From “piracy” to payment: Audio-visual copyright and teaching practice
Peter Anderson, Griffith University

It is now very much a commonplace to remark on the complexity of television: "television is a difficult object, unstable, all over the place, tending derisively to escape us wherever we are (Bolt 1990 p.267). However, despite this apparent difficulty of placing limits on what can be said about television, there are certainly limits to what can be done with material broadcast on television. For, no matter how much television may seem to have become the property of all of us, we do not have the right to record and replay broadcasts whenever and wherever we like, as a free and unmediated and daily lives of a majority of Australians, is governed by the Copyright Act, it in a form of property, over which viewers actually have very few rights. This article will provide an account of the changing circumstances governing the use of broadcast television and audio material within the context of education. It will trace the shift from the situation and difficult circumstances of the early eighties, to the current management of copyright audio-visual material under the statutory licensing agreements between universities and the Audio-visual Copyright Society (AVCS). In examining the process of debate and legal change the paper will chart the development of the relations between, universities, academic institutions, copyright owners and law, as well as some significant shifts in the management of audio-visual teaching and research materials. Throughout the eighties there was substantial debate, and a degree of uncertainty over the use of copyright audio-visual material (including television and radio broadcasts) in the context of primary, secondary and tertiary education. During this period a significant investment was made in the development and recording and playback equipment, enabling a far greater use of broadcast audio-visual material than had ever before been possible. The problem of re-playing “off-air” material was far from certain, with the Copyright Act being subject to a series of conflicting interpretations by bureaucrats, government agencies and audio-visual producers, as well as educators themselves.

Facing the daunting task of seeking permission from individual rights owners for each broadcast for which use was desired, the educational use of audio-visual material was prohibitively expensive, and fell outside the letter of the law. As early as 1981, the film and television industry was claiming losses of $10 million a year, primarily as a result of “off-air” copies of broadcast television (Hedgcock 1981 p.3). In 1982 the Attorney-General’s Department undertook a Review of Audio-visual copyright and broadcast use. The Review provided an opportunity for a re-run of the standard copyright “debate" that set the economic monopoly tenure of owners against the public interest in access to knowledge (White & Phillips 1983 p.28). For example, The Australian Screen Studies Association argued that the ABC’s copyright decision "gave little indication of the various interests at large which the law would eventually cease to include". A detailed account of a number of the “piracy” debates can be found in Anderson 1989). In essence, the Review provided an opportunity for a re-run of the standard copyright "debate" that set the economic monopoly tenure of owners against the public interest in access to knowledge (White & Phillips 1983 p.28).

In opposition to such positions, the Television Programme Distributors Association of Australia not only argued against the general use of video recorders for time shift purposes (they were concerned that viewers would edit out advertising), but also lobbied against the adoption of "fair dealing" provisions for researchers and scholars in relation to television and radio. Although the Television Programme Distributors Association accepted that a licensing scheme for educational use would solve some of the problems of educators, they wanted to limit recording to "broadcasts" and to avoid the use of "library" materials. While this approach was consistent with the rights of copyright owners, it was also consistent with the desire of educators to have control over the reproduction of material. The Review, however, was not content with the status quo and a major issue of concern was the balance of rights between publishers and users of material. The problem of "piracy" may well have appeared to be a step backwards. The new arrangements were quickly agreed to by universities, but the process of negotiation was long and involved, and the complications of the new arrangements were generally available. Indicative (unpublished) figures, provided by the AVCS, reveal that in 1992 some institutions paid as little as $150, while others paid as much as $500 per item of audio-visual material. While no percentage breakdown of the amounts copied in each case is known, it is believed that the amounts copied each year by individual universities might fluctuate between one and two, or a couple of full weeks of recorded material. During the negotiations process, it is difficult to determine just how effectively the new scheme is functioning within the university system. If there is a "debate" over the issues raised by the changes introduced by a licensing scheme, it has remained within the network of exchanges governed by the internal management of university resources. Whatever the position of individual universities, or the AVCS, the AVCS appears less than satisfied with the current arrangements. In a letter sent to universities and broadcasting companies, the AVCS stated in 1993 that it is “appalled by the indications that the operation of the Collective Scheme Agreements with universities is currently under review, citing both criticism from within the universities, and the Society’s concern that "many universities are not complying fully and completely with their obligations", as reasons for the "temporarily suspended" status of the scheme, and added that in addition to implying that there is a significant level of under-reporting, the AVCS suggests that "few universities have procedures in place for the timely collection and submission of quasi-payment information, and negotiating over the amount...". The AVCS has "decided to leave the offer open to any" university that wishes to move from a second-keeping agreement to a specific agreement...". However, while universities remain within the current recording agreements, they can anticipate increased monitoring of compliance with the AVCS, and that "where evidence is obtained of the failure to pay fees, the University will be advised of the failure...". In 1993, the AVCS decided to offer an alternative system to the universities, at an overall cost of around $1.5 per EFTU. While the AVCS declined to provide any further details about its negotiations with the industry, the AVCS appears less than satisfied with the current arrangements. In a letter sent to universities and broadcasting companies, the AVCS stated in 1993 that it is “appalled by the indications that the operation of the Collective Scheme Agreements with universities is currently under review, citing both criticism from within the universities, and the Society’s concern that "many universities are not complying fully and completely with their obligations", as reasons for the "temporarily suspended" status of the scheme, and added that in addition to implying that there is a significant level of under-reporting, the AVCS suggests that "few universities have procedures in place for the timely collection and submission of quasi-payment information, and negotiating over the offer...". The AVCS has "decided to leave the offer open to any university that wishes to move from a second-keeping agreement to a specific agreement...".
Comprehensive research grants and industry collaboration: A challenge for universities in the 1990s

Peter Johnson
Assistant Registrar (Research Administration), The University of Western Australia

Introduction

Many researchers within universities are undertaking collaborative research with industry for the first time in their careers. They are finding it difficult to cope with the pressures of working in a commercial environment. This article traces the reasons why universities and industry are collaborating more than ever before. It focuses on the competitive research grants schemes which have been established by government over the past decade, and especially on the research and development (R & D) corporations in the primary industries and energy sector. How well have universities and industry responded to the opportunities provided under these schemes? What are some of the problems? Have the various parties reached an understanding on issues such as the ownership and valuation of intellectual property, the right to publish the importance of research milestones, etc.? These and other issues are covered and some suggestions offered on what needs to be done in relation to both policy and attitudes in this area.

Responding to the challenge

Why are universities and industry collaborating in research more than ever before? A major reason is that government has made a concerted effort in recent years to encourage collaborative research between universities and industry. Initiatives such as the 15% tax incentive for research and development, the Generic Technology Grants Scheme, the establishment of R & D corporations in the primary industries and energy sector, the National Teaching Company scheme, the Cooperative Research Centre program, Australian Postgraduate Research Awards (Industry) and the Australian Research Council Collaborative Research Grants scheme have been developed to boost R & D expenditure. Most if not all of these schemes are administered and funded under the auspices of government departments or corporations (the "funding agencies"). They require formal links between researchers and commercial collaborators, including financial commitments by industry to the R & D costs or in-kind. Government expects the results of the R & D to be exploited on normal commercial terms and to the benefit of the Australian economy.

On another front, the Government has also been taking steps to improve the intellectual property systems. Various forms of protecting intellectual property have been recognized, including amendments to the Copyright Act in 1984 and the passage of the Plant Variety Rights Act in 1987. The Australian Technology Group (ATG) has also recently established to provide the range of services required to translate Australian research and technology into products and services which can be delivered to the Australian and international markets on a totally commercial basis.

How are universities responding? Some have been quicker than others to adapt to the new environment, where the term "intellectual property" is now more fashionable than a decade ago. In those days, many believed that intellectual property with commercial significance was most likely to arise through heredity, as a result of the best students undertaking research primarily to resurface the university. Thus, the principal issues of concern were often whether to patent the discovery and how the inventor and the university might share in the proceeds from commercial exploitation. Issues such as the rights of funding agencies and other third parties to intellectual property were not commonly considered.

Initially, some universities responded to the new environment by establishing university companies to develop and manage links between the university sector, industry and government. Such companies have had mixed success, with many relying on income from consulting activities to maintain a satisfactory cash flow, rather than on royalties from the exploitation of intellectual property. They are not well suited, however, to processing proposals and grants arising out of the industry-focused competitive research grants schemes which have been introduced in recent years. Many of these schemes require a number of stages for each proposal. A preliminary proposal is usually around 2 - 3 pages in length, with sufficient information to enable a funding agency to decide whether to call for a full proposal. If a full proposal is submitted and is successful, further negotiations are often required to match the budget and research milestones, etc. to the amount offered. Negotiations concerning a formal agreement between the funding agency and the university also take place at this point. Finally, many such agreements require the university and the commercial collaborator to enter into a further contract covering matters such as intellectual property.

A growing number of universities are now appointing legally trained research contracts officers, attached in many cases to their research grants officers, to assist with the negotiation of these matters and to draft and review research agreements. Many universities have also sought the assistance of the Australian Vice-Chancellors’ Committee (AVCC) and, as a result of all of this activity, the level of awareness of the various issues relating to collaborative research with commercial potential has increased considerably within universities. There are some universities, however, which are still reluctant to commit additional resources to the commercial aspects of research, either because they do not perceive a direct financial payoff or are not convinced that income from commercially-oriented research ventures will justify the extra cost. Some fail to recognize that intellectual property matters often have less to do with generating significant income from protecting the interests of parties to a contract where there may be a commercial return in the long term. Universities which neglect their contractual responsibilities may save money in the short term, but they expose themselves to the possibility of being used for breach of contract. Consequently, confidential information arising from a collaborative research project is disclosed without the prior approval of the funding agency.

Adjusting to change

The relationship between funding agencies requiring collaboration...