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Ownership & Authorship of Collaborative Academic Work

Introduction

The purpose of this advisory is to assist academic staff members in avoiding conflict over ownership and authorship rights in collaborative academic work.

When students, professors, librarians and other researchers work together in teams, they can create fundamental advances in knowledge. Unfortunately, these arrangements are also generating conflict over intellectual property ownership and authorship attribution; conflict that can derail projects, damage or destroy careers and undermine the integrity of all academic work. To avoid these difficulties, individuals engaged in collaborative academic projects are advised to:

- understand the basic academic practices and legal rules that govern the sharing of ownership and authorship rights;
- be aware of the social and economic contexts that foster conflict over these rights; and, most importantly
- reach written agreement on how rights are to be assigned **before commencing collaborative work.**

Collaborative Academic Work

Collaborative academic projects draw together combinations of students, faculty, librarians, researchers and technicians, as well as funding from the private sector and government granting agencies. While there

are many success stories arising from such cooperation, there are also instances of difficulties ranging from hurt feelings to career damage, misappropriation of intellectual property, and academic fraud.

Why do problems arise? At the most immediate level it is because team members, often through naivety, fail to agree upon the assignment of ownership and authorship rights at the commencement of a project. While reaching such agreement is essential, it is not a simple task.

First, the rules governing ownership and authorship in collaborative work are a diverse mix of custom, institutional and disciplinary policy, private contract, collective agreement language, common law and statute. Even in the absence of any ill-intent, this complexity can easily foster misunderstandings.

Second, the academic environment is highly competitive and this competition can be influenced by power differentials within teams. These divisions – whether on gender lines or between students and faculty, junior and senior faculty or contract researchers and tenured faculty – need to be understood and addressed by team members. If they are not, ownership and authorship can be inappropriately determined, not by merit and mutual agreement, but through the subtle or overt exercise of hierarchical privilege.

Finally, the effort to commercialize universities and colleges has introduced an additional friction point: the motive of



economic gain. Millions of dollars can hinge on the assignment of intellectual property ownership rights, a strong catalyst for conflict. Financial concerns can also skew academic priorities, with, for example, a student's need to immediately publish their findings in a thesis clashing with the desire of campus administrators to facilitate commercialization by delaying research dissemination. In the worst cases, authorship and ownership rights may be suppressed, not simply to preserve commercial secrecy, but to hide results that demonstrate a product is harmful to human health and safety.

Ownership Rights

Copyright and patents are the two types of intellectual property most relevant to academic work. It is important that team members understand the basic rules associated with these two concepts.

The *Copyright Act* governs literary, dramatic, musical and artistic works (including journal publications such as scientific papers) and, as a default, automatically grants ownership to the author or authors of a work. An exception to this rule is that works arising from within an employment relationship may belong to the employer. Students, as non-employees, thus have a strong initial ownership claim in works they create. Academic staff have a strong claim as well, notwithstanding the employment exception, by virtue of custom, collective agreement rights and the common law.

From this position of initial strength, student and academic staff rights can be undermined by local agreements with university/college administrations and external funders. A student may be specifically hired to

work on a project and thereby lose the presumption of automatic ownership. In other instances, team members may be required to assign copyright to a funding body in order to secure financial support. Many corporate publishers require copyright assignment as a condition of publication.

The *Patent Act* governs inventions (new machines, processes or compositions of matter) and provides students, faculty, librarians and researchers an even stronger initial ownership claim than the *Copyright Act*. It does this by granting ownership to the "inventor", even if the innovation arises from an employment relationship. To circumvent the statute and gain control of inventions, university/college administrations and external funders have aggressively attempted to impose restrictive policies and private contractual arrangements on team members.

Given all this, members of collaborative projects are advised to:

- understand that by common law and statute, they usually have a strong initial claim in the work they create;
- examine the institutional policy and collective agreement language that may dilute or reinforce these rights;
- approach with caution any contracts presented by funders, administrators or fellow team members that may further alter rights;
- remember that important ownership allocation issues can turn on such contracts, so it is critical that their terms are clear, reduced to writing and anticipate as many eventualities as possible; and
- seek assistance, including independent legal advice, when negotiating these contracts, especially in situations characterized by unequal bargaining power.

Authorship Attribution

Authorship attribution is determined by an inter-play of broad academic tradition and more specific policies associated with individual disciplines, institutions, periodicals and even laboratories. Section 14 (Moral Rights) of the *Copyright Act* also speaks to the issue:

The author of a work has ... the right to the integrity of the work and ... the right, where reasonable in the circumstances, to be associated with the work as its author by name or under a pseudonym and the right to remain anonymous.

The most general rule associated with attribution is that those people who have made a substantial, direct, intellectual contribution to a work should be listed as authors. In some disciplines this requires actual co-writing of text. In others it may include those who have made a significant contribution to the conception or design of a study, or to the analysis or interpretation of data. Rules can also vary from laboratory to laboratory. In some instances graduate students are encouraged to publish as sole authors even when their work is produced in a tightly supervised environment. Other times the supervising authority is automatically assigned a share of authorship. Complicating matters further, the demarcation line is not always clear between an author and someone who should receive acknowledgment for providing assistance.

Given the general nature of this broad framework, it is imperative that members of collaborative projects clarify authorship attribution early in their relationship. Because established academic staff often have greater experience than students or junior faculty with the particular customs of a discipline or

individual laboratory, a nuanced, inclusive discussion is essential.

Avoiding Problems

Much grief can be avoided if individual members of collaborative research teams devote time and energy towards achieving an independent, multi-sourced understanding of intellectual property ownership and authorship attribution rules that will govern the work they co-create. The first step in this process is an internet search of the policies of the applicable institution, academic society or periodical. For faculty and librarians, a review of collective agreement articles on intellectual property and academic rights and responsibilities is also essential. Student unions and academic staff associations, as well as fellow team members and trusted colleagues, may be able to provide advice.

Further assistance can be sought from university/college administrations, including their research and legal offices. While these offices can supply valuable information, their identification with commercial interests and status as agents of the employer have the potential to create conflicts of interest and they should not be relied upon as sole sources of assistance. Out of an abundance of caution, or in particularly complex instances, team members may wish to retain and consult independent legal advice. Particular caution should be exhibited towards “standard” contracts presented by administrators, fellow team members or external funders. Even seemingly benign language can strip away important ownership and attribution rights.

Once independently informed, team members should collectively set down **in writing** the rules that will govern intellectual property ownership and authorship attribution in the work that they create.

When Things Go Wrong

If ownership or authorship difficulties arise, team members should meet and discuss the problem. It may be possible to quickly clear up simple misunderstandings or correct the misapplication of established rules. If matters cannot be readily resolved, the next step is to explore the possibility of political action (publicity, moral suasion, censure) and the availability of appeal, grievance or civil claim proceedings. As access to litigation mechanisms is time sensitive, it is important to investigate such options at the earliest possible moment.

The academic staff association or student union will have information on student appeal or grievance arbitration mechanisms and on the steps necessary to bring political pressure to bear on the situation. If the university/college administration is not the source of the difficulty, it may also be able to provide assistance. Authorship attribution disputes can be raised with the relevant academic society or periodical, who may deem it necessary to withdraw an article from circulation. In particularly difficult cases the only option may be to retain independent

legal counsel and prepare for costly and time-consuming civil litigation.

Summary and Conclusion

Conflict within collaborative academic teams over intellectual property ownership and authorship attribution can arise from academic competition, social inequality, the interference of commercial considerations, and the complexity of the rules themselves. To avoid disputes over ownership and authorship team members must:

- be aware of the potential problems that can arise from collaborative work;
- individually and independently research and understand the ownership and attribution rules that apply in their particular circumstances;
- challenge unjust hierarchies within teams that assign rights based on privilege rather than merit;
- challenge the negative impact of economic competition and commercialization on collaborative work; and, most importantly
- reach agreement in writing on ownership and authorship before team work commences. ■

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