

Reclaiming a Scholarly Ethic: Deconstructing "Intellectual Property" in a Post-Typographic World

David Reinking
University of Georgia

A hallmark of modern academia is the publication of scholarship. Although it is rarely the object of systematic reflection and study, scholarly publication occupies an important niche in understanding how print-based literacy affects sociocultural organization and change (Kaufer & Carley, 1993). For example, publication in academic outlets such as the conventional printed journal satisfies a scholarly imperative to generate new knowledge and to disseminate it freely. However, technological, economic, and social factors associated with print-based publication have historically combined to create some restrictions on the dissemination of published scholarship. Most of these restrictions fall under the general term *intellectual property*, which is operationally defined by narrower terms such as *copyright* and *plagiarism*.

The concepts of intellectual property, copyright, and plagiarism, as they apply to scholarly discourse, are so firmly entrenched in all fields that they are typically framed in ethical terms, often published in formal ethic statements such as the one adopted by National Reading Conference (NRC) in 1994. Ethical principles are based on strong assumptions that do not invite question and discussion. However, as literate activity moves toward a post-typographic world where digital reading and writing is likely to predominate (Negroponte, 1995; Reinking, 1995), some scholars have begun to question whether intellectual property remains a viable base for establishing the ethics of academic publication.

For example, Burbules and Bruce (1995) observe that "the capacities of electronic networks for storage, retrieval, and dissemination are altering the way scholars produce writings and their intellectual relations to one another" (p. 12). Likewise, Stix (1994) has pointed out that many of the world's leading scientists are bypassing conventional journals in favor of providing sometimes daily electronic updates of their investigations to key colleagues who engage in similar research and who may likewise suggest interpretations of the data and modifications to the experiment. Such collaborations are inconsistent with conventional definitions of intellectual property.

In fact, the emergence of electronic means to disseminate scholarship have led some writers to reject entirely the concept of intellectual property among academics because they see it as a perversity of a more fundamental scholarly ethic based on the free dissemination of ideas. For example, in considering the question "How can intellectual property continue to be protected in a post-typographic world?" Cleveland (1989) states that "The question contains the seeds of its own confusion: it's the wrong verb

[i.e., protected] about the wrong noun [i.e., property]" (p. 10). Or, as Patterson and Lindberg (1991) state more philosophically in a discussion of copyright in relation to learning, "The factor that separates men and women from the beasts in the jungle is learning, and to subject learning to the proprietary control of entrepreneurs is to demean its importance" (p. x).

Although there are many dimensions to deconstructing the concept of intellectual property as applied to scholarship in a post-typographic world, in this paper I focus primarily on the issue of copyright. There is widespread agreement that current copyright laws do not adequately address new forms of disseminating information electronically (e.g., Dugan, 1991; Negroponte, 1995; Varian, 1995). However, views about how to address digital information vary from preserving the framework of existing copyright laws (e.g., the Working Group on Intellectual Property Rights commissioned by the Clinton administration, *Multimedia Fair Use Guidelines*, Satellite Teleconference, September 1, 1995) to building an entirely new framework (e.g., the Office of Technology Assessment, 1986). The more conservative view is typically espoused by publishers, successful authors, attorneys, and others who have much invested in current laws. The more liberal view is typically promoted by academics, librarians, technologists, and others who have more invested in the free flow of information and in capitalizing on the potential of new technologies. It is not trivial to note that the former groups have disproportionate economic and political power with the added advantage of siding with the status quo.

Nonetheless, even among scholars there are mixed loyalties. Most academics have learned to live with two opposing interests: academic and commercial. The commercial interest, operationalized through copyright and other less formal strategies aimed at selectively restricting dissemination of one's scholarship, is typically justified as an expedient of publication. The dilution of purely scholarly goals that is the consequence of financial expediency is exacerbated by the fact that some scholars benefit handsomely from the exercise of copyright laws. If for-profit publishers are necessary for one's scholarship to be disseminated, why should one not share in the profit? Those scholars are not as likely to question the ethics of limiting the use of their scholarship for the sake of profit, and neither are those who see these individuals as models for their own aspirations. However, what if commercial publishers were not essential to making one's work widely available to those who might make good use of it in the public sector? The ethical issues would then become cloudier. Individual scholars and scholarly organizations are increasingly faced with this dilemma.

In the remainder of this paper I lay the conceptual groundwork for arguing that intellectual property, specifically copyright and the financial interests that it sustains, may no longer be a viable construct for scholars in a post-typographic world. I do so by examining misunderstandings and questionable assumptions that underlie current views and by highlighting a few examples that illustrate how difficult it is to absorb digital technologies into current conceptions of copyright. I also propose some ways that NRC might act to address these issues. Although many practical issues and questions are not addressed here, I hope that this relatively brief conceptual discussion will be a convincing argument for the need to discuss further how scholars might employ digital technologies to reclaim a scholarly ethic that is not limited by financial gain.

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MYTHS, ILLUSIONS, AND QUESTIONABLE ASSUMPTIONS

The Myth of Inalienable Rights

One common misunderstanding is that the original intent of copyright was to protect authors' and publishers' natural proprietary rights to their works. However, as several contemporary writers have pointed out (e.g., Cleveland, 1989; Patterson & Lindberg, 1991) American copyright law is founded not on the principle that authors and publishers have inalienable rights of ownership but on the principle that the granting of a limited monopoly to authors and publishers is warranted only for the sake of advancing the public good. In other words, copyright, as originally conceived, was meant to be a limited extension of proprietary rights to authors and publishers in much the same way that government must sometimes exercise the principle of eminent domain to appropriate private land for the sake of the public good. Monopolies driven by self interest or seizure of private land for government use can only be justified as ethical, at least in a democracy based on free enterprise, when they can be clearly shown to promote the public good. Given this perspective, it is logical to suggest that there is an ethical imperative to reject any conception of copyright that does not clearly enhance the public good to an extent that justifies a monopoly on the dissemination of information. In other words, the public good always supersedes authors' and publishers' claims to ownership over their works.

Presumably, scholars have a heightened sense of how their work serves the public good and an ethical obligation to doing so. Therefore, it should be expected that they would seriously consider how making their work available electronically might enhance the public good even if it means sacrificing personal financial gain.

The Illusion of Copyright's Unmitigated Workability and Benefits

An observation often offered in support of the conservative position is that current conceptions of copyright have until recently worked quite successfully in a typographic world. More than 100 years ago Mark Twain remarked "Only one thing is impossible for God: to find any sense in any copyright law on the planet." Although Twain is enjoyed for his clever exaggerations, the statement rings true even more today when the aging actor who plays the Lone Ranger must wear sun glasses instead of a mask at personal appearances in costume because a television production company claims ownership of his image with a mask, when using the song Happy Birthday in a movie requires a royalty for using the words but not the tune (Overbeck & Pullen, 1994), and when a computer scientist recently received a patent for a number ("A Prime Patent," 1995).

There has been a trend for copyright to be extended to more media with increasingly narrow and specific restrictions to protect proprietary interests (Overbeck & Pullen, 1994). The widening net of copyright has increasingly worked against the public interest as pointed out by Patterson and Lindberg (1991) who argue that each revision of the copyright laws aimed at accommodating new media have concomitantly furthered entrepreneurial interests. As pointed out by Kaminer (1994), given the increasingly high stakes of mass distribution, publishers tend to gravitate not toward true originality and creativity but toward making the safe and familiar look trendy. And, there are notable

examples of artists who move the cultural norm off center but who are then corrupted by their own success. As Kaminer (1994) argues, "Originality would be the death of commerce" (p. 23). Thus, current conceptions of intellectual property as defined by copyright laws do not always serve the public good.

Within academia copyright restrictions are more insidious. For example, Ann Okerson (1991; see also Silberger, 1995), a Director at the Association of Research Libraries, has argued that librarians today "worry a great deal about scholarly publishing . . . because it is becoming dysfunctional and endangered" (p. 425). She points out that researchers who generate research and research libraries where scholarly research is archived are for the most part supported by public funds, which means that published research should be considered inherently in the public domain as a matter of public policy. However, access to printed scholarship has been increasingly threatened by commercial publishers. Currently, approximately 70% of scientific journals are published by for-profit companies. Okerson (1991) argues that the monopoly of copyright is extended considerably in this environment because there are no free market checks on publishers of academic research. She points out that in recent years the price of academic journals has risen at least twice the rate of national inflation. Even more insidious is that when publishers make financial decisions that limit the number of books printed, libraries are the last place that some books can be obtained. Nonetheless, the publisher will demand a royalty if a chapter from even an out-of-print book is made available to students at a copy service.

Thus, I believe a case can be made that a major drawback of current conceptions of copyright law in academia is that it has effectively converted public property to private property thus benefitting commercial interests at the expense of scholarly interests. It would be foolish to argue that copyright has been a major barrier to scholars' and students' access to scholarship; however, it would be just as foolish to argue that we should maintain copyright as currently conceived in the academy because it has worked so well. If new options for disseminating scholarship electronically eviscerate copyright as a force in the academy, I believe that the scholarly community and the public have much to gain and very little to lose.

Questioning the Underlying Assumptions of Copyright and Plagiarism

The primary justification for copyright has been the assumption that without extrinsic financial rewards, there would not be adequate incentive for authors and publishers to develop and disseminate artistic and scientific products; consequently, society would suffer. However, minimal reflection reveals that a strong form of this assumption to be simplistic if not completely inaccurate. It is also an assumption that contradicts the guiding ethic of scholarship, which is to extend learning for its own sake within an intellectual community (Kaufers & Carley, 1993).

Most of the valued intellectual and artistic achievements throughout history and across cultures have occurred without the financial rewards guaranteed by copyright. Today, the culture of the Internet, which has largely been antithetical to copyright and commercial interests, continues nonetheless to increase free access to a variety of useful and enjoyable creations whose diversity and quality are increasing. Many com-

mentators have expressed concern that rigorously enforcing copyright regulations on the Internet will stifle the generation and dissemination of information there (e.g., Rhinegold, 1993). Historically, then, it might be argued that public recognition and validation of one's intellectual and artistic achievements are at least as powerful as financial rewards in stimulating such achievements, not to mention that many individuals are committed unselfishly to promoting the public good.

Such intrinsic motivation is no more true historically than among scholars who devote sometimes heroic time and energy to producing scholarly products which rarely produce significant financial gain. In fact, copyrighting one's work can diminish one's professional capital by restricting what Kaufer and Carley (1993) call "authorial reach." As someone familiar with academic publishing has said, "It's relatively easy to get published, but it's really hard to get read." Getting read, or extending authorial reach is a primary goal among academics, but copyrighting one's work may inhibit achieving that goal. A good example of how not copyrighting one's work can increase professional capital in our field is Edward Fry (1977), whose authorial reach and consequently, one might guess, ancillary financial rewards, have been enhanced by the fact that he did not copyright the graph to his well-known readability formula. The lecture circuit and paid consulting are available to those whose ideas are noticed through publication, and they may be noticed more by giving them away freely without copyright restrictions.

The Illusion That Originality is Common and Readily Attributable

Current conceptions of copyright, intellectual property, and plagiarism are sustained by and contribute to an illusion that originality is common and easy to attribute to individuals. Another quote attributed to Mark Twain (who may have overheard it from someone else) highlights this illusion, "Originality," Twain is purported to have said, "is the art of concealing one's sources." Or, consider the elderly Albert Einstein's response to a reporter who asked him what he was typically doing when he had his brilliant, original insights about the universe. His response was that he did not know how to answer the question since he could remember having only two truly original ideas during his lifetime. (I borrowed the Twain quote and Einstein story from two separate articles I read in researching this paper; it is likely the authors I borrowed from likewise borrowed these quotes to make similar points.)

Electronic texts dispel this illusion because they need not possess the inherent finality of printed documents and because they do not clearly make a distinction between author and reader in relationship to a self-contained, immutable document (Reinking, 1995). In a hypertext, for example, a reader creates his or her own text from an 'author's' often loose confederation of ideas linked along multiply-branching pathways. The reader, therefore, shares in a dynamic originality that changes with each reading of the text. Hypertexts also invite collaborative writing where each individual contributor acknowledges that the whole is greater than each individual's contribution (e.g., Landow, 1992, especially chapter 5).

Hypertexts and the capabilities of digital media invite us to view originality more honestly and realistically. This change suggests revisions in how we conceptualize plagiarism, which is a much more common and emotionally charged issue, especially in

schools. Behaviors considered plagiarism in a typographic world may be seen as much more benign in a post-typographic one. For example, my son recently completed a school report by cutting and pasting together information from more than 25 seemingly unrelated articles in a multimedia encyclopedia. He was able to demonstrate creativity and skill by locating information from diverse sources and by synthesizing it into a new form. On the other hand, he did not bother paraphrasing perfectly good sentences, nor did it seem necessary to cite the individual authors of the separate articles, especially since the content of these articles could hardly be called "original."

One of the advantages of tolerating such behaviors is that it shifts the focus of plagiarism from words to ideas, which feeds back into a consideration of copyright. Ideas themselves cannot be copyrighted, but according to copyright law their expression fixed in a tangible medium can be. But, given a truly original idea, what is of greater importance, the idea or the syntax that one employs to express it? A Zen teaching about how language can limit understanding asks the question: Of what need is the fish trap once the fish is caught? Interestingly, the point that meaning transcends the language used to express it is highly consistent with diverse theories of literate activity and meaning.

There is precedent for relaxing definitions of originality and plagiarism for less noble purposes than to increase dissemination of ideas. For example, does anyone believe that all of the principal players in the O. J. Simpson trial will actually write the prose to fulfill their multimillion dollar book contracts? Referring to such arrangements as licensing agreements, Kaminer (1994) points out that "we've divorced authorship from writing. . . . Readers don't seem to care whether or not authors actually write their books, any more than voters care whether politicians actually write their speeches" (p. 23).

Looking more objectively at concepts such as originality and plagiarism will enable us to address difficult questions such as the role of scholarly attribution in a post-typographic world. Individuals and groups still deserve credit for the work they perform and citations provide useful markers for tracking lines of research and interacting influences among scholars' ideas. But, if we cling too tightly to current definitions and understandings we may find ourselves at odds with the useful capabilities of new electronic media.

Problems in Maintaining Current Views

I now present a few representative issues that illustrate how problematic it is to incorporate digital information into current views of intellectual property and copyright.

A Conceptual Problem: Determining Authorship and Textual Boundaries

One conceptual problem I have already alluded to in the previous section is that authorship can be difficult to determine in hypertexts. Without clear assignment of authorship, conventional ideas about ownership and copying are undermined. The boundaries that are necessary to sustain claims of ownership are already eroding. For example, Burbules and Bruce (1995; see also Stix, 1994) state, "Scholarly networks, from listservs and bulletin boards to interactive journals, may create an entirely new niche of

collaborative publishing, in which the distribution, revision, and continuous co-construction of knowledge can no longer be attributed to individual authors" (p. 16). Like hypertexts, such scholarly outlets lack the qualities of finality, completeness, and singularity that are central to ownership.

Another example is the increasing popularity of the World Wide Web and the browser programs that link innumerable and highly diverse texts. The Web illustrates the potential of digital texts to operationalize the concept of intertextuality in a way that could hardly be imagined even a few years ago. For example, it is easy to imagine the advantages of publishing a scholarly article on the web. All citations would appear in blue letters indicating that when clicked they would take the reader to the full text of the relevant citation. Currently, the only major barrier to this possibility is that the cited works are likely to be protected by copyrights.

Other difficulties pertaining to authorship not adequately addressed by current copyright laws are becoming apparent and are likely to intensify in the future. For example, computers are increasingly being used to scan and to summarize massive data sources and then to produce highly personalized documents (Negroponte, 1995). These types of documents challenge copyright because of questions of authorship but also because it is difficult to identify clearly the difference between an idea and its expression, which is fundamental to copyright laws (Overbeck and Pullen, 1994).

Practical and Technological Problems

Beyond the conceptual discontinuities are the practical and technological discontinuities. Digital technologies substantially alter the contingencies of generating and disseminating intellectual products in almost every medium of expression. In addition, they create new modes and venues for exchanging information that do not precisely parallel existing modes. For example, e-mail is analogous to conventional mail but also introduces an entirely new set of technological and pragmatic considerations (Reinking, 1995).

One example of how digital technologies are not readily absorbed into existing copyright laws is the problems associated with the doctrine of first sale (Rose, 1995). This doctrine states that a buyer of a copyrighted work is free to resell or give away the duly purchased work without interference by the copyright owner, a provision that sustains libraries and used book sales. Because a literal application of this doctrine would in theory allow a single purchaser of a digital work to distribute it to millions, the White House's National Information Infrastructure Task Force recommended simply rescinding the first-sale doctrine for digital file transfers. However, implementing this exception would enormously shift the balance of power in favor of publishers. Rose (1995) states that "The public [would] no longer be able to recirculate copies at prices set by the marketplace; every transfer [would] be made under conditions and at prices set by the copyright owner" (p. 86).

Even if the first-sale doctrine is rescinded on-line without qualification, there is a strong likelihood that it would eventually be undermined because of the impossible task of enforcing it. On ethical grounds it is not acceptable to support illegal activity simply because it is unenforceable. On the other hand, neither is there a moral imperative to

uphold business services that are no longer needed, especially those who refuse to reinvent themselves in response to changing technologies. In fact, progress in a free economy depends upon businesses reaping financial rewards primarily through adaptation and innovation in response to the changing marketplace. Publishers need to begin asking themselves hard questions such as "What will publishing look like if distribution is free?" (Rossney, 1995) instead of fighting to preserve the status quo.

Trying to answer such questions relying primarily on the image of a typographic world seems short sighted. To meet successfully the challenge of entering a post-typographic world, publishers must envision a future for which the typographic world provides little guidance and may too quickly narrow the range of possibilities. They will need to move boldly forward unafraid of confronting familiar concepts that not only may no longer apply, but that may act as stumbling blocks to furthering the public good in general and scholarship in particular.

SOME PROPOSALS

The issues related to copyright, intellectual property, and plagiarism in a post-typographic world are complex, but they are less so in academia than in society at large. In academia the relevant issues should center primarily on how the dissemination of information electronically frees scholars from their dependence upon commercial publishers and from the confounding of financial and professional goals. Unlike the general public, the scholarly community should be clear that its ethics are driven by a selfless dissemination of knowledge unencumbered by motives of profit or personal gain. This realization should lead scholarly societies such as NRC to engage in focused dialog and discussion about how the potential of disseminating information digitally might remove the need for commercial influences on scholarship.

For the sake of stimulating discussion, I propose here several changes in NRC's policies and operations:

1. *Amend Section 1.2.1 of the NRC Bylaws, which charges the Publications Committee to "ensure that appropriate NRC publications are copyrighted and that the copyrights are maintained."* Instead authors should be given the option to copyright their articles but they would not be required to do so as a matter of policy. Each article published by NRC would clearly indicate whether it was copyrighted or not, and if so, the author, not the organization, would hold the copyright. Changing this section would also eliminate the need for Section 3.1.4.4, which specifies conditions under which NRC allows copying of its copyrighted materials.

2. *Officially encourage NRC members to make their conventional printed publications available electronically whenever possible or feasible.* Doing so would allow a wider audience to access important scholarship pertaining to literacy.

3. *Set a policy that all NRC publications be published "in house" or by university presses as opposed to commercial publishing companies who will profit from placing restrictions on the flow of scholarship.* As Okerson (1991) suggests, one way to address the impending crisis in scholarly publishing is "by nudging the not-for-profit sector—university presses and scholarly and professional societies—to become cen-

tral again in the distribution of scholarly information." This proposal is especially timely given the fact that Scholastic, a commercial publisher, recently reneged on its agreement to publish the Forty-fourth NRC Yearbook. Likewise, it would prevent consideration of proposals such as the one recently presented to NRC by a commercial publisher who wished to print and market NRC's publications. The publisher proposed charging higher fees to libraries promising to kickback much of the increase to NRC. This practice is unethical if NRC defines its mission as disseminating important research as widely as possible because the inflated price would inevitably lead some libraries to cancel subscriptions.

4. *Officially encourage NRC members who publish their work through commercial publishers to negotiate not copyrighting their work or alternatively retaining the copyright to their own work instead of signing the copyright over to the publisher.* Alternatively, members would be encouraged to negotiate an agreement that would allow them to make their published work available via electronic means without the consent of the publisher. Although success in these negotiations may be minimal, the results are at least unpredictable (Okerson, 1991). NRC could develop a recommended copyright form that it would encourage members to promote at their respective institutions.

5. *Provide official and systematic support for members who publish serious scholarship electronically but whose institutions may be slow to recognize the merit of such publications in the promotion and tenure process.* Many institutions have been slow to acknowledge the value of scholarship published electronically. Progress might be made more quickly if respected professional organizations such as NRC would endorse rigorous, peer-reviewed scholarship published electronically.

6. *Add text to the NRC ethics statement indicating that scholars have an obligation to guard against restricting dissemination of their scholarship both passively by too quickly acquiescing to restrictions commercial publishers impose as conditions of publication and actively by making decisions solely on the basis of personal financial gain.* This addition would emphasize the primary goal of scholarship and encourage the dissemination of ideas electronically.

7. *Recognize the right of a particular author of a particular text to release readers from the obligation not to appropriate ideas or wording from that text without attribution.* Such a release would require explicit notification and could not be invoked without an author's consent. Authors should be given the right to decide when the dissemination of their ideas is more important than attribution and to confront the possibility that their ideas in a particular publication are not clearly original enough to merit attribution. Requiring authors to make that decision would significantly alter the dynamics of publication, and it is consistent with new forms of expression such as hypertext. It might also discourage authors from recycling the same ideas in multiple publications.

8. *Create an ad hoc committee charged to make recommendations based on a consideration of the potential immediate and long-term implications of disseminating information electronically.* Issues such as the ones listed previously here would be considered by this committee. The committee would have at least one representative from the following standing committees: Technology, Publications, and Ethics.

The preceding proposals hint at the emerging identity crises facing professional academic societies such as NRC. Most notably, how can such organizations' dependence on the income generated by their print publications be reconciled with their ethical imperative to foster unrestricted dissemination of scholarship? A large portion of the income generated by NRC and other professional organizations comes from the sale of publications to libraries. How will the organization sustain itself financially if its publications are available electronically on the World Wide Web, thus obviating the need for libraries to subscribe to these publications? Although disseminating scholarship electronically is considerably less expensive than print, what income could cover these expenses if scholarship was freely accessible? On the other hand, how can academic societies justify restricting electronic access to scholarship solely to preserve the financial benefits associated with printed publications? Mediating this dilemma will require a firm commitment to a scholarly ethic that values dissemination of scholarship over financial gain. And, it will require further discussion aimed at deconstructing the concept of intellectual property in a post-typographic world.

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