownership to articles in electronic form.

Some views from abroad

Significant work has been done on ownership of copyright in HEIs in the USA. There have also been a number of cases in the courts. UK literature on IPR and HEIs tends to focus on patents.²²

An Australian survey of HEI policies on IPR found that all of them (27) waived their

69% of the policies highlighted the institution's general claim to ownership of all IPR produced by staff

copyright in learned articles, although they used different means to achieve this.²³ Some waived their rights but implicitly or explicitly asserted that the university was the owner. Others assigned or 'vested' the copyright of scholarly works in the academic author. In other cases the policy states that the university will not assert its rights. In several cases an exception was made for works – usually computer software – that might have some commercial value.

In the USA, a 1994 report on copyright in the electronic environment was compiled under the aegis of the AAU (Association of American Universities). It dealt specifically with the ownership of copyright in the work of academic staff.²⁴ It suggested four possible scenarios other than leaving things as they are.

- Enhancement of current practices.
- Faculty (staff) ownership of copyright
- Joint ownership by staff and the institution.
- Joint faculty (staff)/university consortium ownership.

The report did not come down in favour of any one option but recommended the creation of model policies and further national coordination of research. Other important issues the report noted were:

- The need to commit resources to university copyright management.
- Concerns over 'dislocation of markets' if universities and professional societies actively managed their own copyright.
- There might be beneficial aspects to university ownership of copyright, particularly in electronic publishing.
- There was an issue of the amount of added value provided by the publisher.
- Academic freedom.

The specific aims of Tufts University's IPR policy include 'to protect the traditional rights of scholars with respect to owning the products of their intellectual endeavours'. It notes that 'this is in contrast to normal practice in the business world, where works created by employees are usually owned by the employer under work-for-hire rules'. Essentially academics at Tufts retain owner-

ship of any journal articles they write, but this is not universal.²⁵

Copyright in scholarly work is controversial. 'Underlying the notion in work for hire is that the employer has the right and ability to control the work created, . . . But that's antithetical to academic freedom in an institution of higher learning.' So many people 'assume . . . that faculty-written books and other materials are owned by the professor, not the university'.²⁶ The AAUP (American Association of University Professors) has formed a 'strike-force' to combat the perceived threat to their rights.

The Dutch solution

In the Netherlands,

the Open University has come up with a new standard agreement between the author and the publisher in which the author does not grant all rights to the publisher; universities retain the right to use the works of their employees (done in the course of their employment) for research and educational purposes. Academic researchers have to sign a licence agreement as part of their employment contract. Together the universities will negotiate with the society of Dutch publishers about the terms of the standard agreement.²⁷

The solution does not propose institutions assert ownership but does ensure some rights are retained by the author to the benefit of the institution. Of course if access is restricted to the employee's institution, this will still meet objections from those who want dissemination on a wider scale.

The impact of the internet

Increasingly, academics are publishing their papers on the internet. One interpretation of the law is that even with restricted access this is, by definition, publication, since it effectively distributes the paper. An international working group has recently looked at this question for science journals.²⁸ Many of the criteria proposed for recognition of a work as a publication are straightforward: fixity of form, persistence, authentication. However, they rejected 'the notion that

Copyright in scholarly work is controversial

posting a paper onto a personal web page constitutes publication'. That said, they then noted ways in which such postings could become publications, for example, 'informing peers of its presence'. SCONUL noted the ambiguities present in their position. 'It would be difficult to dismiss as non publications works that have been posted on a personal web page.'²⁹

Some publishers' contracts stipulate that an article can only be accepted if it has not been previously published. Where the paper is for a conference the situation is greyer, since it is common practice to offer these in advance to delegates, and then submit them for publication in a journal, albeit with a few changes.

'Self-archiving'

It has been argued that there is a way to publish peer-reviewed articles on the web, which would be available for free.³⁰ A preliminary version is put up on the web, then submitted to a journal. It is revised in the light of referee's comments and the author adds notes to the original web version, noting where changes need to be/will be made. The process is referred to as 'self-archiving'. However, if a sufficient number of academics did this and subscriptions fell, the journal – and its peer-review system – might cease to exist, although it is argued that peer review could be paid for separately.³¹

The proponents of the idea argue that an academic who follows this procedure cannot be sued for breaking an agreement with the publisher to assign copyright and also that a publisher would not 'blacklist' an author, because of the 'bad press'. Perhaps the most notable case of 'self-archiving' is the Los Alamos Physics archive.³² Even the Los Alamos archive, however, only holds a fraction of the total number of papers published.³³

Harnad argues that such a system will pay for itself in the long run by saving on journal costs. Indeed, he argues more material would become available.³⁴ Interestingly, Harnad argues that staff should transfer all copyright to publishers none the less, including electronic rights.³⁵

Others have noted that:

there are concerns amongst academics that such a form of pre-publication might degrade the value of articles, to the publishers of high prestige journals and to the Research Assessment Exercise. There are, however, signs that publishers are now becoming increasingly relaxed about these forms of publication. Experience with the Los Alamos archive has shown that so far the financial health of physical journals has not been affected.³⁶

The universities' view

Some personnel and legal officers take a bullish view of copyright ownership. They argue that the law is quite clear on the question of ownership and that they would be prepared to use the law to assert institutional control. The long history of academic staff 'ownership', however, may be difficult to break, at least with regard to print publications.

Law has noted that while there are tight rules on patents and copyright material such as software, and in some places on teaching material (e.g. multimedia), there is rarely any control of journal articles even though these are subject to commercial contracts with publishers.³⁷ He makes the point that copyright has historically been ignored except where it has commercial value, but that the production of work to which copyright applies and its protection may be a condition of employment. Whilst this is the case, legally it might be difficult to enforce. For example, not all staff are included in the RAE.

Law's major concern is with the fact that publishers are asking for, and getting, copyright in all media in perpetuity. With the advent of ECMS and tighter international legal frameworks, publishers could prevent breaches of copyright far more easily than with photocopiers.³⁸ Law notes that whilst with print journals, the library or individual owns the material within it, whatever restrictions there are on copying, with the electronic version, the material is often effectively leased and access can be tightly controlled by the copyright owner.³⁹

Finally, Law argues that the sector could

*there is rarely
any control of
journal articles
even though
these are
subject to
commercial
contracts with
publishers*

'do it themselves'. In the meantime, authors could amend copyright agreements to reserve non-print rights, teaching rights and put a time limit on ownership. The unanswered question is whether publishers would simply refuse to accept an article? Individual action might not work; much might depend on the reputation of the author. Collective action by employers, by insisting authors act according to the above policy, might. Whilst Law argues academics do not have the right to assign rights, this has not been tested in the courts.

The London Business School notes that

The system is now beginning to break down under the impact of changes in copyright law, electronic publishing and commercial practice. Meanwhile libraries are finding it difficult to fund spiralling subscription costs. Faculty are becoming more assertive about their intellectual property rights and universities are anxious to stake their claim in the intellectual property produced under their auspices.⁴⁰

The authors' view

The ALCS (Authors Licensing and Collecting Society) has run workshops with the AUT who adopted their declaration on 'academic authors, academic rights'.⁴¹ 'Academic authors are writers with rights and their work has professional and commercial value. They affirm their moral and legal claim to influence and control the whole spectrum of their works, in original and translated versions.'⁴² The ALCS supports the right of authors to decide where they publish⁴³ and endorses the view that academics should transfer and license their copyright selectively, and not be obliged to assign all copyright to a publisher.⁴⁴ Some copyright organizations appear to believe academics have a strong claim on copyright to articles, and that this would prevail if a case came to court.⁴⁵

At one copyright agency it was mooted that universities should be, and had to be, more 'robust' in dealing with copyright and publishers. In general, copyright agencies prefer institutional ownership of copyright in published work, particularly where it might

simplify transactions involving multiple authorship.⁴⁶

John Kay has argued that universities 'pay large sums to publishers for severely restricted rights to use material they themselves have created'.⁴⁷ He makes a case for universities owning copyright, rather than allowing individuals to give it to publishers, and suggests licensing as the option. He goes on to suggest that in economic terms the present system of disseminating academic knowledge is not very efficient.

the present system of disseminating academic knowledge is not very efficient

The professional and trade unions

The AUT recently issued a guide to its members on intellectual property rights. It has argued that 'In universities it should be put beyond question that academics retain ownership of copyright in their writings and other works, so that they may publish them when and where they wish, without control by their institutions.'⁴⁸ It has been suggested that any HEI interest in copyright is part of a wider process of managerialism and commercialization, which represents an attack on 'academic freedom'. Be that as it may, the AUT's attempts to reach agreement with the CVCP have failed to prosper and negotiations are currently stalled.⁴⁹ The *Times Higher Educational Supplement* ran a leader arguing that the AUT was too late and that HEIs are not willing to allow staff to own copyright and intellectual property rights in material done in work time.⁵⁰ In part, it noted, this is so institutions can restrict assignment of rights to publishers. It anticipates institutions and learned societies developing electronic publishing to get round the costs associated with buying back material from the publishers.⁵¹

The publishers' view

The Association of Learned and Professional Society Publishers (ALPSP) recently launched a new model 'grant of licence' to cover journal articles.⁵² This essentially states that 'Copyright is yours, and we will acknowledge this. . . . However, you authorize us to act on your behalf to defend your copyright. . . . You also retain the right to use your own article . . .' There is also acknowledgement

*the balance
has shifted
dramatically in
electronic
publication*

of the right to put the article up on the web for free access as a preprint or in full for educational purposes.⁵³ The announcement goes on to compare the model licence favourably with that used by Elsevier Science Inc.

In fairness, the latter does permit the author to make single copies and to post the article to the web, but only if it is restricted to the institution. Preprints are not allowed to be updated, which makes 'self-archiving' difficult. What the ALPSP model licence does not address is the fact that in law the copyright is not the author's to give away. An ALPSP survey found:

Copyright does not appear to be an area of major concern at the moment, though a significant number of authors think that copyright should be retained by the author rather than being relinquished to the publisher.⁵⁴

Clearly something convinced the ALPSP that copyright was important to academics.

Conclusion

There can be little doubt that the balance has shifted dramatically in electronic publication. The single most notable change is that data is typically leased rather than purchased and that access therefore disappears when a contract is not renewed. Traditional 'rights' such as fair dealing and interlending have become newly contentious while librarians look at the models proposed by radicals such as Ginsparg and Harnad and wonder at the growth in journal prices.⁵⁵ Increasingly the feeling is that we could do it ourselves, and initiatives as varied as SPARC and Highwire demonstrate this.⁵⁶ Increasingly, institutions are advising authors to amend the standard contracts issued by publishers to authors. An increasing number do, and rare indeed is the publisher who notices. The amendments typically preserve the non-print rights, reserve the right to make multiple copies for teaching and time limit the contract. The ALPSP contract cleverly addresses the most contentious area and throws the debate back to being one between author and employer. Perhaps resolving this would render nugatory most of

the febrile debate between librarians and publishers.

References

1. Christie, A. and Gare, S. (eds) *Blackstone's Statutes on Intellectual Property*, 4th edn. Blackstone Press, 1992, 53–4. The relevant part of the 1988 Copyright, Designs and Patents Act is s.11 (2). The author's moral rights are also severely restricted. See Millard, C. Copyright. In Read, C. (ed.), *Computer Law*, 3rd edn. Blackstone Press, 1996, 149. See also Henry, M. *Current Copyright Law*. Butterworths, 1998, 35–42.
2. See Oppenheim, C. Copyright in HEIs: a discussion paper. In Tedd, M. *Papers on Copyright Issues in the Electronic Library*. JISC, 1995 (www.jisc.ac.uk/pub/copyright/charles1.htm)
3. There are other grey areas which need to be addressed such as articles written or co-written by students, emeritus and visiting staff and any other person not covered by the term 'employee'.
4. See the reaction in analogous areas. Baty, P Labour policy poses threat to freedom. *Times Higher Educational Supplement* 2000: 31 Mar.; Managerialism in universities. *AUT Update* 2000: 64, 17 Feb., 2. Triesman, D. Threat to academic freedom 'will mean war'. *Times Higher Educational Supplement* 1999: 21 May, and Murray, G. Letters and Opinion. *Times Higher Educational Supplement* 1999: 28 May, 17. See also the University of Nottingham v. Simon Fishel case. *Times Higher Educational Supplement*, 2000: 25 Feb., 18 and 3 Mar.
5. Millard, C. Copyright. In Read, C. (ed.), *Computer Law*, 3rd edn. Blackstone Press, 1996, 106. He suggests turning to judicial decisions based on the previous 1956 act or even earlier legislation.
6. Davenport, E. Perceptions of copyright in a group of UK information scientists. *ASLIB Proceedings* 1994: 46, (11–12 Nov./Dec.), 267–74.
7. Weedon, R. Policy Approaches to Copyright in HEIs. CES, University of Strathclyde, 2000.
8. Report of a Working Party on Patents and the Commercial Exploitation of Research Results. Vice-Chancellor's Committee 1977 (forerunner of the CVCP).
9. There have been cases of disputes over ownership of patents in the USA. It may be they have occurred in the UK but more often been settled privately and with less publicity.
10. Weedon, Policy Approaches, 71–4.
11. See below.
12. The bulk of this article is based on research undertaken for Weedon, Policy approaches.
13. See Sutherland, S. Who owns John Sutherland? *London Review of Books* 1999:21(1), 7 Jan. (www.lrb.co.uk/v21/n01/suth2101.htm).
14. Sutherland, Who owns John Sutherland?
15. The advent of electronic publishing may change this.
16. See the AAU (Association of American Universities) Task Force on Intellectual Property Rights in an Electronic Environment, 1994. See also Weedon, Policy approaches, 47–8 (arl.cni.org/aauiPCharge.html).
17. Based on an interview with a representative of a copyright-licensing organization, 18 Aug. 1999. As with all interviews carried out for the Strathclyde research, anonymity was guaranteed.

18. Weedon, R. Policy approaches, 60. There have been agreements in certain areas, e.g. that between the JISC and the PA (Publishers Association) over fair dealing and electronic copying (www.jisc.ac.uk/index.html).
19. Weedon, R. Policy Approaches to Copyright in HEIs. CES, University of Strathclyde 2000, 23–29. The research was funded by the JISC Committee on Awareness, Liaison and Training (JCALT), whose support the authors gratefully acknowledge.
20. The survey, conducted as part of the above research, was sent out to all HEIs. There was a 60% response rate to the survey from CVCP members. Responses reflect what individuals understood the HEIs policy to be, reality might be a little different, as discussions with academics at a selection of institutions revealed. Nine institutions were visited in all.
21. All HEIs were asked to submit their IPR policy documents as part of the above survey. Less than half the institutions who returned the questionnaire did this. Very few post-1992 institutions felt able to supply any documentation.
22. The law and the higher education systems in the USA are different to those of the UK, but such work is still relevant. See, for example, the work of Andrew Webster and Kathryn Packer (www.cam.ac.uk/hums/satsu/pat.htm; www.cam.ac.uk/hums/satsu/inprop.htm; mailbase.ac.uk/lists/ipr-science/files/references).
23. See Monotti, A. Power to modify the vesting of copyright in an employer. *European Intellectual Property Review* 1997:12, 715ff.
24. AAU Task Force on Intellectual Property Rights in an Electronic Environment (arl.cni.org/aauiPCharge.html). See also Ownership of New Works at the University: Unbundling of Rights and the Pursuit of Higher Learning. Consortium for Educational Technology for University Systems (CETUS) (www.cetus.org/ownership.pdf).
25. Tufts University. Policy on rights and responsibilities with respect to intellectual property (www.tufts.edu/tccs/usepolicy/tpoc1.html).
26. Standeford, D. Internet raises sticky questions about ownership of IP in academia. *IP Law Weekly* 2000: 28 Jan. (www.lawnewsnetwork.com/practice/iplaw/news/A14468-2000Jan27.html).
27. With thanks to Alan Story of the University of Kent and Astrid Wissenburg of Kings College London, who provided this synopsis.
28. Staff Reporter. Group asks: when is a science publication not a publication? *Times Higher Educational Supplement* 2000: 18 Feb., 3.
29. Ibid.
30. Harnad, S. Free at last: the future of peer-reviewed journals. *D-Lib Magazine* 1999: 5, 12 (www.dlib.org/dlib/december99/12harnad.html). See also Patel, K. Team finds way round copyright. *Times Higher Educational Supplement* 2000: 25 Feb., 12.
31. Harnad, Free at last, 5, 6. Would universities organize this or publishers? If the latter, would they seek a profit from this service?
32. xxx.lanl.gov
33. Harnad, Free at last, 5, 4.
34. Ibid. 5–6.
35. Ibid. 7. See the American Physical Society. He notes, however, that journals such as *Science* try to prevent ‘self-archiving’. See www.aps.org/index.html and follow links ‘research journals’ and ‘copyright-transfer form’ (www.sciencemag.org/misc/con-info.shtml#prior).
36. See ‘The London Business School’ website: www.lbs.ac.uk/library/intellectual_property_overview/ownership/ownership.html. See also below.
37. Paper given by Derek Law at an ALPSP seminar, 13 Jan. 2000, on which this article is in part based. There are cases where the funders of research projects can and do insist on control, if not ownership of publications.
38. The CLA was a partner in a number of ECMS (Electronic Copyright Management Systems) projects such as COPICAT. This was followed by COPINET, which apparently did not involve the CLA (www.mari.co.uk/copicat/index.html#contents; www.mari.co.uk/copinet/copframe.htm). The European Directive – Amended proposal for a Directive on the harmonization of certain aspects of copyright and related rights in the Information Society COM (1999) 250 final, 21 May 1999. There are real doubts if ‘fair dealing’ will survive in its current form. The directive should pass its final stages in 2000 and will result in changes to UK law within two years (europa.eu.int/comm/internal_market/en/intprop/intprop/copy2.htm). For recent amendments (February 2000) see: europa.eu.int/comm/internal_market/en/intprop/intprop/copy3.htm. The directive is in part based on recent WIPO (World Intellectual Property Organization) treaties. WIPO in turn is linked to the WTO (World Trade Organization).
39. It should be said that there are agreements between institutions and publishers that may offer a more positive interpretation. For example, initiatives such as NESLI (National Electronic Site License Initiative for electronic journals), LIDDAS (Inter-Library loans and Document Delivery) and SPARC (alternative partnerships with publishers) (www.jisc.ac.uk/index.html; www.slsw.gov.au/LIDDAS/; www.arl.org/sparc/factsheet.html).
40. The London Business School website, as above.
41. www.alcs.co.uk/DECLARATION.html – the declaration was endorsed by the AUT in May 1998.
42. Ibid. 2.2.
43. Ibid. 3.3.
44. Ibid. 3.4. This stops short of suggesting authors own copyright.
45. Based on an interview with personnel from a copyright organization, 12 Aug. 1999. Conducted as part of the research for Weedon, Policy Approaches.
46. Based on an interview at a copyright organization, 18 Aug. 1999. In part the personal view of an individual. Conducted as part of the research for the above.
47. Kay, J. Creativity at centre stage. *Financial Times* 1999: 31 Mar., NP.
48. Trythall, B. Ownership and use of knowledge. *AUT Bulletin*, Jan. 1999, 16. He was commenting on ‘Your guide to intellectual property rights’. *AUT*, Jan. 1999. See also Patel, K. V-Cs reject beefed-up copyright. *Times Higher Educational Supplement* 1999: 9 Apr., 7.
49. The CVCP has rejected the AUTs’ proposed agreement on copyright as being too ‘proscriptive’. ‘There are no differences between the two bodies on limiting publishers’ autonomy, but on other areas, we did not feel the proposals advanced much on what the CVCP has already said. . . . The union is asking institutions to forgo rights and returns on intellectual property to an extent that would be counter-productive.’

50. Editorial, Intellectual property. *Times Higher Educational Supplement* 1999: 9 Apr., 16.
51. Ibid.
52. ALPSP, Guidelines for licence of electronic publications. ALPSP Affairs. *Learned Publishing* 1998:11(4), 246–251. See the model licence below (www.alp.org.uk/cpygdlns.pdf; www.alp.org.uk/grantli.pdf). See Patel, K, Rethink on copyright. *Times Higher Educational Supplement* 2000: 28 Jan., 6. Also: Libraries approach copyright solution. *Times Higher Educational Supplement* 2000: 4 Feb., 13.
53. Email announcement from Sally Morris, Secretary General of ALPSP, 21 Dec. 1999. See also Licence to publish. *Learned Publishing* 2000:13(2), 74.
54. Swan, A. and Brown, S. What authors want. The ALPSP research study on the motivations and concerns of contributors to learned journals (Key Perspectives Ltd). London: ALPSP, 1999. See also www.alp.org.uk/pubs.htm.
55. For Harnad, see above. For Ginsparg, see www.library.yale.edu/~okerson/subversive.html
56. For SPARC, see above. For Highwire, see highwire.stanford.edu/intro.dtl

Note. All URLs were correct when checked on 26 April 2000.

Derek Law

Librarian and Director of Information Strategy
University of Strathclyde, Andersonian Library
101 St James' Road
Glasgow G4 0NS, UK
Email: d.law@strath.ac.uk

Ralph Weedon

Internet Copyright Officer
University of Strathclyde Centre for Educational Systems
Alexander Turnbull Building
155 George Street
Glasgow G1 1RD, UK
Email: ralph.weedon@stath.ac.uk

Margaret R. Sheen

ETRAC
University of Strathclyde
Graham Hills Building
50 George Street
Glasgow G1 1QE, UK
Email: m.r.sheen@strath.ac.uk

ALPSP



ALPSP membership for consultants and small companies

Are you an individual consultant or a small company offering services to academic and learned publishing? ALPSP membership offers you an ideal way to network, and Affiliate membership is now available at the reduced rate of £165.

For further information and application forms please contact:

Sally Morris
South House, The Street
Clapham, Worthing
West Sussex BN13 3UU, UK
Tel: + 44 (0)1903 871 686, Fax: + 44 (0)1903 871 457
Email: sec-gen@alp.org.uk