

McSherry, Corynne. *Who Owns Academic Work? Battling for Control of Intellectual Property.* Cambridge: Harvard Univ. Pr., 2001. 275p. alk. paper, \$29.95 (ISBN 0674006291). LC 2001-24463.

America has experienced a number of gold rushes: metallic gold and land in the nineteenth century and oil in the twentieth. As the concept of wealth moved from precious metals to land and petroleum, and from those to invisible bits and bytes coursing through networks, it has become universally clear that intellectual property is destined to be the gold of the twenty-first century. This radical transformation is at the heart of Corynne McSherry's *Who Owns Academic Work? Battling for Control of Intellectual Property*.

The book's blunt, straightforward title conceals a deeply complex array of ideas and concepts that challenge the very foundations of scholarly communication and the commerce of information creation and management—ideas that have simmered and developed over half a millennium. The introductory chapter clearly illustrates how the question of ownership of intellectual property goes far beyond the academic realm, where ownership rights to a faculty member's lectures have traditionally been a key issue. This book comprehends an enormous span of thought, design, and communication: Can a gene be patented? Who "owns" a dance? Can scientific data ever be viewed as a researcher's private property? Why is software now patentable? Who owns the patent rights to government-financed research? Precisely what does the "public domain" include? How does a research university resolve the inevitable conflicts of interest that arise when faculty and graduate student research becomes inextricably entangled with the commercial sector? (Derek Bok, former president of Harvard, has recently addressed this specific question.¹) All these questions cover an enormous span of complexity. There is no way to simplify the interactions among the competing forces within the academy, industry, government, the public domain, and the legal profession.

Despite its open, plain title, the work itself is no simplistic overview of the issues surrounding intellectual property in Western society. Underlying much of the book is an analysis of the research university as a deeply hierarchical social institution whose denizens partake of widely varying levels of privilege, status, income, and power. Ultimately, the author shows that within neither academe nor commerce is there any easy method of dealing with the human frailties that amplify the major hostilities prevailing among intellectual property stakeholders.

In her introductory chapter, McSherry attempts to concentrate her thesis and focus its supporting arguments:

In this book I investigate the social production of academic intellectual property, or the bundle of rights the academy asserts with respect to intangible things. I explore how this property is formed and deployed, where, with what consequences, and for whom, and the border skirmishes attendant upon that productive process. In particular, I assess the stakes, for the law and the academy, of using intellectual property regimes to define and defend academic work.

McSherry is notably successful in fulfilling this very sizable order, in part, by invoking highly condensed, richly meaningful terms to buttress her views. Readers may need to arm themselves with an excellent unabridged dictionary to understand the subtleties of such words as *epistemic*, *imbrication*, *instantiate*, *originary*, *valorize*, and *rhizomatic*. Two other technical terms, uncommon, but essential to understanding this work, are *commodification* and *propertization*, but their meanings quickly become clear from the context.

Comprising but five chapters, *Who Owns Academic Work?* is exceedingly dense. Yet, McSherry successfully weaves an intimate web of connections between mind and commerce via thoroughly documented analyses of intellectual prop-

erty cases. The result is a style that merges casebook, legal brief, and doctoral dissertation and can be a reading challenge for nonlawyers. Still, in any conventional sense, this work is not a primer, not a book to *read* casually but, rather, one to *study* intensively. Indeed, it may be both necessary and desirable to reread chapters—not just once but sometimes twice more. Incidentally, the book is commendably free of sexist language.

The first chapter succinctly, indeed elegantly, outlines the historical development of higher education—from the medieval guilds to the emergence of the medieval university, thence to the formation and supremacy of the German university model, and, finally, to the modern, virtually entrepreneurial, highly bureaucratized institution. McSherry portrays this latest embodiment of the university almost as a battlefield where professors, graduate students, and the institution itself may often be pitted against each other for proprietary rights to research results.

Remaining chapters outline in substantial detail a series of lawsuits and “property stories” that concretely illustrate the concepts McSherry so competently presents. These property stories—cast mainly in terms of abstract dichotomies (e.g., public/private, idea/expression, gift/market, nature/culture, fact/artifact, science/utility, and others)—are fundamentally accounts of academic infighting. Her property stories are highly personalized and poignant. In some instances, the stories nearly approach the genre of the soap opera. This is not a defect. On the contrary, the personal details of career triumphs and disappointments arising from intellectual property debates illustrate McSherry’s abstractions graphically and movingly.

Ownership of intellectual property became a prominent issue in academe after copyright became a formal part of scholarly publishing well over a century ago, but the rise of the Internet has thrust the ownership question into a highly visible foreground. Internet technology facilitates speedy, accurate, and economi-

cal distribution of a virtually unlimited array of ideas and concepts, even performances—what commercial purveyors stiltedly and casually refer to as “content.” With the recent Napster case, even the general public is now aware of the issue.

Even decades before the Internet emerged and permeated commerce so thoroughly, universities had already become aware that a great deal of research—much of it publicly funded—had substantial market value, an issue thoroughly discussed in chapter two. Some schools rapidly capitalized on these values via systematic technology transfer systems implemented through formal licensing. Industrial parks, research parks, and think tanks (e.g., SRI and MITRE) initially staffed by university personnel, sprang up in the vicinity of the country’s premier schools. Some faculty members who founded private high-tech firms became very prosperous almost overnight and retired early from their academic positions. In prior years, a few professors whose published classics turned into best-sellers issued in many editions became extremely wealthy and no one questioned their rights of ownership to their intellectual work. But these days, when faculty members create, universities very often want a piece of the action, for research results are no longer treated as a researcher’s “gift” to the public domain.

Most of McSherry’s analysis is confined to research in the hard sciences. But fair game for her would surely have been the Dead Sea scrolls, for decades the center of acrimonious controversy over “ownership” of their contents and bitter, interpersonal strife over which scholars could have access to them. It is a pity that McSherry’s incisive work did not deal with this issue, which became notorious among humanistic scholars during the last half of the twentieth century. There is no discussion of cloning, which could become the ultimate question of intellectual property. Although McSherry summarizes the issues around the copyrightability of certain data collections (e.g., telephone directories and the like), she does not allude to OCLC’s

attempt to copyright its bibliographic database. Her comments on that topic would likely have been very instructive.

Among the significant issues and questions McSherry raises are:

- Is the “public domain” disappearing? What really belongs to “the commons,” that fund of knowledge belonging to everyone and to no one? Traditionally, scientists were willing, indeed eager, to share their discoveries, but those academics whose work is financed by the commercial sector are increasingly pressured *not* to publish their findings.

- In modern commercial publishing, authors are being rapidly replaced by an army of graphic designers, publicists, editors, promoters, tour organizers, lawyers, media experts, etc.—all billed as “collaborators” with the “author.” Is this tendency slowly creeping into academe where capital-intensive hardware, office and lab space, external grants, conference invitations, publication opportunities, patents and copyrights, and available graduate assistants play a corresponding role?

- Is the professoriate reconstructing its old role, changing from an institution of the “disinterested” to one of the “interested”—indeed, the *very* interested? Are professors now deciding they would prefer to be knowledge “owners” rather than knowledge “workers”?

- Are academe and the market coalescing?

- Has withholding of information deemed vital to national security, market dominance, or public health become our culture’s moral dilemma? How can a society cope with a company’s withholding of genetic data on an infectious agent which, if released to the public domain, could save lives, particularly if such discoveries emerged from industry-sponsored academic research?

The last item in this brief list provides a sense of immediacy to the subject of this book. As I write, a three-way battle over control of TNX-901, a monoclonal antibody useful for combating peanut allergies, is currently being waged among Genentech,

Novartis, and Tanox.² The stakes are in the millions for this drug, but as new drugs are perfected and researched to combat SARS and other emerging biohazards, surely many billions in the future.

As each chapter progresses, the reader gradually becomes aware that the scope of McSherry’s legal and social analysis of intellectual property focuses almost exclusively on Western law, especially British and North American law. *Who Owns Academic Work?* is thoroughly grounded in English legal tradition, going back to the early history of patents and copyright. Although there are fleeting allusions to the international aspects of the struggle for control of intellectual property, there is no detailed discussion of how intellectual property is viewed in other cultures, such as China. For example, Chinese work on cloning, surely an intellectual property issue, is treated at some length in a recent issue of *Wired*;³ but *Who Owns Academic Work?* hardly alludes to any Chinese views on intellectual property.

McSherry has done a vast amount of digging into her subject, attested to by an extraordinarily comprehensive and valuable bibliography of close to 275 entries. One of her great strengths is the thoroughness with which she acknowledges others’ work. Each time McSherry introduces a major topic, she incorporates, directly in the text, clear acknowledgments to the researchers who laid the foundations for her arguments. For example, in regard to the well-known, contentious issue of ownership of a professor’s lectures, McSherry cites a Scottish case dating from 1887 and an even earlier one dating to 1825. Endnotes contain full documentation of, and extended comments on, many of the cited works.

The only real deficiency in McSherry’s work is the index. This access tool is sufficiently flawed that it is likely to impair the work of graduate students and other researchers. For example, one of McSherry’s most intriguing points—the “useful uselessness” of the university—first appears on page 53. This paradox, which she calls “the central premise of the

German university," is repeatedly invoked throughout the work and surely deserves its own entry. Yet, it is nowhere entered into the index as a separate, independent term and is not even entered under a generic term, such as *Paradoxes*. The term *Usefully useless* does appear as a subdivision within half a column of entries under *University*, where it is not easily found. In addition, there are too many strings of undifferentiated locators under the term *University*, but even for this major term the page number references are incomplete. Similarly, there is no entry for the paradoxical, but very memorable, expression *Determined indeterminacy*. The index has other irritations, among them the exclusion of the names of certain persons, institutions, and businesses more than casually mentioned in the text and germane to the author's arguments and examples (e.g., Sir William Blackstone, Vannevar Bush, Jacques Derrida, Stanley Fish, DuPont, Electronic Frontier Foundation, Lexis-Nexis, Melvyl, Immanuel Kant, State University of New York, Norbert Wiener, York University). (Some of these names will be found in the bibliography, however.) In a work covering the vast territory of North American research universities, it would have been appropriate to enter almost every mentioned university by name inasmuch as readers may wish to look for a specific institution. Discussion of a major controversy at UCLA is not indexed. Page 113 contains an important discussion of the legal status of correspondence and let-

ters—vital to humanistic scholars—but there is no entry under *Correspondence* or *Letters*. The journal *Cell* is entered without italics, suggesting a biological entity rather than a publication. There is no specific entry for the extensive discussion of *how* knowledge workers are being transformed into knowledge owners, a persistent and powerful theme. There are instances of incorrect page numbers in the index. For example, the discussion of cognitive property starts on page 108, not on page 109. Twenty-four pages of notes explicating many of McSherry's major points are unindexed. All told, the index is much too short for this complex work. A complex book typically requires an index comprising about eight percent of the total number of pages; less than three percent of this book's pages have been allotted for an index.

Despite a few flaws and omissions, *Who Owns Academic Work?* is a seminal contribution to the fields of scholarly communication and intellectual property law. Thoroughly researched and well documented, it is likely to leave a permanent imprint and has the potential for becoming *the* classical analysis in these fields. McSherry's book received the thirty-first Thomas J. Wilson Prize, awarded by the Harvard University Press to the author judged to have produced the best first book accepted by the press during a calendar year. *Who Owns Academic Work?* is an exciting, provocative, remarkable, and difficult book. Few other books consolidate so effectively the viewpoints and conflicting interests of the numerous stakeholders in the battle for intellectual property. McSherry has brought clarity to an area with a history of muddled thinking and sometimes-strident propaganda. She has produced a convincing, closely reasoned volume with carefully marshaled arguments and a deeply informative history of what will surely continue as one of the twenty-first century's most contentious intellectual issues.

Who Owns Academic Work? is central to its field and constitutes an essential re-education for all in the business of schol-

Index to advertisers

AACRAO	410
AIAA	cover 3
Annual Reviews	cover 2
Archival Products	422
BIOSIS	340
Choice	401
Haworth Press	389
Library Technologies	343
NASW	cover 4
Oxford University Press	339
TechBooks	356

arly communication—university presidents, provosts, deans, lab directors, members of the professoriate, academic librarians, intellectual property lawyers, authors, and publishers. Highly recommended for the libraries of major research universities.—*Allen B. Veaner, University of Arizona.*

1. Sara Rimer, "A Caution against Mixing Commerce and Academics," *New York Times*, 16 April 2003, p. A16 [national edition].

2. Andrew Pollack, "Wrangling May Delay Peanut Allergy Drug," *New York Times*, 13 March 2003, pp. C1, C6 [national edition].

3. Charles C. Mann, "The New Cloning Superpower," *Wired* 11 no. 1 (Jan. 2003): 114—23, 142—43.

Raven, James. *London Booksellers and American Customers: Transatlantic Literary Community and the Charleston Library Society, 1748–1811.* Columbia: Univ. of South Carolina Pr. (*The Carolina Lowcountry and the Atlantic World*), 2002. 522p. alk. paper, \$59.95 (ISBN 1570034060). LC 2001-3345.

This astonishingly informative and highly accomplished study owes its existence to two events. The first came in August 1758 when a representative of the private Charleston (then "Charles Town") Library Society copied a letter to a London bookseller in a blank book. Over 200 years later, in the summer of 1994, scholar and author James Raven of Oxford University opened the volume in the still membership-supported society's search room. Fortunately, it was he who found it, for in the hands of a less-able scholar and writer, a far inferior study, or none at all, would have resulted.

Letters between colonial and early republic libraries and their booksellers are rare. Rarer still is the insight and prodigious learning Raven brings to the topic. The letters, 120 in all, going to 1811, with some gaps, are reproduced and annotated in an appendix. To most readers they would reveal nothing, but with Raven as a probing and relentlessly curious guide, we see opening before us a vanished

world of not just the book trade, but intellectual, cultural, and social life as well. So many topics are revealed that the reader gets the sense that he has looked through a microscope; what was once thought just a drop of water is really a teaming vital universe. And perhaps the analogy is apt. For Raven uses the letter book as a lens that not only allows minute inspection of objects and themes not easily seen, but also one that brilliantly spreads and intensifies light.

To set the letters in context, Raven summons up the world and assumptions of its senders and recipients. The first chapter discusses the colonial book traffic and ideas of the transatlantic community; next comes a view of the growth of intellectual life and book providers in Charleston, S.C. A dissection and reflection upon the society's increasingly upscale and elite members (men, no women) follows. Other chapters delve into the society's growth from its founding in 1748; its difference from other colonial library societies in mission, members, and success; and a view to what these divergences may mean. Raven writes not just of Charleston's library and people; there also is information on Philadelphia, New York, Savannah, Baltimore, and other American and British libraries (all appearing under their names and subjects in the excellent index). Chapters on the booksellers, wholesalers, and ordering process are eye-opening. The time lag between ordering a book and receiving it tried the patience of many of the society's testy librarians, and they scolded their suppliers continually, whether they deserved it or not (and more often than not it appears they did). By examining the books ordered and reconstructing the library's catalog (the subject of another appendix), the author notes the changing tastes of the city and, again, draws larger conclusions. Diagrams show the topics of interest to Charleston readers along with their percentages over time, and other charts reveal the publication dates of Library Society titles.

The summing up in the final chapter is as succinct as it is useful, for the book at-