

Caveat Designare: A Case Study in the Realities of Copyright Issues



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Editor's Note

While instructional developers usually think of "copyright problems" in terms of reproducing and using materials produced by others in their instructional systems, there is another aspect of the "copyright problem" that is perhaps more important to the developer in his/her own professional career.

The copyright problem is "who holds the copyright on materials developed jointly by a subject matter expert and an instructional developer."

The concern of most developers is "how can I protect my rights as joint author and joint copyright holder of the materials?"

This paper presents a case study that illustrates what can happen if the developer is not aware of how the copyright law affects him/her. It then discusses some key elements of the new copyright law. It concludes with some practical suggestions for instructional developers pertaining to procedures they can follow to protect themselves in the critical area of copyright.

The situation described in this paper should in no way be construed as a full transcription of any single event. The information presented is based on facts but does not necessarily represent the activities and behaviors of any particular individuals.

In the fall of 1974 a single science laboratory course was instituted at a

midwestern university for students taking one of two possible lecture courses. The first lecture course was designed to meet the science requirements for non-science majors and was to be a one-semester terminal science course. The second lecture course was designed to meet the needs of nonscience majors in allied health fields who needed to have a broader introduction to this science area than other nonscience majors but did not need the depth required for science majors.

Despite the differences in the needs and composition of the students enrolled in the two lecture courses, a laboratory course had to be designed to serve both groups totalling approximately 1000 students per year.

Students in these courses brought with them different science backgrounds. Because no one background could be assumed, the laboratory course had to provide all information necessary for the successful completion of an experiment.

Dr. Y., the course instructor, approached the Dean of the Learning Resources Service on the campus and asked for assistance in the design of the laboratory course. After an initial consultation with the Dean and the Director of the Instructional Design an intermediate level doctoral student in ID was assigned to work with the instructor as part of an internship experience.

The doctoral student, B., assisted in devising and implementing a needs analysis.

As a result, the following concerns were formulated:

(a) Many students were quite anxious and apprehensive about the environment in the laboratory, as well as their ability to perform a procedure correctly and to believe and understand their observations.

(b) Students seemed to spend a significant portion of laboratory time in preparation for performance of the procedure.

(c) One of the overall main goals of the course was to develop the problem-solving abilities of the students with re-

spect to calculations and experimental strategy. In other words, by the end of the course, the student would be given a previously unencountered problem and be expected to design an experimental procedure that will solve this problem, decide which calculations are necessary, and complete a final report of the problem solving exercise.

Course Design

As a result of these and other design concerns, B. suggested that a basic instructional format be designed and applied to each of the experiments used in the course. According to B.'s design, each laboratory experiment would include the following components:

(a) *Introduction:* To address the student's concern for relevance, B. suggested that each experiment be preceded by an introduction describing the nature of the problem to be explored and relating it to real world concerns.

(b) *Objectives:* A detailed list of objectives was provided and divided into three sections: (1) entry behaviors (those tasks which the students are expected to be able to perform before they begin the experiment), (2) procedures (those tasks which pertain to procedural aspects), and (3) instruction and results (those tasks which deal with background material, calculations, interpretation of results, etc.). B., though unfamiliar with the technical area, provided information on the nature of objectives as well as aiding the organization of the objectives into these categories for diagnostic analysis.

(c) *Instruction:* B. specified the advantages of a multifaceted instructional approach including programmed instruction, practice problems in the text and more.

(d) *Procedures:* A detailed discussion of the nature of the procedures section is provided below.

(e) *Data and Report Sheets:* These are sections in which data are recorded, results are calculated, and interpretations and conclusions are made.

(f) *Advanced Study Assignments:* Exercises were specially designed to pre-

pare students for the experiment by covering background material as well as experimental methods whenever necessary. The exercises in this unit were keyed to those critical objectives of the procedures section so that students who completed the advanced study assignment would be familiar with the procedures of the experiment, thereby avoiding lost preparation time in the laboratory. Finally, B. suggested a practice posttest.

(g) *Practice Posttest*: This section consisted of a series of questions designed to allow the student to evaluate individual progress in learning and applying the principles in the experiment. Answers were provided and keyed by number to the objectives and the instruction section.

In response to Dr. Y.'s concern that students be weaned from a strict flowchart approach to procedures, B. recommended a fading of flowchart complexity until a point was reached in which the student could devise the appropriate procedures without relying on the prompts of the flowchart.

Design Summary

As a result of these and other concerns, the laboratory course began to develop its own particular style. The general goal of the course was to develop the student as a problem solver. To meet this goal, a general introduction to problem solving approaches would be given very early in the course. Additionally, the complexity of the problems to be solved would increase as

While Dr. Y. and B. were barely 2 weeks ahead of the students at any given time in terms of laboratory exercises being completed, a concerted effort was made to obtain formative data on the usefulness of each set of procedures. Dr. Y. and B. attended almost every laboratory session to discuss the lab with the students. Problems were noted, and revisions made on each laboratory exercise so that a more polished version would be available for use in the fall. A final mimeographed manual was compiled in time for use in the fall semester and arrangements were made to sell the manual through the university bookstore. The manual was distributed with the same copyright statement made on each of the previous versions, i.e. © Dr. Y. and B., 1975. B. continued to work with Dr. Y. throughout the course of the academic year to refine, supplement, and clarify the instructional program.

In early 1976 Dr. Y. signed a contract with a major publishing house (MPH) to write an introductory science textbook. As a result of this event a memo was drafted between Dr. Y. and the Director of the Instructional Design department in which an estimate of the expenses accrued through use of design facilities was made. It was felt that if a contract for the text had been made, one for the manual might well be made and the Design group was interested in recovering some of its cost. The memo noted that B. would not receive royalties on the sale of the manual and that the Design group would receive only as much money as it had invested in personnel (mainly B.) and graphics support. In a personal phone call made by Dr. Y. to B. shortly thereafter, Dr. Y. indicated that the publishing company, MPH, was interested in the manual and would probably copyright it. B. asked when the manual would be published and Dr. Y. replied "I don't know yet, but don't worry your name will be on it *somewhere*." (Italics added in hindsight.)

When the manual was mimeographed in the following fall of 1976 it bore the following copyright statement: Dr. Y. © 1976 by MPH, Inc. B. continued to work on the course, though the course had been fairly well refined by now, and concentrated on some research issues such as the nature of representing the procedures and the effects of these representations on the problem solving ability of the students.

Dr. Y. had since left the university for another position while B. completed a

"... don't worry your name will be on it *somewhere*."

Algorithmization of Procedures

The general package as described seemed quite capable of dealing with many of the problems which the students faced. It did not, however, address the problem of student anxiety and lack of confidence. Students were limited to 2 hours per laboratory session. To be able to collect the quantity of information required to make observations, to perform calculations, and to reach conclusions in an experiment, the student must not only complete a procedure but must also believe that the data collected are correct and complete.

Students enrolled in a course of this type generally lack experience in a laboratory and experimental situation. They also lack the ability to organize their time efficiently so that tasks can be completed in a reasonable period of time. These factors combine to cause uncertainty and anxiety that often result in a number of errors.

In an effort to alleviate these problems and increase probabilities of early success, B. designed an algorithmic or flowchart representation of procedures to be used in the course. These algorithms serve several purposes: simplifications of complicated procedures, efficient organization of procedures especially when procedures are used repeatedly in one section, and the reductions of procedures to a series of short steps thereby enabling students to focus on one aspect at a time.

the student became more sophisticated in these techniques. In an effort to maintain student interest and involvement, laboratory experiments were chosen that would apply scientific principles to everyday situations. The initial labs were designed to acquaint the student with the laboratory situation per se, for example, equipment use, measurement techniques, etc. Later labs required more complex laboratory manipulations as well as the more difficult calculations. As a final laboratory exercise, B.'s instructional design provided that the students would be given a previously unseen problem and required to devise a solution for the problem.

Course Production

Dr. Y. began to write the units of the laboratory manual. B.'s contribution was that of instructional designer and consultant. While most of the technical material was beyond B.'s expertise, B. was able to write several sections of the laboratory manual and was generally responsible for the algorithmization of the laboratory procedures. Because both B. and Dr. Y. felt the manual had market potential a verbal agreement was reached in which both Dr. Y. and B. would list their names on each chapter of the manual using the working copyright of © Dr. Y. and B., 1975. A prototype manual was used during an eight-week summer session.

series of studies on the effects of various representation strategies that had culminated in B.'s doctoral dissertation. Occasional contacts were maintained between Dr. Y. and B. throughout the course of the year and Dr. Y. indicated the manual would probably be published after the textbook had been completed. (B. had no involvement with the development of the text.)

In the fall of 1977 B. (Dr. B. actually) took a position with another university. The manual, which was the culmination of Dr. Y.'s technical knowledge and B.'s instructional development skills, was still being used at the institution at which it had been developed.

The Conflict

In early 1978 B. received a form letter from MPH, Inc., sent c/o Director of Instructional Design at his former institution. The letter read:

Dr. Mr. B.:

In two months we will publish the Laboratory Manual for the *Knowledge of Science* by Dr. Y. The author would like to acknowledge your assistance in the preface. May Dr. Y. have your permission to do so? We would appreciate your answer within three days due to our publishing schedule.

As both B. and the Director were attending a professional convention to-

the procedures were put in using a step by step approach based on the results of B.'s research. The art work commissioned by B. and Dr. Y. in the original manual was still intact, as well as the data sheets with only minor changes. The posttest remained unchanged in substance. It had been moved, however, to an appendix in the new manual. Some study exercises were eliminated but the final laboratory exercise was still included. Dr. Y. concluded, "It looks different from when you were involved—so MPH, Inc. was not willing to go with you as a co-author because of the changes. The royalties from the copies sold at our old institution will go toward meeting our final royalty agreement but we haven't figured out the mechanism for that yet . . . this is an unfortunate turn of events. and we will have to deal with this."

After this "explanation," the Director and B. called MPH. They explained that Dr. Y. had not convinced them that the manual had changed significantly from its original form and requested a copy of the manual MPH was now considering for publication be sent to him and the Director. MPH agreed and did so.

After receiving the "new" manual, B. and the Director concluded that it was basically the same as the first draft developed by B. and Dr. Y. In fact, approximately 20 percent of the pages of the "new" manual were Xeroxed copies from the original manual that had both

the conversation with MPH, Inc. and indicated MPH, Inc. had requested a copy of the original laboratory manual upon which B. based his co-authorship claim. T. arranged to have the manual shipped from the University Bookstore to MPH, Inc.

Monday. T. received a call from Dr. Y. who informed T. that B. would not speak to Dr. Y. without an attorney present and that MPH, Inc. was stopping publication of the manual until this matter of authorship is settled. T. called B. to relay this message. B. was surprised to hear Dr. Y.'s assertion since B. had yet to speak to Dr. Y. Immediately after talking to T., B. received a call from Dr. Y. who spent 40 minutes on the phone demanding to know why B. felt a need for any indication of B.'s co-authorship. Dr. Y. felt that the "editors and copywriters at MPH, Inc. have done as much as you and they don't expect credit for co-authorship." B. tried to explain the role of the instructional designer in the original manual and further noted the fact that after all the revisions Dr. Y. had made, "there are approximately 15-20 percent of the pages that are taken directly from our original lab manual." Dr. Y. remained unsatisfied with B.'s arguments but agreed that both parties should give the situation more careful thought. Later Dr. Y. called B. to again discuss the issue of authorship. After 50 minutes the conversation was ended with no resolution.

Wednesday. Late in the afternoon B. and Dr. Y. had another discussion in which they mutually agreed that a solution could be reached if the title page was worded: Dr. Y. with the instructional design assistance of B. B. would also write a preface that would outline the nature of both roles in the development of the manual.

Thursday. Dr. Y.'s spouse called B. to inform B. that said spouse cannot live with this arrangement; spouse said several insulting remarks to B. on the nature of B.'s claims. B. ended the 65-minute phone call by indicating that this problem was a matter between B. and Dr. Y. without "aid" from the spouse. B. then called the counsel and counsel told B. to remain calm. No reputable publisher would publish a book where a dispute as to authorship and/or copyright existed, such as it did in this case.

Friday. Dr. Y. called B. and after another 40 minutes of unproductive conversation, B. said that "this whole week has been very tiring, and I have

"Dr. Y. then proceeded to verbally assault B., threatening to destroy B.'s career and to sue B. if B. didn't sign off on the authorship matter."

gether the letter was hand delivered to B. by the Director. After the initial outrage subsided, B. and the Director called MPH, Inc. to indicate that there might be some misunderstanding regarding the nature of authorship on the manual.

MPH was somewhat surprised by this claim and suggested that B. discuss this issue with Dr. Y. B. and the Director then called Dr. Y. who represented the manual had "changed very substantially" from when B. and Dr. Y. had first designed it. Dr. Y. then went on to explain that while the new manual had the same objectives (but shortened from the original manual), and an introduction section, the Advanced Study Assignment had its name changed and was placed in the back of the manual, and

Dr. Y.'s and B.'s names attached via the working copyright.

B. decided to seek a legal opinion from the counsel who deals with the copyright-related concerns of the University. The counsel indicated that B. did seem to have a valid claim and suggested they both participate in a conference call to MPH, Inc. The call was then made to MPH and B.'s claim was explained.

The Negotiations

The following events took place during the 16 days following B.'s first conversation with MPH, Inc.

Friday. B. called the Director of Instructional Design (T.) at B.'s alma mater. B. informed T. of the nature of

gotten little done. Let me sit on it over the weekend and call you Monday."

Saturday. B. received a call from Dr. Y. who informed B. that "I talked with the Dean of Learning Resources (at your alma mater) and your name should never have been put on that manual. It's their policy not to allow graduate students authorship on such work. I just wanted you to think about that."

Monday. B. called T. to get details on Dr. Y.'s conversation with the Dean of Learning Resources. T. is unaware of the conversation but as the Dean was out of town for the next 2 days, B. and T. decided to wait until his return before doing anything else. B. called Dr. Y. and said that B. didn't want to do anything until the Dean returned. Dr. Y. pushed B. for a settlement again, noting that if MPH, Inc. didn't receive a settlement soon it might drop publication and "that would hurt both of us."

Wednesday. A call to T. revealed that the Dean of Learning Resources at T.'s institution had never stated that B.'s name didn't belong on the manual. Later, Dr. Y. called B.'s department chairman to inform him of B.'s refusal to cooperate with Dr. Y.'s demands. After approximately 15 minutes on the phone the chairman asked B. to come into his office. "I'm going to place the call on the conference speaker; I think Dr. Y. is ready to reach an agreement." Dr. Y. then proceeded to verbally assault B., threatening to destroy B.'s career and to sue B. if B. didn't sign off on the authorship matter. "Calm down young [person]!" the chairman said to Dr. Y. "Young [person]!" Dr. Y. exploded, "I'm not a young [person] I'm a Doctor of Science you son-of-a-bitch!" So much for mediation.

Friday. B. called Dr. Y.'s editor at MPH, Inc. and indicated that Dr. Y. was behaving in an irrational manner and that B. would not deal with Dr. Y. now except through an intermediary. B. and the editor then discussed several options and the editor offered to relay these options to Dr. Y.

Monday. Dr. Y. called B. to discuss the relayed options. B. told Dr. Y. to prepare a draft of how Dr. Y. envisioned these options and mail them to B.

Thursday. B. received a draft of the options and informed Dr. Y. the following would be acceptable:

(a) Title page with only Dr. Y.'s name on it

(b) Copyright page with the state-

ment "with the initial instructional design assistance of B."

(c) Description of the manual's usage, philosophy, etc.

(d) Separate acknowledgement of B.'s contribution

(e) Acknowledgement of other contributors

(f) Table of contents.

Dr. Y. agreed to this alternative and offered to draw up a draft of the agreement.

"Once you have determined how each person's contribution is to be identified and credited, put the agreement in writing."

Saturday. B. traveled to visit T. to sign the new agreement. No mention was made of payment of royalties to T.'s department and T. decided not to sign the agreement (MPH, Inc. had requested T.'s signature on the document).

Monday. T. called Dr. Y. to express his concern for the return of royalties as per an earlier agreement. Dr. Y. gave T. an extended story on the difficulties involved in doing such. Because the Instructional Design department had now received approximately half of the expected royalties from bookstore sales of the mimeographed manuals and the whole issue had gone on long enough, T. agreed to sign because his main concern was that B. received satisfaction. As T. said to B., "I don't know how you'll react to this, but the other day I was just thinking—all this for a lab manual!" Indeed.

Copyright and the Designer¹

If you, as an instructional designer, agree to produce a publication jointly with another, discuss the role each of you is to play and the rights each of you will obtain. Under present copyright law, "authors of a joint work are co-owners of copyright in the work." A work is considered to be "joint" if "the authors collaborate with each other, or if each of the authors prepared his or her contribution with the knowledge and intention that it would be merged with the contributions of other authors as 'inseparable or interdependent parts of a unitary whole.' The touchstone here is

¹This section is based on 18 specific references to 17 U.S.C. Sec. 101 et seq.; the Copyright Act of 1976. Those interested in the exact citations may write the authors for that information. There are no relevant cases as yet to document in this area.

the intention, at the time the writing is done, that the parts be absorbed or combined into an integrated unit . . ." Remember, the crucial issue is the intent of the parties at the time of creation to integrate components into a larger work. Once you have determined how each person's contribution is to be identified and credited, put the agreement in writing. This will leave no room for speculation as to the intention of the co-authors. Make sure the written docu-

ment is clear and precise, signed by each contributor, and dated.

Your initial response may be that since you are both professionals, there is no need for a written contract. You both understand each other's role in and the rights to the finished work product. As we have seen from the case study, you may both understand these things but you may understand them differently.

Because many people work together on occasions without any difficulties, you may be asking "Why do I need a contractual agreement with Dr. X?" A lawyer will tell you that contributors who have the same ideas regarding proprietary rights in the final joint publication may not need a contract or a lawyer. The lawyer will also tell you that his/her role is to ensure your rights in the instance where disagreement arises after long laborious weeks, months, or years have been spent in the development of this definitive work of genius. Contribution to a given work is a question of fact and the contract is evidence of that fact. The contract is your insurance policy that the rights you think you will have at the beginning of your endeavor are indeed the rights you have when the product is complete.

Experienced business persons rarely, if ever, enter into a venture where the rights and responsibilities of all participants are not clearly delineated. You should not hesitate to use a written agreement in your professional dealings. There is no need that it be a contract replete with legalisms. It can be a letter from you to your contributor that specifies, at a minimum, some, if not all of the following factors:

(a) A brief description of the proposed project.

(b) The contribution each individual is to make.

(c) The form the final product will take.

(d) If the end product is a publication, how is it to be published and distributed?

(e) How will the title page read? Will you both be listed as authors or one as the instructional designer?

(f) May one co-author grant a license in the work without the written consent of the other co-author(s)?

(g) If the product is published and royalties ensue, how will they be divided?

You may include any other factors that are important to your unique situation. Your letter is limited only by your imagination. It is *crucial* that your language be precise and not subject to more than one interpretation. In contract law, any ambiguity in a contract is construed *against* the drafter. That means that if you write a letter of understanding and some provision is vague, a court of law would construe it in favor of the person to whom it is written.

To make this letter evidence of the mutual agreement reached by both parties, it should be signed by the person to whom it is written. This may be accomplished by adding a short paragraph at the close of the letter which reads, for example:

"If this letter represents your understanding of our proposed venture, and you agree that it will control the venture, as described above, please sign and date your signature at the bottom of this letter. I have enclosed a signed copy for your files." The bottom corner of the letter should have a place for indicating acceptance. A simple

"ACCEPTED _____"
(signature) (date)

will suffice. Send the original and a copy to the addressee. Then if the agreement is reached, you each will have a fully signed (executed) copy of the agreement (contract) for your records. If any dispute arises later in the relationship as to rights and/or responsibilities, there should be no problem in settling it by referring back to your letter.

The legal presentation of an illegal copyright infringement action is very complex, and at best it takes a highly trained lawyer who deals in the area of copyrights often. A contract action, however, is an area of the law many lawyers deal in daily. While it may be just as complex in certain cases, an al-

leged breach of contract case does not usually require as much additional preparation to familiarize oneself with the basic language, history, and state of the art as a copyright infringement action would for a general legal practitioner.

Another way to protect your interest during the development stage of a publication is to use a copyright notice on working drafts, as did the contributors in the case study. A brief explanation of an important change in the copyright law is appropriate at this point.

The Copyright Act of 1976 is the first major legislative revision of copyright law since 1909. The new copyright law took effect with respect to most provisions on January 1, 1978.

The new law may be rightfully referred to as an "author's" law. Theoretically, there is an attempt to balance the public's right to know against the author's need for protection of profits that may result from the creation of a tangible product. Ideally, the new law provides for flexibility in the use of copyrighted material without substantial economic injury to the copyright owner(s).

The intent of the new law is to establish a single unified system of federal statutory protection for copyrightable work. For a work to be considered copyrightable, it must be fixed in some tangible form that can be reproduced and it must be a product of original creative authorship. Originality implies a significant amount of intellectual effort on the part of the creator rather than novelty or ingenuity.

For works created on or after January 1, 1978, the duration of copyright ownership is extended for the life of the author plus 50 years. In the case of joint authorship, it is the life of the last surviving author plus 50 years. If the presently copyrighted work is in its first term, it must be renewed to preserve the copyright claim. The renewal period has been extended to increase the copyright protection for a term of 75 years from the date the copyright was originally secured. Copyrighted works presently in their renewal period will automatically be extended so that the copyright term is equal to 75 years from the original date of copyright. For works created on or after January 1, 1978, the necessity for renewal has been removed. Your concerns will probably be for works not yet copyrighted so renewal will be inapplicable.

There are several exceptions to the rule that a copyright is held for the life of the author plus 50 years. These include a "work made for hire," and an anonymous work or a pseudonymous work; the former will most likely be the only one of concern to most readers. The term of copyright for these types of works are 75 years from the date of first publication or 100 years from the date of creation, whichever expires first. A "work made for hire" is:

(a) a work prepared by an employee within the scope of his or her employment; or

(b) a work specifically ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, *if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire* (emphasis added).

Whether your finished product belongs to your employer (a work made for hire) or yourself is a policy matter. If you are using direct or indirect employment resources in the development of your work product, you should check your company or institutional policy to determine who will have the copyright claim. If it's a work made for hire, your employer is considered the author in the eyes of the copyright law and therefore has the exclusive rights encompassed in a claim of copyright, unless all parties have expressly agreed otherwise in a signed written document. If a designer is commissioned by an author, and you both stipulate so in writing, your contribution is a work made for hire, in which case the commissioning author will be considered the sole author for copyright purposes.

Registration requirements under the new law have been made permissive. This means that the owner of a claim to copyright may register that claim at any time during the copyright term. The copyright term itself begins at the moment the work meets the criteria for copyrightability set out above. *In essence this means that as soon as the pen is lifted from the paper of a work which is both original and creative, the copyright attaches.*

Under the old copyright law, an author/creator held no copyright protection until the product was in final form

and registered with the Copyright Office in Washington, D.C. Upon meeting the criteria of originality and tangibility of form the author had to pay a fee and wait for return of a certificate of copyright. Today, registration with the Copyright Office is unnecessary to establish a claim of copyright.

There are inducements, however, to early registration. The inducements manifest themselves in the form of additional remedies such as statutory damages or attorney's fees in case of infringements. It is mandatory, however, that registration take place prior to the institution of any law suit alleging an infringement.

Even though copyright attaches with registration, the placement of the copyright notice (the symbol ©, year of first publication, names of owner(s) of the copyright in the work) gives others reasonable notice that the work is your copyrighted property. This should act as a deterrent to infringement in many cases.

When you feel that your rights in the publication have been violated, you should do one of two things: speak to the supposed infringer and try to work out a mutually agreeable working arrangement or, if this fails, consult a lawyer. If at all possible, try to settle the matter without litigation.

The judicial settlement of copyright disputes is time-consuming, expensive, and rarely completely satisfactory to anyone. If you have protected your interests from the beginning, through one of these, or any other, methods, it should be less difficult to enforce your rights if the need arises.

The purpose of this section has been to acquaint you with several precautionary tools by which you may ensure your rights in a work product. It is in no way a definitive essay. Neither is it a substitute for legal advice concerning the facts of your individual situation.

Reflections on the Negotiation Process

The chronology of events related during the negotiation phase of this episode cannot completely convey the emotional drain encountered by all parties concerned; nor do they relate the total of all conversations. These negotiations were never pleasant. None of the parties involved were completely satisfied with the final solution, but it was probably the only feasible option. However, several observations can be made in the event other designers must face similar

situations. The best advice here is preventative in nature—draw up an agreement in advance. Failing that, when negotiations become inevitable remember the following:

(a) *Reputable publishing houses are very sensitive about copyright infringement issues.* It is their business to sell unique materials; they don't want anyone infringing on their materials, and they respect the rights of others. A reputable publishing house will not usually care to be involved in negotiations of any kind between an author and one who makes a claim to authorship as B. did. From the very beginning MPH made it clear to both B. and Dr. Y. that the laboratory manual would not be published until authorship claims had been resolved. This stand was taken by MPH despite the fact that much editorial time had been spent on the project and it was due to be published in time for adoption for fall semester.

(b) *Given that you wish to contest authorship, spend some time documenting the nature of your contribution.* Do this to determine if you firmly believe you have a right to authorship and to express this conviction to the other people involved in a cogent manner. It is advantageous to have project documentation available to refer to at this stage. Remember that others are likely to expect you to produce evidence of a concrete nature ("What did you write? what did I write?"). This may be difficult if you viewed the design effort as a synergistic effort. Try to document the nature of your suggestions as they cause changes in the status quo of the instructional system. B. was able to demonstrate that many of the recommendations made by B. were based on collection and analysis of data. Dr. Y. chose not to acknowledge the empirical nature of these recommendations; e.g., equating B.'s recommendations on format modification based on formative evaluation with a copy editor's editorial judgment.

original manual. A call to T. clarified the nature of the Dean's statement and enabled B. to continue with the negotiations. At each stage B. or T. would call the other after a discussion with Dr. Y. to discuss developments. (MPH had authorized use of their telephone number for charging all calls—B. estimated approximately \$400 was spent in this manner.) This becomes tedious if each person receives two or three calls in a day but avoids any possible confusing tactic taken by another party.

(d) *Be calm.* Dr. Y. was often in a state of rage—faced with possible non-publication most of us would be, too.

Often it's hard to act in a professional manner when so much of one's ego is involved in the issue, but screaming battles usually do nothing more than cause each party to retreat to an immovable position.

(e) *Make all agreements in writing.* B. received a rude surprise when Dr. Y.'s spouse called to inform B. that the spouse wouldn't accept a given solution. The spouse had taken a professional issue and turned it into a family matter with all of its concomitant problems. B.'s false sense of satisfaction with resolution of the problem was quickly shattered by the call and made the negotiations all the more emotionally draining. As a result, don't believe you have resolved the issue until you see it in writing.

(f) *Limit the cast of characters.* The fewer people involved, the easier it will be to reach a solution. If your colleagues are aware of your negotiations, ask that they decline any communication with the other party. Colleagues can simply state that it is a professional issue between other parties and they are not involved.

(g) *No matter how much pressure you feel, the other party probably feels more.* In all probability time is on your side; allow it to work to your benefit. If the publishing house is considering non-publication there is a threat of lost repu-

"If all else fails, grin'n' bear it."

(c) *In the event you will be negotiating with another party involved, as T. was, keep each other informed of all developments.* B. was skeptical of Dr. Y.'s claim that the Dean of Learning Resources at B.'s alma mater had stated B.'s name should not have been on the

tation and time that the other party must face that you do not necessarily have to deal with.

(h) *Use an intermediary if necessary.* B. turned to an editor at MPH to serve as a go-between. During the initial stages of the negotiations this would not

necessarily be a wise policy, but as pressures build it may be the best strategy. B. wanted to avoid legal involvement, though Dr. Y. threatened such, and chose a third party outside the legal profession. In some instances an attorney may be helpful, but the threat of impending litigation brought by the introduction of an attorney may have a deleterious effect on the negotiations. It may also have an advantageous effect, so judge wisely.

(i) *Be prepared to compromise.* B. finally devised an option that satisfied a need for professional recognition while providing a face-saving alternative for Dr. Y. The design field has yet to determine what is proper recognition for designers in these matters, and publishers are quite unaware of the role of an instructional designer in a project. Again, the best place to solve this issue of recognition is before the project is well underway.

(j) *If all else fails, grin'n' bear it.*
