LANGUAGE DOCUMENTATION & CONSERVATION

Vol. 1, No. 1 (June 2007), pp. 28–43
http://nflrc.hawaii.edu/ldc/

Copyright Essentials for Linguists

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This paper addresses copyright issues that linguists confront in their capacity as users and creators of scholarly work. It is organized in a simple question-answer format. Questions 1–3 present the basics of U.S. copyright law, including the fundamental nature of copyright as a bundle of intellectual property rights and the role of registration. Questions 4–5 treat issues of copyright notice. Questions 6–8 explain licenses, especially Creative Commons licenses, and the function of an Author's Addendum. Questions 9 –10 look at copyright in the context of online open access publishing. Question 11 discusses the concept of Fair Use. Question 12 analyzes the problem of what are called Orphan Works. Questions 13–19 explore issues of copyright ownership, including Work for Hire, joint authorship, and attribution. Questions 20–22 deal with copyright with specific reference to fieldwork situations and indigenous rights. The paper concludes with a brief presentation of key sources for further study and clarification.

Sharing information is the fundamental nature of [science and] education.
Restricting the sharing of information is the fundamental nature of copyright law.
MARC LINDSEY

1. INTRODUCTION. The first question the reader is likely to ask is: why include an article on copyright in the first number of *LD&C*, a journal primarily concerned with field linguistics? The answer lies in an alternative reading of the *LD&C* acronym, namely "Language Documentation and Communication." However important basic fieldwork is, the communication of the results of this research is equally important. These are not separate enterprises, as people heading off to the field often think, but flip sides of the same coin. Those of us who value empirical linguistic research have decried the dominance of linguistic theory in our discipline, but we have tended to remain silent about an equally serious weakness affecting the descriptive linguistic enterprise, namely the phenomenon of field linguists who fail to write up and publish their findings. All of us, whether specialists in Africa or Southeast Asia or Latin America, know of legendary figures—whom we usually mention in reverential terms—who have mountains of knowledge in their heads and masses of materials in their files but who have published very little. These materials cry out for both readings of the *C* in *LD&C*, conservation and communication, with the latter being as urgent as the former.

Even if one agrees that scientific communication is essential, one still might ask what this has to do with copyright law. Why do linguists need to bother about this? Isn't this what lawyers are for? There probably was a time when individuals involved in scholarly linguistic work, whether functioning as fieldworkers, authors, or editors, didn't have to concern themselves with such matters, but this is no longer the case. (It is striking—and

E-ISSN 1934-5275

somewhat embarrassing to me—that the Newman and Ratliff (2001) fieldwork volume, whose preparation began barely a decade ago, doesn't include a single mention of copyright.) There are numerous reasons why the situation is very different now from before, but let me mention just three. First, copyright protection—what I prefer to call copyright "shackles"—now lasts for any inordinate amount of time, anywhere from 70 to 120 years, as compared with the 28 years that formerly was the norm in the U.S. Second, contrary to what used to be the case, the publishing of academic journals has turned out to be extremely profitable. Putting out journals is less and less a labor of love by dedicated colleagues committed to promoting scholarship in their fields and more and more a money-making enterprise by large often transnational publishers. Nowadays journals and the scholars who publish in them are not necessarily on the same wave length and they often have conflicting interests. Third, and most obvious, the internet presents new threats to traditional publishing while simultaneously providing new opportunities for fast and effective scholarly communication and the commercial exploitation of that scholarship.

The copyright world has changed. Almost daily we discover that the failure of scholars to pay attention to such matters has had serious negative consequences. For example, older classic works in our field that ideally should be an open part of our intellectual legacy turn out to be off limits, and in general copyright restricts our ability to make creative use of previous works, including our own (!). When we fail to pay attention to copyright matters, we inadvertently give up scholarly rights that we would like to have and needn't have lost, such as the right to post papers on our private websites or the right to duplicate our own papers for students in classes that we are teaching. In the normal course of things, field linguists might not appreciate the relevance of copyright rules to their work, but the fact is that to protect yourself and your scholarly goals and objectives, you really do need to understand basic concepts in copyright law and how it affects you.

The purpose of this paper is to explain copyright principles and issues that are relevant to scholarly communication. The goal is not to make you a copyright expert, but rather to give you some sense of what is at stake and what you possibly can do about it.

The approach that I have adopted is a simple question-and-answer format, in which I have tried my best to avoid legalese and to provide answers in plain conversational English. Before starting in, however, let me make two disclaimers. First, I shall not be treating copyright from an international perspective. Rather, I am limiting myself to U.S. copyright law as embodied in the Copyright Act of 1976 (and amendments thereto), which went into effect on January 1, 1978 (U.S. Code Title 17). Copyright law elsewhere in the world—especially European and Canadian law, with which I have some familiarity—is similar to U.S. law in most respects but there are differences. Second, the sketch that I am providing is for general information purposes and is not to be taken as legal advice. If you should ever have the misfortune of coming up with a copyright problem that threatens to spill over into legal action, go see your university counsel or consult a copyright attorney. It is hoped that the information presented here will provide a context within which to place your situation and will help you frame the questions that you want to ask. But be aware that this is just a brief sketch and not a legal treatise.

2. COPYRIGHT GENERALITIES.

Q1. What is copyright?

A1. The best way to answer this question is not to offer a facile and uninformative definition, but rather to set out some of the critical attributes of copyright. (1) Copyright provides authors with exclusive (monopolistic) control over their works. (Note: In accordance with normal copyright law usage, the creator of a work, whether it be a novel, a painting, a piece of sculpture, a musical composition, or a photograph, is called the "author.") (2) Although usually described in the affirmative, copyright is better thought of in the negative, i.e., a set of prohibitions on what others cannot do without the copyright holder's permission. (3) Copyright is automatic. What this means is that a work becomes copyrighted once it is created and reduced to concrete form whether the author has any interest in having the copyright or not. This is a situation where the passive, which all style manuals encourage us to eschew, is apt. (4) Copyright is a form of intellectual "property," and as such can be transferred by sale, gift, inheritance, etc. (5) Copyright is not a single thing but rather a bundle of rights encompassing reproduction (the original right to make copies), distribution, performance, display, and the making of derivative works (e.g., a translation of a book or a theatrical adaptation of a story). Each of these rights can be conveyed separately, e.g., you can give one publisher the publication rights and another the translation rights, and each is divisible; e.g., you could give translation rights to two individuals or companies, either covering different languages or even applying to the same language. (6) Copyright has an exceedingly long duration. It is currently the life of the author plus seventy years, or ninety-five years in the case of employer-created works. Before the current copyright law went into effect in 1978, copyright lasted for twenty-eight years, with the possibility of renewal for another twenty-eight+ years, the exact duration depending on subsequent extensions. A consequence and, in my opinion, very great benefit of the renewal system was that the copyright on the large majority of works ended after twenty-eight years. (7) Most creative work is covered by copyright: songs, poems, books, scholarly articles, paintings, sculpture, photographs, and even computer programs. A modicum of originality is required—a shopping list probably wouldn't make it—but not much, e.g., a banal teenage love letter probably would qualify. What is not covered are ideas, facts, data, real world phenomena, and practical/useful processes. Also not covered are State constitutions, statutes, and judicial opinions, and all works of the U.S. Government. (8) Works that lack copyright protection for whatever reason—whether the work never qualified for copyright or the copyright expired or was lost—are said to be in the public domain. As far as copyright law is concerned, these public domain works are free for all to use.

Q2. How does one reconcile the notion that copyright is automatic with the requirement that one must pay a fee and file for copyright?

A2. This supposed contradiction is based on a misconception. The fact is that one does *not* have to file anything with the U.S. Copyright Office to establish your copyright. You can *register* your work if you like, but this is entirely voluntary. People who have created works that they expect to have economic value usually opt for registration, not because it is required but because it confers a number of potential legal benefits. For example,

registration is a precondition for suing someone, it creates a presumption as to the validity of your copyright, and if you win your case, it offers the possibly of being awarded your attorney's fees and what are called "statutory damages," i.e., a set amount of money without your having to show that you actually lost anything.

Q3. I am a Ph.D. student just about to finish up. Should I copyright my thesis?

A3. Although one can talk about "copyrighting" something, in the same way that one can talk about the sun rising, no one actually copyrights anything anymore: it just happens. Once you finish a work and get it reduced to "tangible form," i.e., on paper, on a computer, on a disk, on tape, on film, etc., but not just in your head, the work is automatically copyrighted. It just happens. Your university probably requires that you publish your thesis with University Microfilms International (now a company called ProQuest) as part of the degree requirements, but this doesn't affect the copyright status of the work one way or the other.

However, if you want to register your thesis, UMI will do it for you for a nominal fee ($65 at the current time). Most students do so because they mistakenly think that this is a condition for obtaining their degree and that it is necessary in order to copyright their work. They are also influenced by university graduate schools and copyright management centers, almost all of which advise students to do so. I personally take a minority position on this issue and recommend that students do not register their theses. Not only is it an unnecessary waste of money, but philosophically it makes the wrong statement. To me a thesis is an academic exercise intended to demonstrate that a student has a grasp of his/her subject and is prepared to function as a professional academic, i.e., is someone who values science and knowledge and believes in scholarly communication in the broadest sense. To start out by buying the right to potentially sue someone who might want to make use of your work strikes me as a wrong first step. One good thing about the registration system as it is set up is that lack of registration does not involve loss of copyright, and thus one can always do it later if there should be some good reason to do so, which is almost never the case. In the meantime, scholars and scholars-to-be should resist the insidious "commodification" of ideas and culture" (see Porsdam 2006).

3. COPYRIGHT NOTICE.

Q4. In order to prevent people from stealing my ideas and plagiarizing my papers, I make a practice of putting a copyright notice © on all papers that I write, whether I am duplicating copies for class or whether I am posting them on my personal website. Is this good practice?

A4. Yes and no. To begin with, ideas cannot be copyrighted, only the expression of those ideas, so if you are worried about being scooped, copyright is not going to help you. Second, it is a huge mistake to confuse plagiarism with copyright infringement. Plagiarism is a type of literary fraud—not theft as often mistakenly claimed—which may come into play whether the misuse constitutes copyright infringement or not. (For an entertaining and easy-to-read discourse on plagiarism, see Posner 2007.) In a university setting, plagiarism constitutes academic dishonesty, potentially leading to student discipline or professional censure. If, for example, a student plagiarizes something of yours in an MA thesis, the

obvious step is to contact the Dean at that school. It would be pointless to go to the trouble and expense of suing the student in federal court for copyright infringement. Similarly, if you should discover that another scholar has plagiarized your work, the sensible approach would be to handle your complaint through professional channels—the offender's university or a scholarly society such as the LSA—rather than resort to the courts.

Nevertheless, putting © and your name and date on a paper does serve a useful notice function. What it says publicly is that you have chosen to preserve your copyright rights and that you have not authorized other people to use your work unless they contact you and request permission to do so. This is especially useful on the web, where the open-access culture leads people to believe that anything that you have posted is there for the taking. As long as you are putting a notice on your paper, don't forget to include an address (ideally email) where people can reach you if they want. There is nothing more annoying than spotting a work that you want to use, having the good intention of asking permission, and not knowing how to locate the author.

Q5. Someone suggested that the way to protect my copyright when I finish a paper is to put © at the bottom of the first page and mail a copy of the paper to myself. Is this a good idea?

A5. Yes, if you want to help out the post office with its financial problems; otherwise it's a waste of time and money. I don't know where this idea—referred to as the "poor man's copyright"—originated, but it serves no useful purpose. As for copyright itself, when your work is finished it's yours, and as for registration—if it is something you care about—you have to send the proper forms with the appropriate fees to the copyright office for it to be operative. I suppose that there could be the rare occasion when that unopened envelope with a readable postmark could be just the proof that you needed to show that your work predated that of someone else who claimed to be the true first author; but unless you are extraordinarily compulsive and paranoid, this practice is more trouble than it is worth.

4. COPYRIGHT LICENSES.

Q6. What is a copyright license?

A6. The reason that copyright, which is an intangible, is referred to as "intellectual property" is that, like concrete property, it can be sold, willed, donated, exchanged, or otherwise transferred to others. In lieu of conveying copyright in toto, one can give someone else permission to exercise some of the elements that make up the bundle of rights. If one thinks of copyright as the negative right to prevent people *from* using your work, one can think of a license as the positive permission which allows someone *to* make specific use of your work. Most journals require that the author transfer the copyright to them. *LD&C*, on the other hand, allows the author to retain the copyright per se, but requires that the author give them explicit permission to publish the paper along with certain associated rights. The agreement that authors sign when they publish papers in *LD&C* is a license.

It is important to remember that unlike copyright transfer, which covers the gamut of rights, a license is limited to its specified terms. Thus, a simple license authorizing a journal to publish a paper would not necessarily entail the right to republish that work in a separate

collected volume, to sell the article separately from the journal itself, to have the article translated, or to use the article in good fun as the basis of a parody. Additional uses such as these would have to be provided for in the license itself. (Some, but not all, of these are in fact covered in the *LD&C* author's agreement.)

Licenses are of two main types, and from a legal perspective the difference is highly significant. Exclusive licenses are those that give someone the right to exploit a work in some way or other to the exclusion of everyone else, including the copyright holder. Exclusive licenses must be in writing. Nonexclusive licenses permit someone to make use of a work in some specified way, but do not preclude others (including the copyright holder) from also making similar uses. For example, the standard agreement that PhD students sign authorizing University Microfilms International (UMI) to distribute their theses is a nonexclusive license. It does not prohibit the authors from publishing the same work elsewhere, whether in modified form, in a series of journal articles, or exactly as is. Nonexclusive licenses need not be in writing, although good business practice would usually expect it. They can be oral or even implied. For example, if someone submits an article to an informal departmental journal, that act of submission constitutes an implied license authorizing the journal to publish the article even in the absence of a formal letter explicitly saying so.

Q7. What is a Creative Commons license?

A7. Creative Commons is a nonprofit organization devoted to the goal of making current intellectual outputs and our rich cultural legacy as widely available and openly accessible as possible. Creative Commons, which has developed into an energetic international movement, arose in reaction to what was viewed as unnecessarily restrictive behavior on the part of book publishers, movie studios, the music recording industry, and other copyright holders, especially with regard to activities on the internet (see Lessig 2004, McLeod 2005). In contrast to the standard phrase "All Rights Reserved," which typically accompanies copyright notices, Creative Commons' mantra is "Some Rights Reserved." A better way to appreciate their approach is to reword their catchphrase as "Some Rights *not* Reserved." That is, the goal of Creative Commons is to have authors (and artists and photographers, etc.) free up their works so that other people can make use of them. It doesn't mean giving up one's copyright per se, and it doesn't mean that authors are not entitled to proper attribution for their works—this is required in all CC licenses. Rather it simply means giving away rights that one doesn't need and that one is prepared to make available to others.

To accomplish this, Creative Commons has drawn up a small number of alternative licenses that authors can attach to their works in order to allow others to use them. The way this operates in practice is that people looking at a work that has a CC license know that they can do certain things with the work without having to go to the hassle of trying to find the author or publisher to request permission. For example, if you were looking for a picture of a hyena or a baobab tree to include as an illustration in a children's story that you were writing, you could go to the Flickr website (http://www.flickr.com) and limit your search to pictures with an appropriate CC license and thereby know that anything that came up would be available for you to use.

Some CC licenses are more open and less constrained than others. They differ in terms of what the user can do (e.g., make derivative works or not) and under what conditions (e.g., only noncommercial use or not). All papers in *LD&C*, which has adopted a progressive, open-access publishing policy, carry a CC license, authors being given the option of two types. The first allows people to freely reproduce and distribute the work on condition that it is for noncommercial purposes, but it does not allow people to make derivative works such as adaptations or translations. (Note that when we talk about what people can or cannot do, we are only talking about the special privilege that they are being given. People can always do other things if they obtain the necessary permission, for which there may or may not be a fee involved.) The other license, which also requires that the use be for noncommercial purposes, allows greater latitude in that derivatives are permitted, but there is an added condition that any new work built on the article must be issued with the same CC license as the original. The idea is that you should not be permitted to take advantage of someone else's openness and generosity and then erect a fence around your own work.

Q8. What is an Author's Addendum?

A8. Normally when a paper is accepted for publication in a journal, the editor sends you a boilerplate contract (= author's agreement) to sign whereby you transfer the copyright to the publisher. Authors are now beginning to realize that they should be able to retain certain privileges for themselves and that they needn't have to cede all of their rights. Although the author may have no objection to the journal exercising the exclusive right to publish the paper now and in the future, the author might like to be able to do specific things as a matter of course without having to beg the publisher for permission. (The usual problem is not the publisher's refusal, but the publisher's failure to respond in a timely manner, if at all.) Examples would be the right to use the paper in one's own teaching; the right to include the paper in a volume that one is editing; the right to deposit the paper in one's institutional digital repository; the right to have the paper translated into another language, such as Hausa or Quechua; and the right to make multiple copies of the paper to be distributed to members of the community where one worked. One way to deal with this is to add an additional page to the contract that was sent to you, the "Author's Addendum," spelling out exactly what it is you want. (One commonly talks about retaining rights; however, you are really transferring the copyright to the publisher who in effect is then issuing specified licenses back to you.) Publishers may balk at the addendum, but as the practice becomes more common, they will gradually come around to the idea that their standard contracts cannot be take-it-or-leave it documents, and that if your requests are reasonable, they are likely to agree. Of course, given the power imbalance, it is difficult for faculty and students to negotiate with major publishers on an individual basis. This is why organizations such as the Association of Research Libraries (ARL) and university consortia such as the Big-Ten-based Committee on Institutional Cooperation (CIC) are developing model authors addenda for scholars to adopt and which eventually may be negotiated at an institutional level on behalf of the faculty.

5. ONLINE OPEN-ACCESS PUBLISHING.

Q9. How do copyright rules for online publication differ from normal copyright rules?

A9. Strictly speaking, they don't. The law is the same but the cultural framework and professional expectations are different. The web is an incredibly democratic institution and one dominated, or at least heavily inhabited, by young people who have grown up with the experience and expectation that things on the internet are free, as in fact they often are. Interestingly, even when one turns to traditionally published books issued by commercial and academic presses, one is beginning to find pdf copies of books being made available for free by their authors simultaneously with the sale of the print copies (e.g., Benkler 2006, Lessig 2004). Thus online publications tend to have fewer copyright restraints and restrictions in practice than comparable paper publications, although there is no reason in principle why this would have to be so.

Q10. If I take an article from a free, open-access online journal, is it fair to assume that I can use the material for whatever academic purposes I want?

A10. No, and this follows from the previous question. People seem to think that online open access material is thereby in the public domain, but this is not the case at all. Even though you are free to read an open-access journal without paying, strictly speaking the contents of the journal are copyrighted. Thus in the absence of an explicit notice (such as a Creative Commons license) that authorizes you to duplicate, distribute, or otherwise use the material, you may not. An open-access journal is like a free newspaper that you might find at your favorite coffee shop. You can read it or use it for wrapping up smoked mackerel, but that's it. The articles in the free journal are subject to the same panoply of copyright protections and restrictions as an article in the *Wall Street Journal* or *Linguistic Inquiry*. But, as indicated earlier, people don't feel that way.

6. FAIR USE.

Q11. If a work is copyrighted and doesn't come with something comparable to a Creative Commons license, does this mean that I can't use it in my work without tracking down and asking permission of the publisher? If I have to get permission every time I quote something in a book review or every time I reproduce some example or tree diagram in an article I am working on, everything is going to grind to a halt. Is there no way out?

A11. Fortunately copyright law contains an exception to the general rule that the copyright holder has the exclusive right to exploit a work and this is what is called "Fair Use." If you make reasonable use of someone else's work for such purposes as commentary, criticism, scholarship, or parody, and if this use doesn't interfere with the copyright holder's legitimate economic interests, Fair Use allows you to do so without going to the trouble of requesting permission. Although there are no strict guidelines as to what constitutes Fair Use, there are set factors to consider that give you some measure of what would be considered reasonable. These factors are: the nature of your intended use

(noncommercial vs. commercial); the nature of the work being used (factual vs. creative, published vs. unpublished); the quantity or importance of the material used (a few lines vs. an entire chapter or section); and the potential impact of your use on the financial value of the material used (little vs. substantial). I would suggest that the best rule of thumb is to put yourself in the other person's place. If someone used some of your work without permission—assuming, of course, proper citation and attribution—would you be annoyed, or would you feel that it would have been silly for the person to have bothered to ask you?

In most cases, I think that scholars have a good sense of what is and what is not Fair Use. The problem is that publishers tend to be overcautious. You might feel that it is eminently reasonable to incorporate material from someone else's article in a book that you are working on, but your publisher may feel otherwise and require that you get copyright permission. Even if you are absolutely sure that your use falls under Fair Use, there's not much you can do if your publisher insists: this is the copyright bottleneck that we are all up against.

7. ORPHAN WORKS.

Q12. There's a great paper published in a small journal some twenty-five years ago that I would like to include in a volume that I am editing, but my publisher won't agree because I haven't been able to get permission from the author. The journal is long defunct and no one has any idea where the author is or whether the person is even still alive. Since no one is being hurt, can't we just go ahead?

A12. Copyrighted works whose copyright holders can't be located are referred to as "orphan works." This is a huge problem already and one that is only going to get worse in the future. This is because of the extraordinarily long copyright duration (the copyright on works created today will easily extend until the year 2100), the generally insignificant commercial value of most scholarly works, and the absence of a required and updated copyright registration system. You may ask why publishers are so silly as to be frightened by the prospect of the copyright holder showing up. The answer is that copyright law is unforgiving and doesn't provide good faith as an excuse for infringement. If the publisher published a book that included a chapter for which it lacked permission (because one couldn't get it even though one tried), the copyright holder could sue the publisher and most likely would win, thereby subjecting the publisher to monetary damages and, even worse, the prospect of having to withdraw the book from publication. The risks are very slight indeed, but publishers, whose interests are usually economic and not scholarly, would rather not take the risk. There has been proposed legislation, both in the U.S. and abroad, to do something about the orphan works problem by building in due diligence/safe harbor provisions, but so far nothing has happened. Ultimately there has to be some change in the law—the current situation is absurd—but in the meantime we are stuck with what we have.

8. COPYRIGHT OWNERSHIP.

Q13. Suppose an old and dear professor of mine, now deceased, left me her voluminous field materials (including notebooks, dictionary slips, and tape recordings),

lifelong professional correspondence, draft papers, and a partially finished book. They are extremely important materials that I intend to work up for publication so as to make them available to other scholars. Since she has entrusted me with her materials, I presume that this is OK. Given that I am going to have to devote a lot of time and effort into publishing these materials, the question I have is, whose name(s) should appear as author?

A13. Your first big problem is with your presumption. Although you now have the physical papers, and although it was probably the professor's intention that you help get them out, unless she transferred the copyrights to you—and it is very possible that she didn't—you don't hold the copyright to these materials and thus you lack the authority to publish them. Quelle horreur! This is a serious and pervasive problem. Senior scholars generally attend to estate planning and other financial matters, but they often overlook what was so important to them throughout their lives, namely the results of their intellectual efforts. Thus, in order to publish these works, you will need to track down the current copyright holder(s), which could be a spouse, children, grandchildren, or even the professor's favorite charity, and convince them to transfer the copyrights to you. Otherwise, you're stymied.

The raw fieldnotes, the drafts, and the correspondence present different problems. The good news about the notes is that facts and data are not copyrightable and so you can use these as you wish. The draft papers and book are probably copyrighted and thus to publish these you would need the copyright holders to transfer the copyright to you or else issue you a license. This would be necessary even if your final works differed from the originals in a substantial way. The bad news about the letters is that not only are they covered by copyright, but the copyright holder is not the professor (or her successors), but the individual writers. Without their permission, or that of their heirs—whoever and wherever they may be—you cannot publish the letters or even post them on a free online website. You own the physical letters, which you can sell or give away or deposit in a library archive, but you lack the intellectual rights embodied in the copyright.

Whose name(s) should appear as author, whether you only, the professor, or both, is a question of professional propriety, courtesy, and understanding: it is not a copyright question. The copyright issue would be whether your editorial work on particular publications was substantial enough to make you legally a joint author and thus co-owner of the copyright in those works.

Q14. A graduate student who worked as my field assistant on an NSF grant has written up a publishable paper. Who owns the copyright? The student, I as Principal Investigator (PI), or NSF?

A14. Strictly speaking, none of the above! Most likely your university owns the copyright, even though it doesn't know it and wouldn't want it. This is because of a provision of the copyright law covering "Work made for Hire." This provision states that work done by an employee as part of that employee's normal duties belongs to the employer. Normally the writer of a paper—in this case the student—is the initial copyright holder. In Work for Hire situations, the employer occupies the place of the actual author and becomes the legal copyright holder. Assuming that the student was being paid out of your grant, i.e., he was not a volunteer intern, and that the paper came out of his work

on the project, i.e., was within the "scope of his employment," then the copyright would belong to the employer. Although you may have been the student's direct supervisor and NSF was the source of the funds, if the student was officially an employee of the university and got his checks and W2 forms from them, the university would be the legal employer and thus the copyright holder.

In practice, no one pays any attention to this and the student could publish his paper and sign whatever author's agreement was required AS IF he had the copyright. There is, however, a way in which the student could have had the copyright in the first place. The Work for Hire rule is a default rule. Although the copyright on an employee's creation normally belongs to the employer, if the employee and employer agree otherwise in a signed written document, the employee can be deemed the copyright holder. But lots of luck in finding someone in your university legal department who would be willing to sign such a thing!

Q15. Thinking about the "scope of employment" phrase, wouldn't it follow that the academic papers that all of us professors produce would belong to our universities? I mean, sure we teach, but a good part of what we are paid to do is to do research and publish. So if the university owns the copyright to our work, how come we haven't heard anything about this?

A15. That's the $64,000 question. If you simply read what the law says regarding Work for Hire, you indeed would have to conclude that universities, not the professors, are the rightful copyright holders. A few appellate court judges who have commented on the subject have proposed that there is a "teacher's exception" to the Work for Hire rule; but these pronouncements are problematic indeed. The reality is that universities don't want and are not set up to handle the multitude of copyrights that faculty generate each year and so they generally function as if the Work for Hire rule didn't apply (although they occasionally fudge when it comes to copyrights on potentially valuable software). Thus in practice, professors are the de facto initial copyright holders of their own works. One of these days, the matter is going to end up in the courts, and we may get a clear (or more likely muddy) ruling on the subject. But in the meantime, it is not anything to worry about.

Q16. If I hire someone to do a map for an article I am writing or hire someone to prepare an index for my book, is the copyright mine? That is, can I assume that this would fall under the Work for Hire rule?

A16. The copyright *could* be yours, but it is not automatically so. You may think that when you give the cartographer a check and he gives you the map, you thereby own the copyright, but that is not the case. Unless you take appropriate steps, he has the copyright, not you. We can assume that you have the right to use the map in your article—we talked earlier about implied licenses—but you do not have the copyright. The reason is that with commissioned or specially ordered works, the default is the opposite of what it is with employees. Although you speak of having "hired" someone, that person was really a free-lance, independent contractor rather than an employee. This being the case, the cartographer or indexer would own the copyright, not you, *unless* you two had an agreement in writing

specifying that this was to be Work for Hire. It is extremely important to keep this in mind; otherwise you could discover later at some inconvenient moment that a portion of your article or book didn't belong to you.

Q17. The director of a big fieldwork team insists that his name be on every paper that comes out of the project whether he personally was involved in the research and writing or not. Is this allowed?

A17. This question raises both professional and copyright issues. U.S. copyright law is remarkably silent about the question of whose name(s) can appear on a work. The copyright laws of many European countries encompass "moral rights," which deal with issues of attribution and creative integrity, but U.S. law does not have anything comparable (except in the limited case of paintings and sculpture). Thus, no one could object to the director's putting his name on the papers on copyright grounds, although they certainly could on professional and ethical grounds. The question here would be what is the generally accepted and expected norm in such situations, the practice being different in different disciplines. Note, however, that if the director was not a contributing author of the paper in any real sense, then strictly speaking he would not have any copyright interest in the paper whatsoever. That's the law. In practice, once the director got his name on the paper, everyone would treat him as a joint author with equal copyright rights from that point forward.

The most important message to take from this discussion is that one should not expect copyright law to fix all the problems in the world. The issue here is really one of appropriate professional behavior and proper academic ethics and should be addressed in those terms without reference to copyright as a legal doctrine.

Q18. How about a situation where four people really did work together on a project (although to different extents) and thus all deserve to have their names on the paper. Assuming that the PI, whose name appears first, led the research effort and that the second author did the bulk of the write-up, what rights do the various authors have?

A18. Again one needs to separate professional scholarly practices from legal rules. Professionally, the various members of a research team need to sort out among themselves who does what, who is responsible for what, and who is entitled to what, ideally before any conflict arises. Under copyright law, the rule is that all authors of a single work constitute equal copyright holders, i.e., the PI of a big project or the person who did most of the writing has no more legal claim to the work than a part-time unpaid undergraduate assistant. Members of a group working on a commercial project can decide among themselves how the proceeds are to be allocated, but as far as copyright ownership is concerned, if there are four authors, each has a one-fourth interest. Note that any of copyright holders, including the most minor contributor in the team, may use the work as they see fit and may even issue nonexclusive licenses as long as they provide a financial accounting to their joint copyright holders. What they cannot do on their own without the agreement of the others is transfer the copyright as such or issue an exclusive license.

Q19. Suppose the person who did most of the writing was a PhD student. Could she rewrite the article a bit and use it as a chapter in her thesis?

A19. We keep coming back to the fact that many academic questions have copyright and noncopyright dimensions. From a copyright point of view, if the student was one of the authors—she needn't have been the primary author—she would be free to make whatever use of the work that she wanted without needing permission from the others. This follows from the general rule about the rights of joint authors. I am assuming here that the joint authors are still the copyright holders. If they had published the paper and had transferred the copyright to the journal publisher, then the student's use of the paper without permission would constitute copyright infringement even though it was her own paper.

The real issue in this case is one of possible academic misconduct. If the student removed the names of the other authors and incorporated the article in her thesis as if it were hers alone, she would be guilty of plagiarism. If she properly cited the article and/or did a major rewrite, she would be OK. But if she presented the material as her own when her changes were essentially cosmetic, she could be subject to academic discipline.

9. COPYRIGHT AND FIELD SITUATIONS.

Q20. While I was in the field I collected quite a lot of oral literature, especially from two remarkable people. The first was an old woman who seemed to know an endless number of folktales, which she told in energetic fashion. Both she and the village elders explained to me that she was the personal custodian of the folktales, but that the tales as such were the property of the community. The second was a blind man who was admired in the village because of his linguistically expressive poetry. I recorded both of these people and with the help of a local school teacher assistant transcribed everything in the local language and translated everything into English. From a copyright point of view, who owns what?

A20. No one owns copyright to the folktales. The old woman doesn't because, although she related them, she was not the author. Similarly, the community has no copyright interest because of the lack of identifiable authorship. When the elders told you that the community owned the folktales, you may have acquired certain contractual or ethical obligations regarding your use of the tales, but this would be outside of copyright law. Finally, neither you nor the teacher has any copyright interest in the folktales as such. Transcription of a recording does not constitute authorship.

As long as the poet's poetry was entirely oral, there would have been no copyright. However, once you recorded the poetry, you thereby "reduced it to tangible form"—the transcription wasn't required—whereupon copyright automatically attached. (For sake of discussion, I am assuming that the copyright laws in the country in which you were doing your research are similar to U.S. law.) The poet is now fully invested with the copyright on his poetry that you took down, and so anything that you intend to do with the poetry will require his approval.

Unless the teacher could be considered your employee and not just someone who did special tasks for you from time to time, you and the teacher jointly own the copyright to the translations. Remember, even if you paid him well for the translation work, and even if your understanding was that you would then be free to use the translation as you wanted,

if you didn't get an agreement in writing saying that his free-lance work would constitute Work for Hire, the teacher obtained a 50% interest in the translation. As a joint holder of the copyright, you would be free to use the translations for your purposes and even issue nonexclusive licenses—each co-holder has that right. However, you couldn't transfer the copyright as such without the teacher's approval, and you would owe him 50% of any royalties or other income that might ensue from your combined efforts.

Q21. Who owns the copyright on the photos that I took in the field, me or the individuals in the pictures? Do I need their permission if I want to publish the photos? Regarding the copyright, would it matter if I were using an expensive camera that was paid for out of an extra grant that I had received from the National Endowment for the Humanities for the express purpose of taking high-quality pictures?

A21. The general rule for pictures is that the photographer is the author and therefore the copyright holder. The people being photographed have no copyright interest in the photos at all. On the other hand, what you may do with the photos is a different matter. This depends not so much on copyright, but on privacy matters, personal and professional ethics, cultural rules, where the pictures were taken and of whom, and on whatever formal or informal agreements you made with the people you photographed. That is, no one is likely to sue you for copyright infringement; but since most people feel very strongly about photos, you need to be extra cautious not to overstep your bounds.

The fact that NEH paid for the camera doesn't change the fact that you as photographer own the copyright to your photos. If you were an employee of NEH whose job it was to take photos, then copyright on the pictures would automatically be theirs under the Work for Hire doctrine. Alternatively, if the terms of your grant specified that NEH was to obtain the copyright on the photos, then you would have to sign over the copyright to them. Otherwise, the copyright on the photos is yours.

Q22. Some communities have awakened to the history of cultural exploitation by Western scholars and now want to exercise control over their language, specifically with regard to written or recorded documentation. Some now insist that they be provided copies of research notes and recordings collected in the field and some want to have the final say on who can and who cannot make use of materials on their language that have been deposited in libraries and archives. How does copyright enter into the picture?

A22. The short answer is that it doesn't. One cannot copyright facts or ideas or real-world phenomena, which means that languages are not copyrightable. There is a lot of discussion these days—more so in anthropology and folklore than in linguistics—about indigenous intellectual property rights. These include aspects of indigenous knowledge, such as traditional pharmacology, which are patentable subject matter, as well as literature, music, and the arts, which fall in the copyright domain. Unfortunately copyright law as it now exists appears to be of no help in preserving traditional rights. The problem, as was brought to my attention by Akiemi Glenn (personal communication), is that unlike the copyright over-protection situation that Creative Commons deals with, the problem in the non-Western world is often one of copyright underprotection (see Hardison n.d.). Thus,

if there are to be any standards to determine appropriate community control of language materials and oral literature, or guidelines regarding respect for traditional cultures, these are going to have to be drawn up by professional societies or university institutes or provided for by ad hoc legislation independent of the current copyright system.

10. SUMMARY AND CONCLUSION. Scholars tend to be both creators of and users of copyrighted material. The tension in copyright law results from the natural inclination of authors to be possessive about their creative output, and the desire of readers and users to have maximum access to cultural and intellectual works at minimal cost, where cost is measured not just in terms of money but in time, effort, and inconvenience (what are often referred to as "transaction costs"). And then one has to take into account the publishers, who play an important role in facilitating the communication between the creators and the ultimate readers and users. Copyright law is supposed to strike a balance in meeting the needs wishes, and interests of the various stakeholders. Many individuals involved with scholarly communication feel that the law is now way out of kilter, which explains the emergence of self-help measures such as Creative Commons licenses and the Author's Addendum. Nevertheless, no matter how one feels about the issue philosophically, all people involved in scholarly production (and this includes field linguists who would much prefer to think about other things) need to have a basic understanding of what copyright law is about in order to know how to react intelligently to it and how to deal with the problems that it inevitably presents.

11. SOURCES. Useful brochures about copyright law and access to the copyright act itself (*U.S. Code Title 17*) can be found on the website of the U.S. Copyright Office. A number of universities, especially Cornell, Duke, Maryland, Michigan, and Stanford, have extremely helpful copyright pages, a very good one being that of the Copyright Center at IUPUI. The best comprehensive one-volume treatment of copyright law is Leaffer 2005. Strong 1999 is less detailed and in need of updating, but it is still very reliable and for the nonlawyer interested in the subject, much easier to read than Leaffer 2005. Information regarding Creative Commons can be obtained from their website and from numerous online resources such as Educause (2005, 2007).

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