Topic: Cutting the Gordian Knot: Possible Solutions to the Conflict between the Gift, Work-for-Hire, and Market Models for Academic Work

Abstract: Academics are involved in an unique circular relationship to intellectual property. They build their work “on the shoulder of giants” – building on the expression of ideas by others, often being paid for work relating to their production of copyrighted materials, yet the custom is for them to retain copyright. Academics then gift, sell, or license their works to publishers, who then sell or license these works back to the institutions that were the underlying support for their creation. This leads to several unfortunate situations: institutions paying for work twice, academics holding the inaccurate viewpoint that they can use copyrighted materials as long as they are for educational purposes, and academics technically being unable to reuse or revise works once their copyright has been transferred. Further complicating the situation is language in the licenses for many of the databases that academics use – explicitly rejecting use for non-educational purposes or commercial purposes.

I will discuss the development of the teacher exception to copyright through both common practice and case law, but will focus primarily on the potential solutions:
• contract: explicitly changing the contract terms of employment;
• statutory interpretation: by interpreting fair use broadly to more explicitly include educational use by the institution that pays for the work’s creation;
• statute: creating an exception to copyright similar to public access to government funded research by the National Institutes of Health (42 USC § 282c (2009)); and
• license: creating an open access / institutional repository to create an access point for faculty research, similar to the new policy followed by Faculty of Arts and Sciences of Harvard University.