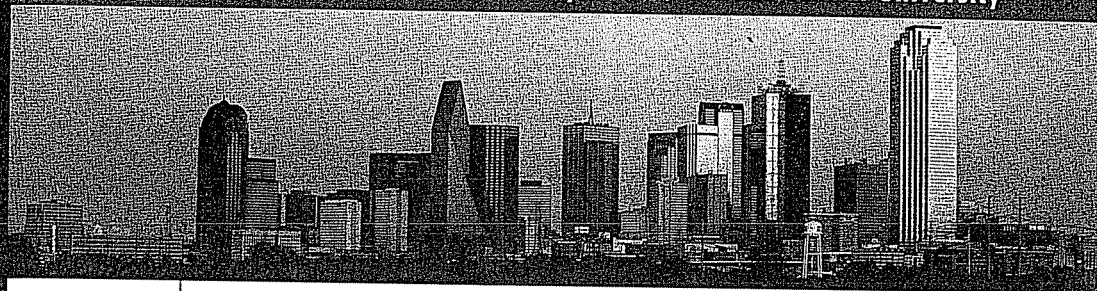


Online Communities

Commerce, Community Action, and the Virtual University



A comprehensive guide ◀
to online communities—how
they develop and how they
impact e-commerce, culture,
politics, and education

Why some online communities ◀
thrive—and others fail

Nineteen experts write ◀
about the rhetoric and reality
of online communities, including
Richard Stallman, founder of the
Free Software Foundation

Chris Werry, Editor | **Miranda Mowbray, Editor**

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The Free Universal Encyclopedia and Learning Resource

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10

Community, Courseware, and Intellectual Property Law *by Geoffrey Sauer*

The major change to befall universities over the last two decades has been the identification of the campus as a significant site of capital accumulation, which has resulted in the systematic conversion of intellectual activity into intellectual capital and, hence, intellectual property. —David F. Noble, 1998

There's a revolution brewing on college campuses these days. Its goal is to make higher education more accessible . . . and more profitable too.—WebCT (an online courseware vendor and publisher), unnumbered page distributed with press release, 1999

Jean-François Lyotard's prediction in *The Postmodern Condition* (Lyotard 1984) that market segmentation would encourage both a proliferation of fields and commodification of knowledges has proven correct. Intellectual property rights for publishers have been expanded. Public policy and venture capital funding have encouraged the growth of "information industry" jobs in the United States. Media industries have grown in their cultural influence, and the corporations that run them have found it useful to reorganize to produce diverse markets for information. Knowledge distribution has become increasingly motivated by the logic of commodity trading and market demand. And while it seems clear that academic knowledges will be a rich growth market in the coming decade, this change is not simply egalitarian progress toward accessible scholarship, but also (or instead?) the ratio-

nalization of contemporary knowledge as a commodity. It is important to study how this is happening, as academics struggle to clarify how to engage new media technologies in our teaching and research, and as the resources produced within academic communities acquire an increasingly important online component.

This present state of publishing certainly isn't always fully understood by either advocates or antagonists of online publishing. Some writers equate the Internet with commodification—either as a symbol of contemporary problems (as in Noble 1998), or a utopian alternative to current hegemonies (as in Negroponete 1995). But the numerous parallels between the views of corporate interests and university administrators have undeniably led to a redistribution of resources away from stolid academic disciplines toward fields such as business and the sciences—which have adapted more readily to the commodity model (see Berube 1998 and Nelson 1997 for discussion of this). This chapter will examine changes in intellectual property rights over the past few decades in order to examine their implications for teaching and for the organization and control of academic resources online. It will then look at new Internet technologies becoming incorporated into classroom practice. Last, it will propose alternative strategies that might be useful to scholarly communities.

Changes in the Duration of Copyright in the United States

In order to analyze these cultural changes of the past few decades, it is helpful first to look at material changes in intellectual property that enable recent reforms. Since the mid-1960s the entertainment industry in the United States has won significant legislative victories to increase the value of their intellectual properties. The enormous strength of commercial publishing interests can be seen in a pattern of exten-

sions to copyright law; the U.S. Congress enacted a succession of laws that extend the duration of copyright—preventing works from moving automatically into the public domain. The total duration of copyright has been extended potentially as long as 150 years, if the author lives to the age of 80, as can be seen in Table 10.1.

Although it's not usually obvious to those who don't follow intellectual property law, these changes actually affect teachers' and writers' relations with their work. For example, in addition to the duration changes above, Congress has also changed the definitions of intellectual property in 17 U.S. Code 101. This change of definitions creates differences between the interests of university administrations (which have won some new property rights to faculty work) and those of instructors—who have not won any increases in salary, royalties or participation in distribution of their works.

Many writings about new media issues take up utopian narratives from the early 1990s about the Internet which assume that new media are an opposite to print—as if “publishing” had somehow been a fixed or stable institution since the fifteenth century. The impulse to vilify “dot-commodification” may lead to the opinion that the rise of commerce-driven new media provides a simple explanation of the commercialization of academic work. In particular, it may suggest that the expectation by courseware companies that the copyright of academic works distributed over their systems should belong to the University, or to the courseware companies themselves, rather than to the authors of the works (or to the public), is a phenomenon that has not been prefigured in other forms of publishing. The equation of print publishing with *Gutenberg*, as if the contemporary publishing industry somehow resembled fifteenth-century incunabula, recurs alarmingly often. From Table 10.1 it becomes clear that new media have become popular only in the later stages of a change within the organization of property by media industries, and that the attitude of courseware companies toward copyright is not the *cause* but rather a *symptom* of the emergent order.

TABLE 10.1 Increase of Duration of Copyright

YEAR	LAW	MAXIMUM DURATION OF COPYRIGHT
1962	Pub. L. 87-668	59 years
1965	Pub. L. 89-142	61 years
1967	Pub. L. 90-141	62 years
1968	Pub. L. 90-416	63 years
1969	Pub. L. 91-147	64 years
1970	Pub. L. 91-555	65 years
1971	Pub. L. 92-170	66 years
1972	Pub. L. 92-566	68 years
1974	Pub. L. 93-573	70 years
1976	Pub. L. 94-553	75 years (or 50 past author's death)
1998	Pub. L.105-298	95 years (or 70 past author's death)

The 1976 Copyright Act

When copyright protection was first extended to creative works in Great Britain in 1710, that protection could be held for only a few years. After the term expired, works would enter into the common weal, becoming a part of the culture, and would no longer be private property.

While the rhetoric of the early laws was to encourage creative genius by allowing authors to benefit from their works, it has been well documented elsewhere that the original eighteenth-century lobby for copyright consisted of publishers (see, for instance, Darnton 1979). Individual authors did benefit from being able to sell creative works to publishers (who would then hold exclusive rights to publish), but few individuals owned their own publishing firms, and publishers rapidly developed standard contracts which paid authors as little as possible. (Today, publishers routinely offer authors as little as

7 percent of net sales—which means retail sales minus the cost of desk copies, remaindered volumes, etc.)

Following the 1976 Copyright Act, property rights in the United States are today given by default to the employer, unless a particular contract that grants the individual creator some rights to his or her work is negotiated *before the work is begun*. This is the reason for the complex term lengths in the final two rows of Table 10.1. The default term (95 years in the final row) applies if the work is owned by a corporate entity, and only if the work were owned by an individual does the second term (life + 70 years) apply—rare indeed for published books, since publishing contracts today as a matter of course transfer ownership entirely to the publisher.

This change has had many effects on creative work. Eminent authors, musicians and actors today require professional agents to negotiate their share of rights to creative works—all of which would otherwise be presumed simply to be corporate (publisher, media distributor or film studio) property. This produces a sort of “class” dichotomy between those who can afford to engage in current practices, and those who either don’t have the celebrity to negotiate, or those who don’t question current practice.

This has not often become noticed in academic work. Non-profit university presses pay quite little for publishing contracts, and even commercial publishers seldom pay well for academic productions—so it is seldom indeed that academic authors require agents to negotiate on their behalf. Textbook contracts have a reputation for being lucrative, but the stories about this circulate mostly around notable successes, such as the University of Tennessee’s English department, which is said to fund its graduate programs with revenues from its share of the *Harcourt Brace Handbook*. But those stories are from sales successes and are hardly representative of academic writing.

Changes in copyright law which favor employers and creators with lawyers and agents affect academic and commercial employees today because organizations have tended to market

their newly found rights to intellectual properties much more fully than before, with a general desire to obtain commercial value from many forms of knowledge. For example, many research universities today have "Technology Transfer" offices, whose task is to represent the university's share of commercially valuable intellectual properties.

These changes may affect academics in the future in an additional way. Academics provide copies of varied types of course material to the University as part of employment. Colleges may claim that such syllabi, handouts, annotated bibliographies and even audio or video recordings of lectures are the property of the employer.

Copyright is legal protection for expression; it does not protect ideas, and by statute applies only to forms recorded in some permanent medium. As a result, copyright has rarely been considered to apply to lectures and in-class discussions—and even property law has generally been considered irrelevant to these, since they tend not to be recorded. (The preservation of lectures in students' notes has led to a few legal arguments, since student notes are often notoriously creative works in their own right, rather than simple transcription.)

But when a university administration makes a contract with a corporate Web provider to run course Web sites, the Web courseware host is acting as an authorized agent of the university. If faculty members voluntarily (or as a matter of policy, as is beginning to be seen at some colleges) place course materials onto a Web server run by or for the university, it could be argued that this constitutes transfer of ownership of the materials from the instructor to his or her employer, and that this transfer of materials constitutes a contractual transfer of distribution rights (which the university might then market or redistribute at its discretion). Although this may be a tempting way of raising funds to assist hard-up faculties, it may have lead to the types of unfortunate side-effects described in (for example) Norman Clark's chapter in this book.

Few academics understand that such a transfer need not be in the form of a signed contract. Indeed, college administra-

tions are not necessarily conniving to seize properties that were traditionally seen to belong to the faculty—administrators may only discover their rights to such properties five or ten years from now. Or they may sign contracts with commercial Web courseware providers that (unintentionally) transfer intellectual property rights to the commercial courseware provider (as is done routinely in book-publishing contracts). But the increases of intellectual property rights in the United States in recent decades have coincided with an increasing recognition of the value of intellectual property, and academic knowledges are a ripe prospective territory for expanded commodification (given that a four-year U.S. university tuition can exceed \$100,000 per student). The fact that classroom knowledges, and various other less formalized resources produced within academic communities, have not circulated as commodities in the past cannot be thought to be an adequate protection against this happening in the future. Contract law has a tremendous bias toward the presumption that contracts are entered into by equal partners, capable of negotiating for their own interests and cognizant of the implications of their contract. But the current strength of publishing corporations (as seen in recent intellectual property law) and the relative naïveté shown by academics casts that presumption into doubt here. David Noble, a sociologist who has received much attention for his public stands against course Web sites, cites very effectively (Noble 1998) the moment in Kurt Vonnegut's *Player Piano* (1952) when the ace machinist Rudy Hertz is flattered by the automation engineers who tell him his genius will be immortalized. They buy him a beer. They capture his skills on tape. Then they fire him.

Of course, although some teachers might be improved by being immortalized on tape, it is as impossible to completely capture a good teacher on tape as it is to train a Player Piano to be a sensitive accompanist. What is missing from a recording is the teacher's and students' interaction, with two-way or multiway communication in which all interlocutors respond flexibly, adjusting their utterances (and sometimes changing their beliefs) in response to the social and conversational dynamics. In short, it is the aspect of communication that is

enabled on the Internet by what is referred to as “community” communication tools. The simpleminded translation of print publishing models to Internet publishing models, ignoring “community” interaction and communication, was a resounding flop in some highly visible cases, and now it has become almost obligatory for any ambitious media site to give its readers the possibility of dynamic multiway communication among themselves. An interesting development (described by Janelle Brown and Chris Werry in this book) is the attempted commodification of these communication methods as well, continuing the long-term trend in publishing already identified in this chapter. However, as much as media companies might want to “tape” the social skills of human experts in community communication, and despite technical advances in Internet bots and interactive and personalized systems, so far teaching and learning in online communities still work best when most of the interacting personas are directly ventriloquized by human beings. Administrators who manage to record all the available course material would be wise not to fire the teaching staff quite yet.

The Thor Power Tool Case, 1979

These changes do not necessary imply Manichean dichotomies of innocent, virtuous authors versus scheming, devious publishing executives or university administrators. The present state of intellectual property law has evolved over decades. In this section we study this evolution, in order to discern potential positions for academic workers in the future.

Although many influences in U.S. publishing history could exemplify changes in the past few decades, the clearest may be the Supreme Court's 1979 *Thor Power Tool* decision (*Thor Power Tool Co. v. Commissioner*, 439 U.S. 522, 1979). The *Thor* decision ruled that a hardware manufacturer's parts, stored over a five to ten-year period for distribution to retail stores, should be taxable property in one year *at the retail value of the parts*.

An unforeseen effect was that books stored by publishers in warehouses after large runs (for long-term future sales) would also be taxed much more highly than before, so that whatever backlist a publisher has at the end of each fiscal year becomes a financial liability. This is important, because offset lithography makes printing books less expensive when done once, in large volume, rather than via multiple print runs of small quantities for each year's sales. Publishers of specialized and abstruse works with small audiences—such as academic and lesser-known literary texts—had (before this decision) simply printed a large number of copies of such books and amortized their cost over five or ten years of sales. The *Thor* decision made this course untenable, as such publishers had to pay far greater tax on backlists. As a result, many publishers today prefer to publish marketable books they believe can be sold within a single fiscal year.

This has offered material advantages to books which could become events, complete with public relations campaigns and marketing which seek to demonstrate their relevance and timeliness. Popular authors such as Stephen King and Harry Potter author J. K. Rowling today write on a schedule of one book per year, and the cyclic nature of the writing suits a marketing apparatus designed to maintain the visibility and recognizability of “event” authors. Even in academic writings (where this celebrity is less common), the “event” theory of publishing has encouraged market segmentation and differentiation in order to create “hot” new subdisciplines and disciplinary “star systems,” whose greatest authors’ new works receive “must-read” status. Meanwhile, older and more measured works with smaller (if constant) reading audiences have quietly gone out of print.

Among the longer-term results of this has been that four large book distribution corporations have come to dominate publishing in the United States. These firms, such as Ingram and Publisher's Group West, warehouse books for their member publishers and have a strong inventory computer network in place, with connections to bookstore franchises across the country, so stores can automatically order from centralized distributors. American readers have seen how

these networks have made possible a hegemony of heavily computerized retail franchises with strong connections to the distributors: Barnes & Noble, Borders, and Amazon.com are all examples of this. These bookstores have databases designed to keep track of inventory, to reorder popular works automatically from distributors, and to keep track of what books go out of print and what new offerings should be added to catalogues and shelves.

On the one hand, such a system may seem efficient. It is certainly true that the total number of works available has increased. However, much interesting work is also being lost because it does not fit into the new economics of publishing, especially “esoteric” works and books published by small presses. As local bookstores are replaced by these franchises, many traditional relationships between academics and bookstore management have decreased, and in many ways the influence of those of us in the humanities in book sales seems to be the weakest it has been this century. The response of some groups of authors traditionally published by small presses, including many academics in sciences as well as in the humanities, has been to despair of the print publishing world and to flee to the Internet. For example, the most prestigious physics journals are now almost without exception online publications. Some of the “democratic” aura of Internet publishing today derives from online publication’s freedom from the economic realities which structure publishers’ calendars.

Imbalance of Powers: Corporate, Government, and Consumer

Many colleagues over recent years have argued to me that these extensions of property do benefit authors. Following a Reagan-era “trickle-down” theory, these colleagues argue that greater revenues for publishers will generate a better position for faculty. And it could even be true. Certainly the “star sys-

tems” in publishing which have emerged post-1979 have worked to the advantage of the few academics who become famous within their disciplines (and, following market segmentation and differentiation, now even subdisciplines). Authors whose work fits the “event” paradigm of book publishing—and who therefore sell sufficient copies to hire agents to negotiate—may benefit from their celebrity.

But the increased costs which computerized databases, publicity, marketing and rapid obsolescence have added to books have had visible costs for all of us who read and teach. The increases in the cost of “leisure” reading have already had noticeable effects for communities of readers in everyday life. Quality paperbacks in the United States begin in the \$15 range, and hardcover books range upward from \$20—this builds popular support around less-expensive “bestseller” books, and further decreases the base of support for academic knowledges. In this world, the futures for leisure reading in the humanities seem more difficult to imagine, particularly as young readers seem to find early focus of their reading interests economically rewarding, thus decreasing the sort of breadth more common earlier this century.

Historians have written at length about the dangers of allowing the price of written works to escalate, creating elite knowledges with narrow bases of support in culture. I have written elsewhere to draw parallels to the eighteenth-century print history of the French Bourbon monarchy, as have historians such as Robert Darnton. Darnton’s work on Swiss book smuggling as part of the business and economics of the Enlightenment argues that economic and material exigencies can have dramatic impact on the value of knowledges within cultural contexts. I have a personal friend who works as a manager in my neighborhood Barnes & Noble, who has told me that his store wants to limit its stock of university press books, because they are comparatively difficult to find, to order, and to negotiate profit margins comparable to those found from presses which distribute via the four large distribution companies.

Alienated Labor—Even within the Star System

Walter Benjamin (1968), Roland Barthes (1968/1989), and Michel Foucault (1979) have written about the principles that a culture uses to organize written works. Because the complexities of comparing the many details of works make this practically impossible, social institutions are developed to assist us. The author-function, one instance of this, is the creation of a myth around particular authors, which can be used to connect their works to one another, in order to think of single books as belonging to a progression of books by the same author.

As we look to the possibility that academic knowledges will be more thoroughly commodified in the future, we should beware the possibility that the author-function that will organize scholarship will be organized around employers (Harvard University courses online!) or publishers (WebCT or eCollege courses online!) rather than in terms of individual instructors, whose diminution may not benefit all of us. Michael Milken, the ex-junk-bond king, has invested heavily in companies offering online education technology, which suggests that academic commodities may be marketed as any other media or information commodities. And the argument of Alan Gilbert (the chair of Universitas 21, an international association of research-based universities), in a statement to *The Chronicle of Higher Education* that U.S. universities are not good brand names overseas (Maslen 2000), suggests that neither individual faculty nor parent universities constitute the author-function most likely to be used to organize these commodities.

The workplace realities of creative labor will be influenced by the ways in which the author-function works in emerging media. Recently even the beneficiaries of the corporate “star system” have expressed dissatisfaction with the current balance of power between artists and corporations in intellectual property. In May 2000, singer-songwriter Don Henley received popular attention for his assertion that the copyright act favored the Recording Industry Association over recording artists. And a similar argument was made in June 2000 by singer

Courtney Love, who studied a hypothetical but very autobiographical-sounding recording contract in an article for *Salon* magazine titled "Courtney Love Does the Math." The article found that a sample recording contract generated \$45,000 for musicians from a one-year album project, while providing the record company \$6.6 million. She concludes with a desire for some alternative to the current music industry:

I want to work with people who believe in music and art and passion. And I'm just the tip of the iceberg. I'm leaving the major label system and there are hundreds of artists who are going to follow me. There's an unbelievable opportunity for new companies that dare to get it right (*Salon* 2000, p. 363).

Music celebrities by definition have already-written identities within the popular music star system. If Web courseware is to become a part of our work process, it may be important to examine how author identities will be acknowledged within academic online publishing—for example, how credit for online publishing will be reflected in tenure review.

A common joke in English departments is that English faculty fight so fiercely because the stakes are so small. In fact, I believe the stakes are large. The inequities which affect even media celebrities will have comparable effects upon us (the more so for the remarkably small pay we receive for our writings), and the same property laws which are becoming known for their anti-author bias in other media will begin to affect us as well, as new markets emerge for circulating the scholarly knowledges that emerge out of academic communities.

Commercial Publishing Influence in Web Courseware

One of the fastest-growing applications for online academic publication in the United States is that of online courseware. This is in part because commercial e-commerce interests have begun to copy the catalog-commodity software engines currently available to wholesale and retail distributors, attempt-

ing to transform these to distribute academic commodities. The negotiations currently under way for the most part are not visible to faculty (with the exception of the numerous one- and two-page advertisements in *The Chronicle of Higher Education*—the most widely read publication about higher education in North America—and the sponsorships of National Public Radio).

But the peril of this new system can be seen when reading the brochures circulated by courseware vendors to college and university administrators. For example, the company RealEducation (which recently became WebCT) has for two years distributed to administrators a marketing packet that contains a document (WebCT 1999, “RealEducation Raises \$15 Million to Build Online Campuses for Colleges, Universities & Corporations”) which asks the following:

Why would anyone want to go to class on-campus when they can go to www.realeducation.com and get an entire degree from a growing list of the best institutions of higher learning in the country via our reliable, easy-to-use, yet sophisticated Internet education system? (p. 3)

Why, indeed. There are clues that this question is one asked of college administrators, rather than students or faculty. Included in the brochure is a photograph of a middle-class housewife in classically styled clothes, her young daughter on her lap, sitting at her kitchen table with orange juice, her notes, and a laptop computer. This offers some insight into one vision planned to intrigue school administrators: expanding student populations to nontraditional students.

Another WebCT brochure (WebCT 1999, “Take a Shortcut to Putting Your College or University Online”) suggests that its company’s courseware system would provide virtual replacements for many of the cost centers that dominate university budgets. The brochure suggests expanding university access without the costs of investment in real estate or a physical plant:

Build a new kind of campus, not new buildings. Imagine a university without walls, without limits. [WebCT] customizes

your online campus and classrooms to fit the look and feel of your institution. And both will mirror your traditional campus in every way; with all the services, all the interaction, and all the vibrancy of the educational experience your traditional students enjoy (p. 2).

Later, the same brochure suggests that WebCT's online facilities might replace numerous existing cost centers:

Your online campus will include: Course Catalog, Academic Calendar, Inquiry/Application Forms, Registration Information, Degree Requirements, Add/Drop Policies, Admissions, Financial Aid & Bursar's Office, Administrative Services, Student Services & Faculty Directory, Academic Advising, Career Counseling, Bookstore, Student Union (p. 4).

The plan here is to substitute electronic replicas of some of the more expensive services (non-revenue-generating departments are known as "cost centers" in corporate jargon) provided by traditional academic institutions to their students.

Each course is consistent in look, functions and features; so it's uncomplicated for faculty developing the courses and the students who use them (p. 6).

Last (and perhaps least), the brochure talks about working with the faculty who will actually create the course content.

Education instructional designers and course developers consult one-on-one with faculty to help convert their course materials into compelling and effective Internet presentations (p. 3).

Perhaps not surprisingly, when U.S. courseware vendors discuss online education in materials intended for faculty, a very different tone is registered, one in which "community" tends to be the central motif. For example, *The Chronicle of Higher Education* is crammed to the brim with advertising from online education companies, almost all of which stresses the extent to which their systems will enhance community life in universities, make academic community

resources easier to use, and connect academics with the wider communities outside their gates. One of Campus Pipeline's advertising slogans in issues of *The Chronicle of Higher Education* in 1999–2000 (for example, on p. A53 of the September 3, 1999 edition) was "A community dedicated to meeting individual needs. A business streamlined for maximum efficiency. And a campus that never closes." Furthermore, Campus Pipeline (discussed in more detail by Norman Clark in this book) announces in its mission statement that "We will revolutionize education by connecting the collegiate community," and asserts that its software "revolutionizes the way higher education builds relationships with its students, faculty, staff and alumni." In this context, "community" perhaps functions as a way of reassuring educators that courseware vendors are sensitive to the social and communicative aspects of teaching, and that courseware does not involve an automation of education resembling Vonnegut's *Player Piano*.

Student Dissatisfaction with Traditional Teaching

As bizarre as some commercial courseware seems to professional scholars, such systems may not appear as abhorrent to undergraduates. Market segmentation and the focused disciplinary nature of contemporary research produces scholars often disenchanted with undergraduate teaching—which appears less and less connected to prestigious work.

The alienation many academics have from representing their work to nonexperts may well be a symptom of the current publishing era. But the "online community" model of teaching may appear to students as an *improvement* over the traditional lecture hall or the adjunct classrooms that have become such a part of the research university core curriculum. What is necessary (if we wish to preserve traditional teaching from commodity courseware) is a form of accessibility in our teaching which contemporary publishing does not seem to support.

Courseware Advantages

The first step would be to consider whether online technologies might offer a form of accessibility currently missing from teaching practice. In the introduction it was suggested that there are advantages to these media for teaching. There is nothing to say that course Web sites are inherently exploitative. I don't want to fall prey to the technological-determinist fallacy that assumes that certain "democratic" relationships inhere within technologies, but course Web sites can and do offer specific and understandable advantages to classroom teaching when students have adequate Internet access. I myself have found a number of these, having used course Web sites every term since 1995.

The traditional paper-based syllabus is a powerful tool for structuring a course. But I have always found that my expectations from before the term begins should be reconsidered in the face of what actually appeals to students in the classroom. Some works seem to merit more in-depth study than I could predict ahead of time, and others prove less relevant than expected. When I teach with a course Web site syllabus, the students always know where to look for upcoming assignments, but we have a certain freedom to change upcoming assignments (as long as everyone uses the system to see any changes).

But in these marketing brochures written to college and university administrators, it is interesting to note that students, faculty and the classroom features available in the Web courseware are the seventh (and last) item in the list. And for this reason, received ideas about online courseware deserve careful study—few of us can trust publishers', administrators' or even our own first impulses regarding these technologies.

Alternatives: The English Server

There are, of course, some alternatives to corporate commercialization of scholarly knowledges. Other chapters in this

book will speak about several of these, but effort should be given to explore alternatives to current commercial plans in this area—before they become a *fait accompli*.

Protection within Disciplines

It may be possible to protect academics' positions by action from academic disciplinary communities, at the national and international level. In his 1998 article from *First Monday*, David F. Noble engages an argument from the point of view of academic disciplines, against distance education as an institution. By equating distance education programs with "diploma mills" and by citing academic organizations' policy documents from the 1970s condemning institutions which may resemble new online distance education programs from even prestigious universities, Noble attempts to undermine university administrators' claims that distance education equals (or improves) traditional teaching methods.

As described above, and in contrast to David Noble's view, the Internet is seen by some as a place to escape commercial and economic pressures, including the imbalance of intellectual property rights. The Internet may have been first constructed as a territory where strict hierarchical relationships between writers and publishers (or academics and faculty administration, or software developers and corporate managers) did not apply. The subsequent investment that writers, software developers, and community correspondents began to make in Internet writing may be seen to be a direct result of that benign neglect. The neglect was unintended by management and is being "reformed" today with a greater corporate presence. The extraordinary success of the Internet may enable the preservation of such relative autonomy, but it is likely that many "do-it-yourself" sites will not be able to continue without more formal institutional support. In the case of academia, perhaps as faculty realize their vested interest in creating independent online distributors of scholarly knowledges, communities of academics will be able to produce for themselves more scholar-friendly alternatives to the commercial courseware.

Independent Course Materials

Examples of this sort of practice can already be found in the work of many young academics. For example, in the United States there are the online sites of the *Voice of the Shuttle* at the University of California-Santa Barbara, the *Eighteenth-Century Web* at Rutgers, the *Poststructural Theory Web* site at Southern Illinois (Carbondale) and the *English Server*, formerly at Carnegie Mellon and now at the University of Washington. This chapter will conclude by examining the last of these, the English Server (<http://eserver.org/>, Figure 10-1), which has published electronic works since 1990 and in 2000 has created an electronic course Web site system.

The English Server is an academic cooperative that has published humanities texts to more than forty million readers, today serving between two and four million works per month. It currently distributes almost thirty thousand works in total, including literary classics and new writing, representing a wide range of topics in the arts and humanities.

It is run as an academic cooperative, sharing most writings with the public, but some only among particular communities of its members. One becomes an English Server “member” only by participating in the process of publishing works, either by writing, editing, or formatting submissions for online publication. The site hopes to demonstrate the potential that collaborative uses of communications technologies holds for the arts and humanities—the need for “public intellectuals”—while at the same time providing useful and otherwise unavailable facilities for collaboration in new subdisciplines and interdisciplinary areas. It may mitigate some of the drawbacks of the academic “star system.” For example, jointly authored papers, including those from authors in different disciplines, are facilitated by the English Server, whereas (in the humanities at least) joint authoring is often problematic within U.S. academic systems of tenure and review.

The English Server provides a means of linking members’ work to disciplinary groups and organizations that recognize such contributions—via lists and conference lines, for exam-

The screenshot shows the EServer website interface. At the top, there is a navigation bar with icons for Back, Forward, Stop, Refresh, Home, AutoFill, Print, and Mail. Below this is an address bar containing the URL <http://eserver.org/>. The main content area features the EServer logo and the text "collections in the arts & humanities". A date stamp indicates "Wednesday, June 21, 2000". A paragraph of text states: "The EServer at Carnegie Mellon has been online for ten years; today we offer 29,136 works online. Browse or search our collections, talk on our mailing lists and live chat line, or join our teams of volunteers publishing to Internet readers. Two of our featured collections are:"

Two featured collections are highlighted in boxes:

- Education:** Resources for both students and teachers.
- Journals:** Links to academic journals and popular magazines.

On the left side, there is a vertical menu with the following links: about us, recent additions, conference line, bulletin board, mailing lists, search us, and join us. Below the main content area is a search bar with the text "Search The EServer for" and a "Find" button. A promotional banner reads "Educate Sherlock. Download the EServer's Sherlock plug-in today." At the bottom, there is a section titled "Our Collections" with a list of links and descriptions:

- [The Academy](#): miscellaneous resources for students and faculty
- [Art/Architecture](#): links to art, architecture, and aesthetic theory
- [Audio and Video](#): audio recordings of scholarly presentations
- [Bad Subjects](#): a journal discussing current progressive issues
- [Books](#): book-length nonfiction and miscellaneous literatures
- [Calls for Papers](#): calls for conference papers and journal articles
- [Community Literacy](#): a collaboration with the Pittsburgh Community House

FIGURE 10-1 The English Server

ple. Furthermore, the English Server enables readers to contribute individually or cooperatively to its holdings. Unlike many other online humanities collections, readers may submit their own work for consideration by colleagues editing other English Server collections. Because it is not a commercial enterprise, authors can be permitted to retain ownership

and control of their work, rather than signing away copyright in exchange for an economic opportunity for publishers who must pay for typesetting, printing, marketing and staff to organize every stage of publication. Because the English Server is a member-run collective managed according to principles derived from hacker co-op sites, it is not nearly as bureaucratic as comparable corporate or official university Web sites, which results in greatly larger collections and increased efficiency in the publication process.

The English Server does not charge its readers for access to texts, and although contributions are always welcome, the site is provided due to volunteer labor by our writers, editors and administrative board. English Server equipment is maintained by grants, donations, and a small annual budget from the Carnegie Mellon English Department. The Department benefits in turn from the publicity generated by the site, which receives sought-after Internet "hits" from its association with the collections of popular reading available to academic communities worldwide (and therefore attracts undergraduate and graduate students to the Department's programs). Moreover, the English Department can circulate its official brochure and internal policy manuals on the system, without any need for professional administrators paid for from the department budget. In this case, the policy and brochure distribution rides on the back of the distribution of academic content, in comparison to the vision in the WebCT brochure quoted earlier, which reads as if the electronic distribution of academic content were a minor (although pleasant) side-effect of the digitization of university administration systems.

Several members of the English Server's administrative board (including myself) worked in 1998 to develop a simple courseware server for the English Department at Carnegie Mellon. Taking that initial work as a model, and working with longtime English Server members such as Seattle-based professional relational-database designer Ellen Meserow and Pittsburgh-based Web designer Alice Crawford, the site released in the summer of 2000 a prototype of a Web courseware system. This system will be opened to all English Server members in time for the Fall 2000 term.

Returning to the discussion of copyright law, if a faculty member sends his or her academic work to an online community without using the servers of the university where he or she is employed, this does not constitute a contractual "submission" of work-for-hire to an employer under U.S. law. (The relevant law is 17 U.S. Code 101.) As a result, the faculty member can retain the copyright to work on the English Server, or similar online communities, whereas work put online via a courseware system based at the faculty member's university becomes the property of the university. If academics can maintain systems that allow copyright to be kept by the author, this may encourage independent thinking. A gift economy among academics (as opposed to an economy in which each university tries to hang on to its own exclusive intellectual property) may be more helpful to accessibility of scholarly knowledges and may improve the teaching of undergraduates.

Because the English Server adopted the new Internet technologies as they emerged (FTP in 1990, Gopher in 1991, World Wide Web in 1993, Java and dynamic HTML in 1997, etc.), the system was of necessity in contact with both its constituencies: hackers and academics. Academics who work daily with Internet protocols and hardware have strong incentives to keep in contact with communities of experts who specialize in these technologies. This may be particularly useful for those academics modeling themselves on Antonio Gramsci's ideal of the "organic intellectual"—a scholar honestly serving a particular constituency. With the increasing importance of Internet technologies in practically every sphere of life, an organic intellectual who has ongoing contacts with experts on the technical details of the Internet is likely to be more useful to the community that he or she serves.

Cultural studies has skirted the edges of disciplinary positionality while retaining the freedom to negotiate its interests strategically; the English Server has engaged a very similar practice, preserving its academic position while enjoying the relative autonomy made possible by the novelty of its position.

It is hardly revolutionary: it merely spans a gap in conventional publishing. Since it publishes some works with commercial value together with other works which do not fit into contemporary commercial publishers' interests, it is, of necessity, an imperfect compromise. But I would argue that this sort of position offers a certain liberation from the naïve individualism of technophile utopias, while at the same time questioning current corporate publishing norms.

Conclusion: Public Intellectualism

David Noble's assertions (Noble 1998) about the dangers of adopting commercial courseware can act as a wake-up call, but they lead him to a defensive strategy. Rather than engaging with university administrations by offering public and visible alternatives to the emerging commodification of knowledge, Noble withdraws into privacy, keeping his courses offline and limiting their audiences to those he can see in his classroom. One might question how powerful this alternative to corporate commodification might be in persuading university administrators and new faculty to follow his lead.

The practical response I would recommend takes a different course than Noble's. Following Richard Stallman, who argues that open source software is more than merely a marginal alternative to corporate commodification but rather a moral imperative, I would argue that the moral imperative for faculty is a form of public intellectualism that will allow us to broaden support for our interests.

The third option I can see, continuing on our present course, hardly needs much discussion. Continuing upon our present course may well result in a continued diminution in the importance of humanities disciplines, in the United States and elsewhere, and in a consequent impoverishment of the wider culture.

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