

COPYRIGHT ISSUES IN JOINT COURSE DEVELOPMENT*

Copyright is a legal quagmire whenever international multilateral cooperation is involved: it can also easily become a headache for project managers, presidents of institutions, senior administrators and their legal advisers. This is due to the fact that copyright laws vary wildly from country to country and that timid attempts to unify them within "multinational spaces" have not had, up to now, any significant success.

We have also to take into account some historical background on copyright issues: legislation was produced in the past with the major aim of protecting authors and publishers from unauthorized reproduction of their works or editions, and to provide them with material benefits (usually under the form of a royalty) whenever a third part was given permission to publish or to reproduce extensively a document. (Incidentally, and speaking mostly about the remote past, copyrights were mostly relevant to the publishing of literary written works - the ones most likely to become best-sellers - sometimes across ages; it is a much more recent fact that scientific, pedagogic or technical works were found to be a publisher's delight). On the other hand, recordings of coherent sounds (be they music, spoken words, poetry or drama) have found the increasing favour of the public, leading to the proliferation of recording companies, with the consequent need to protect authors' and publishers' rights against unauthorized copying and selling. Then came the turn of the magnetic recordings, first with spools and audiocassettes, then with videocassettes and finally with optical discs, both for sound and image; all of these processes combined with the technological possibility given to the public to either record from broadcasts or copy other magnetic recordings. Optical duplication today is also becoming a distinct possibility being available to the public in general, as much as there is the possibility for the private citizen to copy a whole book using a copying machine, or to duplicate computer software utilising a PC.

From this very brief overview of the past we can conclude that copyright laws have been designed mostly to protect authors and publishers against intrusion of both

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unscrupulous publishers and opportunist individuals, in the relationship between a publisher and his buying clientele: they were certainly not designed to complicate or to impede international cooperation in the educational context, or to prevent a true democratisation of access to learning. However, unfortunately, they do.

To prove the point: let us consider distance education as a particular context; and joint course development (in distance education) as a even more complex situation to cope with.

The more current situation in distance learning is for the teaching institution to make available to students a whole set of didactic materials, usually of a multimedia character (written, audio, video and informatic). These learning materials are frequently developed and produced by the institution itself. It has frequently been found that the most appropriate way to deal with copyright issues in this context is for the institution to celebrate a "copyright agreement" with an author nominated to develop the course, through which this author waives copyright ownership in favour of the institution (in exchange for a material benefit, mutually agreed) and this without losing out in any way his moral right to be recognised as the intellectual author of the work. The same rule applies to any other agent who might intervene in the production process: video and audio directors, cameramen, script writers, editors, etc. In this way, the copyright ownership (supposed to have no restrictions except the ones actually underwritten by those parties) is clear and transparent – meaning that the owner is free to negotiate its full transfer, or parts thereof, to another entity. It goes without saying that the copyright owner must have juridical personality and be empowered to celebrate this kind of agreement with authors and other producer agents, which is actually of contractual force.

The transfer of such copyright into another national context (which also means, a different legal framework) requires another set of precautions. The most expedite way of doing this is to celebrate a bilateral arrangement, possessing contractual nature, with a symmetric entity from the other country, making sure that its provisions **do not contradict** the national law on contracts therein: this is contrary to the other possible option of trying to make the contract to obey both national laws on copyrights, which is currently almost impossible to achieve. To complete the process, both contracting institutions have just to select the local jurisdiction competent to judge any possible future litigation between the two underwriters, should this occur.

Multilateral international agreements follow exactly the same pattern; when the process of negotiations, each one between one fixed entity and another, is completed, a number of bilateral agreements vouch for the conformity of contracts between one and all the other international partners.

Joint course production in a distance education context combines all the difficulties of copyright agreements: with the very diverse cultural traditions of academia in different countries possessing different degrees of autonomy regarding relationship between professor, department, faculty and university; different situations about who has the final power to decide on content, or on nomination of author, or on examination rules, or on who has the power to sign contracts, on behalf of whom.

A third set of difficulties lies with the sharing of tasks between the different national partners and this can only be done through general agreement, which does not mean that sometimes informal bilateral conversations would be required. But it is unthinkable to decide about the distribution of work without considering **first** the distribution of collectable expenses and of financial resources and **then** the way of sharing possible future financial benefits or returns before considering the matter as settled.

The only reliable way of dealing with this complicated and diversified situation is to carry on and to finalise all kinds of negotiations, first, within each institution, then among institutions - **before** any kind of formal agreement having been decided upon. Infraction to this basic rule will possibly lead to disaster.

A final remark on leadership: a competent, demanding and forceful Project Leader is required to guarantee harmony of purpose and academic leadership; a reliable Project Manager, to assure respect of the timetable and accuracy of accounting; a very diplomatic and imaginative representative of the prime contractor, for dealing with the partner meetings, misgivings and conflicts, is a final precaution to be taken.