

Chapter 18

Copyright Law and Higher Education

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I Introduction

Until recently, academics in Australia operated in a 'copyright-free zone' in dealings with their employing universities.¹ As increased funding pressures force universities to seek alternative sources of income, greater attention is now being given to the copyright materials created within universities. Previously, copyright creations, particularly in the humanities, were considered an inconsequential source of revenue for universities.² Now, universities in Australia (and overseas) commonly harness technology to create 'marketable teaching products',³ such as those offered within Massive Open Online Courses (MOOCs).⁴ These developments re-focus attention on the copyright ownership of academic-created materials.⁵

This chapter outlines the position on copyright ownership under Commonwealth legislation,⁶ and considers the treatment of academic-created copyright materials in university employment contracts and policies. Under Australian legislation, and commonly under university contractual terms, there may remain uncertainty about the copyright ownership of academic-created materials. Uncertainty about ownership damages transactional efficiency. Equally, as lecture notes and recordings become potentially marketable materials,⁷ it remains unclear whether lecturers will have rights

1 Ann Monotti and Sam Ricketson, *Universities and Intellectual Property: Ownership and Exploitation* (Oxford University Press, 2003), 10.

2 In comparison, the patentable inventions of those in science faculties have been of interest to universities for some time. Ibid 10; Rochelle Cooper Dreyfuss, 'Collaborative Research: Conflicts on Authorship, Ownership, and Accountability' (2000) 53 *Vanderbilt Law Review* 1161, 1185; Robert A Gorman, 'Copyright Conflicts on the University Campus: The First Annual Christopher A Meyer Memorial Lecture' (2000) 47 *Journal of the Copyright Society of the USA* 291, 297.

3 Monotti and Ricketson, above n 1, 500.

4 Tim Dodd, 'New Wave of MOOCs About to Go Live' (24 February 2014) *Australian Financial Review* <http://www.afr.com/p/national/education/new_wave_of_australian_moocs_about_MTUMD1L17U6vgpP0brs2WP>. This is consistent with a worldwide trend: Educause, 'Copyright Challenges in a MOOC Environment' (2013), 1.

5 Although initially not much attention was paid to who might own intellectual property in MOOCs, for example (Monotti and Ricketson, above n 1, 3), the question of intellectual property ownership of academic ideas and copyright works 'remains very much alive, and in need of attention': Justine Pila, 'Who Owns the Intellectual Property Rights in Academic Works?' (2010) 32 *European Intellectual Property Review* 609.

6 The *Copyright Act 1968* (Cth) (*Copyright Act*).

7 'For commercial MOOC providers, and increasingly for campuses, course content is potentially profitable': Educause, above n 4, 2.

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