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ARTICLE

Intellectual property and action research

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ABSTRACT

This brief article offers an overview of the issue of intellectual property and the ways in which this intersects with the practice and dissemination of action research. Particular attention is paid to various forms of co-authorship and to the impact of developing forms of information and communication technologies on the question of intellectual property.

KEY WORDS

- censorship
- co-authorship
- information and communication technologies (ICTs)
- intellectual property
- royalties

Action research claims a set of ethical norms including participation, democratization, mutual respect, and co-generative knowledge creation and use. These norms not only differ from the norms in most conventional research and applied work, but because the latter have long dominated the academic and public scene, the norms of individualism, competitiveness, and self-interest are built into many of the procedures and understandings of conventional social research. Nowhere is this more clear than in the case of intellectual property issues. We will use this brief article to open up a rather daunting set of such issues with the aim of stimulating dialogue among action researchers about these questions.

An overview of intellectual property

Issues surrounding the ownership and management of intellectual property have always been problematic in industrial societies. The petty commodity production mindset and competition for control over the factors of production generated property regimes in which land and labor were converted into what Karl Polanyi called fictitious commodities (Polanyi, 1944, ch. 6). Only capital in Polanyi's scheme was a true commodity: infinitely divisible, seamlessly transportable, and saleable on the market (Polanyi, 1944). Neither land nor labor fulfills these conditions through anything other than massive social fictions. Land itself is not bought and sold. Rather, a system of titles is bought and sold and no matter how much money one has, one cannot buy land in Kansas and farm it in Texas (Bohannon, 1967). Labor as a fictitious commodity is the centerpiece of Marxist analysis. Because a person's labor does not exist separately from the person, putting labor on the market means that the webs of social relations of the person are subjected to the vagaries of the market, leading to the reconstruction and, in many cases, the demolition of the social fabric.

One small implication of the commoditization of labor is the treatment of the products of intellectual activity themselves as commodities, a problem that not only has not been moderated with attempts to regulate capitalism but that has actually been dramatically exacerbated in the last quarter century with a set of court decisions permitting molecular biologists to 'own' life forms and with the passage of the Bayh-Dole Act in 1984 that permitted universities to patent the results of research done with US government funding. A whole field of 'knowledge management' has emerged in recent years, even to the point of some companies now having a Chief Knowledge Officer (CKO) and conducting intellectual capital audits analogous to financial audits in order to determine how successful they are being at controlling these 'assets' (Fuller, 2002). An example of scandalous university behavior in this regard is given by David Noble in *Digital Diploma Mills* where he recounts the stories of UCLA and York University whose administrations attempted to force faculties to put their courses up on the web

and then tried to declare that those courses were the intellectual property of those universities (Noble, 2002).

The notions of authorship and copyright are now so taken for granted that the huge ideological infrastructure that supports it is invisible to most people. To simplify, industrial societies appear to believe that knowledge and ideas can be owned because they are the unique products of the operations of individual minds and of the effort those individuals put into them and so should be 'owned' just as one owns other forms of property. The inconvenience in this view is that it is a fundamental misrepresentation of the way we humans live in society, learning everything we know through others, even learning to speak only in a community of speakers.

The fiction that an anthropologist doing fieldwork is the sole creator of an ethnography or a political scientist doing a survey is *creating* that knowledge requires the notion that some kind of professional add-on, created through years of rigorous training, converts raw stuff into 'knowledge' and therefore that knowledge belongs to the researcher. This is and has always been a convenient and exploitative fiction. It is not that the researcher does not add something or that the effort should not be recognized, but that addition and recognition in no way justifies the unilaterally extractive treatment of the knowledge created for the personal benefit of the researcher.

It should be evident by now why such a notion is incompatible with action research. Action research starts from the premises that local knowledge is rich and complex, that local stakeholders are experts in their own lives and situations, and that knowledge in AR is co-generated through collaborative effort. The long and complex processes of knowledge generation mean that the knowledge belongs to all and also make it operationally impossible to attribute particular findings and ideas to particular individuals. As a result, authorship of publications arising from AR projects and other issues related to the question of intellectual property are intensely problematic.

These problems, of course, do not just affect action researchers. Issues about intellectual property, plagiarism, contractual limitations on free speech, co-authorship, senior-junior authors, and the rest are concerns to everyone who publishes or plans to. In many cases, even the most non-participatory researchers are struggling with vexing issues having to do with their own ability to protect, interpret, and distribute their own work. The alternative often is to be converted into intellectual piece-workers in someone else's knowledge factory. In the remainder of this article we attempt to address some of these issues, drawing on our own experience with co-researchers, students, and colleagues to illustrate how they influence the practice of action research as well as the relationships among the various participants in the research process.

Intellectual property and action research

Co-authorship with community partners

A major issue for action researchers focuses on developing new strategies for involving community partners in the processes not only of knowledge generation but of knowledge dissemination as well. Many different solutions have been tried. Some action researchers opt for two kinds of writing, one for audiences of their professional peers and one for the audiences relevant to the local collaborators. Others opt to list all the participants as co-authors, whether or not they actually 'wrote' part of the manuscript. Still others work with a few local collaborators as a collaborative writing team. A few have opted for naming themselves as a collective and not listing their names individually on publications. And there surely are other possible practices.

My (Greenwood's) AR project in the industrial cooperatives of Mondragón provides a helpful illustration of the range of issues that can arise in negotiating issues of co-authorship with community partners. This work yielded a number of different forms of writing which resulted from a complex negotiation among a sizeable group of collaborators. Over the course of that project, there were some 40 participants. At the end of the first month of work, three of us wrote a quick monograph to deliver to the General Manager to show what we had done and might be able to do to enable him to decide if the project should go forward or stop. No author was listed by mutual agreement because this was an internal document.

In the final year of the project, I confronted the group with the need to write up the results, something that appealed to some participants and frightened others. Eventually a smaller writing party formed, primarily made up of the leaders of the various human resources groups in the central service area of the Fagor cooperatives. I created an outline, the group reworked it, and writing tasks were allocated in the process of creating a monograph. We agreed that one monograph would be created in Spanish for local distribution through a Basque publisher and that another would be done to be published by a university press in English. We further worked out a set of agreements about authorship and vetting manuscripts.

The initial reaction of the cooperative members was that they would not sign their names to the writing because this would be an example of a cult of personality inimical to the concept of cooperation. In response, I argued that their views about the cooperatives, forged in the project, were not the views of all cooperative members and, in fact, embodied one of two major streams of thought in the system. Thus, I asked them if they were simply not willing to own up publicly to what they had concluded or wished to avoid being confronted by others about their interpretations. After a long and complex negotiation, they all decided to sign with their own names.

Because I provided the outline and impetus, I was to be listed as first author. My principal collaborator and initiator of the project, José Luis González Santos, was listed as second author and the others were listed in alphabetical order (1992). Both José Luis and I wrote our own sections pretty autonomously. The others needed more help and support and we worked with them on their outlines and revisions. We all agreed that the content had to be approved by all the authors. This caused a number of things that I had written to be taken out of the manuscript.

Realizing that these issues were more complex than we first had thought, we also forged a general agreement that basically distinguished among types of writings. There were writings for internal cooperative use that could be done by the local stakeholders as they saw fit. There were collaborative writings that were handled and vetted by the group and there were a series of articles that were of great interest to me and of value to others doing action research but in which the local stakeholders felt they had no interest (e.g. Greenwood, 1988). In these cases, I would show them the manuscripts for approval but would sign as the author myself.

This story shows a complex mixture of positive and negative elements. Local co-authors were named but I arm-twisted them into being co-authors at all. At the same time, the group process forced some of the content I strongly wanted to include in the manuscript to be dropped, in deference to the wishes of the local participants.

Another interesting case was the doctoral dissertation done at Cornell University by Michael Reynolds (1994). A collaborative project to redesign a basic physics course, it involved the professor, the senior lecturer, graduate assistants, and undergraduate students. When the dissertation was written, Reynolds passed the chapters by the team, they critiqued it, and he revised it to their satisfaction. They then collaboratively wrote a chapter of their own including their reflections on the process. They also came to the dissertation defense and defended the dissertation with Reynolds.

The dissertation was copyrighted by Reynolds but the names of the collaborators appeared on the chapter they wrote. Even that was problematic. Initially, they wanted to be anonymous and then most of them, having written a section, wanted to put their names on it. Only one did not, and then at the very last moment, she decided to add her name as well. Obviously there was much at stake for these participants in being or not being named.

Were these ideal solutions? No, but they do reveal something of the complexity of questions of authorship that conventional researchers barely seem to recognize.

Faculty and student co-authors

One of the most challenging aspects of academia, and certainly one of the most arcane, is negotiating the world of academic publishing. Understanding not only the rhetorical demands of academic writing, but the process of identifying possible sites for publication and the nuances of the review process, act as formidable barriers to new researchers. For students encountering this task for the first time, the support and guidance of a faculty mentor can be extremely valuable. It may also be the case that, even within a blind review process, the name or implied presence of a recognized scholar as author can facilitate the publication process. Given these factors, the practice of co-authorship between faculty and students can serve as an important educational experience and can provide opportunities otherwise unavailable to student researchers. On the other hand, there is the potential for unethical faculty mentors to take advantage of the hard work, trust, and lack of understanding of the publication process on the part of students by using student research to further their own publication agendas. Establishing formal policies and procedures can encourage ethical co-authorship, but we must also remain mindful of the ways in which differences of power and privilege within the academy can influence any collaborative relationship. And so it was with a simultaneous sense of enthusiasm and trepidation that I (Brydon-Miller) suggested to the students in my Action Research course in 2003 that we consider co-authoring a paper for the *International Journal of Learning* (Allen et al., 2004).

The students in this course are, for the most part, practicing professionals with many years of experience in educational and community settings so I was less concerned with their ability and willingness to challenge any potential inequities in our collaboration than I might have been with younger students. Nonetheless, I was still concerned that the collaboration be seen by them as fair and equitable. An open negotiation of the text of the article, inclusion of specific sections of the text titled 'Teacher to teacher' that identify specific co-authors with their personal reflections and advice to readers, and a shared decision regarding order of authorship resulting in an alphabetical presentation of authors, all contributed to what, I believe, the students perceived as a positive experience. As Beverly Eby, one of the students in the class, reflected in response to a recent query regarding the experience:

I thought the process was one of the best experiences that I had in the doctoral program. It was an easy process and you did most of the work! It gave each of us a chance to contribute and to be in print which was absolutely wonderful. Now, two years later, it is even better to remember how we came together to do something as a class. I wish we had had more of an opportunity to write together. I think that the writing process between professor and students is wonderful and added a dimension to the student/teacher relationship that I didn't have in every class. It demonstrates the true meaning of Action Research.

Another student, Gisele Mack, while agreeing with Bev's overall assessment, also observed, 'at the time, I never felt confident enough to even be taken seriously about my work or its relevance. I mean I was still trying to figure all of it out!', suggesting that even with students who are more advanced, both professionally and academically, the process of engaging in such collaborations can still be somewhat overwhelming and that care should be taken to actively support student scholarship. Another student, Kerry Welch, responded to my follow-up query regarding the potential for abuse by wisely suggesting that,

there are no real assurances that I know of except the ethics of the faculty. One thing I would suggest to students is to always keep at least two faculty aware of what they are doing in terms of research and/or writing with other faculty members. That way, if a question should ever arise, they would have a potential advocate. The secondary benefit, of course, is that more faculty know what they are doing to provide feedback, ideas, and support.

While another student, Kelly Obarski, offered the following recommendations:

It would be idealistic but really incredible to have faculty required to co-write papers with their students. Publicizing this could have huge benefits for graduate students and their interest in attending the university. I also think that faculty supporting each other and their efforts in co-authoring papers [would be good]. This could include the dean making special awards for those faculty.

While I have yet to approach my Dean with this suggestion, Kelly's recommendation does reflect the need for systemic change to support such efforts at co-authorship, which currently tends to count against, rather than in favor of, the faculty member who undertakes such collaborations. Implications for reappointment, tenure, and promotion, as well as clear guidelines for safeguarding student co-authors would help to support such efforts while insuring the fair and equitable treatment of all participants in the process.

Royalties and issues of ownership

Though the vast bulk of academic and AR writing does not earn royalties, some does and the issues raised by royalties are difficult to sort out. On one level, receiving a royalty is the recognition that the product that was sold was created by the author who thus deserves the financial benefit, an absolutely typical commodity production concept. While this concept seems clear, it certainly is not. No one thinks, learns, or acts alone. All of our knowledge is, at base, social – from the language we learn to speak to the education that enables us to become writers. All of our research, even when done in a plasma physics laboratory, is in the company of other humans and enveloped in streams of speech. Peer review is as much a test of the boundaries of linguistic and cultural communities as it is an 'objective' assessment of a contribution.

In the social sciences, this problem is even worse because the source and subject of our knowledge is other people who we learn about and from daily. By the end of a conventional research project, we find it impossible to sustain the claim that the knowledge is the unique property of the researcher, but the fiction persists. In action research, however, this fiction simply cannot be allowed to stand. To the extent AR rests on the explicit acknowledgement of co-generative knowledge production and incorporative respect for local knowledge and experience, AR publications are never the sole property of the professional researcher, even when that researcher wrote every line of the manuscript reporting the work.

That said, without the professional skills of the researcher, most AR publications would never have seen the light of day. So there is no doubt that the research professional makes an important and unique contribution, but this does not obliterate the role of the rest of the collaborators in the research. But, if we accept this, how do we embody it in practice in dealing with the question of royalties? One potential strategy is to direct any royalties to a third party or organization. For example, in the publication of *Traveling companions: Feminism, teaching, and action research* (Brydon-Miller, Maguire & McIntyre, 2004), a volume that grew out of a conference sponsored by the Society for the Psychological Study of Social Issues (SPSSI), a part of that sponsorship agreement specified that any royalties would belong to the organization, rather than to individual authors or editors.

A related issue that sometimes arises is in the assignment of one's own texts to students as part of course requirements. In this case individual faculty members have the opportunity to mandate that their students contribute to their own royalty payments by requiring that they purchase the text. On the other hand, using an alternative and (at least in our own minds) inferior text in order to avoid this problem, does not serve our students well either. Greenwood has suggested a simple solution to this quandary: make it clear that any such profits will be donated to student scholarship funds or other student-oriented programs.

Copyright

These difficult issues have spawned a broad set of discussions about the questions of copyright, an issue that has been explored by our colleague, Carla Shafer, in some detail and we have invited her to share her insights on this matter in this article (see Box).

The last decade has seen the unabated progress of information and communication technologies (ICTs) towards dominating knowledge re/production across the spectrum of scholarly, political, commercial, and popular genres. In spite of the increasing commercialization of the internet, ICTs have been

remarkably persistent in challenging the prevailing institutionally-based economy of scholarship. Most notably, claims about the leveling nature of new social networking applications bring the discussion squarely into the ethics and value frameworks of action research. A new scholarship is emerging from the ranks of early adopters of auto-publishing and social networking tools in academia, hinting at the unprecedented impact that the new culture of cyberspace is likely to have on many aspects of higher education. Social networking tools, such as blogs, wikis, and social tagging (e.g. del.icio.us) are particularly powerful in the ways that they are changing how people communicate, collaborate, market themselves professionally, share knowledge, and create new intellectual capital in communities of scholarship and praxis.

Many users who have experienced the empowerment of these tools are publicly questioning the deeply entrenched institutional structures, ranging from pedagogy to tenure, that are built on the old mode of knowledge re/production with its dependence on closely held intellectual property.

While the peculiar language of blogging and its 'long tail' economics is still largely limited to the bleeding edge of the academic community, the challenge of open access is no longer an issue of the periphery. This economic paradigm shift, which began in the community of software engineers as the open source movement in the 1980s, has now burst upon the public consciousness as the scholarly publishing industry goes head to head with legislators and defenders of the public interest over the management of the scholarly products of publicly funded research. More than 30 nations signed the Economic Co-operation and Development (OECD) Declaration on Access to Research Data from Public Funding¹ in January of 2004. The United States is lagging behind the European community in setting policy. Nevertheless, the recent legislative action of the NIH (requiring that funded research be released in compliance with principles of open access) is another high-profile example of the extent to which this shift is happening at very high levels. The impact of these, and other high-level policies, is already having a profound impact on academic research and professional development.

The extent of technology's impact across society – and the academy, in particular – means that all disciplines and fields of inquiry are now confronting ethical questions that once were relatively unique to the domain of action research. A thought-provoking development is the marked difference between the natural and social sciences respecting formal inquiry into these topics, with the natural sciences leading in creating and adopting new forms of knowledge re/production. The open access movement is one of the most notable arenas where this discrepancy prevails. Less than 350 out of a total

1577 journal titles are currently listed under the Social Sciences heading in the Directory of Open Access Journals.²

One group currently looking at the intersecting concerns of both action research and ICT discourses is Social Networking for Inquiry and Practice (SNIP),³ an initiative I (Shafer) started at Cornell University, and that is currently sponsored by the Cornell Participatory Action Research Network. One of the aims of the SNIP project is to deepen the discussion in the action research community by first providing technical assistance for implementing collaborative and auto-publishing applications – such as blogs, wikis and social tagging – and then creating a forum for reflective discussion about our communicative practice and its practical, ethical, philosophical, and institutional challenges.

Ownership, responsibility, and protecting stakeholders

The issue of the ownership of intellectual property, however, extends beyond the question of rights attached to commodity production. There is also the matter of ownership in the sense of accepting the responsibility for the contents and the social, political, legal, and economic effects of what has been discovered and written down. There are situations in which accepting responsibility can trump the question of ownership, as, for example, when the stakeholders are in an exposed, vulnerable situation and the professional researcher is in a position to state their positions or needs without fear of the same consequences. Under those circumstance, asserting ‘false’ sole authorship may be an ethical duty while, lacking those circumstances, it would be a form of exploitation.

Arm-twisting

Socially constructed expectations also play a significant role in these issues. For generations, academic social scientists have asserted a special professional right to conduct social research, to make policy recommendations, and to write about their research without the collaboration of local stakeholders. In our experience, this is often the way local stakeholders understand the role of an academic. They expect us to do the research, to write up the results, and to make recommendations and they are often willing to treat themselves as mere ‘informants’ and as the subjects of our writing.

When action researchers open up these relationships for reconsideration, the initial conversations are often unsatisfactory and produce a good deal of insecurity. Local stakeholders, when told that they can be co-authors or at least should guide the research and evaluate the results before they are published, often

are assailed by self-doubt about their competence and ability to do what previously has been the work of an 'expert'.

It is very hard to manage these conversations. If the researcher simply gives in to this, the result is business as usual in the form of extractive research. If the researcher presses the local collaborators hard about playing an active role, they can experience the professional researcher as abdicating her expert responsibility or they can experience uncertainty and insecurity. And, of course, this is part of the developmental process in AR.

They are, indeed, generally less 'expert' in synthesis and write-up of social research than are professionals who have done this kind of work repeatedly. But, if increasing the ability of local people to conduct their own research and analysis and to speak in their own voices is part of the goal of AR, then the matter cannot be left where the academic professionals have placed it.

Conversations about these issues can be quite difficult and we are quite conscious of having engaged in a certain amount of 'arm-twisting' to get local collaborators to think this through fully and to make a reflective decision about their role. When is this arm-twisting about growing the capacities of local collaborators and ending the monopoly of voice that the social sciences have held and when is this coercive buck-passing and the abdication of professional responsibility? It is not easy to say.

Censorship

Censorship is not a new theme in the social sciences. The history of the social sciences is filled with episodes of censorship and punishment of social scientists for writing critically about political economies that favored the rich and powerful. The history of the contemporary social sciences is filled with examples of censorship and purges (Furner, 1975; Lengermann & Niebrugge-Brantley, 1998; Price, 2004; Ross, 1991). One can even argue that most of the research and publication agendas of the contemporary social sciences now avoid this by engaging in self-censorship, or as Messer-Davidow put it, being 'disciplined' (2002, p. 213).

Self-censorship can also result from a well-intended wish on the part of the researcher to protect the reputation of the organization or individuals being researched. Ethnographers and qualitative researchers have encountered this dilemma of delivering bad news in the form of negative observations of the subjects of the research. In this instance the researcher must choose between two evils: withholding an honest assessment of the research setting from one's readers in an effort to protect the subjects of that research, or providing a truthful description of the research site with the understanding that the subjects of that work will be portrayed in a less than flattering manner. Williams' (1996) description of her own experience of dealing with such a dilemma, in which she

discussed her concerns with the individual research subject – in this case a classroom teacher – whose behavior she found problematic, provides a useful example for action researchers as well. The teacher, to her credit, declined Williams' offer to withdraw the description of the behavior, saying, 'I'm going to be more aware of it, and this might help someone else.' Williams notes

I found that engaging in a joint decision concerning whether or not to publish the 'bad news' was an important and ethical move, and I argue for the importance of such negotiation and collaborative behavior among qualitative researchers and their participants. (1996, p. 47)

This dilemma can be especially vexing in an action research setting in which decisions regarding what information to include are made through a collaborative process with all research partners, as for example in the situation in which there are negative things about the stakeholders themselves or about the local situation that are important to understanding what is happening but the local stakeholders refuse to permit this information to be included in the published reports. What is the responsibility of the action researcher under these circumstances – tell the 'truth' or accept the collective judgment of the collaborators about what can or cannot be published? This is not easily resolved, because social researchers do not deserve to stand on a soapbox and declaim about academic freedom, given the 'lapdog' status that so much social science has accepted as a condition for comfortable survival.

The obverse problem can also arise in which the action researcher may find it necessary, in order to honor commitments to local stakeholders, to write about subjects and in ways that offend the rich and powerful. This can have a variety of consequences for their own professional careers, whether they be academic or in the public sector.

Conclusion

This article has aimed to raise a number of challenging questions and to point out that AR must come to terms with them. We are at the beginning of a conversation about our professional ethics in these arenas, not at the end.

While we do not pretend to have solutions to these issues, we do have a couple of suggestions at this point. First, we think that the relationship between action researchers and local collaborators should not be thought of primarily in contractual terms. Rather, we think that AR can develop a deeper understanding of the processes we engage in if rather than using the individualistic logic of intellectual property law/practices and performance contracts, we think about these relationships in terms of covenants (see May, 1983). Though this term has a religious origin (see Hilsen, this issue), what it adds to the notion of contract is

the sense of a binding agreement made in social solidarity between persons from whom withdrawal is not contemplated. While this is a tough standard, it has the virtue of making the collaborative social relationships and solidarity involved in AR processes the centerpiece of the relationship. Perhaps, expanding this notion of covenant and filling it in with experiential meanings from many AR projects would help us refine normatively how we can better understand these relationships and their consequences.

However, this in and of itself does not result in simple answers. After all, if we leave some of the elements of populist romanticism that are common in AR aside, it is worth noting that not all AR relationships are close and caring. Especially in larger-scale urban and industrial projects, relationships can be somewhat distant and even partially adversarial. Under these conditions, what kind of solidarity is specific to AR relationships? As far as we know, the AR literature is silent on this.

We have raised nothing but thorny questions in this brief article and we should point out that we do not believe that these questions have 'answers'. The point is not to have 'answers' but to recognize the necessity of having conscious dialogues and negotiations about these issues and reporting our experiences to each other honestly, presenting all points of view, and accepting the dissonance that is bound to accompany such narratives, in order to enhance our collective ability to deal with these issues. Perhaps that should be part of our 'covenant' with each other as action researchers.

Notes

- 1 Retrieved 30 May 2005 from: http://www.oecd.org/document/0,2340,en_2649_34487_25998799_1_1_1_1,00.html
- 2 Retrieved 30 May 2005 from: <http://www.doaj.org/> Note that the number cited does not include OA journals from all the humanities.
- 3 Retrieved 30 May from: <http://www.PARnet.org/snip/> (temporarily at <http://cu-ed100.com/snip/>)

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