

Copyright policy issues facing tertiary institutions engaged in e-learning

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Changing technology, changing laws, the ease of copying, and the growing access to a vast array of online materials have all changed how copyright affects academic work and consequently the content and complexity of institutional copyright policies. Traditionally oriented policies and systems that have not been updated to address the full range of issues present a risk and a barrier to ongoing development and use of e-learning. This paper suggests a range of issues that institutions should be addressing and presents evidence that many institutions lack modern and effective policies in this area.

Keywords: copyright, policy

Introduction

Copyright is the legal mechanism used internationally to provide owners of created works with some control of how their works are used. While the misuse of technology such as BitTorrent and Napster to copy copyright works is frequently in the public eye, copyright controls much more than copying. As well as the bundle of rights provided in most countries that have assented to the World Trade Organisation and World Intellectual Property Organisation treaties, copyright imposes a system that affects all parts of modern information economies. As sources of much new knowledge and as active creators of works protected by copyright institutions and academics can benefit from copyright laws and controls. As teachers and users of copyrighted materials created by others institutions and academics are also bound by the restrictions enabled by the copyright system (Marshall, 2008a).

Historically, copyright has been essentially ignored by academics in their daily practice and by institutions. Only with the advent of technology has copyright started to impinge on our consciousnesses. First, the photocopier brought the need to display notices next to each machine and the advent of licenses to reimburse copyright owners for the right to make handouts and collections of notes for students. The growth of the internet and online learning saw a growing awareness of the value of teaching materials to institutions interested in commercialising courseware, and this consequently exposed the tensions between institutions and academics over who actually owns academic work (Noble 1998; McSherry, 2001; Monotti and Ricketson, 2006). The explosion of bandwidth and technologies supporting online media has seen the growing concern of media companies about rampant copying of their products and the consequent decline in sales. This concern about media sales declines has seen both an attempt to extend copyright so as to retain existing revenue streams, and an attempt to use technology and laws to control how information is used (Lessig, 2006). The open source movement, once the obscure domain of software writers has exploded into a major political movement and driven a critical reexamination of academic publishing models (Atkinson, 2006).

Much of this complexity impinges on the work of academics and the business of institutions. No longer can we assume that teaching and learning are happening privately and behind closed doors. The technology that facilitates e-learning also exposes our teaching practices and information use to wider scrutiny and the risk that poor copyright policies and systems within the institution will result in reputational and legal damages. Traditionally oriented policies and systems that have not been updated to address the full range of issues arising from copyright present a risk and a barrier to ongoing development and use of e-learning. This paper presents an analysis of the range of issues that institutions should consider when assessing their copyright policies and systems, based on the New Zealand copyright laws, and derived from a larger review and analysis presented elsewhere (Marshall, 2008b). In addition an analysis of existing policies of New Zealand tertiary organisations is presented, assessing the extent to which the issues are addressed currently.

Copyright policy issues

The following sections describe a number of key areas that institutions should consider when creating and maintaining intellectual property policies. While they are presented as policy elements it is likely that they will be constituted in a variety of ways, including statutes, procedures, regulations and guidelines, depending on the institutional norms for policy and governance. These issues have been identified by reviewing the full range of existing institutional policies and systems in New Zealand, Australia and internationally and examples drawn from the current policies of institutions are provided to illustrate how the issue could be addressed. More detail illustrating the range of policy approaches adopted is provided in Marshall (2008b). While the author is not a lawyer, a New Zealand lawyer and copyright specialist has reviewed the issues identified. However nothing in this paper should be construed as legal advice and a local expert in copyright law should be consulted when implementing copyright policies or engaging with issues raised by this paper.

It is assumed that institutions will have policies addressing patents and other forms of intellectual property; this discussion is limited to aspects relating to copyright law only. It is also assumed that institutions will have clear disputes and appeals procedures to deal with any ambiguity or conflict arising from the application of policies. Finally, many of the aspects presented in the context of policy would require complementary clauses in employment contracts and enrolment materials to be effective. This discussion is framed in the context of New Zealand law however the need to address the same issues is likely to apply in most countries, although the detail may differ depending on the specifics of the laws.

Ownership of materials created by employees

Employees generally do not own the work they create. For staff in higher education institutions employed as 'General Staff' or in supporting roles this is generally accepted to hold. For staff employed in teaching roles, particularly in academic positions at universities, the situation is more complex. This area is subject to substantial analysis (i.e. McSherry, 2001; Monotti & Ricketson, 2003) but can be summarised as stating that employer ownership depends on the extent to which an academic can be said to be managed or controlled by the employer as to the content and nature of their work. There are a number of complicating issues for policy in this area for institutions arising from the internationally mobile nature of the workforce and the ways by which academic work is created, published and distributed. Academics generally see their work as being driven by their discipline, not their employer. Academic careers commonly span multiple employers with research and teaching changing focus as academic interests change and as new knowledge is developed. Normally, the academics, rather than the institutional managers, are the experts in what is important in their discipline, what should be researched and what should be taught. They are essentially self-governing in their work, a concept that is commonly referred to as 'Academic Freedom' and which is protected by Statute in New Zealand.

Administration work and the associated documentation created at the direction of the institution to ensure the smooth running of its operational activities is most clearly the property of the employer whether undertaken by academics or other staff. Research work by academics is under very little control in most institutions and a case for ownership of copyright in research works by academics can be made strongly. This is supported in Australia by the recent loss in the patent ownership case taken by the University of Western Australia against a former academic staff member (Sharp, 2008). Other staff employed in research activities are under much more explicit control and so their case for ownership is less clear. Teaching work by academics is under greater or lesser control depending on the institution and the level of the course being taught. In some cases the content and pedagogy are strictly defined and controlled, in others the academic has complete freedom to choose what and how they teach. The extent to which they are autonomous determines the extent to which a case for academic ownership could be made. Other staff associated with teaching such as sessional assistants, tutors, or teaching assistants, would likely not have a case for ownership of their work.

Academics generally join the institution with a pre-existing body of work that they continue to develop during their employment and which they need to take with them when leaving for another employer subsequently. Any attempt to impede this process would likely damage an institution's ability to attract and retain academics, and would reduce the productivity of the academics employed under such conditions, as they would need to recreate materials unnecessarily. Academic work is often interrelated and connected in ways that might constitute adaptation (an activity controlled by copyright law) when building on prior work, this could potentially impose a significant burden in handling the permissions requested by employees or ex-employees. There is also the practical issue of handling the vast quantity of material produced by academics. The academic publishing process commonly requires that academics

assert copyright ownership and also often assign ownership to publishers. An employer retaining total ownership of this work would need to have efficient systems for generating such approvals if they wanted academic work to be published. Balancing this is the problem for institutions that grant ownership to staff of copyright in their work without retaining some form of access for use by other staff and in the normal operations of the institution. Once ownership has been granted to staff, it will be very difficult for an institution to reassert ownership and such a decision could not be retroactive.

Finally, there is the growing pressure to reform academic publishing so as to reduce the costs associated with accessing the primary literature in many fields (Atkinson, 2006). Decisions such as that of the NIH to require that publicly funded research must be freely accessible to the public (Steinbrook, 2005), combined with the substantially more equitable cost structure and economic model (Bergstrom, 2001; McCabe & Snyder, 2004), and the potential for greater academic freedom (Frey, 2004) make online journals and self-archiving attractive. However, the ability to use these alternatives requires academics have ownership of their work, or that employers place their work under some form of open licence.

The University does not claim copyright in work or material produced by University staff in furtherance of their general employment obligations to teach and to undertake scholarly research, and agrees that copyright in such work or material is owned by the University staff members who produce it (University of Otago).

Ownership of materials created by teams

Under New Zealand law, materials created by multiple creators belong to the individual creators of each element of the materials unless the individual contributions cannot be distinguished. When the team members all work for the same employer, and that employer asserts ownership of the employee's work there is no need to consider joint ownership. When individual employees own some materials, it is wise to provide a mechanism for facilitating ongoing joint work, particularly when courses are created and developed by more than one person. Many policies consider multiple contributions from the perspective of revenue sharing but fail to consider the copyright aspects relating to adaptation and ongoing use, including publication.

Joint ownership agreements include details of who the joint owners are, for how long and under what conditions. Agreements specify who has the right of use, who has the right of distribution, who has the right of sale and how any profit/further costs are to be shared (Christchurch Polytechnic Institute of Technology).

Ownership of materials created by contractors

In New Zealand, work created by contractors generally belongs to the person commissioning and agreeing to pay for it. However care should be taken as the law limits this to very specific classes of work. It does not include 'literary work' in the very specific list of works mentioned and thus many, but not all, of works created by contractors in the context of e-learning would be covered. There is also the issue of whether or not a contract employee is in fact an employee under New Zealand employment law. Depending on the circumstances a non-permanently contracted employee may be an employee. In practice these ambiguities mean that the contract commissioning work must explicitly address ownership of all of the works produced (including intermediate stages) for there to be clarity of ownership. Policies should require that this be done for all commissioning and short-term employment contracts.

IP that is explicitly commissioned by the University from staff as part of their employment duties is owned by the University. The Creator and the University will enter an IP agreement at the time the work is commissioned. Where work is commissioned by the University outside of an employment relationship, then an explicit contract shall specify ownership of any resulting IP (Victoria University of Wellington).

Ownership of materials created by students

Students are not employees, nor are they paid for their work undertaken during their studies. Consequently, they own original work they create during their studies. It should be noted that merely asserting ownership in a policy or enrolment form would not normally be binding on a student unless they explicitly assented to the requirements of the policy, and had the opportunity to review the constraints and implications of any policy prior to commencing their studies. Institutions generally can assume that they have the right to use student work in ways that support the assessment and verification of that work if a

student submits for assessment. When students are engaged in learning activities that involve actual workplaces care should be taken to ensure that all parties understand the ownership conditions of any work created by the student. Care should be taken when allowing a third party to own student work to ensure that the institution has the right to use the work for assessment purposes if necessary, and that the student fully understands the implications of any work placement agreement. Policies should also consider the situation of staff of the institution who also enrol as students and attend courses at the same institution, either with or without assistance and support from the employer.

If a staff member is also enrolled as a student and the subject matter of his/her study is also the work for which the staff member is employed by the University, the University as employer will own any IP the staff member creates in his/her course of study (University of Queensland).

A complication also arises from the common practice in some disciplines of joint publication with students of research works. This raises both copyright and ethics concerns and is commonly addressed by policies specifically developed in response to historical problems that have arisen as a result of poor practice in this area (Seymore, 2006).

Ownership of materials created by guests or visitors to the institution

One of the distinguishing characteristics of academic work is the extent to which staff visit and work at other institutions. As visitors are not employees, institutions must depend upon formal agreements to ensure clear ownership of any materials developed while the visitor is at the institution. It should be noted that merely asserting ownership in a policy would not normally be binding on a visitor unless they explicitly assented to the requirements of the policy.

Heads of Schools, Directors of Centres and Institutes, and Managers of other administrative units will negotiate an agreement with visiting academics conducting research at Victoria, and for Victoria academics conducting research at other institutions. The principle of such agreements should be that IP is owned by the parties in proportion to the relative value of each party's contribution to the development of the IP including consideration of pre-existing intellectual property contributed, the quantum of inputs contributed, and the value or importance of that intellectual property and those inputs to the development of any new intellectual property (Victoria University of Wellington).

Distinction between academic work and other work

It is relatively common, for pragmatic reasons and to preserve academic freedom, to exempt "scholarly works" from institutional ownership. Where this is done, policies should carefully consider how to define the boundaries that they wish to impose.

All intellectual property in course materials shall belong to the University ... Copyright in all books, journal and magazine articles shall belong to employees (Auckland University of Technology).

Consideration of institutional resources or external arrangements

When ownership is assigned to the employee it is still common to restrict this to situations where staff make limited use of institutional resources. Care should be taken to define the boundary between "substantial" and other use of institutional resources when that will result in the employer claiming ownership.

The University also claims legal and beneficial ownership of and reserves all rights in and to Intellectual Property created by Staff, Students and Visitors in the Course of Duties or created using the University's Resources (Auckland University of Technology).

Collaborations between institutions

Academics often engage in collaborative projects with colleagues at other institutions. Policies that assert ownership of all staff work will need to provide a mechanism for supporting staff working on projects where the resulting intellectual property will likely be owned by multiple institutions operating with different policy expectations.

Subject to any written agreement to the contrary approved by the University prior to the commencement of undertaking research at another institution, the provisions regarding ownership of IP set out in this Policy will continue to apply to University staff who are participating in collaborative research at another university or research institution (Australian National University).

Open licensing

An alternative to either the employer or employee owning materials is that they be licensed using 'open' licences such as the Creative Commons or GNU Public Licence. While this approach implies a simplification of the issues, it merely reduces the administration of owned works by the institution. There is still the requirement to establish that the works are owned in the first place, so that the requirement to use an open licence can be imposed. In some cases, the open licensing of intellectual property is a requirement of external funding and may also result from moves away from traditional journal publishing models.

If a creator of a work whose copyright is owned by the University, including a creator of a work-for-hire, wishes to make a work freely available to the public, through non-commercial licensing or other means, the University, subject to the terms of any applicable agreements with third parties under which the work was created, will accommodate such wishes as long as it determines that the benefits to the public of making such works freely available outweigh any advantages that might be derived from commercialization (Columbia University).

Exploitation and revenue sharing

Revenue sharing aspects of intellectual property policies commonly assume that they are only addressing patents. Institutions claiming copyright ownership of all staff work should also consider the motivational aspects of sharing revenue derived from copyright works.

The share of any net benefit (being benefits after all costs are recovered and the legitimate claims of any third parties are satisfied) flowing to a Staff member or Student who is the creator of Intellectual property commercialized through the commercial office will be determined by negotiation in good faith between the commercial office and the Staff member or Student involved (Massey University).

Ongoing use of materials

Asserting ownership of copyright in materials created by the staff of an institution does not remove the need for institutions to consider copyright use. Most of the materials created by staff in educational institutions need to be updated and adapted regularly if they are to maintain their value, and so policies need to authorise such activities by staff. In addition, both staff and the institution have an interest in the ongoing use of materials after the termination of employment. Depending on the nature and extent of ownership retained by the employer or granted to the employee, policies need to address how such ongoing use is authorised.

The University does not assert ownership of copyright in teaching materials written by a staff member. However, by entering employment with the University staff members grant to the University a perpetual, royalty-free, non-exclusive licence to use and adapt their teaching materials. This licence includes the right to sub-license and to commercially exploit. The University reserves the right to reach an agreement with a staff member in relation to copyright in teaching materials which varies the terms of this sub-section (James Cook University).

Access to materials created by staff under favorable terms

Much of the material published in the academic literature is created, reviewed, and edited by academics employed by educational institutions. Historically it has not been uncommon for institutions to lose free access to teaching materials created by their own staff as a result of publication in textbooks and journals. More recently, institutions have begun requiring their staff consider the needs of their employer and students when negotiating publishing contracts and ensure that materials are provided cheaply and in convenient format for the ongoing use of the institution's staff and students.

Authors of works intended for publication and sale as student texts should take care when negotiating publication contracts to ensure that they do not give up the right, or deprive the University of the right, to deliver pre-existing teaching materials to students through University courses. Where this issue arises, advice should be sought from the Director, Legal Services and the Dean of the author's Faculty before any commitment is entered into with a publisher (La Trobe University).

Acknowledgement of authorship

In a legal sense, the acknowledgement of authorship is governed by the 'Moral Rights' provisions of the Copyright Act. Even when an employer asserts ownership of copyright they must protect the moral rights of their employees. All staff have moral rights to protect their reputations and to ensure that authorship is acknowledged, while employers have the implicit right to expect that staff will work to protect their employers interests. The former means that even if an employer asserts total ownership, they still must acknowledge the authorship by the staff member (if asserted) and treat their employees reputations with respect. The latter means that even if the employee has total ownership, they must refrain from using their work to damage the interests of their employer, for example by providing teaching materials for use by a direct competitor without the permission of their employer. Moral rights can be waived by agreement.

The University undertakes to respect and protect the moral rights which the law confers on staff and students (The University of Auckland).

Respect for culturally significant materials

Common law copyright frameworks do not include explicit consideration of the rules and norms that govern the appropriate use of materials from other cultures (Barclay, 2005). These rules are often complex and unlike copyright do not expire after a designated period of time. Respect for the sensitivities of different cultures is commonly required by educational institutions, particularly with regard to Maori culture in New Zealand and Aboriginal culture in Australia.

Where the creation of QUT intellectual property involves the traditional interests or property of Indigenous peoples and/or the use of traditional knowledge, QUT will take all reasonable steps to consult with the relevant Indigenous groups to ensure that any decisions taken on the protection, development and commercialisation of that intellectual property conforms with the relevant Indigenous protocols and ethical guidelines (Queensland University of Technology).

Compliance with statutory licences

Some institutions choose to enumerate in detail the requirements of the individual copyright licences entered into, so as to communicate to staff what uses of materials owned by third parties are permitted, and under what circumstances. A complete enumeration is unnecessary as it imposes a cost of maintenance of the policy on the institution. Policies should require that staff be informed of the conditions restricting their use of copyright materials.

Unitec staff must comply with the provisions of the Copyright Act 1994 and the terms of the Copyright Licence and Unitec's licence with Screenrights as outlined in this policy. Unitec staff that fail to do so will be personally liable for such failure (Unitec New Zealand).

Notices on distributed materials

Notices and other information regarding the copyright status of materials enjoy special protection under New Zealand copyright law. Removing or modifying such information in an attempt to conceal the copyright status of a work is a criminal offence. In addition, the licences that enable the educational use of works require that the copyright status of the work be recognised through the display of specific notices. Compliance with these requirements should be clearly conveyed to all staff and included as part of any publishing or distribution procedures.

The Copyright Warning Notice below must be clearly marked on all print copies of materials, and a similar notice will be displayed on Blackboard for all electronic copies.

Any variations of this Copyright Warning Notice must be approved in advance by the Registrar (Unitec New Zealand).

Notice and takedown procedures

Institutions can avoid criminal and civil liability for the distribution of copyright materials if they can demonstrate that the unlawful copying and use is not authorised and by responding efficiently to notices informing them that copyright materials have been misused. Procedures for dealing with such notices should include a clear process for filing a notice, assigned responsibility to acknowledge and investigate the notice, and a process for responding formally. In New Zealand such procedures are a requirement of the Copyright Act sections that protect institutions as Internet Service Providers.

In general, the University will take action to expeditiously remove or disable access to the copyright material which is the subject of any Take Down notice, prior to assessing its position and deciding whether to challenge the notice. The Information Security Manager has authority to take such action when required. Such action will be an interim measure pending investigation of the allegations that have been made, and does not imply any acceptance that material held on the University's computer systems does indeed breach the copyright of another party (Curtin University of Technology).

Jurisdiction

Copyright law internationally shares a number of common elements normally as a consequence of a shared legal heritage or compliance with international treaties. There are, however, significant differences in the detail, including the duration of protection, ownership provisions and the permitted acts allowed for educational purposes. These are not normally an issue for traditional delivery, but can be an issue for e-learning delivery. Institutions engaged in the international delivery of e-learning should carefully review the differences in law between the countries being delivered to and New Zealand. A particular issue is the likely need to execute licences for the use of copyright materials separately in each country delivered to. In order to simplify this situation policies may require the use of institutionally owned original content when delivering internationally.

Removal of technological prevention measures

The New Zealand 2008 *Copyright (New Technologies) Act* enables the removal of Technological Prevention Measures (TPMs) by educational institutions so as to exercise permitted acts provided that no charge is made for this service. This is a significant freedom that will likely be subject to scrutiny from organisations with a vested interest in strong protection of intellectual properties. Institutional policies should consider ensuring that the use of the TPM circumvention provisions is carefully controlled and clearly for educational purposes. This contrasts strongly with the strong protection TPMs enjoy in Australia.

No member of the Murdoch University community is permitted to manufacture, market, advertise, sell, or supply devices intended to circumvent a manufacturer's protection measures on computer software (this is an offence under the Act), unless these acts are done for a permitted purpose. Permitted purposes include security testing, library activities, and activities assisting persons with a disability. Staff or students contemplating any activity involving circumvention devices must first check with the University Copyright Coordinator (Murdoch University).

Communication and training

Copyright is a complex area with many subtleties and staff are unlikely to be familiar with the requirements of their own country, let alone any other they may choose to work in. Institutions should acknowledge the need to ensure staff are familiar with the copyright environment of the institution and provide suitable training and support to ensure staff comply with policies and licences.

The University will conduct an ongoing intellectual property education programme with the following objectives:

- (a) to alert staff and students of their rights, responsibilities and opportunities in relation to intellectual property;
- (b) to alert staff and students to any changes to relevant policy; and

(c) to generate a better understanding of intellectual property issues in general (James Cook University).

Administration of information

Copyright is a 'systems' issue for a large organisation (Casey *et al.*, 2006). Effective management of copyright issues requires detailed record keeping and documentation of the source of all materials used or created. Ensuring that these systems are complied with requires a carefully considered regime of management and policy.

The policy is to be administered by the Learning resource Centre manager including ensuring providing training for staff and students, maintaining accurate records and administering requests for copyright approvals that require direct application to the owner (Wellington Institute of Technology).

Enforcement of compliance

The legal, financial and reputational consequences to institutions of copyright violations by staff and students can be substantial and need to be reflected by policy enforcement and the sanctions imposed on those who breach the policy.

The Victoria University Staff Code of Conduct requires all staff to observe the Copyright Policy, legislation and agreements. The University views breaches of the Code of Conduct seriously and sanctions may be applied. Any breaches with regard to the policy will initially be managed through an informal process. If required, formal University disciplinary processes or appropriate legal action will be initiated (Victoria University).

Authority to vary

The complexity of copyright law and the range of activities undertaken within educational institutions mean that any policy that attempted to address every nuance would most likely fail or be too cumbersome to use. Consequently policies should include a mechanism for authorising exemptions or variations to procedures in specific circumstances.

The Deputy Vice-Chancellor (Research) is the custodian of the University's Intellectual Property Policy and is the University's delegated agent and authority where Intellectual Property is concerned. All Intellectual Property matters, in which the University can reasonably be said to have a commercial interest, must be directed through the office of the Deputy Vice-Chancellor (Research) unless exempted in this Policy or otherwise agreed by this office (Massey University).

Analysis of New Zealand tertiary institution copyright policies

The complexity of copyright law and the recent changes made to the Act are challenging for institutions maintaining policy. This section analyses a set of policies from New Zealand universities and polytechnics in order to gain an insight into the extent to which these policies require updating.

Methodology

Policies, employment agreements and supporting documents were obtained from 7 of the 8 New Zealand universities and 15 of the 20 polytechnics by requesting them from institutional contacts and reviewing materials available on public web sites. Each policy was analysed for content that addressed the 30 separate areas listed below in Table 1. No attempt was made to assess the quality or efficacy of policy statements; the focus was simply on whether or not a particular issue had been addressed by the policy. It is likely that where policy is present, awareness and compliance will not be consistent with that policy expectation, however assessing that disconnect is beyond the scope of the current work.

Results

A total of 22 policies were analysed and a summary of the results is given in Table 1. Overall the results were not encouraging. There was no item that was addressed by all policies and in most cases well under half of the institutions addressed the item under examination. As a set, no institution addressed all of the

Table 1: Summary of copyright policy coverage for 22 New Zealand institutions

	Policy element	All TEOs %	Universities %	Polytechnics %
1	Asserts copyright ownership of all works	59	14	80
2	Ownership of works created by students in the course of their studies	77	100	67
3	Ownership of materials created under contract to external parties	59	57	60
4	Ownership of materials created by academic visitors and non-employees	23	67	7
5	Ownership of materials created as part of formal collaborations between institutions	14	29	7
6	Copyright of materials brought by the employee from previous employers	14	0	20
7	Ongoing use of materials by the employee after leaving the institution	5	14	0
8	Mechanism for employees to gain permission to publish and present materials	0	0	0
9	Mechanism for third parties to gain permission to use materials created by employees	9	14	7
10	Mechanism to vary terms in specific situations	23	29	20
11	Authority and mechanism for entering into external funding contracts that impose different ownership conditions (i.e. grants requiring open licenses)	27	57	13
12	Adaptation of works created by other employees	5	14	0
13	Moral rights of creators	27	57	13
14	Need to acknowledge authorship and other contributions to the creation of works	9	14	7
15	Distinguishes between teaching and administration materials	5	0	7
16	Materials created for use in online or distance education	14	29	7
17	Mechanism by which copyright can be assigned to publishers, including guidance on model contract terms required by the institution	5	14	0
18	Favorable licensing for institutions of materials published by third parties	0	0	0
19	Institutional repositories and the right of the employer to retain works	0	0	0
20	Identifies the statutory licenses entered into by the institution	77	100	67
21	Compliance with license clearance procedures	55	71	47
22	Record keeping requirements of licenses	32	43	27
23	Notice provisions of licenses	41	86	20
24	Open licenses	9	14	7
25	Acknowledges the Treaty and concerns of Maori regarding intellectual property	36	57	27
26	Need to exercise respect for culturally significant materials	9	29	0
27	Copyright record keeping responsibilities	23	14	27
28	Training and support of staff	27	14	33

issues identified, with only three (all universities) addressing 13 of the 28 items (46%) and the majority addressing less than a third of the items.

Looking at the results for the universities, two items were covered by all policies: the ownership of student works, including theses (item 2), and the licences entered into by the institution to expand access to copyright works (item 20). For the polytechnics, no items were addressed by all of the policies, the best coverage was for student ownership (item 2) and licences (item 20) where 10 of the 15 institutions addressed these issues. A number of items showed significant differences when comparing the university policies with the polytechnic ones. Far fewer (14%) universities asserted total ownership of employee work (item 1) compared to polytechnics (80%), with most universities allowing employee's copyright ownership of scholarly works including both teaching and research work. More universities also addressed ownership of works created under external contracts (item 11), visitors (item 4), detailed licence provisions (items 20-23), Treaty obligations and cultural respect aspects (items 25 and 26). No institution had enacted policy mechanisms for employees to get permission to publish or present works (item 8) even when the institution had asserted ownership and thus complete control of the works. An awareness of the issues resulting from open publishing and ensuring access to works created by employees was also largely absent (items 17-19), a surprising omission given the growing realisation of the value to institutions that is lost when rights are conferred unconditionally to publishers.

Conclusion

Copyright is a challenging area for educational institutions as they are significant creators and users of copyright works. More so than in many industries, the staff of educational institutions are internationally

mobile and bring expectations and habits that are not always consistent with laws and licences in New Zealand. Institutional policies and guidelines need to both constrain staff use of works within the law and licences and also educate staff as to the expectations that are placed on them. The current state of the policies used by New Zealand institutions is not good and while it is unrealistic to expect that all of the issues identified in this paper would be addressed by all institutions, the very poor coverage observed suggests a serious lack of engagement. The assertion of ownership of copyright by institutions does not address many of the issues raised by copyright and gaps are likely to become more evident as staff move to more use of online resources and their work becomes more visible than it has been to date. Recent changes in New Zealand law have seen dramatic growth in the penalties associated with misuse of copyright material. Simply removing a copyright statement or licence metadata from a file can result in penalties for staff of five years in jail or NZ\$150,000 in fines. Modern search engines make detecting such misuse trivial and make removing evidence of past transgressions increasingly difficult. Institutions have an obligation to help their staff understand how to avoid this very real risk and to put in place systems, including policy, that protect everyone's legitimate interests.

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Please cite as: Marshall, S. (2008). Copyright policy issues facing tertiary institutions engaged in e-learning. In *Hello! Where are you in the landscape of educational technology? Proceedings ascilite Melbourne 2008*. <https://doi.org/10.14742/apubs.2008.2403>

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