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# Who Owns Academic Work?: Battling for Control of Intellectual Property

Corynne McSherry


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BATTLING FOR CONTROL  
OF INTELLECTUAL PROPERTY



C O R Y N N E M C S H E R R Y

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#3806077 in Books Harvard University Press 2003-10-15 2003-09-24 Original language: English PDF # 1  
9.00 x .72 x 6.001, .82 #File Name: 0674012437288 pages | File size: 28.Mb

Corynne McSherry : Who Owns Academic Work?: Battling for Control of Intellectual Property before purchasing it in order to gauge whether or not it would be worth my time, and all praised Who Owns Academic Work?:

## Battling for Control of Intellectual Property:

10 of 10 people found the following review helpful. Fascinating Explanation of University Culture and IP By M. Wilson I reviewed this book for the Journal of Technology Transfer. I thought it would be a simple explanation of legal cases and their implications on university IP. Though it had that at the beginning and end, the real meat of the book is the middle, which explains the university culture better than any book I have ever read. Without understanding that culture, it is hard to know the impact of the cases that McSherry cites. It is often a tough read, but well worth the effort to learn about the history of the copyright system, the role of the gift-economy and commercial economy clash that commercialization issues force on universities as well as the particulars of cases that have the potential to dramatically change how the university functions based on the precedence of several key legal cases. Those whom I have recommended it to, have agreed with me that it is a very valuable book! 11 of 34 people found the following review helpful. A Major Hit Piece Taken Directly from the Pages of Karl Rove By H. Nicole Young Apparently, while Corynne McSherry was a law student at Stanford writing this book, she was looking to carry over some sort of unexplained grudge from her graduate days at UCSD. I didn't know her personally when I was also a graduate student at UCSD, but McSherry was friends with a small subset of students in my laboratory who, instead of doing science, seemed to spend a majority of their days sitting around thinking of ways to try to torment me on the sole basis that I was a highly talented, passionate female scientist. It didn't work most of the time, but still, what a pain in the choo-choo that was! Anyway, it might go a long way toward explaining why this book reads so much to me like McSherry took a page from the Karl Rove Book of Slime and created this hit piece disguised as an academic work. In fact, it wouldn't surprise me if Agouron Pharmaceuticals, the other half of the "Pelletier v Agouron Pharmaceuticals" lawsuit that is so prominently featured on the opening pages of this book, paid her way through law school in exchange for allowing them to hijack what may have started out as a reasonable thesis (mostly the middle part of the book covering the history of intellectual property in academia), but ended up being some sort of convoluted, sick argument in support of pharmaceutical companies stealing as much basic research data they can from academic scientists, falsifying whatever they aren't able to steal, and publishing it all as their own independent research. Believe it or not, there is still no system in place (though Mother Nature knows I tried -- through the NIH, NSF, FDA, UC Regents, the scientific journal where Agouron's half-stolen/half-falsified work was published, even the National Academies of Science -- until finally resorting to a legal remedy) for preventing pharmaceutical companies from behaving this way with non-patentable basic research work published in the scientific literature. And contrary to the faulty premise of this book (that scientific publications are of little value to anybody but academic scientists), such publications, even if presenting only basic research and nothing patentable yet, can be extremely valuable and sought after, especially to a budding start-up company, because they can add scientific prestige and even a big stock boost with the proper media attention. The reason the beginning and end of this book stand out apart from the rest, as another reviewer notes, is because these are the parts that were probably written mostly by Agouron attorneys, as is evident from the fact that most of the writing in these parts seems to be just a regurgitation of seven years' worth of Karl Rove type press releases that Agouron issued against me during the course of this lawsuit, many of them hinting that I was not a very good scientist and that my main motivation in the lawsuit was just a sour grapes attempt to get money and attention: "Without a major publication under her belt, Pelletier was simply a vulnerable and mostly unknown postdoctoral researcher, with little academic credit to invest in her own defense" (pg. 195). "As a young post-doctoral researcher, the (scientific project involved in the lawsuit) was supposed to be Dr. Pelletier's ticket to scientific success" (Introduction). It is not like Ms. McSherry was unaware of my 1992 Ph.D. thesis from UCSD, which was unrelated to the work involved in the lawsuit and was completed two years before I finally sued Agouron in 1994 (after months of attempted negotiations with them to be reasonable and not publish the work they stole from me), two years before I became an apparently "unknown postdoctoral researcher with little academic credit and no major publication to her name." For the record (which you are not going to get an accurate account of in this book), my Ph.D. thesis was published as a major research article in the top scientific journal in the country -- Science, soon thereafter became the second most cited paper in chemistry for its time period, was featured as a cover story for Chemical and Engineering News in February of 1993, landed several invited lectures for me around the world, including France, Germany, Italy, and China, and is to this day still featured in all major biochemistry textbooks. Yes, Corynne McSherry was fully aware of my scientific accomplishments at the writing of this book, as was the unfortunately jealous subset from my laboratory whom she hung out with and who, at the behest of Agouron Pharmaceuticals, plotted and eventually succeeded at stealing my subsequent postdoctoral research work in 1992/1993 and handing it over to Agouron Pharmaceuticals for immediate publication. "Who Owns Academic Work" was published, not-so-coincidentally, in the Fall of 2000, just weeks before an unprecedented and completely unfounded decision was handed down from a California Appeals Court on my case, where a well-deserved \$200,000 monetary award against Agouron Pharmaceuticals that was granted to me by 12 out of 12 jurors after a two-week trial, was reduced to \$1.00 despite every other aspect and decisions of the jurors being upheld. Why? Because, the Court ruled, they were not sure "who owns academic work." Apparently, the academic work that Agouron scientists stole from an academic laboratory and

published as their own was, in effect, really owned by the public anyway, right? -- i.e. Agouron -- and the Court, against the better judgment of twelve of my peers, could find no damage done to me nor to my career that justified such a monetary award. In other words, a young and talented academic female scientist's non-patentable basic research work is easy pickings and can be taken at will prior to publication by any pharmaceutical company and published as its own, as they saw fit, and heaven forfend that the young scientist have any recourse for this base and inexcusable action, lest the entire academic world suffer "earth-shattering consequences," as McSherry laughingly calls it. In fact, if you read between the lines carefully enough (from both the book and the Court decision and even the reviews of the book), you could almost swear any such well-deserved decision against any US pharmaceutical company might pose a threat to national security! LOL! Give me a break...

Who owns academic work? This question is provoking political and legal battles, fought on uncertain terrain, for ever-higher stakes. The posting of faculty lecture notes on commercial Web sites is being hotly debated in multiple forums, even as faculty and university administrators square off in a battle for professorial copyright. In courtrooms throughout the country, universities find themselves embroiled in intricate and expensive patent litigation. Meanwhile, junior researchers are appearing in those same courtrooms, using intellectual property rules to challenge traditional academic hierarchies. All but forgotten in these ownership disputes is a more fundamental question: should academic work be owned at all? Once characterized as a kind of gift, academic work--and academic freedom--are now being reframed as private intellectual property. Drawing on legal, historical, and qualitative research, Corynne McSherry explores the proprietization of academic work and shows how that process is shaking the foundations of the university, the professoriate, and intellectual property law. The modern university's reason for being is inextricably tied to that of the intellectual property system. The rush of universities and scholars to defend their knowledge as property dangerously undercuts a working covenant that has sustained academic life--and intellectual property law--for a century and a half. As the value structure of the research university is replaced by the inequalities of the free market, academics risk losing a language for talking about knowledge as anything other than property. McSherry has written a book that ought to deeply trouble everyone who cares about the academy.

Corynne McSherry makes a compelling argument about the ways intellectual property debates figure in the university today. *Who Owns Academic Work?* is at once one of the most important recent books on the contemporary university and one of the most interesting on intellectual property issues as well. (Mark Rose, University of California, Santa Barbara) *Who Owns Academic Work?* is required reading for anyone interested in the peculiar author-function of academics, and in the ways it both resembles and differs from the protocols of intellectual property law. McSherry's intellectual and empirical skills make this work both thought-provoking and informative. (Mario Biagioli, Harvard University) In the best tradition of cultural studies, McSherry chooses an unfamiliar object of study, approaching it from without rather than from within... What is significantly different here (and stunning) is the thesis that intellectual property has produced a crisis in the research university and that, in turn, the question of scientific research has "troubled" intellectual property principles... At stake is the maintenance of a "community of science" in which trust and exchange of ideas has historically characterized the climate. (Jane Gaines, Duke University) McSherry is concerned with the future of intellectual property at a time when universities continue to combine a place in the market economy with their traditional role in a gift economy. Her second worry is the flip side: what will be the effect on universities as our standards and definitions of intellectual property change, especially given the way the public domain is eroding?... The book provokes much thought about issues that most academic scientists likely do not consider in much depth--copyright, patent and data ownership, and the "work-for-hire" exclusion of individual employee's rights in the US... McSherry ably demonstrates that universities are going through a second revolution. Academics should be wary of what that revolution may bring. (Steven M. Bachrach *New Scientist* 2001-12-01) This book provides not a legal but a cultural analysis of the social production of academic knowledge... [McSherry] forces us to look at the data stream of modern society that passes through a series of institutions, all of which attempt to enforce conflicting ownership claims. When a professor delivers a lecture to students, is he or she making a "gift" to the world in general? Or to the community of students concerned? Or does the professor retain the ownership of everything in the lecture?... This is a highly stimulating work. (Anthony Smith *Times Higher Education Supplement* 2002-02-02) This collection of essays... asks us to consider who has the legal and social right to academic freedom in theory and practice, and what conditions are put in place to limit or enable that freedom to exist. This is a collection of essays about the limitations of academic freedom, but it is equally a collection about the social nature of the university... The collection does what it sets out to do: provoke the reader into participating in this important ongoing dialogue... Anyone working in academia, in any capacity, should think about these issues and enter into the critical dialogue of which these texts are a part, thus ensuring we put theory into practice. (Batia Boe Stolar *Canadian Literature*) Corynne McSherry makes a compelling argument about the ways intellectual property debates figure in the university today. *Who Owns Academic Work?* is at once one of the most important recent books on the contemporary university and one of the most interesting on intellectual property issues as well. (Mark Rose, University of California,

Santa Barbara)About the AuthorCorynne McSherry is an attorney at Bingham McCutchen in San Francisco, CA. She holds a Ph.D. in Communication from the University of California, San Diego.