

## UNDERSTANDING THE ISSUES

### WHY DO UNIVERSITIES HAVE TO CARE ABOUT COPYRIGHT?

#### Universities are the ones that get sued for the wrongs committed by their employees

The current status of the law regarding the liability of entities like universities that provide the kinds of services to our communities that we do (Internet access and publishing capability) indicates that we can be held liable for infringements of faculty and staff, and perhaps even of students (unrelated third parties). In at least one case, a defendant's (netcom) failure to have and follow a policy for addressing allegations of infringement was a significant element in the court's analysis of liability.

#### **Costs of carelessness**

The rules of the road in the electronic environment are being worked out through the legislative process and in our courts. The courtroom is not where most of us would like to have our influence! Nevertheless, copyright owners are having considerable success lately pursuing strategies to narrow the scope of fair use, to hold Internet service providers liable for the infringements of their customers, let alone their employees, and to make license agreements that no one reads legally enforceable. They also have had considerable success in obtaining passage of legislation to create new rights for users to infringe.

Still, potential litigation is really just a *risk* of cost. More real to most of us are the costs we absorb through the inflated prices we pay for books and journals that incorporate a substantial mark-up for campus and library copying that the publishing community believes is infringing.

Costs for subscriptions to scientific, medical and technical journals have been spiraling out of control. Many universities have cut back on monograph acquisition to purchase journals. Some cancel subscriptions and rely upon interlibrary loan, a practice that many publishers complain is illegal in itself. Even then, costs of interlibrary loan are escalating as well.

Most importantly, the university must recognize that to a large extent, it has helped to create the circumstances that fostered the explosion of these costs.

#### **Benefits of electronic scholarly communication**

The electronic medium offers a unique opportunity for universities to take a more active role in the management of our copyright properties, to more efficiently and more effectively facilitate our research and educational mission.

#### **Implementing a comprehensive intellectual property policy will support university research and educational missions**

Most of us recognize the value of patents; U.T. System has carefully developed a clearly articulated patent policy. Most universities have not, on the other hand, recognized that significant sums are lost because we don't have thoughtful copyright policies. We would save money if we did not give copyrights away and then have to buy them back. Further, using others' copyrights illegally has hidden costs that we are just beginning to understand, and could well have catastrophic costs if we were sued for infringement.