Among the many challenges that information technology is posing to universities, none is more contentious than the issues it raises for intellectual property. The controversy pits administration against faculty, scientists against humanists, and academic values against financial interests. Dennis Thompson, chair of Harvard University’s Committee on Information Technology, believes that much of this controversy is misplaced. He maintains that changes in intellectual property policies should address more than products of information technology. Further, some of the problems that may seem to be about ownership go beyond the province of intellectual property.
Beyond Information Technology

"Is a CD-ROM more like a textbook, or more like an invention?" Most intellectual property policy grants faculty ownership of copyrightable work (such as textbooks), but gives the university the option of taking title to most patentable products (such as inventions). Clearly, the question has a high-stakes answer. It is, however, precisely the wrong one to ask, because it focuses attention on the nature of the product instead of the way it is created. A simple shift of perspective—from the attributes of the product to the circumstances of its creation—is an essential step toward developing a coherent policy for information technology products.

The more appropriate question is, "Has the university contributed substantially and specifically to the making of the product?" If so, the university should share in its profits and have some control over its uses. This principle in some form is widely accepted, and is at least implicit in many existing university policies. Additionally, in the absence of a specific contribution, there may be other factors, such as effects on the university's reputation, which could justify some control over the product.

The extent of the university's contribution may be assessed based on three types of support: financial, intellectual and reputational. Each provides a basis for some claim by the university on an intellectual product; the claim, however, goes beyond information technology products, and is not necessarily one of ownership.

Financial Support

What should count as a substantial and specific financial contribution may be contestable in particular cases, but a general distinction is clear enough: On one side, the ordinary benefits of employment such as academic year salary, office, usual library resources, usual facilities and office staff, and personal computers, should not count. On the other side, facilities assigned to an individual faculty member, such as a laboratory, should count.

In terms of sharing revenues once a substantial and significant institutional contribution has been determined, the best approach may be to adopt a general template for dividing royalties and fees and negotiate departures from it. The important point is that the negotiations focus on the nature of the university's contribution, not the character of the product.

Intellectual Support

Intellectual resources provided by a faculty member's students, colleagues, and the shared activities of university life often are neglected in disputes about intellectual property. This is understandable, given the diffuse nature of the contribution and the difficulty of capturing it in a policy. Nevertheless, intellectual support is clearly linked to some particular works, such as a catalogue of a special collection in a university museum, or a video of a concert by the university orchestra. In these types of cases, the university has a legitimate claim.

Reputational Support

In the case of most faculty members, the value of the name of their institution is at least as great as their own. Any commercial fruits of a university's reputation are largely attributable to the contributions of many generations of faculty, students, alumni and staff; therefore such revenues should be allocated for the benefit of the university as a whole, and its individual members present and future.

The value of an institution's reputation is clear when publishers and producers actively seek—perhaps even as a condition of production—to identify a faculty member's institution, sometimes to increase profits or at least audiences, or sometimes just to enhance the authority of the content.

Beyond Intellectual Property

To address the emerging problems generated by information technology, intellectual property policy should embody principles that apply beyond information
technology. Such problems are not best addressed by policies that speak mainly the language of ownership and control.

Perhaps the most salient example of an emerging issue is what may be called the courseware problem—the control of lectures, syllabi, exercises and exams prepared by faculty for their own courses, but offered in various forms, virtual and otherwise, to students at home or at other institutions. This issue is best approached not in terms of faculty rights to their own creative products, but rather in terms of their responsibilities to their students, colleagues and institution. Thus, general policies dealing with conflict of interest and conflict of commitment become more appropriate instruments for addressing the courseware issue.

Following that approach, once again financial, intellectual and reputational considerations come to the fore. At this point, though, the question is not so much whether the institution has provided support in each area, but rather whether the institution’s interests along these lines are being served.

An intellectual property policy could address an institution’s financial interests if it grants the university some claim to profits when substantial and specific support for developing the courseware has been provided. More important are the intellectual interests of the institution: faculty commitment could be compromised by involvement in the production of courseware, distracting them from giving full attention to teaching at their own institution. It is equally important to ensure that any outside arrangements faculty make to distribute courseware do not affect its availability to students at their home university.

Finally, reputational interests are a key concern. The reputation of any university is a collective good, easily damaged by the actions of individuals, to the detriment of other members, present and future. In regard to courseware, the effect of the use of the name of an institution on the university and its members may be sufficiently controlled by an intellectual property policy that limits the use of the university’s name. For example, use of the name could be prohibited unless the faculty member entered into partnership with the university to produce the courseware, as in a licensing arrangement. Universities would be well advised to provide institutional support to faculty in producing and distributing courseware.

Conclusion

To meet the challenges posed by developments in information technology, attention should focus on the significant financial, intellectual and reputational interests of the university as they affect its central educational mission. From that vantage point, it is clear that changes in intellectual property policy should embrace principles that go beyond information technology, and further, that problems of information technology call for policies that go beyond intellectual property.

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