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Issues & Perspectives

University-Industry Collaborations: Getting Your Slice of the Intellectual Property Pie

As an attorney at a major research university, I sometimes feel that intellectual property law should be a required course for all graduate students. After all, intellectual property is big business in higher education. Universities have set up technology transfer offices to help commercialize patented inventions. Entire courses and programs are being transformed into new media and packaged for Web delivery. Students, as well as faculty, increasingly think their ideas have monetary value and want to protect their piece of the intellectual property pie.

This property-oriented mindset reflects larger trends and tensions in our Napster-generation popular culture. While it is healthy for faculty and students alike to know their legal rights and responsibilities, this increased focus on intellectual property rights has profound implications for collaborative efforts on campus. Graduate students in the sciences in particular are frequently expected to collaborate with faculty and other students in developing patentable inventions or copyrightable works such as scholarly articles or multimedia projects.

To answer the questions of who can do what with these intellectual work products, all of us in higher education need to be guided not just by the law, but by the fundamental mission of the higher education enterprise in which we invest so much of ourselves.

Having said that, what are the legal rights of graduate students in this area? The (overly) simple answer is that students ordinarily own the intellectual property rights in works they create in their student capacity--such as theses and dissertations. But the reality is much more complicated. First, we must distinguish between ideas--which are not protected by intellectual property law--and original, tangible expression and useful inventions--which generally are. If somebody "steals" your idea for an article or research project, it might be an ethical issue, but it is not a legal issue unless they copy something tangible.

Second, we must distinguish between situations where individuals act as students versus situations where they act as employees. Why? Because under the work-for-hire doctrine, employers own the intellectual property rights to works created by employees acting within the scope of their employment. To add another layer of complexity, academic tradition has generally protected faculty intellectual property rights in their own scholarly works. The multifaceted nature of graduate students' relationships with their institutions and with faculty--as individuals performing work for compensation in some contexts, and as students paying tuition in others--makes the application of these legal principles to graduate students ambiguous in some circumstances. Thus, graduate students should seek clarification of their status with their departments if they have reason to believe that they might be considered

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employees for purposes of their work on certain projects.

Even if graduate students are not acting as employees, they may find themselves in positions where they are asked or told to sign away their intellectual property rights--perhaps to their institution, an external project sponsor, or even a faculty member. Do you have to sign or agree? Sometimes--but in many cases you can and should retain some rights.

In the case of sponsored projects, for example, the governing contracts often require that the intellectual property created for the project belongs to the external sponsor, or to the university. But not every article related to a particular type of research or issue is necessarily covered by the sponsorship agreements. And in many circumstances, sponsors and universities might not object to students retaining certain rights that don't compete with sponsor and university needs--e.g., the right to use a work in one's own future research and teaching.

Put another way, intellectual property does not have to be an all-or-nothing game. The intellectual property pie can be sliced in many different ways and is not really like a finite pie at all--because some pieces can be shared so that multiple parties can savor each bite.

So how do students protect their rights? As graduate students, by now you've learned that knowledge is power. So you should make it your business to know what the governing contracts with sponsors say about sponsored projects and the resulting work products. Although corporate sponsors often seek confidentiality for such agreements, graduate students working on particular projects, as part of the university's team, may be able to assert that they have a need to know the contents. Furthermore, many such agreements are subject to public disclosure--especially at public institutions.

You should also be familiar with your own institution's intellectual property policies. And you should feel free to ask for written agreements to clarify your rights when necessary. Such agreements need not be long, complex documents full of legalese. Instead, they can take the form of brief letters or memoranda, outlining the rights of the parties involved. If you have questions, university counsel can be a useful resource. Although they represent the institution as a whole--rather than individual faculty members or students in their private capacities--they can frequently be helpful in explaining university contracts, policies, and practices.

And what about getting things published? In terms of our academic mission and values, all of us in higher education should be especially wary of contracts that reserve final editorial discretion to an outside corporation, or that require extensive delays in publication. Indeed, scholarly journals in medicine and other disciplines have recently banded together to ensure that such conditions are not applied to articles they publish.

As a lawyer, I also urge graduate students and faculty alike always to read what they sign--especially the fine print. Publishers routinely ask for more rights than they really need. If you want to reserve the right to use an article in your own teaching and research, to distribute it at scholarly conferences, to post it on a Web site at some future time, and/or to create derivative works from it, you should not be afraid to suggest such amendments to a publishing agreement.

Finally, remember that appropriate professional credit is often more important for an academic career than intellectual property ownership. Intellectual property law aside, you should insist on proper acknowledgment of your role in every project under ethical and professional standards in your field.

Believe it or not, the constitutional purpose underlying all intellectual property law is to promote the development of knowledge--not to protect anyone's property rights. These rights are merely means to achieve this greater public end that lies at the heart of higher education. As a dessert lover myself, I can honestly say that the intellectual property pie is sweetest when we all remember why we're eating it.

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