

Intellectual Property and the University

An Interview with Kim Bonner, Director, Center for Intellectual Property, University of Maryland, University College

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L A&M met Kimberly Bonner, the director of the Center for Intellectual Property, University of Maryland, at Seton Hall University, where she was the keynote speaker at a conference that addressed copyright law and its applications in a university context. The Center for Intellectual Property, which focuses on policy research and developing conferences and workshops on issues such as the TEACH Act, the Digital Millennium Copyright Act (DMCA), peer-to-peer file sharing, and scholarly communication, also provides open-access Web services to the higher-education community. Two services are of special note: a Virtual Academic Integrity Laboratory on plagiarism and academic integrity and a Q&A forum, Ask the Intellectual Property Resource Specialist.

Q: Tell me about the creation of the Center for Intellectual Property. What was the motivation for starting this center on campus? Where did the funding come from?

A: Dr. Kim Kelley, the associate provost for Information and Library Services, and Dr. Claudine SchWeber, who was at that time the director of the Office of Distance Education and Lifelong Learning, came up with the initial idea for the Center for Intellectual Property. Dr. Kelley, in particular, thought that University of Maryland, University College (UMUC) needed to develop expertise in the area of copyright in the digital environment because of the increased restraints on digital information. Also, the issue of ownership of online courses was a heated issue. The Center for Intellectual Property has branched out into the related area of academic integrity, which goes to the heart of quality scholarship and learning outcomes. The initial programming was supported by the Sloan Foundation. UMUC then decided to further support those early initiatives by creating the Center for Intellectual Property on campus.

Q: Had UMUC just begun its distance education initiatives? Was it anticipating a problem supporting these courses? What year was this?

A: The year was 1999. The university has been fully engaged in online courses since the mid-1990s. Because Dr. Kelley is the associate provost, she had dealt first-hand with restrictive licenses for distance education courses and the problem with the distance education exemption in the

Copyright Act. The university system of Maryland was also grappling with the issue of ownership of intellectual property and the development of intellectual property policies. So, UMUC created the Center for Intellectual Property [CIP] in part to respond to issues they were already dealing with and anticipated those issues would increase over time.

Q: How was the staff recruited? Why did you decide to join CIP?

A: After the initial Sloan-supported programs, UMUC decided to commit funds toward the creation of the Center for Intellectual Property. After that commitment, Dr. Kelley decided to recruit a small staff that included me and Olga Francois, our senior reference librarian. I decided to join CIP for essentially two reasons. First, I wanted to work in the public sector in an IP law-related area and second, I understood that the center had incredible promise to provide an invaluable service to the higher-education community that was not previously offered.

Q: What were you doing before you joined CIP? What drew you to working in the higher-education community?

A: I was working at a large corporate law firm in Washington, D.C., prior to coming to UMUC. I was a fourth-year associate and, quite frankly, I was bored stiff. I am a very entrepreneurial person and enjoy “building.” I also enjoy charting new territory. I have always had quite an adventurous and pioneering temperament. So, I took a lot of my training from the law firm and my judicial clerkship and applied my legal knowledge in this new arena for a group (higher education) that I am proud to be associated with.

Q: Tell me about the core issues the center is addressing. Have they changed since 1999? Is higher education doing a better job in identifying and addressing these issues, particularly in regard to distance education?

A: Things have certainly become more established in copyright law concerning distance education than they were in 1999. The TEACH Act has passed and certainly provides more clarity than the previous statute. However, the application and implementation of the TEACH Act still poses a major hurdle for many institutions like UMUC and Seton Hall. Is the TEACH Act a “useable” piece of legislation? The jury is still out on that issue. The center is in the midst of a one-and-a-half-year study funded by the Mellon

Foundation on the impact of the use of digital content control systems (like the ones mandated in the TEACH Act) on dissemination of information on campus. The application of fair use in the digital environment remains a key issue. Restrictive licenses remain a key issue. Possible legislation that may heighten the burden on colleges to act as “copyright cops” remains an issue. CIP will continue to focus on its main areas, copyright and academic integrity. For the foreseeable future, we will have plenty of work to do in helping the higher-education community chart the legal and policy landscape in those areas.

Q: *Why do you think copyright is such a difficult issue for the higher-education community to deal with?*

A: Well, quite simply, copyright is a difficult issue for *everyone* to deal with. The Copyright Act is a very complex statute. At one time lawyers practiced intellectual property law generally. However, due to the specialization in this area you now have whole armies of lawyers who specialize in copyright. The Internet has simply added fuel to that already large inferno. So, I think the first reason why higher educational institutions are having a hard time in this area is simply due to the nature of the subject matter. The second reason why higher education is having a difficult time with this is due to the centrality of copyrighted works to the university mission. Simply put, without the use of third-party copyrighted works, education stops. Period. I am not sure of any other enterprise that could make such a claim. But fundamentally, higher education is a knowledge-producing enterprise that cannot function without access to works that for the most part are under copyright. When higher education was solely conducted in a face-to-face setting and potential infractions were hard to trace, copyright was not such a big deal. But now we have distance education exploding. The use of copyrighted works, which are traceable online, and the potential for liability has greatly increased. So, higher education is having such a hard time with copyright because higher education is in the copyright business and now has greater potential exposure to liability than ever before.

Q: *Is it correct that there are no precedents to follow yet?*

A: Well, that depends on what you mean. Regarding the TEACH Act, no, I do not believe so. But there is a lot of case law in the fair-use and Internet context.

Q: *Can you comment on how you see peer-to-peer file sharing being resolved by the higher-education community?*

A: I’m going to respond to that question on two levels: illegal music downloads and other types of legal uses. As regards to illegal file sharing, there appears to be a trend developing on campus that universities are signing contracts with companies such as Napster or other online music distributing services to provide legal access to digital music for the campus community. I think this trend will

continue and other music services will spring up that will offer better overall deals to the university community. As regards to other types of peer-to-peer file sharing, I think

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we have not even begun to see the potential possible valuable and legal uses of P2P file sharing on the networked campus. I think that’s why it’s critical that this technology not be banned as a menace due to its misuse.

Q: *Do you see CIP occupying a unique place in the higher education community or as a program that could or should be duplicated at other universities?*

A: It’s our hope that CIP can expand to become a member-based organization that provides increased services to more institutions. It would be wonderful to have universities join in the effort to create a center that may be housed at the University of Maryland, University Campus, but that is servicing a large spectrum of colleges. I think that would be the most effective and efficient use of university dollars. In an era where colleges are being asked to do so much more with less and less state or federal funding, I don’t think individualized centers on every campus is a realistic response. However, if we can create a collective effort to deal with copyright policy and licensing issues—I think that is wise. That being said, there are some institutions that probably would want to support their own center. But I think for the most part universities should try to work collaboratively.

Q: *Is this a future goal or have you begun to implement this?*

A: We’ve begun this year to develop a strategy to achieve this goal. Presently, the details of this approach are being finalized, but nothing has been implemented.

Q: *The center has won a number of prestigious awards. Is there one of which you are especially proud?*

A: I think I am most proud of the University Continuing Education Association Award for Exemplary Programming that we received earlier this year. That award recognized our efforts as a team to provide some of the best professional development programming for the higher-education professional. The award is also exciting because CIP has not been in existence that long.

Q: *You have a scholar-in-residence program. Has that turned out the way you wanted it to?*

A: Actually, the IP Scholar Program has been wonderful. We have had the opportunity to collaborate with several incredible people. Lolly Gasaway was the first scholar. Kenny Crews was last year’s scholar, and presently Clifford Lynch of CNI [Coalition for Networked Information] will be with us for the next two years. These scholars teach for us,

and they also help us develop new programs and find possible solutions to policy issues. The program has truly been a success. The model of a scholar in virtual residence is one that few, if any that we know, have ever used. UMUC is looking at duplicating the model in other departments.

Q: *What is the administrative structure of CIP? Your library and information services are merged, correct?*

A: Well, you are asking an interesting question at an interesting time. The administrative structure of CIP has been somewhat overhauled. We were part of a large research unit at UMUC that was changed recently. Now we are organizationally in a new unit of which the library is part.

Q: *What are the most pressing issues concerning copyright and intellectual property that the higher-education community will be addressing in the near future?*

A: I think the most pressing issue that higher education will address in the near future is a policy-oriented one. The higher-education community needs to play a much larger role in the copyright policy debates that are being presently engaged in on the Hill. The academic enterprise and knowledge production itself stands on the shoulders of fair use. Scholars produce new works by taking bits and pieces of information from previous works. That has not changed because of the digital environment. It has simply increased. Higher education, particularly faculty, needs to get educated and engaged about the public policy debates surrounding fair use because ultimately their work will be impacted.