Digital Diploma Mills

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1 The Automation of Higher Education

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Recent events at two large North American universities signal dramatically that we have entered a new era in higher education, one which is rapidly drawing the halls of academe into the age of automation. In mid- summer the UCLA administration launched its historic "Instructional Enhancement Initiative" requiring computer web sites for all of its arts and sciences courses by the start of the Fall term, the first time that a major university has made mandatory the use of computer telecommunications technology in the delivery of higher education. In partnership with several private corporations (including the Times Mirror Company, parent of the Los Angeles Times), moreover, UCLA has spawned its own for-profit company, headed by a former UCLA vice chancellor, to peddle online education (the Home Education Network).

This past spring in Toronto, meanwhile, the full-time faculty of York University, Canada's third largest, ended an historic two-month strike having secured for the first time anywhere formal contractual protection against precisely the kind of administrative action being taken by UCLA. The unprecedented faculty job action, the longest university strike in English Canadian history, was taken partly in response to unilateral administrative initiatives in the implementation of instructional technology, the most egregious example of which was an official solicitation to private corporations inviting them to permanently place their logo on a university online course in return for a $10,000 contribution to courseware development. As at UCLA, the York University administration has spawned its own subsidiary (Cultech), directed by the vice president for research and several deans and dedicated, in collaboration with a consortium of private sector firms, to the commercial development and exploitation of online education.

Significantly, at both UCLA and York, the presumably cyber-happy students have given clear indication that they are not exactly enthusiastic about the prospect of a high-tech academic future, recommending against the Initiative at UCLA and at York lending their support to striking faculty and launching their own independent investigation of the commercial, pedagogical, and ethical implications of online educational technology. This Fall the student handbook distributed annually to all students by the York Federation of Students contained a warning about the dangers of online education.

Thus, at the very outset of this new age of higher education, the lines have already been drawn in the struggle which will ultimately determine its shape. On the one side university administrators and their myriad commercial partners, on the other those who constitute the core relation of education: students and teachers. (The chief slogan of the York faculty during the strike was "the classroom vs the boardroom"). It is no accident, then, that the high-tech transformation of higher education is being initiated and implemented from the top down, either without any student and faculty involvement in the decision-making or despite it. At UCLA the administration launched their Initiative during the summer when many faculty are away and there was little possibility of faculty oversight or governance; faculty were thus left out of the loop and kept in the dark about the new web requirement until the last moment. And UCLA administrators also went ahead with its Initiative, which is funded by a new compulsory student fee, despite the formal student recommendation against it. Similarly the initiatives of the York administration in the deployment of computer technology in education were taken without faculty oversight and deliberation much less student involvement.

What is driving this headlong rush to implement new technology with so little regard for deliberation of the pedagogical and economic costs and at the risk of student and faculty alienation and opposition? A short answer might be the fear of getting left behind, the incessant pressures of "progress". But there is more to it. For the universities are not simply undergoing a technological transformation. Beneath that change, and camouflaged by it, lies another: the commercialization of higher education. For here as elsewhere technology is but a vehicle and a disarming disguise.

The major change to befall the universities over the last two decades has been the identification of the campus as a significant site of capital accumulation, a change in social perception which has resulted in the systematic conversion of intellectual activity into intellectual capital and, hence, intellectual property. There have been two general phases of this transformation. The first, which began twenty years ago and is still underway, entailed the commoditization of the research function of the university, transforming scientific and engineering knowledge into commercially viable proprietary products that could be owned and bought and sold in the market. The second, which we are now witnessing, entails the commoditization of the educational function of the university, transforming courses into courseware, the activity of instruction itself into commercially viable proprietary products that can be owned and bought and sold in the market. In the first phase the universities became the site of production and sale of patents and exclusive licenses. In the second, they are becoming the site of production of - as well as the chief market for - copyrighted videos, courseware, CD-ROMs, and Web sites.

The first phase began in the mid-1970's when, in the wake of the oil crisis and intensifying international competition, corporate and political leaders of the major industrialized countries of the world recognized that they were losing their monopoly over the world's heavy industries and that, in the future, their supremacy would depend upon their monopoly over the knowledge which had become the lifeblood of the new so-called "knowledge-based" industries (space, electronics, computers, materials, telecommunications, and bioengineering). This focus upon "intellectual capital" turned their attention to the universities as its chief source, implicating the universities as never before in the economic machinery. In the view of capital, the universities had become too important to be left to the universities. Within a decade there was a proliferation of industrial partnerships and new proprietary arrangements, as industrialists and their campus counterparts invented ways to socialize the risks and costs of creating this knowledge while privatizing the benefits. This unprecedented collaboration gave rise to an elaborate web of interlocking directorates between corporate and academic boardrooms and the foundation of joint lobbying efforts epitomized by the work of the Business-Higher Education Forum. The chief accomplishment of the combined effort, in addition to a relaxation of anti-trust regulations and greater tax incentives for corporate funding of university research, was the 1980 reform of the patent law which for the first time gave the universities automatic ownership of patents resulting from federal government grants. Laboratory knowledge now became patents, that is Intellectual capital and intellectual property. As patent holding companies, the universities set about at once to codify their intellectual property policies, develop the infrastructure for the conduct of commercially-viable research, cultivate their corporate ties, and create the mechanisms for marketing their new commodity, exclusive licenses to their patents. The result of this first phase of university commoditization was a wholesale reallocation of university resources toward its research function at the expense of its educational function.

Class sizes swelled, teaching staffs and instructional resources were reduced, salaries were frozen, and curricular offerings were cut to the bone. At the same time, tuition soared to subsidize the creation and maintenance of the commercial infrastructure (and correspondingly bloated administration) that has never really paid off. In the end students were paying more for their education and getting less, and the campuses were in crisis.[1]

The second phase of the commercialization of academia, the commoditization of instruction, is touted as the solution to the crisis engendered by the first. Ignoring the true sources of the financial debacle - an expensive and low-yielding commercial infrastructure and greatly expanded administrative costs - the champions of computer-based instruction focus their attention rather upon increasing the efficiencies of already overextended teachers. And they ignore as well the fact that their high-tech remedies are bound only to compound the problem, increasing further, rather then reducing, the costs of higher education. (Experience to date demonstrates clearly that computer-based teaching, with its limitless demands upon instructor time and vastly expanded overhead requirements - equipment, upgrades, maintenance, and technical and administrative support staff - costs more not less than traditional education, whatever the reductions in direct labor, hence the need for outside funding and student technology fees). Little wonder, then, that teachers and students are reluctant to embrace this new panacea. Their hesitation reflects not fear but wisdom.[2]

But this second transformation of higher education is not the work of teachers or students, the presumed beneficiaries of improved education, because it is not really about education at all. That's just the name of the market. The foremost promoters of this transformation are rather the vendors of the network hardware, software, and "content" - Apple, IBM, Bell, the cable companies, Microsoft, and the edutainment and publishing companies Disney, Simon

[1]Tuition began to outpace inflation in the early 1980's, at precisely the moment when changes in the patent system enabled the universities to become major vendors of patent licenses. According to data compiled by the National Center for Educational Statistics, between 1976 and 1994 expenditures on research increased 21.7% at public research universities while expenditure on instruction decreased 9.5%. Faculty salaries, which had peaked in 1972, fell precipitously during the next decade and have since recovered only half the loss.

[2]Recent surveys of the instructional use of information technology in higher education clearly indicate that there have been no significant gains in either productivity improvement or pedagogical enhancement. Kenneth C. Green , Director of the Campus Computing Project, which conducts annual surveys of information technology use in higher education, noted that "the campus experience over the past decade reveals that the dollars can be daunting, the return on investment highly uncertain." "We have yet to hear of an instance where the total costs (including all realistically amortized capital investments and development expenses, plus reasonable estimates for faculty and support staff time) associated with teaching some unit to some group of students actually decline while maintaining the quality of learning," Green wrote. On the matter of pedagogical effectiveness, Green noted that "the research literature offers, at best, a mixed review of often inconclusive results, at least when searching for traditional measures of statistical significance in learning outcomes."

and Schuster, Prentice-Hall, et al - who view education as a market for their wares, a market estimated by the Lehman Brothers investment firm potentially to be worth several hundred billion dollars. "Investment opportunity in the education industry has never been better," one of their reports proclaimed, indicating that this will be "the focus industry" for lucrative investment in the future, replacing the healthcare industry. (The report also forecasts that the educational market will eventually become dominated by EMO's - education maintenance organizations - just like HMO's in the healthcare market). It is important to emphasize that, for all the democratic rhetoric about extending educational access to those unable to get to the campus, the campus remains the real market for these products, where students outnumber their distance learning counterparts six-to-one.

In addition to the vendors, corporate training advocates view online education as yet another way of bringing their problem-solving, information- processing, "just-in-time" educated employees up to profit- making speed. Beyond their ambitious in-house training programs, which have incorporated computer-based instructional methods pioneered by the military, they envision the transformation of the delivery of higher education as a means of supplying their properly-prepared personnel at public expense.

The third major promoters of this transformation are the university administrators, who see it as a way of giving their institutions a fashionably forward-looking image. More importantly, they view computer-based instruction as a means of reducing their direct labor and plant maintenance costs - fewer teachers and classrooms - while at the same time undermining the autonomy and independence of faculty. At the same time, they are hoping to get a piece of the commercial action for their institutions or themselves, as vendors in their own right of software and content. University administrators are supported in this enterprise by a number of private foundations, trade associations, and academic-corporate consortia which are promoting the use of the new technologies with increasing intensity. Among these are the Sloan, Mellon, Pew, and Culpeper Foundations, the American Council on Education, and, above all, Educom, a consortium representing the management of 600 colleges and universities and a hundred private corporations.

Last but not least, behind this effort are the ubiquitous technozealots who simply view computers as the panacea for everything, because they like to play with them. With the avid encouragement of their private sector and university patrons, they forge ahead, without support for their pedagogical claims about the alleged enhancement of education, without any real evidence of productivity improvement, and without any effective demand from either students or teachers.

In addition to York and UCLA, universities throughout North America are rapidly being overtaken by this second phase of commercialization. There are the stand-alone virtual institutions like University of Phoenix, the wired private institutions like the New School for Social Research, the campuses of state universities like the University of Maryland and the new Gulf-Coast campus of the University of Florida (which boasts no tenure). On the state level, the states of Arizona and California have initiated their own state-wide virtual university projects, while a consortia of western "Smart States" have launched their own ambitious effort to wire all of their campuses into an online educational network. In Canada, a national effort has been undertaken, spearheaded by the Telelearning Research Network centered at Simon Fraser University in Vancouver, to bring most of the nation's higher education institutions into a "Virtual U" network.

The overriding commercial intent and market orientation behind these initiatives is explicit, as is illustrated by the most ambitious U.S. effort to date, the Western Governors' Virtual University Project, whose stated goals are to "expand the marketplace for instructional materials, courseware, and programs utilizing advanced technology," "expand the marketplace for demonstrated competence," and "identify and remove barriers to the free functioning of these markets, particularly barriers posed by statutes, policies, and administrative rules and regulations."

"In the future," Utah governor Mike Leavitt proclaimed, "an institution of higher education will become a little like a local television station." Start up funds for the project come from the private sector, specifically from Educational Management Group , the educational arm of the world's largest educational publisher Simon and Schuster and the proprietary impulse behind their largesse is made clear by Simon and Schuster CEO Jonathan Newcomb: "The use of interactive technology is causing a fundamental shift away from the physical classroom toward anytime, anywhere learning - the model for post secondary education in the twenty- first century." This transformation is being made possible by "advances in digital technology, coupled with the protection of copyright in cyberspace."

Similarly, the national effort to develop the "Virtual U" customized educational software platform in Canada is directed by an industrial consortium which includes Kodak, IBM, Microsoft, McGraw-Hill, Prentice-Hall, Rogers Cablesystems, Unitel, Novasys, Nortel, Bell Canada, and MPR Teltech, a research subsidiary of GTE. The commercial thrust behind the project is explicit here too. Predicting a potential fifty billion dollar Canadian market, the project proposal emphasizes the adoption of "an intellectual property policy that will encourage researchers and industry to commercialize their innovations" and anticipates the development of "a number of commercially marketable hardware and software products and services," including "courseware and other learning products." The two directors of the project, Simon Fraser University professors, have formed their own company to peddle these products in collaboration with the university. At the same time, the nearby University of British Columbia has recently spun off the private WEB-CT company to peddle its own educational website software, WEB-CT, the software designed by one of its computer science professors and now being used by UCLA. In recent months, WEB-CT has entered into production and distribution relationships with Silicon Graphics and Prentice-Hall and is fast becoming a major player in the American as well as Canadian higher education market. As of the beginning of the Fall term, WEB CT licensees now include, in addition to UCLA and California State University, the Universities of Georgia, Minnesota, Illinois, North Carolina, and Indiana, as well as such private institutions as Syracuse, Brandeis, and Duquesne.

The implications of the commoditization of university instruction are two-fold in nature, those relating to the university as a site of the production of the commodities and those relating to the university as a market for them. The first raises for the faculty traditional labor issues about the introduction of new technologies of production. The second raises for students major questions about costs, coercion, privacy, equity, and the quality of education.

With the commoditization of instruction, teachers as labor are drawn into a production process designed for the efficient creation of instructional commodities, and hence become subject to all the pressures that have befallen production workers in other industries undergoing rapid technological transformation from above. In this context faculty have much more in common with the historic plight of other skilled workers than they care to acknowledge. Like these others, their activity is being restructured, via the technology, in order to reduce their autonomy, independence, and control over their work and to place workplace knowledge and control as much as possible into the hands of the administration. As in other industries, the technology is being deployed by management primarily to discipline, deskill, and displace labor.

Once faculty and courses go online, administrators gain much greater direct control over faculty performance and course content than ever before and the potential for administrative scrutiny, supervision, regimentation, discipline and even censorship increase dramatically. At the same time, the use of the technology entails an inevitable extension of working time and an intensification of work as faculty struggle at all hours of the day and night to stay on top of the technology and respond, via chat rooms, virtual office hours, and e-mail, to both students and administrators to whom they have now become instantly and continuously accessible. The technology also allows for much more careful administrative monitoring of faculty availability, activities, and responsiveness.

Once faculty put their course material online, moreover, the knowledge and course design skill embodied in that material is taken out of their possession, transferred to the machinery and placed in the hands of the administration. The administration is now in a position to hire less skilled, and hence cheaper, workers to deliver the technologically prepackaged course. It also allows the administration, which claims ownership of this commodity, to peddle the course elsewhere without the original designer's involvement or even knowledge, much less financial interest. The buyers of this packaged commodity, meanwhile, other academic institutions, are able thereby to contract out, and hence outsource, the work of their own employees and thus reduce their reliance upon their in-house teaching staff.

Most important, once the faculty converts its courses to courseware, their services are in the long run no longer required. They become redundant, and when they leave, their work remains behind. In Kurt Vonnegut's classic novel Player Piano 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. Today faculty are falling for the same tired line, that their brilliance will be broadcast online to millions. Perhaps, but without their further participation. Some skeptical faculty insist that what they do cannot possibly be automated, and they are right. But it will be automated anyway, whatever the loss in educational quality. Because education, again, is not what all this is about; it's about making money. In short, the new technology of education, like the automation of other industries, robs faculty of their knowledge and skills, their control over their working lives, the product of their labor, and, ultimately, their means of livelihood.

None of this is speculation. This Fall the UCLA faculty, at administration request, have dutifully or grudgingly (it doesn't really matter which) placed their course work - ranging from just syllabi and assignments to the entire body of course lectures and notes - at the disposal of their administration, to be used online, without asking who will own it much less how it will eventually be used and with what consequences. At York university, untenured faculty have been required to put their courses on video, CD- ROM or the Internet or lose their job. They have then been hired to teach their own now automated course at a fraction of their former compensation. The New School in New York now routinely hires outside contractors from around the country, mostly unemployed PhDs, to design online courses. The designers are not hired as employees but are simply paid a modest flat fee and are required to surrender to the university all rights to their course. The New School then offers the course without having to employ anyone. And this is just the beginning.

Educom, the academic -corporate consortium, has recently established their Learning Infrastructure Initiative which includes the detailed study of what professors do, breaking the faculty job down in classic Tayloristic fashion into discrete tasks, and determining what parts can be automated or outsourced. Educom believes that course design, lectures, and even evaluation can all be standardized, mechanized, and consigned to outside commercial vendors. "Today you're looking at a highly personal human- mediated environment," Educom president Robert Heterich observed. "The potential to remove the human mediation in some areas and replace it with automation - smart, computer-based, network-based systems - is tremendous. It's gotta happen."

Toward this end, university administrators are coercing or enticing faculty into compliance, placing the greatest pressures on the most vulnerable - untenured and part-time faculty, and entry-level and prospective employees. They are using the academic incentive and promotion structure to reward cooperation and discourage dissent. At the same time they are mounting an intensifying propaganda campaign to portray faculty as incompetent, hide-bound, recalcitrant, inefficient, ineffective, and expensive - in short, in need of improvement or replacement through instructional technologies. Faculty are portrayed above all as obstructionist, as standing in the way of progress and forestalling the panacea of virtual education allegedly demanded by students, their parents, and the public.

The York University faculty had heard it all. Yet still they fought vigorously and ultimately successfully to preserve quality education and protect themselves from administrative assault. During their long strike they countered such administration propaganda with the truth about what was happening to higher education and eventually won the support of students, the media, and the public. Most important, they secured a new contract containing unique and unprecedented provisions which, if effectively enforced, give faculty members direct and unambiguous control over all decisions relating to the automation of instruction, including veto power. According to the contract, all decisions regarding the use of technology as a supplement to classroom instruction or as a means of alternative delivery (including the use of video, CD-ROM's, Internet websites, computer-mediated conferencing, etc.) "shall be consistent with the pedagogic and academic judgements and principles of the faculty member employee as to the appropriateness of the use of technology in the circumstances." The contract also guarantees that "a faculty member will not be required to convert a course without his or her agreement." Thus, the York faculty will be able to ensure that the new technology, if and when used, will contribute to a genuine enhancement rather than a degradation of the quality of education, while at the same time preserving their positions, their autonomy, and their academic freedom. The battle is far from won, but it is a start.

The second set of implications stemming from the commoditization of instruction involve the transformation of the university into a market for the commodities being produced. Administrative propaganda routinely alludes to an alleged student demand for the new instructional products. At UCLA officials are betting that their high-tech agenda will be "student driven", as students insist that faculty make fuller use of the web site technology in their courses. To date, however, there has been no such demand on the part of students, no serious study of it, and no evidence for it. Indeed, the few times students have been given a voice, they have rejected the initiatives hands down, especially when they were required to pay for it (the definition of effective demand, i.e. a market). At UCLA, students recommended against the Instructional Enhancement Initiative. At the University of British Columbia, home of the WEB-CT software being used at UCLA, students voted in a referendum four-to-one against a similar initiative, despite a lengthy administration campaign promising them a more secure place in the high tech future. Administrators at both institutions have tended to dismiss, ignore, or explain away these negative student decisions, but there is a message here: students want the genuine face-to- face education they paid for not a cybercounterfeit. Nevertheless, administrators at both UCLA and UBC decided to proceed with the their agenda anyway, desperate to create a market and secure some return on their investment in the information technology infrastructure. Thus, they are creating a market by fiat, compelling students (and faculty) to become users and hence consumers of the hardware, software, and content products as a condition of getting an education, whatever their interest or ability to pay. Can all students equally afford this capital-intensive education?

Another key ethical issue relates to the use of student online activities. Few students realize that their computer-based courses are often thinly- veiled field trials for product and market development, that while they are studying their courses, their courses are studying them. In Canada, for example, universities have been given royalty-free licenses to Virtual U software in return for providing data on its use to the vendors. Thus, all online activity including communications between students and professors and among students are monitored, automatically logged and archived by the system for use by the vendor. Students enrolled in courses using Virtual U software are in fact formally designated "experimental subjects." Because federal monies were used to develop the software and underwrite the field trials, vendors were compelled to comply with ethical guidelines on the experimental use of human subjects. Thus, all students once enrolled are required to sign forms releasing ownership and control of their online activities to the vendors. The form states "as a student using Virtual U in a course, I give my permission to have the computer-generated usage data, conference transcript data, and virtual artifacts data collected by the Virtual U software. . . used for research, development, and demonstration purposes. "

According to UCLA's Home Education Network president John Korbara, all of their distance learning courses are likewise monitored and archived for use by company officials. On the UCLA campus, according to Harlan Lebo of the Provost's office, student use of the course websites will be routinely audited and evaluated by the administration. Marvin Goldberg, designer of the UCLA WEB-CT software acknowledges that the system allows for "lurking" and automatic storage and retrieval of all online activities. How this capability will be used and by whom is not altogether clear, especially since websites are typically being constructed by people other than the instructors. What third parties (besides students and faculty in the course) will have access to the student's communications? Who will own student online contributions? What rights, if any, do students have to privacy and proprietary control of their work? Are they given prior notification as to the ultimate status of their online activities, so that they might be in a position to give, or withhold, their informed consent? If students are taking courses which are just experiments, and hence of unproven pedagogical value, should students be paying full tuition for them? And if students are being used as guinea pigs in product trials masquerading as courses, should they be paying for these courses or be paid to take them? More to the point, should students be content with a degraded, shadow cybereducation? In Canada student organizations have begun to confront these issues head on, and there are some signs of similar student concern emerging also in the U.S.

In his classic 1959 study of diploma mills for the American Council on Education, Robert Reid described the typical diploma mill as having the following characteristics: "no classrooms," "faculties are often untrained or nonexistent," and "the officers are unethical self-seekers whose qualifications are no better than their offerings." It is an apt description of the digital diploma mills now in the making. Quality higher education will not disappear entirely, but it will soon become the exclusive preserve of the privileged, available only to children of the rich and the powerful. For the rest of us a dismal new era of higher education has dawned. In ten years, we will look upon the wired remains of our once great democratic higher education system and wonder how we let it happen. That is, unless we decide now not to let it happen.

2 The Coming Battle Over Online Instruction

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Tensions are rapidly mounting today between faculty and university administrations over the high tech commercialization of higher education. During the last two decades campus commercialization centered upon the research function of the universities, but it has now shifted to the core instructional function, the heart and soul of academia. In both cases the primary commercial impulse has come from non-academic forces, industrial corporations seeking indirect public subsidy of their research needs and private vendors of instructional hardware, software, and content looking for subsidized product development and a potentially lucrative market for their wares. In both cases also, there has been a fundamental transformation of the nature of academic work and the relationship between higher educational institutions and their faculty employees. With the commoditization of instruction, this transformation of academia is now reaching the breaking point.

The commercialization of research entailed the conversion of the intellectual process of research into discrete products - inventions - and the conversion of these inventions into commodities - something that could be owned and exchanged on the market - by means of patents and exclusive licenses. With this change, faculty who conducted research in the service of their role as educators and scholars, became instead producers of commodities for their employer. Universities could become commercial players not only because they were the major site of federally-funded scientific and technological research but also because amendments to the patent law had given academic contractors ownership of all patents resulting from federally-funded research. This potentially gave the universities something to trade with industry: licenses to those patents. But before the universities could make any proprietary deals with industry they had first to secure the patent rights of their research faculty and staff, because patents are issued only to inventors not to institutions. Universities thus established ad hoc arrangements with their own professors, giving them a share of revenues in exchange for their patent rights. Eventually, they adopted formal intellectual property policies similar to those devised many decades before by private industry: employees would be required contractually to assign their patent rights to the university as a routine condition of employment.

In the process, research, formerly pursued as an end in itself or as a contribution to human knowledge, now became a means to commercial ends and researchers became implicated, directly or indirectly and wittingly or not, in the business of making money for their universities. The commercialization of academic research brought universities and industry into close partnership; it made some people very rich and no doubt resulted in the development of some new technologies. But it also ushered in a brash new regime of proprietary control, secrecy, fraud, theft, and commercial motives and preoccupations. Some argue that this new commercial ethos has irreversibly corrupted the university as a site of reliably independent thought and disinterested inquiry, placing in jeopardy a precious and irreplaceble public resource.

Today the universities are moving rapidly to commercialize their instructional activities in much the same way. Here the instructional process, classroom teaching, is converted into products, such as a CD ROMs, Websites, or courseware. These products are then converted into marketable commodities by means of copyrights and licenses to distribute copyrighted instructional products. Like the commercialization of research, the commercialization of instruction entails a fundamental change in the relationship between the universities and their faculty employees. Here faculty who develop and teach face-to-face courses as their primary responsibility as educators are transformed into mere producers of marketable instructional commodities which they may or may not themselves "deliver."

Universities today are going into business for themselves, as the producers and distributors of commercial instructional products, or they are making deals with private firms for the production and distribution of online courses. But before the universities can begin to trade on their courses, they must first control the copyright to course material. Course copyright is the sine qua non of the digital diploma mill. In copyright law, however, ownership follows authorship. This means that course materials are the property of the teaching faculty and staff who developed them. Traditionally, universities have acknowledged that faculty, as the authors of courses, have owned their course materials and hence copyright to them (except in those cases where extraordinary university resources were involved in course development, which might entail shared ownership). But the universities are now undertaking to usurp such traditional faculty rights in order to capitalize on the online instruction marketplace, and it is for this reason that the rather arcane matter of copyright and intellectual property has become the most explosive campus issue of the day. Here the battle line over the future of higher education will be drawn. For faculty and their organizations it is a struggle not only over proprietary control of course materials per se but also over their academic role, their autonomy and integrity, their future employment, and the future of quality education. In the wake of the online education gold-rush, many have begun to wonder, will the content of education be shaped by scholars and educators or by media businessmen, by the dictates of experienced pedagogy or a quick profit? Will people enroll in higher educational institutions only to discover that they might just as well have stayed home watching television?

At present the universities are in a phase of transition, experimenting with solutions to their copyright dilemma. Such efforts must be watched very closely because what happens now will likely determine the future shape of higher education. During the last few years several universities have entered into formal agreements with private firms which give some indication of where they are headed: UCLA and the Home Education Network (THEN), UC Berkeley and America On Line (AOL); and the University of Colorado and Real Eduation. These documents, heretofore confidential, herald the dawning of a new regime of instruction strikingly similar to the commercial regime of academic research. The initial loci of these arrangements are the extension programs of the universities, the testing grounds for online instruction and the beach-heads, so to speak, for the commercialization of higher education. In each of these contracts, entered into without faculty knowledge much less approval, the university has explicitly assumed its own, rather than faculty, authorship/ownership of course materials, in violation not only of academic tradition but perhaps also of federal copyright law. In claiming authorship/ownership as a precondition of making the deal, the universities might also have committed fraud. Whether or not the universities have already overstepped legal boundaries, it is clear that there is a move afoot here to establish surreptitiously a new practice, a new tradition, in which universities automatically own all rights to course material developed by faculty. Unless faculty act quickly to assert and confirm their rightful claim to their course materials, their inaction might retrospectively be seen by the courts in the future as a tacit acknowledgement of the abandonment of those rights. In the longer run, universities will no doubt undertake to routinize this theft by requiring faculty to assign all copyrights on course material to the university as a condition of employment as they have done with patents.

The first case to be examined is the secret agreement between UCLA and The Home Education Network (THEN) signed on June 30, 1994 and amended February 21, 1996. This agreement entailed the granting by a university of exclusive production and distribution rights to electronic courses, including copyright, to a private, for-profit corporation, without any prior faculty consultation or approval.

THEN emerged not from the world of education but from the fast hustle media world of spins and sound-bites, cable TV and public relations. It was the brainchild of political media consultant and television producer Alan Arkatov, who produced and marketed the media campaigns of over a dozen U.S. senators, governors, and mayors, before serving as Senior Advisor to President Clinton's 1992 campaign chairman Mickey Kantor. In 1994 he negotiated a landmark contract with the Regents of the University of California to form an unprecendented arrangement with UCLA Extension (UNEX), the largest continuing higher education program in the country. The agreement gave Arkatov exclusive rights to all electronic delivery of UNEX courses and the exclusive use of the UCLA name for that purpose, thereby launching THEN as "the most comprehensive continuing distance learning program of its kind in the United States."

THEN is now directed by its President and CEO John Kobara, who comes out of the cable television industry and the public relations and marketing side of academia. A UCLA graduate, Kobara was vice president and general manager of Falcon TV, one of the nation's largest independent cable operators, and served as president of the Southern California Cable Association before returning to UCLA to direct the Alumni Association. By the time he joined THEN in 1997, Kobara was UCLA's Vice Chancellor of University Relations directing all of the university's public relations, marketing, and government and alumni relations activities. Combining their media experience, political influence, and insider knowledge of UCLA and its myriad community connections, Arkatov and Kobara were well placed to make the most profitable use of their ambitious arrangement with UCLA. But UCLA administrators, meanwhile, had ambitions of their own, not only to provide a new revenue stream for UNEX but to establish it, and UCLA, as the premier vehicle for distance learning in the University of California system, and beyond.

The extremely broad agreement between THEN (signed by Arkatov) and the Regents of the University of California (on behalf of UNEX, a part of the Division of Continuing Education of UCLA, signed by Robert Lapiner, UCLA Dean of Continuing Studies) granted to THEN the exclusive right to produce, for a ten year "production period", and exploit, in perpetuity, all electronic versions of UNEX courses: "the sole, exclusive and irrevocable right under copyright and otherwise to make, produce and copyright by any means or 'Technology,' as such term is hereinafter defined, now known or herefter devised during the 'Production Period', as such term is hereinafter defined, audio, visual, audio/visual. digital and/or other recordings of all UNEX classes. . . ." as well as "the sole, exclusive and irrevocable right under copyright and otherwise to exhibit, perform, broadcast, transmit, publish, reproduce, manufacture, distribute, advertise, sell, rent, lease, market, publicize, promote, merchandise, provide technical support for, license and otherwise exploit, generally deal in and with and turn to account the Recordings by all means and technology and in all media and forms of expression and communication now known or later developed in all languages throughout the universe (the 'Territory') in perpetuity. . . ." THEN also secured the right to use the "University of California" and "UCLA" names in connection with the exploitation of their rights granted in the Agreement, as well as the right to assign or transfer their interests in the agreement to "any entity."

In consideration of this generous grant of rights, UNEX would receive a percentage of THEN's gross receipts (increasing from 6 to 12 percent over the course of the term) plus reimbursement of expenses incurred in the preparation of courses, including materials and wages. UNEX retained the right to designate which courses would and would not be converted to electronic form and the right to final approval of their content. However, it agreed that "THEN shall have the unlimited right to vary, change, alter, modify, add to and/or delete from the Recordings, and to rearrange and/or transpose the Recording and change the sequence thereof." In 1995 there was apparently some difference of opinion between the parties over whether or not the 1994 agreement covered online and Internet delivery of courses. THEN insisted that it did and ultimately prevailed upon UCLA to formally amend the agreement stipulating explicitly that "UNEX and THEN acknowledge that the inclusion of On-Line Rights is on the same economic and other terms as pertain to Recordings in the Agreement and that all such terms shall be interpreted so as to encompass On-Line Rights."

If the THEN-UCLA agreement brought the pecuniary preoccupations of private commerce into the heart and soul of higher education, it also carried with it another characteristic aspect of proprietary enterprise: secrecy. Despite, or perhaps because of, the broad terms and far-reaching implications of their agreement, THEN officials and UCLA administrators formally agreed to keep it secret. In a confidentiality clause in the 1994 agreement, it was agreed that "except as required by law, UNEX shall hold in confidence and shall not disclose or reveal to any person or entity confidential information relating to the nature and substance of this Agreement..." and that any participating "Instructor shall hold in confidence and not disclose or reveal to any person or entity confidential information relating to the nature and substance of the agreement between UNEX and THEN...." While THEN clearly had proprietary motives for such confidentiality, why did UCLA administrators, trustees of a public institution trading in publicly-created goods, agree to such secrecy? What did the university have to hide? Perhaps it was what the agreement had to say about its larger ambitions, and, especially, its relations with faculty.

Kobara's spin on the deal is that this arrangement is a modest one, restricted to UNEX and thus without any significance, or any reason for concern, beyond it. He insists that THEN has no relationship with UCLA but only with UNEX,which he argues is an independent entity. This is not the case. While UNEX is self-supporting, it is unambiguously a part of UCLA, as the Agreement itself makes clear. It is for this reason that an officer of UCLA, Robert Lapiner, signed the agreement, representing the Regents. Moreover, Kobara's modesty is clearly belied by the Agreement, which reveals intentions of a much wider scope. According to the Agreement, "The parties contemplate that the relationship with THEN may extend to other University of California campuses. Because of UNEX's unique responsibility to be bound to THEN for the Term hereof, THEN agrees that the participation of all other University of California campuses as well as other academic units of UCLA in this project will be coordinated by UNEX and for the purposes of this Agreement shall be considered 'UNEX Classes.' An appropriate share of revenues otherwise payable to UNEX for any such courses shall, however, be distributed proportionately to the participating University of California campus or other academic unit of UCLA." Whether or not they are able to realize their grand vision, it is clear that UCLA from the outset intended to extend its distance education operations beyond UNEX and, through UNEX - the largest continuing education program in the UC system - beyond UCLA to other UC campuses. This Fall the UCLA Division of Letters and Science launched its Instructional Enhancement Initiative mandating that every course must have a website containing at a minimum course outlines and assignments and encouraging faculty to put their lectures and other materials online as well. Like the THEN-UCLA deal, this action was taken without debate or formal faculty approval. THEN and UCLA officials maintain that there is no connection between this unprecedented initiative and their UNEX activities. In response to increasingly apparent faculty concern, UCLA's Provost of Arts and Letters Brian Copenhaver has recently distributed a letter to all faculty insisting, perhaps too much, that IEI is "resolutely and only academic" and that "there are no plans to use IEI commercially." Reading the Agreement, however, one has to wonder.

At the heart of the THEN-UCLA deal is the crucial matter of copyright. As is typical in any such agreement, the parties must attest to the fact that they indeed have the right and authority to grant whatever it is they are granting. Thus, UNEX affirmed that "UNEX has the full right, power, and authority to enter into and perform this Agreement and to grant to and vest in THEN all rights herein set forth, free and clear of any and all claims, rights, and obligations whatsoever." Under this assumption, UNEX agreed that "As between UNEX, THEN, and the instructors of the UNEX Classes (the 'Instructors'), THEN shall be the owner of all right, title, and interest, including without limitation, the copyright, in and to all Recordings of UNEX Classes produced by and for THEN hereunder and, for purposes of Title 17 of the United States Code also known as the Copyright Act of 1976, as amended (the 'Copyright Act'), THEN shall be deemed the author of the Recordings." By what legal right and under what authority could UNEX make such a grant, given the fact that the instructors who create the courses rather than UCLA or UNEX are the rightful and heretofore acknowledged owners of copyright? The instructors, of course, were never even party to this agreement. This is the crux of the Agreement and all such arrangements.

In order to be in a position to uphold its side of the bargain, UNEX formally agreed that it would undertake to compel its instructors, on THEN's behalf, to assign their copyrights to UNEX, thereby enabling UNEX to assign them to THEN. This was made fully explicit with the inclusion in the Agreement of an "Exhibit A," outlining a compulsory "Instructors' Agreement," whereby instructors would be made to surrender their rights to UNEX as a condition of employment. The Agreement thus stipulates that "UNEX shall use its best efforts to cause each Instructor to agree in writing ('Instructor Agreement') for the specific stated benefit of THEN, to the provisions set forth on Exhibit 'A' attached hereto." Furthermore, the agreement stipulates that any such Instructor Agreement had to meet the specifications not only of UNEX but also of THEN, which "shall have the right of prior written approval of the form and substance of the agreements entered into by UNEX and Instructors concerning the production and exploitation of the Recordings."

Exhibit A is a five page document which specifies in detail what the Instructor must give up and do for UNEX and THEN in order for UNEX to meet its contractual obligations to THEN. Predictably, the Instructor must agree to grant to UNEX the same rights granted by UNEX to THEN, namely "the sole, exclusive and irrevocable right under copyright and otherwise to make, produce and copyright by any means or technology now known or hereafter devised Recordings of all UNEX Classes taught by Instructor" as well as "the sole, exclusive and irrevocable right under copyright and otherwise to exhibit, perform, broadcast, transmit, publish, reproduce, manufacture, distribute, advertise, sell, rent, lease, market, publicize, promote, merchandise, provide technical support for, license and otherwise exploit, generally deal in and with and turn to account the Recordings by all means and technology and in all media and forms of expression and communication now known or later developed in all languages throughout the Territory in perpetuity." The Instructor must acknowledge and agree that "THEN shall be deemed the author of the Recordings" and that the "Instructor has no rights of any kind or nature in the Recordings of UNEX Classes taught by the Instructor;" and must "forever waive any right to assert any rule, law, decree, judicial decision or administrative order of any kind throughout the world, which allows Instructor any right in the moral rights (droit moral) in the Recordings."

According to Exhibit A, the "Instructor must not permit the Course Materials utilized by the Instructor for UNEX Classes taught during the Production Period to be recorded by any Technology, except by THEN" unless it is approved by THEN or is restricted to publication in print form on paper (e.g. books). The Instructor is also obligated to assist UNEX and THEN in securing releases to all copyrighted material used in the Instructor's course. And just as UNEX must use its best efforts to cause the Instructor to sign the Instructor Agreement, so the "Instructor shall use Instructor's best efforts to cause all guest lecturers taking part in UNEX Classes taught by such Instructor to execute agreements approved by UNEX and THEN that are consistent with the balance of the provisions of Exhibit A." Finally, the Instructor is required to execute any other documents consistent with the terms of the Instructor Agreement, as requested by UNEX or THEN, and if the Instructor fails to do so, "the Instructor shall be deemed to have appointed UNEX and/or THEN as Instructor's irrevocable attorney-in-fact with full power of substitution and delegation and with full and complete right and authority . . . to perform such acts and take such proceedings in the name of Instructor. . "

The Instructor Agreement, a formal written contract between employee and employer in which employee rights are legally transferred to the employer, was seen by the parties in 1994 as the way UNEX would secure the power and authority required to comply with its Agreement with THEN, at the expense of the Instructors. Today both parties contend that such Instructor Agreements are not necessary. According to the terms of a revised agreement, they argue, which has not yet been finalized, the actual ownership of electronic courses would reside solely with UNEX while THEN would merely have exclusive rights of distribution. And UNEX now maintains that its ownership rights are automatic and would not require any formal contract with their employees. As David Menninger, UCLA's Associate Dean of Continuing Education and UCLA Extension, explained to me in a letter in December, 1997, "since the focus of the Extension/THEN relationship has shifted to Extension online courses, for which the Regents of the University of California retain ownership, no such instructor's agreement has ever been used, nor is any further need anticipated."

It is not clear upon what legal basis Menninger asserts his claim that the Regents of the University of California retain ownership, given the traditional legal rights of the Instructors to these courses. According to Kathy Whenmouth, technology transfer specialist in the University of California's President's Office, the University does not yet have any policy on the copyright of online course materials. Clearly, the matter is far from settled. What exactly are the rights of instructors and the Regents? Now that the UNEX/THEN Agreement has seen thelight of day, it will no doubt become a focus of controversy. Is it legal? Will it withstand a legal challenge? Whatever the ultimate legal status of the Agreement,which would have to be determined in court, this episode sheds much light upon the methods, intentions, and visions of those involved in the commoditization and commercialization of university instruction.

The second agreement, between America On Line (AOL) and UC Berkeley (The Regents of the University of California) points in much the same direction. Signed on July 26, 1995, this agreement, which also contains a confidentiality clause, centers upon Berkeley's extension program, the Center for Media and Independent Learning. Here the arrangement from the outset entails only the licensing of course distribution rights without any transfer of copyright from the university to the company. According to the agreement, the University aims to offer "electronic courses in a broad spectrum of disciplines (Arts and Humanities, Business and Management, Computer Science, Hazardous Materials Management, Natural Sciences, Social Sciences), for credit or for professional development." Accordingly, the "University grants AOL a non-exclusive, revocable, worldwide license to market, license, distribute, and promote" these courses. In doing so, the "University represents and warrants to AOL" that such offerings "will not infringe on or violate any copyright, patent or any other proprietary right of any third party. ..." Once again, as was the case with the UCLA- THEN agreement, the University is representing to AOL that it alone owns the course materials and that no third parties, including the faculty who develop courses, have any rights to them. In order to secure faculty compliance with this claim, the University has drawn up a generic course development "letter of agreement" for instructors to execute. In this document, which instructors are required to sign, the University informs instructors that "The Regents of the University of California will own the copyright to all materials you develop, in print or other media, for use in this UC Extension course . ... and we retain the right to continue offering the course should you resign as instructor." By means of this contract the University obtains, and the instructors abandon, ownership of all course materials. Instructors are paid a modest "honorarium" for developing the course and abandoning their rights, payable half on acceptance of the materials and half on actual delivery of the course. Whereas AOL receives ten percent of all royalty revenues, the instructors receive none.

The final example is possibly the most far-reaching, involving the Denver-based company Real Education, Inc. (Real Ed) and the entire University of Colorado. Real Education was founded in 1996 by CEO Rob Helmick, an attorney and former general counsel for various universities who specialized in education law and the "merger and acquisition of educational institutions worldwide." In 1996 Helmick's law firm, Helmick and Associates International, acquired Real Information Systems, one of the leading worldwide web production companies in the U.S., and created Real Education, Inc., "so that universities could easily outsource instruction." Real Education has become a major player in the outsourcing of university online instruction and currently has contracts with some twenty universities and colleges throughout the United States, including the University of Colorado, Northern Illinois University, Rogers University, and the Colorado Community Colleges. The company specializes in providing universities with all of the hardware, software, internet links and technical support they need for online course delivery, including assistance with course development. It is now collaborating with Microsoft and Simon and Schuster to create a standard for the industry. For its part, the University of Colorado has been in the forefront of online education and recently won the Eddy Award of the National Science Foundation as the "Number One Online University in the World."

After some preliminary collaboration, Real Ed and the University of Colorado entered into a formal agreement on May 27, 1997. The arrangement engages Real Ed to provide the technical means for online course development and delivery but the University retains all copyright to course material. According to the agreement, the "University, on behalf of its four campuses, wishes to develop its online capability utilizing Real Ed's Einstein Network Version 2.5 (or the latest version thereof) to create University credit and non-credit courses for delivery in the United States and abroad." As part of its obligations, Real Ed agrees to "oversee the adaptation of existing distance-learning courses and collaborate with the University's faculty and staff in the development of new courses" and to "provide instructional design support to University faculty to assist in the transfer of lectures to the online format." However, according to the contract, "it is understood and agreed that the relationship of University and Real Ed, with respect to all course development, is that of author and editor, final approval and ownership rights over University-developed material will vest in the University. . . ." Once again, in making a deal with a private firm, the University is explicitly identifying itself as the "author" of all course materials having full "ownership rights."

Having made clear its proprietary claims vis a vis Real Ed, the University has also made an effort to establish the contractual basis for such claims vis a vis its faculty. The University has drawn up an "Agreement for Development of Courses Between the Regents of the University of Colorado and Faculty Course Developer" to be signed by all faculty developing online courses. According to this agreement, "Faculty acknowledges that the 'on-line course is deemed as a 'work made for hire' within the meaning of the U.S. Copyright Act of 1976 and The Board of Regents of the University of Colorado shall own exclusively and forever all rights thereto including derivative works." In addition, "Faculty acknowledges and agrees that the 'on-line' course itself may not be used in faculty consulting, in delivering lectures or presentations to another academic institution, and may not be duplicated or distributed to other individuals, academic institutions or corporations without a written agreement and approval of the University." In return for developing a typical three-credit course and assigning copyright on all course materials to the University, the faculty member receives one thousand dollars plus royalties of ten percent of revenues up to \$125,000 and fifteen percent thereafter. (Real Ed receives five thousand dollars for each course developed plus one hundred dollars per student.) At present, faculty involvement in online course development is voluntary. However, according to the agreement with Real Ed, the University has the power to designate which faculty will develop such courses. According to Maureen Schlenker of the University of Colorado at Denver who oversees "UC Online," departments might require faculty to participate. No doubt untenured and part-time instructors, those with the least job security and lowest pay, will most likely be pressed into service. Marvin D. Loflin, dean of the college of arts and sciences on the Denver campus, says he is considering plans to hire non-professorial "teaching associates" to teach on-line courses. "I'm prepared to make over the whole infrastructure of higher education," he recently proclaimed to the Chronicle of Higher Education (March 27, 1998, p. A30).

These agreements herald a new regime in higher education, one which is taking hold of the nation's campuses at an accelerating rate: the commoditization and commercialization of instruction. Extension programs are the cutting edge for this new commercial ethos not only because of their obvious involvement in distance learning but also because they are typically staffed by the most vulnerable instructors, people who have little job security and would thus be most ready to comply with university demands. But as the arrangement between the University of Colorado and Real Ed makes especially clear, the new regime of online education extends far beyond university extension programs and the most vulnerable. Indeed, it is now becoming increasingly apparent that the real market for online courses will be the on-campus population, as the experience of the University of Colorado aleady indicates. And as UCLA's Instructional Enhancement Initiative makes plain, faculty at all levels will ultimately be drawn into the new regime, through encouragement or coercion. The implications of these agreements therefore must be considered seriously by anyone who is using or plans to use electronic means to enhance or deliver their courses. Who owns the material you have placed on the Website or e-mail? Without a clear and definitive assertion of copyright claims by faculty, the universities will usurp such rights by default.

This is a matter of some urgency and it is especially pressing for those faculty who work in a non-union workplace. Unionized faculty have at least an organization and collective bargaining rights through which they might fight for their rightful claims. But non-unionized faculty must invent other means. One strategy might be for faculty to file for injunctions against their universities to prevent them from entering into or complying with agreements in which they make claim to copyright on course materials that legally belong to faculty. These agreements might well be illegal, perhaps involving fraud, and hence invalid. Faculty might also investigate whether or not their university is involved in the delivery of any courses without having first obtained a signed copyright agreement with the instructor. Once again, this might well involve an illegal infringement of copyright. But by whatever means, collective bargaining, litigation, or direct action, faculty must act, and act now, to preserve their rights.

University control over copyright is the sine qua non of the Digital Diploma Mills. Without it the universities and their corporate partners cannot proceed. As the CEO of Simon and Schuster, Jonathan Newcomb, has stated, commercial online education presupposes "advances in digital technology coupled with the protection of copyright in cyberspace." Only by resisting and opposing university control over copyright will faculty be able to preserve their legal rights, their autonomy, their jobs, and, above all, the quality and integrity of higher education. The fate of higher education is in their hands.

3 The Bloom Is Off the Rose

November 1998

Abe and Moe run into each other on Flatbush Avenue.

"Boy, have I got a deal for you" Moe," says Abe. "I've got these fancy new university courses, computers and everything, you can take it right from your own living room. What do you think?"

"Sounds nice," says Moe, "How much?"

"For you, my friend, a bargain," says Abe, "Only three hundred dollars."

"I'll take it" says Moe.

Four months later they run into each other again.

"Hey Abe, you crook," says Moe, "Remember that course you sold me?"

"Sure," says Abe, "what about it?"

"It was lousy," says Moe, "I didn't learn a thing."

"Moe, you dummy, of course you didn't," says Abe. "That was a buying and selling course, not a learning course!"

Far sooner than most observers might have imagined, the juggernaut of online education appears to have stalled. Only a year ago, it seemed there was no stopping it. Promoters of instructional technology and "distance learning" advanced with ideological bravado as well as institutional power, the momentum of human progress allegedly behind them. They had merely to proclaim "it's the future" to throw skeptics on the defensive and convince seasoned educators that they belonged in the dustbin of history. The monotonal mantras about our inevitable wired destiny, the prepackaged palaver of silicon snake-oil salesmen, echoed through the halls of academe, replete with sophomoric allusions to historical precedent (the invention of writing and the printing press) and sound-bites about the imminent demise of the "sage on the stage" and "bricks and mortar" institutions. But today, alas, the wind is out of their sails, their momentum broken, their confidence shaken.

At countless campus forums on the subject throughout North America, the burden of proof has squarely shifted from the critics to the promoters. Though still amply funded and politically supported, it is they who are now on the defensive, compelled, in the wake of repeated failures and in the face of mounting skepticism, to try to buttress their still lame arguments with half-baked data about pedagogical usefulness, economic return, or market demand. Attendance at campus events has multiplied an order of magnitude as faculty and students have finally become alert to the administrative agendas and commercial con-games behind this seeming technological revolution.

Off campus, the scene is much the same. Study after study seems to confirm that computer-based instruction reduces performance levels and that habitual Internet use induces depression. Advertisers peddle platinum Mastercards and even Apple laptop computers by subtly acknowledging that "seven days without e-mail" is "priceless" and that being in touch with your office from anywhere anytime is a "bummer." Meanwhile, all the busy people supposedly clamoring for distance learning - who allegedly constitute the multi-billion dollar market for cyberinstruction - are curling up at night with the New York Times top bestseller, Tuesdays with Morrie, a sentimental evocation of the intimate, enduring, and life-enriching relationship between a former student and his dying professor. “Have you ever really had a teacher? One who saw you as a raw but precious thing, a jewel that, with wisdom, could be polished to a proud shine? If you are lucky enough to find such teachers, you will always find your way back.” So much for distance learning.

Above all, a spectre is haunting the high-tech hijackers of higher education, the spectre of faculty (and student) resistance. Last Fall this Digital Diploma Mills series began with the juxtaposition of two events. The first, UCLA’s Instructional Enhancement Initiative (and partnership with The Home Education Network), signalled the commoditization of instruction and commercialization of higher education by means of digital technology. The second, the unprecedented two-month strike by faculty at York University, represented the first significant sign of opposition to this new regime and the unholy alliance among academic administrators and their myriad corporate and political partners. In this new age of higher education, I wrote then,”the lines have already been drawn in the struggle which will ultimately determine its shape.” Over the last year, this struggle has intensified.

At UCLA, the widely-touted Instructional Enhancement Initiative, which mandated web sites for all 3800 arts and sciences courses, has floundered in the face of faculty recalcitrance and resistance. By the end of the academic year, only thirty percent of the faculty had put any of their course material online and several dozen had actively resisted the Initiative and the way it had been unilaterally inspired and implemented. UCLA Extension’s partnership with The Home Education Network (which changed its name in the Spring to Onlinelearning.net) ran aground on similar shoals when instructors made it clear that they would refuse to assign any of their rights in their course materials to either UCLA (the Regents) or the company. In already up to their necks, the partners decided simply to claim the rights anyway and proceed apace, flying without wings on borrowed time. While the strike at York awakened the faculty there to a new vigilance and militancy with regard to the computer-based commercialization of the university, it also emboldened others elsewhere to do likewise. At Acadia University, for example, which had linked up with IBM in hopes of becoming the foremost wired institution in Canada, the threat of a faculty strike forced the administration to back off from some of their unilateral demands for online instruction, and faculties at other Canadian institutions have been moving in the same direction. And even within Simon Fraser University’s Department of Communications, home of the recently refunded Canadian flagship Telelearning Research Center, serious faculty challenges to the virtual university enterprise have emerged and gone public.

In the United States as well, resistance is on the rise. Last year faculty and students in the California State University system, the largest public higher educational institution in the country, fought vigorously and effectively against the California Educational Technology Inititiative (CETI), an unprecedented deal between CSU and a consortium of firms (Microsoft, GTE, Hughes, and Fujitsu), which would have given them a monopoly over the development of the system’s telecommunications infrastructure and the marketing and delivery of CSU online courses. Students resisted being made a captive market for company products while faculty responded to the lack of faculty consultation and threats to academic freedom and their intellectual property rights. In particular, they feared that CETI might try to dictate online course content for commercial advantage and that CSU would appropriate and commercially exploit their course materials.

Throughout the CSU system, faculty senates passed resolutions against CETI, tried to obtain an injunction to stop the deal, and used the media and public forums to campaign against it. Together with students, faculty participated in widely publicized demonstrations; at Humboldt State University in northern California, students demonstrating against the deal altered the sign at the campus entrance to read “Microsoft University”, a creative act of defiance which caught the attention of media around the country. Through the efforts of the Internet activist group NetAction, the controversy over the CETI deal became a cause celebre, galvanizing opposition and leading to high-profile government hearings and legislative scrutiny and skepticism. Opposition to the deal from California-based business competitors such as Apple, Netscape, and Sun (none of the CETI partners were California-based) also contributed to the erosion of legislative support for the half-baked deal (which was seen as probably unconstitutional under state law). Before long, Microsoft and Hughes dropped out, then GTE, and the deal was dead. A new deal is in the works but is sure to encounter determined and well-organized opposition.

Further north at the University of Washington in Seattle, a campus with little recent history of faculty activism, four hundred faculty members attended a February forum on “digital diploma mills” sponsored by the local chapter of the AAUP. Later that Spring, Washington governor Gary Locke and Wallace Loh,his chief advisor on higher education, gave speeches extolling the virtues of the “brave new world of digital education” and outlined plans for statewide initiatives in that direction. The AAUP immediately drafted an open letter to the governor vigorously opposing this vapid vision and circulated it among the faculty. Within two days, seven hundred faculty from across the campus, from slavic studies to computer science, had signed the letter - surely a record for concerted faculty action of any kind. Another two hundred signatures were later added and the letter was made public, in early June. Within a week, this bold and eloquent faculty protest had made headlines around the country.

”We feel called upon to respond before quixotic ideas harden into disastrous policies,” the faculty wrote the governor. “While costly fantasies of this kind present a mouth-watering bonanza to software manufacturers and other corporate sponsors, what they bode for education is nothing short of disastrous. . . . Education is not reducible to the downloading of information, much less to the passive and solitary activity of staring at a screen. Education is an intersubjective and social process, involving hands- on activity, spontaneity, and the communal experience of sharing in the learning enterprise.... We urge you to support learning as a human and social practice, an enrichment of soul and mind, the entitlement of all citizens in a democracy, and not a profit-making commodity to be offered on the cheapest terms to the highest bidder. The University of Washington is a vital resource to our community, not a factory, not a corporation, not a software package. Its excellence and integrity are not only assets that we as a community can afford to maintain, but also assets that we cannot afford to squander.”

The widespread academic and media support engendered by this letter compelled the governor to meet with a faculty delegation and ultimately to retreat somewhat from fully embracing the virtual education agenda, at least for now. “We’re not unique,” history professor Jim Gregory, one of the organizers of the letter campaign, told the press. “We just may be a little more mobilized at this particular moment.” He was right. All the way at the other end of the continent, near Ft. Myers, Florida, similar sentiments were emerging. The Florida Gulf Coast University (FGCU) , the new tenth campus of the state higher education system, was advertised as the "university of the future," "built as a testing-ground for Internet-based instruction," where faculty are hired on short-term contracts without a tenure system. In recent months the FGCU faculty and their union the United Faculty of Florida have begun openly to question the pedagogical value of online education, protest against the increased workload entailed in distance learning - a major complaint everywhere, resist the university's attempt to appropriate their intellectual property, and lobby for a standard tenure system rather than have to reapply for their jobs every two years.

In an administration survey, more than half of the faculty - who were hired on the understanding that the new campus would specialize in distance education - opposed increasing the proportion of distance-learning classes from 16 to 25 percent of classes. "Some professors say they remain unconvinced of the method's effectiveness," the Wall Street Journal reported in July. The questionable economic viability of existing distance education classes has also been an issue.

"Some observers say significant savings can be achieved only if the size of distance-learning classes increases," the newspaper reported, but enlarging the classes only undermines the pedagogical promise even more. Intellectual property issues are at the center of faculty concerns. Faculty became especially alarmed when the Dean of Instructional Technology Kathleen Davie was quoted in a Chronicle of Higher Education article saying that, with regard to faculty course materials "the first rights belong to the university." A new draft policy on intellectual property, formulated without faculty involvement by Davie and her associates, is explicit on this point: "IP developed by FGCU employees (faculty, staff, and students) under university sponsorship or with university support shall belong to the university. University sponsorship or support means the work is conceived or reduced to practice: as a result of the employee's duties; through the use of University resources, such as facilities or equipment; or with university funds, or funds under the control of or administered by the university." In a response to a faculty member's query about this, Dean Davie summed up the university position: "For the most part, the university holds the copyrights for instructional materials created as part of one's compensated workload."

The creator of one course has already complained about the university's efforts to seek outside sponsorship without his permission. Chuck Lindsay, the president of the FGCU Faculty Senate, noted in a letter to the Chronicle of Higher Education that the faculty had not been involved in the formulation of the policy and emphasized that "we do not subscribe to the notion that online course materials are, as such, a product of work for hire. . . .We hold that any policy that attempts to lay down across-the- board levels of ownership and revenue sharing for new online course materials reflects a perspective that ascribes an inferior status to original instructional creations and a work for hire mentality;both are contrary to the mission and guiding principles of FGCU.

FGCU is not alone in moving in this direction, of course; draft policies of the University of California, the University of Victoria, the University of Kansas, and Penn State, to name a few, reflect similar intent. But here the unionized faculty have kept themselves abreast of the situation, have gone public with their concerns, and have begun to mobilize their resources for the struggle. The administration is on the defensive. In an interview this summer, Dean Davie acknowledged that she had personally declined a faculty request that I be invited to the campus to hold a forum on these issues, out of fear of jeopardizing her position.

The faculty actions at CSU, the University of Washington, and FGCU are not isolated events. There is similar ferment throught academia. This became apparent at the international Digital Diploma Mills conference held at Harvey Mudd College in Claremont, California in April. The conference attracted well-informed faculty and student participants and an audience of campus activists and rank and file union members from throughout the United States and Canada, as well as Mexico. (The keynote speaker was Mary Burgan, general secretary of the AAUP, who suggested that "distance makes the heart grow colder.") The two days of sessions critically examined the political economy, pedagogical value, and economic viability of online education and explored the implications for faculty and students, while those in attendance used their free time to compare notes, make contacts and extend their networks. The Chronicle of Higher Education ran a two-page story on the conference, which ended on an revealing note, pointing out that "officials at Harvey Mudd took pains to distance themselves from the event."

At the same time, faculty and student activists have been holding similar forums on their own campuses. I myself have participated in many such events at campuses such as the University of Pittsburgh, Alma College, James Madison University, Embry-Riddle University, George Mason University,the University of Western Ontario, the University of Wisconsin, the University of Washington, the California State University campuses in Sacramento and San Bernadino, California Polytechnic University in Pomona, and the University of California campuses at Irvine and Los Angeles. Increasingly, and everywhere, faculty and students alike are waking up to the realization that it is High Noon for Higher Education. They are overcoming their traditional timidity and parochialism to make common cause with like-minded people across the continent, to fight for their own and the larger public interest against the plans and pronouncements of peddlers and politicians who in general know little about education. Having learned that they are not alone, faculty are displaying a new-found confidence in their own experience and expertise, and thus in their rightful capacity to decide what is a good education. Socrates, they have reminded themselves, was not a content provider.

In the wake of this resistance, the media has caught the scent, publicly validating and magnifying its message. After several years of puff pieces and press releases about the wonders of wired learning, the media is finally beginning to give the matter more scrutiny and critics their due. "Virtual Classes Trend Alarms Professors," the New York Times reported in June; a front page article in the Wall Street Journal in August carried the headline "Scholarly Dismay: College Professors Balk at Internet Teaching Plans;" describing what it called the "backlash against virtual education," the Christian Science Monitor carried another summer story entitled "Professors Peer Doubtfully into a Digital Future;" the Industry Standard, "The Newsmagazine of the Internet Economy," began its feature article "Academics Rebel Against an Online Future" with the words: "Hell no - we won't go - online. . . .The backlash has begun."

The San Francisco Chronicle, the Seattle Times, the Los Angeles Times, the Boston Globe - all have run critical articles examining the commoditization and commercialization of university instruction. In June the Industry Standard's cover story was "Ideas for Sale: Business is racing to bring education online. Now academics fear they're becoming just another class of content provider." The headline for the article read "Higher Earning: the

Fight to Control the Academy's Intellectual Capital." In response to the open letter to the governor from University of Washington faculty that same month, The Seattle Times ran an editorial entitled "Potential Pitfalls," noting that "Signs of high tech corporate corruption are already sneaking into higher education classrooms." Indeed.

If the media-annointed "backlash" against virtual education has prompted a bit more skepticism on the part of reporters and editorial writers, so too has the pitiful performance of the virtuosi themselves, whose market appears to have been a mirage. After several years of high- profile hype and millions of dollars, the flagship Western Governors' Virtual University opened for business this Fall, offering hundreds of online courses. Expecting an initial enrollment of 5000, the WGU enrolled only 10 people, and received just 75 inquiries. Intended to put a positive spin on this disaster, WGU marketing director Jeff Edward's doubletalk unwittingly hit the nail on the head: "it points out that students are pretty serious about this." Serious enough, that is, to know crap when they see it.

It's pretty much the same story at Onlinelearning.net, the UCLA partner that describes itself as "one of the leading global supplers of online continuing education." The company lost two million dollars in its first year of business and was unable to pay UCLA the anticipated royalties. According to insiders, it is currently losing about $60,000 a month. John Kobara, the president of the company and former UCLA vice chancellor for marketing acknowledged at a company event this month that it is indeed a very risky business. Kobara noted that most apparent successes are misleading: at the Universities of Colorado, Washington, and Arizona, the great majority of allegedly "distance learning" customers "are in the dorms" while most online programs, such as those at Berkeley and Vanderbilt, have retention rates of well less than 50%. "Retention is the challenge," Kobara explained. Getting people enrolled is one thing, and difficult enough. Getting them to remain enrolled and complete their courses is another thing entirely. A November 2nd article in the New York Times entitled "More Colleges Plunging Into Uncharted Waters of On-Line Courses," confirmed that these were not isolated experiences.

Distance learning administrators are keeping their chins up and issuing upbeat press releases which are increasingly hard to believe. Officials at WGU, which recently joined forces with Britain's Open University in an attempt to improve its prospects , the Southern Regional Electronic Campus (SREC) which coordinates distance learning courses in sixteen southern states, and the California Virtual University, which coordinates the online offerings of one hundred California campuses, have all expressed optimism about the future of distance learning. "We feel confident that there is tremendous interest, especially in the non-traditional student environment," said WGU's Jeffrey Xouris. "Figures indicate significant interest in distance education," said CVU's Rich Halberg. "The dirty little secret," Gerald Heeger, dean of Continuing and Professional Studies at NYU, told the New York Times, "is that nobody's making any money."

Great expectations have yielded great expenditures, that is the story so far. The high-tech hallucinations of new revenue streams that so enchanted administrators everywhere were conjured up by voo-doo demographics, which mistook distance for demand. What was left out of the equation was whether or not people, on the basis of convenience and computer gimmickry, would be willing to pay more for less education. Apparently not.

In time-honored fashion, the purveyers of this dismal product have turned to the taxpayer to bail them out. They are placing their bets on the Distance Education Demonstration

Program contained in the education bill recently approved by Congress and signed by Bill Clinton, which waives classroom requirements for federal student aid eligibility for distance learning customers, thereby priming the distance education market and providing an indirect subsidy to vendors. According to existing law, students must spend a specified number of hours in a classroom to be eligible for student aid. Vendors have been lobbying for some time, against strenuous opposition from traditional academic institutions and unions, for a waiver of such requirements, which would render their customers eligible for student aid and them eligible for a handsome handout.

The new legislation grants such a waiver for fifteen organizations engaged exclusively in distance learning, including the Western Governor's University. But, even fattened with such pork, it is unlikely that the distance-learning market will materialize on anything like the scale dreamed up by the wishful thinkers of Wall Street. An inflated assessment of the market for online distance education has been matched by an abandonment of financial common sense, as officials recklessly allocated millions of (typically taxpayer) dollars toward untested virtual ventures. Suckered by the siren-songs and scare-tactics of the silicon snake-oil salesmen, university and college officials have thrown caution to the wind and failed to full cost their pet projects. As former chief university financial officer Christopher Oberg warned at the Harvey Mudd conference, administrators have suspended normal accounting practices at their peril, and the returns are in. (Little wonder, perhaps, that the presumably more sober Certified Public Accounts Review program at Northern Illinois University has broken off its partnership with online vendor Real Education, citing questionable business practices.)

In the face of faculty and student resistance, increasing media skepticism, and notably lackluster performance, some university administrators are beginning to break ranks. It is perhaps no surprise to hear a note of caution emanating from an elite private institution, which must retain some semblance of genuine education for its privileged clientele even while competing for their favors with high-wired acts. Yet it is nevertheless remarkable to find it coming from one of the nation's premier technical institutions, which famously foisted all of this technology upon us in the first place. Last year Michael Dertouzos, director of M.I.T.'s Laboratory for Computer Science - home of the World Wide Web - waxed eloquently about the virtues of non-virtual education. "Education is much more than the transfer of knowledge from teachers to learners. As an educator myself, I can say firsthand that lighting the fire of learning in the hearts of students, providing role models, and building student-teacher bonds are the most critical factors for successful learning. These cardinal necessities will not be imparted by information technology. . . . teachers' dedication and ability will still be the most important educational tool." And now, Dertouzos' boss, M.I.T. president Charles Vest, has added his voice to the chorus. "Even though I'm from M.I.T., I'm not convinced technology is the answer to everything," Vest conceded. In particular, the relationship between teacher and student "is an experience you can never replace electronically." Echoes of Tuesdays with Morrie.

More striking still is the recent inaugural address of J. Bernard Machen, the new president of the University of Utah. The University of Utah is located in Salt Lake City, the headquarters of the WGU, and among the distinguished guests at the inauguration was Utah governor and WGU co-chairman Michael Leavitt, who once proclaimed that "in the future an institution of higher education will become a little like a local television station." Formerly the provost at the University of Michigan, Machen forcefully decried the vocational emphasis of online learning and the shifting allocation of public higher education resources toward virtual instruction at the expense of traditional campus-based education. "Let us not succumb to the temptation to force a college education to its lowest common denominator," Machen insisted. "It inherently limits the broader, more interactive aspects of a university education. Spontaneous debate, discussion, and exchange of ideas in the classroom are essential in developing the mind. Poetry must be heard, interpreted and discussed, with professors and classmates. Learning about the different professions and academic disciplines available at the University of Utah requires personal involvement, and that is only available on our campus, and it can only be experienced by being here. . . . The kind of education I am describing is not the cheapest, but it is the best."

Predictably, Machen's remarks were derisively dismissed by governor Leavitt's office. "It is not the first time that we have heard a kind of fearful, skeptical reaction of the higher education community," one aide to the governor remarked, in a condescending manner all too familiar to faculty critics. But they are not listening carefully, for this is not what they have heard before. The tune may be the same, but the tone has changed, dramatically. No longer are students and faculty (and the rare administrator) speaking up for quality education out of fear and defensiveness in the face of a preordained and prematurely foreclosed virtual future. Emboldened by recent experience (and forewarned by the diastrous demise of public health care), their voices now resonate with new-found conviction and resolve, with the confident and joyful determination to forge a different future. No time for complacency, to be certain, to abandon vigilance or vital preparation for critical battles to come (especially the battle over intellectual property), but the tide appears to have turned. Indeed, it is now the tired response of the governor's office that appears time-worn and out of touch, the damning words strangely hollow without the weight of history behind them.

The bloom is off the rose.

4 Rehearsal for the Revolution

November 1999

> *"Those who cannot remember the past are condemned to repeat it"—George Santayana*

All discussion of distance education these days invariably turns into a discussion of technology, an endless meditation on the wonders of computer-mediated instruction. Identified with a revolution in technology, distance education has thereby assumed the aura of innovation and the appearance of a revolution itself, a bold departure from tradition, a signal step toward a preordained and radically transformed higher educational future. In the face of such a seemingly inexorable technology-driven destiny and the seductive enchantment of technological transcendence, skeptics are silenced and all questions are begged. But we pay a price for this technological fetishism, which so dominates and delimits discussion. For it prevents us from perceiving the more fundamental significance of today's drive for distance education, which, at bottom, is not really about technology, nor is it anything new. We have been here before.

In essence, the current mania for distance education is about the commodification of higher education, of which computer technology is merely the latest medium, and it is, in reality, more a rerun than a revolution, bearing striking resemblance to a past today's enthusiasts barely know about or care to acknowledge, an earlier episode in the commodification of higher education known as correspondence instruction or, more quaintly, home study. Then as now, distance education has always been not so much technology-driven as profit-driven, whatever the mode of delivery. The common denominator linking the two episodes is not technology but the pursuit of profit in the guise and name of higher education. A careful examination of the earlier, pre-computer, episode in distance education enables us to place the current mania not only in historical perspective but also in its proper political-economic context. The chief aim here is to try to shift our attention from technology to political economy, and from fantasies about the future to the far more sobering lessons of the past.

Before proceeding with the historical analysis, it is important to spell out what is meant by both education and commodification, since these terms are often used with little precision. To begin with, education must be distinguished from training (which is arguably more suitable for distance delivery), because the two are so often conflated. In essence, training involves the honing of a person's mind so that that mind can be used for the purposes of someone other than that person. Training thus typically entails a radical divorce between knowledge and the self. Here knowledge is usually defined as a set of skills or a body of information designed to be put to use, to become operational, only in a context determined by someone other than the trained person; in this context the assertion of self is not only counter-productive, it is subversive to the enterprise. Education is the exact opposite of training in that it entails not the disassociation but the utter integration of knowledge and the self, in a word, self-knowledge. Here knowledge is defined by and, in turn, helps to define, the self. Knowledge and the knowledgeable person are basically inseparable.

Education is a process that necessarily entails an interpersonal (not merely interactive) relationship between people – student and teacher (and student and student) that aims at individual and collective self-knowledge. (Whenever people recall their educational experiences they tend to remember above all not courses or subjects or the information imparted but people, people who changed their minds or their lives, people who made a difference in their developing sense of themselves. It is a sign of our current confusion about education that we must be reminded of this obvious fact: that the relationship between people is central to the educational experience). Education is a process of becoming for all parties, based upon mutual recognition and validation and centering upon the formation and evolution of identity. The actual content of the educational experience is defined by this relationship between people and the chief determinant of quality education is the establishment and enrichment of this relationship.

Like education, the word commodification (or commoditization) is used rather loosely with regard to education and some precision might help the discussion. A commodity is something created, grown, produced, or manufactured for exchange on the market. There are, of course, some things which are bought and sold on the market which were not created for that purpose, such as "labor"and land – what the political economist Karl Polanyi referred to as"fictitious commodities". Most educational offerings, although divided into units of credit and exchanged for tuition, are fictitious commodities in that they are not created by the educator strictly with this purpose in mind. Here we will be using the term commodity, not in this fictitious, more expansive,sense but rather in its classical,restricted sense, to mean something expressly created for market exchange. The commoditization of higher education, then, refers to the deliberate transformation of the educational process into commodity form, for the purpose of commercial transaction.

The commodification of education requires the interruption of this fundamental educational process and the disintegration and distillation of the educational experience into discrete, reified, and ultimately saleable things or packages of things. In the first step toward commodification, attention is shifted from the experience of the people involved in the educational process to the production and inventorying of an assortment of fragmented "course materials": syllabi, lectures, lessons, exams (now referred to in the aggregate as "content"). As anyone familiar with higher education knows, these common instruments of instruction barely reflect what actually takes place in the educational experience, and lend an illusion of order and predictability to what is, at its best, an essentially unscripted and undetermined process. Second, these fragments are removed or "alienated" from their original context, the actual educational process itself, and from their producers, the teachers, and are assembled as "courses," which take on an existence independent of and apart from those who created and gave flesh to them. This is perhaps the most critical step in commodity formation. The alienation of ownership of and control over course material (through surrender of copyright) is crucial to this step. Finally, the assembled "courses" are exchanged for a profit on the market, which determines their value, by their "owners", who may or may not have any relationship to the original creators and participants in the educational process. At the expense of the original integrity of the educational process, instruction has here been transformed into a set of deliverable commodities, and the end of education has become not self-knowledge but the making of money. In the wake of this transformation, teachers become commodity producers and deliverers, subject to the familiar regime of commodity production in any other industry, and students become consumers of yet more commodities. The relationship between teacher and student is thus re-established,in an alienated mode, through the medium of the market, and the buying and selling of commodities takes on the appearance of education. But it is, in reality, only a shadow of education, an assemblage of pieces without the whole.

Again, under this new regime, painfully familiar to skilled workers in every industry since the dawn of industrial capitalism, educators confront the harsh realities of commodity production: speed-up, routinization of work, greater work discipline and managerial supervision, reduced autonomy, job insecurity, employer appropriation of the fruits of their labor, and, above all, the insistent managerial pressures to reduce labor costs in order to turn a profit. Thus, the commoditization of instruction leads invariably to the "proletarianization" or, more politely, the "deprofessionalization" of the professoriate. (As investors shift their focus from health care to education, the deprofessionalization experienced by physicians is being extended to professors, who now face what some Wall Street spokesmen are already calling EMO's, the education counterpart to HMO's.)

But there is a paradox at the core of this transformation Quality education is labor-intensive, it depends upon a low teacher-student ratio, and significant interaction between the two parties – the one utterly unambiguous result of a century of educational research. Any effort to offer quality in education must therefore presuppose a substantial and sustained investment in educational labor, whatever the medium of instruction. The requirements of commodity production, however, undermine the labor-intensive foundation of quality education, (and with it, quality products people will willingly pay for). Pedagogical promise and economic efficiency are thus in contradiction. Here is the achilles heel of distance education. In the past as well as the present, distance educators have always insisted that they offer a kind of intimate and individualized instruction not possible in the crowded, competitive environment of the campus. Theirs is an improved, enhanced education. To make their enterprise profitable, however, they have been compelled to reduce their instructional costs to a minimum, thereby undermining their pedagogical promise. The invariable result has been not only a degraded labor force but a degraded product as well. The history of correspondence education provides a cautionary tale in this regard, a lesson of a debacle hardly heeded by those today so frantically engaged in repeating it.

The rhetoric of the correspondence education movement a century ago was almost identical to that of the current distance education movement. Anytime, anywhere education (they didn't yet use the word "asynchronous") accessible to anyone from home or workplace, advance at your own pace, profit from personalized, one-on-one contact with your instructor, avoid the crowded classroom and boring lecture hall. In brief, correspondence instruction emerged in the last decade of the nineteenth century along two parallel paths, as a commercial, for-profit enterprise, and as an extension of university-based higher education. At the heart of both was the production and distribution of pre-packaged courses of instruction, educational commodities bought, sold, and serviced through the mail.

The commercial effort arose in the expectation of profiting from the growing demand for vocational and professional training, generated by increasingly mechanized and science-based industrial activity, and rapidly devolved into what became known as diploma mills. The university effort arose in response to the same demand for vocational training, as an attempt to protect traditional academic turf from commercial competition, to tap into a potent new source of revenues, and as a result of a genuinely progressive movement for democratic access to education, particularly adult education. While the universities tried initially to distinguish themselves in both form and content from their increasinly disreputable commercial rivals, in the end, having embarked down the same path of commodity production, they tended invariably to resemble them, becoming diploma mills in their own right.

The parallels with the present situation are striking. For-profit commercial firms are once again emerging to provide vocational training to working people via computer-based distance instruction. Universities are once again striving to meet the challenge of these commercial enterprises, generate new revenue streams, and extend the range and reach of their offerings. And although trying somehow to distinguish themselves from their commercial rivals – while collaborating ever more closely with them – they are once again coming to resemble them, this time as digital diploma mills. In the following pages we will examine in some detail the history of the correspondence education movement in the U.S, looking first at the commercial ventures and then at the parallel efforts of the universities. The account of the university experience is based upon heretofore unexamined archival records of four of the leading institutions engaged in correspondence instruction: the University of Chicago, Columbia University, the University of Wisconsin and the University of California, Berkeley. Following this historical review of the first episode in the commodification of higher education, we will return to the present to indicate some similarities with the current episode.

Thomas J. Foster established one of the earliest private, for-profit correspondence schools in Pennsylvania in the late 1880's to provide vocational training in mining, mine safety, drafting and metalworking. Spurred by the success of these efforts, he founded in 1892 the International Correspondence Schools, which became one of the largest and most enduring enterprises in this burgeoning new education industry. By 1926 there were over three hundred such schools in the U.S., with an annual income of over $70 million (one and a half times the income of all colleges and universities combined), with fifty new schools being started each year. In 1924 these commercial enterprises, which catered primarily to people who sought qualifications for job advancement in business and industry, boasted of an enrollment four times that of all colleges, universities, and professional schools combined. Copyrighted courses were developed for the firms in-house by their own staff or under contract with outside "experts," and were administered through the mail by in-house or contract instructors. Students were recruited through advertisements and myriad promotional schemes, peddled by a field salesforce employed on a commission basis.

In their promotional activities and material, targeted to credulous and inexperienced youth, the commercial firms claimed that their courses would guarantee students careers, security, wealth, status and self-respect. "If you want to be independent," one firm pitched, "if you want to make good in the world; if you want to get off somebody's payroll and head one of your own; if you want the many pleasures and luxuries that are in the world for you and your family; if you want to banish forever the fear of losing your job – then – sign the pay-raising enrollment blank! Get it to me! Right now!". The chief selling point of education by means of correspondence, the firms maintained, was personalized instruction for busy people. "The student has the individual attention of the teacher while he is reciting, though it is in writing," another firm explained. The student "works at his own tempo set by himself and not fixed by the average capacities of a large number of students studying simultaneously. He can begin when he likes, study at any hours convenient to him, and finish as soon as he is able".

In all of the firms a priority was placed upon securing enrollment and the lion's share of effort and revenues was expended in promotion and sales rather than in instruction. Typically between fifty and eighty percent of tuition fees went into direct mail campaigns, magazine and newspaper advertisements, and the training and support of a sales staff responsible for "cold canvassing," soliciting "prospects" and intensive follow-ups and paid by the number of enrollments they obtained. "The most intensive work of all the schools is, in fact, devoted to developing the sales force," John Noffsinger observed in his 1926 Carnegie Corporation – sponsored study of correspondence schools written when the correspondence movement was at its peak. "This is by far the most highly organized and carefully worked out department of the school". "The whole emphasis on salesmanship is the most serious criticism to be made against the system of correspondence education as it now exists," Noffsinger noted. "Perhaps it cannot be avoided when schools are organized for profit," he added. Indeed, the pursuit of profit tended inescapably to subvert the noble intentions, or pretentions, of the enterprises, especially in what had become a highly competitive (and totally unregulated) field in which many firms came and went and some made handsome fortunes. In a burgeoning industry increasingly dominated by hucksters and swindlers who had little genuine knowledge of or interest in education per se, promotional claims were easily exaggerated to the point of fraud and the salesforces were encouraged to sign up any and all prospects, however ill-prepared for the coursework, in order to fulfill their quotas and reap their commissions (which often amounted to as much as a third of the tuition). Enrollees were typically required to pay the full tuition or a substantial part of it up front and most of the firms had a no-refund policy for the ninety to ninety-five percent of the students who failed to complete their course of study. (In Noffsinger's survey of seventy five correspondence schools only 2.6% of the enrolled students completed the courses they had begun.)

The remarkably high drop-out rate was not an accident. It reflected not only the shameless methods of recruitment but also the shoddy quality of what was being offered – the inevitable result of the profit-driven commodification of education. If the lion's share of revenues were expended on promotion – to recruit students and secure the up-front tuition payments – a mere pittance was expended on instruction. In the commercial firms the promotional staff was four to six times- and oftentimes twenty to thirty times – the size of the instructional staff and compensation of the former was typically many times that of the latter. In some firms, less than one cent of every tuition dollar went into instruction. For the actual "delivery" of courses – the correction of lessons and grading exams – most firms relied upon a casualized workforce of "readers" who worked part-time and were paid on a piecework basis per lesson or exam (roughly twenty cents per lesson in the 1920's). Many firms preferred "sub-professional" personnel, particularly untrained older women, for routine grading. These people often worked under sweatshop conditions, having to deliver a high volume of lessons in order to make a living, and were unable therefore to manage more than a perfunctory pedagogical performance. Such conditions were of course not conducive to the kind of careful, individualized instruction promised in the company's promotional materials. (As Noffsinger pointed out in his Carnegie study, "the lack of personal contact between teacher and student" was the "chief weakness" of the instruction.) The central "pedagogical" concern of the firms was clearly to keep instructional costs to a bare minimum, a fact caricatured in vaudeville sketches of correspondence education in which all work was done by a lone mail-clerk and the instructors dropped out of sight altogether.

All of this made perfect economic sense, however, and was summed up in correspondence industry jargon in the phrase "drop-out money". Since students were required to pay their tuition up-front without the possibility of a refund, and instructors were paid on a piece-work basis, once students dropped out there was no further instructional expense and what remained of the upfront payment was pure profit: "drop-out money". Given the economics of this cynical education system, there was no incentive whatsoever to try to retain students by upgrading the conditions of instruction and thereby improving the quality of course offerings. The economics in fact dictated the opposite, to concentrate all efforts upon recruitment and next to nothing on instruction. Already by the mid-1920's – when the correspondence movement was at its peak - increasing criticism of the commercial correspondence firms had largely discredited the industry, which was coming to be seen as a haven for disreputable hustlers and diploma mills. In 1924 the New York Board of Regents condemned the schools for their false claims and for their no-refund policies. "There is nothing inherent in correspondence as a method of instruction to disqualify it as a way to education," wrote Noffsinger, an avid supporter of adult distance education (and later official of the National Home Study Council, established to try to regulate the industry.) "Unfortunately," however, he lamented, "the majority of correspondence schools are not well equipped and still less conscientiously conducted. They are commercial enterprises designed to make quick and easy profits. Many of them are in the shady zone bordering on the criminal. A large proportion of those who enroll in correspondence courses are wasting time, money, and energy or even are being swindled". Noffsinger condemned "the victimization of hundreds of thousands who now are virtually robbed of savings and whose enthusiasm for education is crushed". In the commercial schools, Noffsinger warned, "the making of profit is their first consideration, a dangerous situation at best in education."

The evolution of university-based correspondence instruction closely parallelled that of the commercial schools. Following some early stillborn experiments in academic correspondence instruction in the 1880's, the university-based movement began in earnest in the 1890's; by the teens and twenties of this century it had become a craze comparable to today's mania for online distance education. The first entrant into the field was the newly founded University of Chicago whose first president William Rainey Harper was an early enthusiast for distance education. By the time he moved to Chicago from Yale, Harper had already had considerable experience in teaching via correspondence through the Chautauqua organization in New York state, and he made the Home Study Department one of the founding pillars of the new university. Following the lead of Chicago other institutions soon joined the ranks of the movement, notably the state universities of Wisconsin, Nebraska, Minnesota, Kansas, Oregon, Texas, Missouri, Colorado, Pennsylvania, Indiana, and California. By 1919, when Columbia University launched its home study program, there were already seventy-three colleges and universities offering instruction by correspondence. Emphasizing the democratization of education and hoping to tap into the lucrative market exploited by their commercial rivals, the universities echoed the sales pitch of the private schools.

Hervey F. Mallory, head of the University of Chicago Home Study Department proclaimed the virtues of individualized instruction, insisting that education by correspondence was akin to a "tutorial relationship" which "may prove to be superior to the usual method of teaching". "The student acts independently and for himself but at the same time, being in contact with the teacher, he is also enabled to secure special help for every difficulty". Correspondence study, the department advertised, offered three "unique advantages": "you receive individual personal attention; you work as rapidly as you can, or as slowly as necessary, unhampered by others as in a regular class;" and your studies "may begin at any time and may be carried on according to any personal schedule and in any place where postal service in available". Mallory insisted that correspondence study offered an education better than anything possible in "the crowded classroom of the ordinary American University". "It is impossible in such a context to treat students as individuals, overcome peer pressure for conformity, encourage students who are shy, slow, intimidated by a class setting". Home study, by contrast, "takes into account individual differences in learning" and the students "may do course work at any time and any place, and at their own personal pace". From the evangelical perspective of its proponents, then, correspondence education was more than just an extension of traditional education; it was an improvement, a means of instruction at once less costly and of higher quality, an advance, in short, which signalled a revolution in higher education. "What warrant is there for believing that the virility of the more ancient type of cloistered college and university could be maintained, except here and there, in our business civilization?" Mallory asked rhetorically. "The day is coming," President Harper prophesied, heralding that revolution,"when the work done by correspondence will be greater in amount than that done in the classroom of our academies and colleges, when the students who shall recite by correspondence will far outnumber those who make oral presentations".

As was the case with the commercial schools here too the promises and expectations of enthusiasts were thwarted by the realities of commodity production. Although they were not for-profit organizations per se, the correspondence programs of the universities were nevertheless largely self-supporting and hence, de facto, profit-oriented; a correspondence program's expenses had to be covered "by profits from its own operations," as Carl Huth of the University of Chicago's Home Study Department put it. And while it was initially assumed that this new form of instruction would be more economically efficient than traditional classroom-based instruction, the pioneers quickly discovered that correspondence instruction was far most costly to operate they they had imagined, owing primarily to the overhead entailed in administration. Almost from the outset, therefore, they found themselves caught up in much the same game as their commercial rivals: devising promotional schemes to boost enrollment in order to offset growing administrative costs, reducing their course preparation and revision expenses by standardizing their inventory and relying on "canned courses", and, above all, keeping instructional compensation to a minimum through the use of casual employment and payment by piecerate. Before too long, with a degraded product and drop-out rates almost comparable to that of the commercial firms, they too had come to depend for their survival upon "drop-out money."

From the outset, the leaders of the university programs pointedly distinguished their work from that of their disreputable commercial counterparts. It was unfortunate that the universities had "stepped aside to leave large part of the field of adult education to commercial schools or even to confidence men and swindlers," Mallory noted, but the new university programs would correct for that failure. "The most important fact about the university system of correspondence instruction in contrast to that of the commercial schools," he argued, "is the fact of institutional background, and that background is a great public-service institution – a modern university. . . . an organic whole whose spiritual or immaterial aspects are far more important than the concrete parts". The Home Study Department of the University of Chicago, he insisted, was "interwoven with the university" and thus reflected its exalted traditions and mission – what would today be called "brandworthiness". Accordingly, the Home Study Department initially emphasized that its courses would be taught by the same professors who taught courses on campus and, indeed, at the outset even President Harper himself offered a course by correspondence. But within a few years, most of the course delivery was being handled by an assortment of instructors, readers, associate readers, fellows, lecturers, associate lecturers, and assistants, their pay meagre and their status low. They were paid on a piecerate basis – roughly thirty cents per lesson and, under university statutes, received no benefits. Representatives from the regular faculty ranks were largely those at the lower rungs who took on correspondence work in order to supplement their own quite modest salaries. In order to make out, the Home Study instructors were compelled to take on a large volume of work which quickly devolved into uninspired drudgery, and it was understood that there was no future in it.

Initially, the Home Study Program was selective in its recruitment, requiring evidence of a prospective students's ability as a prerequisite for enrolling. Students had to have sufficient reason for not enrolling as a resident student and had to "give satisfactory evidence, by examination or otherwise, that he is able to do the work required". (The University of Chicago required at least partial resident matriculation for those seeking degrees and required examinations for credit given by correspondence.) Eventually, however, such entrance requirements were dropped in order to increase enrollments. According to the Home Study brochure some years later, "You need not take an entrance examination, nor present a transcript of work done elsewhere. Your desire to enroll in a particular course will be taken as evidence that you are prepared to do the work of that course". Although there were some early efforts at advertising and salesmanship, these were kept within what were considered proper bounds for a respectable institution of higher education – a university policy lamented by the Home Study Department, especially in the face of competition from other, more aggressive, institutions such as Columbia.

As in the case of the commercial schools here too the reduced quality of the courses combined with the lack of preparation of those enrolled produced a very high drop-out rate. And like the commercial schools – the University of Chicago adopted a no-refund policy; tuition was to be paid in full at the time of registration and, once registration was completed, fees were not refundable. As late as 1939, and despite the criticism of commercial schools on just this count, the University's president Robert Hutchins, the renowned champion of classical education, reaffirmed this policy. "The registration and tuition fee will not be refunded to a student whose application has been accepted and who has been duly enrolled in a course," Hutchins wrote to a correspondence student. "This statement reflects standard practice in correspondence schools everywhere".

Columbia University did not join the correspondence movement until 1919 but quickly became a leader in the field with revenues matched only by the University of Chicago. It owed its success to an unusually ambitious program aimed at a national and international market and an aggressive promotional effort that rivalled that of the commercial schools. A Home Study program was first proposed in 1915 by James Egbert, Columbia's head of extension, and the idea was enthuasiastically endorsed by Columbia's president Nicholas Murray Butler, an avid supporter of adult education who had earlier in his career been the founding director of Columbia's summer session for part-time students. In full flower by the mid-twenties, the Columbia correspondence program was providing instruction to students in every state and fifty foreign countries.

Although Columbia never gave academic credit for its correspondence courses aside from a certificate of completion, the university nevertheless strove to distinguish its offerings from those of the commercial schools, emphasizing "personal contact and supervision", concentrating on recognized academic subjects, limiting the number of students in each course, and keeping standards high through regular review of material by the appropriate academic faculty. The two-fold aim of Home Study, according to Egbert, was to extend the enlightening reach of the university while at the same time generating additional revenue. He and his colleagues soon discovered, however, that the preparation of course materials and the administration of the program were more demanding, labor-intensive, and expensive than had been anticipated. To offset these costs, they moved to broaden the correspondence curriculum into more lucrative vocational areas of every sort and to expand their promotional activities in an effort to enlarge the enrollment. In 1920 Home Study had 156 students; by 1926 there were nearly five thousand and that number was doubled by 1929. As Egbert undertook "to apply business methods" to his expanding operation, the program employed a national salesforce of sixty "field representatives" (as compared to one hundred instructors) who were paid a commission according to the number of students they enrolled. In addition, Columbia mounted a full-scale national advertising campaign in the manner of the commercial firms, with such themes as "Profit By Your Capacity to Learn", "Will you Increase Your Fixed Assets?", "Turning Leisure to Profit," "Who Controls Your Future?", "Who is Too Old to Learn?" and "Of What Can You Be Certain?". In 1929 Egbert proudly unveiled plans for a vastly expanded enterprise which would be housed in a new twelve-story building. Compared to the lavish expenditure on promotion, the Home Study program kept its instructional expenses to a minimum. Here too all payment for instruction was on a piecerate, per lesson basis. As at Chicago, while some faculty engaged in Home Study in order to supplement their salaries, they were likely to be "academic lame ducks", as one Home Study official described them, and the bulk of instruction was performed by a casualized low-status workforce of instructors, lecturers, and assistants. Overworked and undervalued, they were not quite able or inclined to provide the "personal contact" that was promised. While the Home Study Department continued to boast that all of their courses were "prepared so as to enable the instructor to adjust all study to the individual needs of each student", that "direct contact is maintained between the student and the instructor personally (emphasis in original) throughout the course,"and that correspondence students "can attain the many advantages of instruction of Univerity grade, under the constant guidance, suggestion, and help of regular members of the University teaching staff," the reality was otherwise. Together with fraudulent advertising and an indiscriminate enrollment policy, inescapably perfunctory instruction produced a drop-out rate of eighty percent, a rate comparable to that of the for-profit commercial schools.

The experience of two of the largest state university correspondence programs, Wisconsin and California (Berkeley) was similar to that of the private Chicago and Columbia, even though their institutions could draw upon public funds, because here too the departments were required to be largely self-supporting (public subsidy might be available for overhead but not instruction, which had to be borne by student fees). The Regents authorized correspondence courses at Wisconsin as early as 1891, a year before the University of Chicago, but it was not until 1906 that an actual correspondence department was established as part of Wisconsin's famous Extension program. From the very beginning, it was made explicit that correspondence courses "shall not involve the university in any expense." Originally correspondence instruction was conducted under the auspices of the regular faculty although the actual instructional duties were performed by "fellows" and "advanced students". Because of the onerous workload, faculty participation was minimal and enrollment remained small. The effort was revived under President Charles R. van Hise and his new director of extension Louis E. Reber, two engineers attuned especially to the training needs of industry.

Van Hise had recognized the economic potential of correspondence instruction, judging from the experience of the commercial schools, and he commissioned a study of the for-profit firms. "The enormous success of the commercial correspondence schools suggested that here was an educational opportunity which had been neglected by the Universities," van Hise wrote in 1906. "There are tens of thousands of students in the State of Wisconsin who are already taking correspondence work in private correspondence schools, probably more than thirty thousand, and they are paying for this work outside of the State more than three-quarters of a million dollars per annum".

Up to this point Wisconsin's correspondence courses had offered primarily academic and cultural fare under the auspices of the academic departments, but van Hise, at the behest of businessmen who offered to make donations to the University if it reactivated correspondence study, pushed the enterprise in a decidedly vocational and industrial direction. Reber, formerly the Dean of Engineering at Pennsylvania State University, had the same industrial orientation, viewing correspondence study primarily as a way of providing a trained workforce for industry. "It would be difficult under present conditions to provide a better means for meeting the persistent and growing demand for industrial training than the methods of correspondence study adopted by the University," he observed. "This fact has been cordially recognized and the work encouraged and aided by employers of men wherever it has been established". Before coming to Wisconsin Reber visited the International Correpondence Schools in Scranton and undertook to refashion the Wisconsin correspondence program along the same lines as that leading commercial enterprise.

Reber succeeded in having the correspondence department established independent of the regular faculty, with its own non-academic staff of instructors and with its courses removed from faculty control. Under Reber's direction the Wisconsin correspondence program grew enormously, drawing one of the largest enrollments in the country. The drop-out rate was roughly fifty-five percent and "drop-out money" was the name of the game.

Berkeley's program was modelled on Wisconsin's. Initially Berkeley's correspondence courses were meant to be the academic equivalent of resident courses, taught by university faculty and supervised by academic departments, and the university pledged to "place each student in direct personal contact with his instructor". But here too, the program administrators discovered that, as director Baldwin Woods later explained, "correspondence instruction is expensive". Thus, for economic reasons, the program moved to expand enrollment by catering to the greatest demand, which was for vocational courses for people in business and industry, by engaging in "continuous promotion," employing "field representatives," and relaxing admissions standards ("there is no requirement for admission to a class save the ability to pursue the work with profit.") Enrollment increased four-fold and fees were later increased to whatever the market would bear. Most of the instructional work was done by low-status, part-time "readers" described by one director as "overworked" who were paid on a piece-rate basis of twenty-five to thirty-five cents per lesson. Not surprisingly, the drop-out rate averaged seventy to eighty percent. Students were required to pay full tuition up-front and a partial refund was allowed only if no more than two lessons had been completed. In 1926 The President's Report declared that "the fee for a course must be set to bring in income. Expansion must be largely profitable".

At the end of the twenties, after nearly four decades in the business of correspondence instruction, the university-based programs began to come under the kind of scrutiny and scathing criticism heretofore reserved for the commercial schools. The first and most damning salvo came from Abraham Flexner, one of the nation's most distinguished and influential observers of higher education. Best known for his earlier indictment of medical education on behalf of the Carnegie Foundation, Flexner had served for fifteen years as general secretary of the Rockefeller-funded General Education Board and later became the founding director of the Institute for Advanced Study at Princeton. After his retirement from the General Education Board in 1928, Flexner delivered his Rhodes Lectures on the state of higher education in England, Germany, and the United States, which were published in 1930 under the simple title Universities. In his lectures on the situation in the United States, Flexner excoriated the American universities for their commercial preoccupations, for having compromised their defining independence and integrity, and for having thereby abandoned their unique and essential social function of disinterested critical and creative inquiry. At the heart of his indictment was a scornful assessment of university-based correspondence education, focusing in detail upon the academically unseemly activities of the University of Chicago and Columbia University. Flexner acknowledged the social importance of correspondence and vocational education but questioned whether they belonged in a university, where they distracted the institution from its special intellectual mission, compromised its core values, and reoriented its priorities in a distinctly commercial direction. The rush to cash in on marketable courses and the enthusiasm for correspondence instruction, Flexner argued, "show the confusion in our colleges of education with training". The universities, he insisted, "have thoughtlessly and excessively catered to fleeting, transient, and immediate demands" and have "needlessly cheapened, vulgarized, and mechanized themselves," reducing themselves to "the level of the vendors of patent medicines."

He lampooned the intellectually trivial kinds of courses offered by the correspondence programs of Columbia, the University of Chicago, and the University of Wisconsin, and wondered about what would make "a great university descend to such humbug". What sort of contribution is Columbia making towards a clearer apprehension of what education really is?", Flexner asked. He particularly decried Columbia's indiscriminate enrollment practices and especially its elaborate and deceptive promotional effort which, he argued, "befuddles the public" and generates a "spurious demand." If Columbia's correspondence courses were genuinely of "college grade" and taught by "regular members of the staff," as Columbia advertised, then why was no academic credit given for them? If correspondence instruction was superior to that of the traditional classroom, then why did not Columbia sell off its expensive campus and teach all of its courses by mail? "The whole thing is business, not education," Flexner concluded. "Columbia, untaxed because it is an educational institution, is in business: it has education to sell [and] plays the purely commercial game of the merchant whose sole concern is profit". Likewise, he bemoaned as "scandalous" the fact that "the prestige of the University of Chicago should be used to bamboozle well-meaning but untrained persons. . . by means of extravagant and misleading advertisements". Finally, pointing out that regular faculty in most institutions remained justifiably skeptical of correspondence and vocational instruction, he assailed the "administrative usurpation of professorial functions" and the casualization of the professoriate. "The American professoriate," Flexner declared, "is a proletariat".

Flexner's critique of correspondence education, which gained widespread media attention, sent shockwaves through academia, prompting internal efforts to raise standards and curtail excessive and misleading advertising. At Columbia, the blow was eventually fatal to the correspondence program. A year after the publication of Flexner's book – and the unveiling of Columbia's ambitious plans for a vastly expanded program with its own grand headquarters - President Butler wrote to his Extension director Egbert that "a good many people are impressed unfavorably with our Home Study advertising and continually call my attention to it. I should like to have you oversee this advertising very carefully from the viewpoint of those who criticize it as 'salesmanship,' etc". The result of this belated concern was a severe restriction of advertising (which lasted at Columbia until the late 1960's).The continued unwillingness of Columbia's Administrative Board to grant academic credit for correspondence courses – largely because of the low regard in which these courses were held by the regular faculty – coupled with the restrictions on general advertising which the Board had now come to deem "inappropriate and unwise" effectively undermined the effort to maintain enrollments sufficient to sustain the Department (especially in the midst of the Depression) and it was finally officially discontinued in 1937. A year after Flexner's critique, and partly in response to it, the American Association for Adult Education launched a Carnegie Corporation-funded survey of university-based correspondence courses under the direction of Hervey Mallory, longtime head of the Home Study Department at the University of Chicago. Published in 1933 as University Teaching By Mail, the study, which generally endorsed and called for the improvement of the correspondence method, acknowledged the validity of much of criticism.

Referring explicitly to Flexner, the study noted that "many believe that correspondence instruction is not a function of college or university" and wonder "how does it come that literature and art have fallen to the absurd estate of commodities requiring advertisement and postal shipment?". The study argued, however, that while "there is something fine and entirely right in the demand for independence, integrity, and disinterestedness," on the part of universities, the "ideals of practical service, of experiment in educational method, and of participation in the life of the community" are not incompatible with it and insisting that many, especially mature, students had benefitted from correspondence instruction. The study conceded, on the other hand, that "it may be that schoolmen and businessmen have. . . created the demand by a false propaganda of success through education, of promise of additions to the pay envelopes proportional to the number of courses, certificates, credits, and degrees, and other rewards displayed in correspondence study advertising".

In surveying the weaknesses of the method, the study acknowledged the narrowly utilitarian motive and also the "very real isolation" of most correspondence students, owing not only to the intrinsic limitations of the correspondence method of instruction but also to the pressures on instructors which further undermined its promise. "One of the charges against the correspondence study system is that it tends to exploit the student by inducing him to enroll and pay fees, and then fails to give adequate service in return," the study observed; students routinely complained about "insufficient corrections and comments by the instructor" and the "lack of 'personal' contacts with instructors" which contributed to the excessively high drop-out rates. In the light of such apparently inescapable weaknesses of correspondence instruction, the authors of the study abandoned altogether earlier evangelical expectations about this new method some day supplanting traditional education and insisted instead, much more modestly, that correspondence instruction should be employed only as a supplement to, rather than a substitute for, classroom instruction." No reputable proponent of home study seriously suggests that correspondence teaching should replace classroom instruction," the authors declared. "Correspondence study is not advocated as a substitute for campus study, but is established as a supplement with peculiar merits and demerits. Correpondence courses are of the most value to the individual when taken in conjunction with a residence program. They are not a substitute for education. They should not be taken merely in conjunction with one's job or avocation, nor are they to be used simply as a hobby or as an exercise of will power by itself. They serve individual purposes best when they fit into a long-time, socialized program of education". Earlier claims about the alleged superiority of correspondence over classroom instruction were likewise abandoned and various attempts to "experimentally" compare the two were dismissed as scientifically spurious and inconclusive.

The study devoted considerable attention to the unsatisfactory working conditions of instructors – notably that they were overworked and underpaid – in accounting for the failings of the method, which depended ultimately upon "the willingness of the instructor to give a generous amount of attention to the student". "When that fails, the authors noted, "the special merit of the correspondence method, individual instruction, remains individual chiefly on the students' side alone – this is the chief weakness in method – perfunctory reading of reports, lack of helpful suggestions, and delay and neglect by over-burdened" instructors. Instructors excused their perfunctory performance on the grounds that the pay was too small to merit the effort and the authors of the survey confirmed that the workload of instructors was typically excessive and that "the compensation in nearly all the institutions is very small". "The excuse of instructors that pay is too little has some merit. The merit of the excuse lies in the fact that in most cases in the present system the pay is small by the piece, and piecework may be irksome to the teachers both when it is light and when it is heavy, in the first place perhaps because the tengible reward is slight, in the second because the work piles up beyond one's schedule". Most instructors, the study also found, worked on a part-time, fee-for-service basis, with little supervision which meant both that they suffered from job insecurity and that there was a noticeable "difficulty of maintaining standards". "The employment of readers or graders or fee instructors, as they are variously called, has been severely criticized on the assumption that such readers are not qualified teachers or are doing a merely perfunctory job of paper criticism". "Nearly all university correspondence teachers might be designated as fee instructors," the study found, "since few are on a salary basis".

While the authors of the Carnegie study criticized such pedagogically counterproductive employment practices – and also the "usual policy of the universities not to refund fees" to students who drop out - they placed the blame not so much on the university correspondence programs per se but rather on the commercial pressures with which they were unfairly burdened. “Most university correspondence courses are underfunded and understaffed,” they noted, and each is forced to be self-supporting, leaving them no choice but to adopt the unseemly commercial practices of their for-profit cousins. “Correspondence instruction in the university should not be required to ’pay its way’ in a business sense any more than classroom instruction,” the authors insisted. “The business methods should not be those of a commercial concern whose prime motive is to dispose of commodities or services for a money profit”. Yet the survey showed that such was clearly the case. Although the authors warned that no “university correpondence administration should not lay itself open even remotely to objection on grounds of dubious commercial practices, such as ’charging what the traffic will bear,” exacting from students fees that will yield a profit, or giving instructors poor compensation in order to keep costs low,” they knew that, given the circumstances in which they were compelled to operate, the circumstances of commodity production, they had no other option.

The belatedly modest and critical tone of the Carnegie survey signalled that the heyday of correspondence education was over. The great expectations of this first foray into the commodification of higher education had been exploded and the movement was spent. Strong criticism of the private, for-profit correspondence schools was ritually repeated over the years, with little noticeable effect, particularly in a series of studies sponsored by the American Council on Education. Likewise, subsequent examinations of university-based correspondence education continued to confirm the findings of the 1933 survey. Thirty years later the General Accounting Office was warning veterans on the G.I. Bill not to waste their federal funds on correspondence courses. In 1968 the Carnegie-funded Correspondence Education Research Project, which had been commissioned by the National Home Study Council (later renamed the Distance Education and Training Council) and the National University Extension Association, found that correspondence courses suffered from poor quality, perfunctory instructor performance, and a very high drop out rate; that instructors endured low pay (on a piecerate basis) and low status; that programs continued to rely upon “drop-out money” to survive; and that there was little prospect for improvement “as long as correspondence instruction is held in such low esteem.”

All such investigations and attendant efforts at reform and regulation invariably failed to change the picture, even as correspondence programs adopted the latest media of delivery, including film, telephone, radio, audio-tapes, and television. Universities continued to offer correspondence instruction, of course, but the efforts were much more modest in their claims and ambitions. Poor cousins of classroom instruction, they were for the most part confined to institutionally separate and self-supporting extension divisions and carefully cordoned off from the campus proper, presumably to spare the core institution the expense, the commercial contamination, and the criticism.

Like their now forgotten forebears, today’s proponents of distance education believe they are leading a revolution which will transform the educational landscape. Fixated on technology and the future, they are unencumbered by the sober lessons of this cautionary tale or by any understanding of the history they are so busy repeating. If anything, the commercial element in distance education is this time even stronger, heralded anew as a bold departure from tradition. For, now, instead of trying to distinguish themselves from their commercial rivals, the universities are eagerly joining forces with them, lending their brand names to profit-making enterprise in exchange for a piece of the action.

The four institutions examined here as prominent players in the first episode of distance learning are, of course, at it again. The University of Wisconsin has a deal with Lotus/IBM and other privatecontractors to develop and deliver online distance education, especially under the auspices of its Learning Innovations Center while University of California has contracts with America Online and Onlinelearning.net for the same purposes. And the University of Chicago and Columbia are among the most enterprising participants in the new distance education goldrush. The University of Chicago signed a controversial deal with a start-up online education company called UNEXT.com, which is headed by Chicago trustee Andrew Rosenfield and bankrolled in part by junk bond felon Michael Milken. Principal investors in the company include the dean of the law school and two of Chicago's Nobel-prize-winning economists. The new game is less about generating revenues from student fees than about reaping a harvest from financial speculation in the education industry through stock options and initial public offerings.

The first university to sign up with UNEXT was Columbia, which has licensed UNEXT to use the school's logo in return for a share in the business. "I was less interested in the income stream than in the capitalization. The huge upside essentially is the value of the equity in the IPO," Columbia's business school dean Meyer Feldberg, a friend of Milken's, told the Wall Street Journal. "I don't see a downside," he added, betraying an innocence of Columbia's history that would make Flexner roll over in his grave. "I guess our exposure would be if in some way our brand name is devalued by some problem with this experimental venture". Columbia has also set up its own for-profit online distance education company, Morningside Ventures, headed by an executive formerly with the National Football League, satellite, and cable TV companies. Columbia's Executive Vice President Michael Crow explained the need for the company with hyperbole reminiscent of that of his prophesying predecessors in the correspondence movement. "After a thousand years, university-based education is undergoing a fundamental transformation," he declared; "multi-media learning initiatives" are taking us beyond the classroom and the textbook. And he acknowledged the essentially commercial nature of this transformation. "Because of the technologies required and the non-traditional revenue streams involved," he noted, "corporations will play a major role in these new forms of education. We felt the need for a for-profit company to compete effectively and productively."

Last but not least, Columbia has now become party to an agreement with yet another company which intends to peddle its core arts and science courses. Columbia will develop courses and lend its brand name to the company's product line in return for royalties and stock options. According to one source, the company has already been busy recruiting faculty to the enterprise as course developers and has suggested the possibility of using professional actors to deliver them.

For the time being, however, until the actors arrive, the bulk of university-based online distance education courses are being delivered in the same manner as correspondence courses of old, by poorly paid and overworked low status instructors, working on a per-course basis without benefits or job security and under coercion to assign their rights to their course materials to their employer as a condition of employment. The imperatives of commodity production, in short, are again in full force, shaping the working conditions of instructors until they are replaced once and for all by machines, script writers, and actors.

Just as the promoters of correspondence instruction learned the hard way that the costs of their new method were much higher than anticipated and that they had to lower their labor costs to turn a profit, so the promoters of online instruction have belatedly discovered that the costs of this latest new method are prohibitive unless they likewise reduce their labor costs. As Gregory Farrington, president of Lehigh University, observed recently, "unless the new technologies can be used to increase the average teaching productivity of faculty, there is virtually no chance that those technologies will improve the economics of traditional higher education". But increasing the "teaching productivity of faculty" – whether through job intensification, outsourcing, or the substitution of computers for people – essentially means increasing the number of students per teacher and this invariably results in an undermining of the pedagogical promise of the method, as the experience of correspondence instruction clearly demonstrates. And the degradation of the quality of the education' invariably destroys the incentive and motivation of students. Already the drop-out rates of online distance education are much higher than those of classroom-based instruction.

So here we go again. We have indeed been here before. But there are differences between the current rage for online distance education and the earlier debacle of correspondence distance education. First, the firewalls separating distance education programs from the core campus are breaking down; although they first took hold on the beachheads of extension divisions, commercial online initiatives have already begun to penetrate deeply into the heart of the university. Second, while the overhead for correspondence courses was expensive, the infrastructural expense for online courses exceeds it by an order of magnitude – a technological tape worm in the guts of higher education. Finally, while correspondence programs were often aimed at a broad market, most efforts remained merely regional. The ambitious reach of today's distance educators, on the other hand, is determinedly global in scale, which is why the World Trade Organization is currently at work trying to remove any and all barriers to international trade in educational commodities. In short, then, the dire implications of this second distance education craze far outstrip those of the first. Even if it fails to deliver on its economic or pedagogical promise, as it surely will, its promoters will push it forward nevertheless, given the investment entailed, leaving a legacy of corruption and ruin in its wake. In comparing Napoleon III with Napoleon I, Karl Marx formulated his famous dictum "first time tragedy, second time farce". A comparison of the past and present episodes of distance education suggests perhaps a different lesson, namely, that sometimes the tragedy follows the farce.

5 Fool's Gold

2001

In January, 1998, a controversy erupted at UCLA over its relationship with a private company, The Home Education Network (THEN), with which it was engaged in the delivery of distance education. The controversy was prompted by disclosure in the first installment of this Digital Diploma Mills series, and subsequent media coverage, of some of the details of the arrangement, by that time already five years in the making but still relatively unknown on the UCLA campus. Two days after the appearance of an article on the deal in the Los Angeles Times, Robert Lapiner, UCLA's Dean of Continuing Studies and University Extension (UNEX), wrote a letter to the newspaper's editor. Lapiner clarified that THEN was not a part of UCLA but an independent privately-capitalized company, and UNEX was not UCLA but rather an independent self-supporting division of UCLA. He maintained that the UNEX-THEN relationship was sound and beneficial.

The very next day, however, Lapiner sent off a dispatch to Julie Gordon at the University of California Office of the President, copied to UCLA's Chancellor Albert Carnesale, which suggested a different tale. Lapiner urged that his response to the LA Times be circulated "for the sake of damage control", and acknowledged that "this affair is not going to go away". Here Lapiner conceded that there had indeed been problems with the relationship and he sought to reassure the chancellor, who had only recently assumed office, that these problems would not tarnish the reputation of UCLA as a whole and were being remedied. "From the outset of our relationship with THEN," Lapiner wrote, "I put in a firewall between Extension and the rest of the campus, so that whatever might go wrong (and much has) in the relationship, it would not impact others' initiatives or strategic interests. Indeed, I tried to reenforce [sic] that firewall over the last couple of years, but for reasons outside of UNEX's span of control our bargaining power was egregiously compromised". Lapiner emphasized that earnest efforts were underway "to protect the university from greater risk and to fix something we didn't break". A short while later Lapiner told an Academic Senate subcommittee looking into the matter that, while he himself had serious reservations about some key aspects of the collaborative arrangement, "I was told to sign it anyway". He did not reveal who gave the order.

At the end of his letter to the LA Times, Lapiner complained that the newspaper had failed to try to get a full picture of the arrangement and noted cryptically that "there's a compelling story about public-private relationships here". This is a belated attempt to tell that story. It is based upon a review of several thousand pages of documents obtained from UCLA under the California Public Records Act as well as conversations with some of the principal participants. It is offered as a cautionary tale, an example not simply of university-based distance education but, more significantly, of the private commercial hijacking of public higher education via distance education. It examines the current craze for distance education from the perspective not of technology but of political economy, and shifts our attention for a moment from the machinery to the machinations. In particular, it examines in detail, by way of a case study, the great expectation of financial returns - fuelled by extravagant technological fantasies - which underlies much of today's enthusiasm for distance education. This expectation, and the corollary pursuit of what appears increasingly to be little more than fool's gold, has already led to a worrisome relaxation of sound financial management practice and legal safeguards of the public interest, a bending of the rules of established procedure, and quite possibly even the breaking of the law.

The collaboration between public higher education institutions and private for-profit companies, as in the development and delivery of online instruction, entails an encounter between two fundamentally different cultures and betrays an increasing academic enchantment with the entrepreneurial ethos of the commercial world, a deference to and awe of, and a naive impulse to emulate, the risks and realpolitik of business (using public moneys and resources) and a corresponding sacrifice of the core values that define universitities as unique and invaluable. This sacrifice entails a loss not merely to the universities but, more important, to the public which sustains them and depends upon them.

The relationship between UCLA and THEN (later renamed Onlinelearning.net - OLN) emerged out of joint discussions begun in January, 1993, exactly five years before the controversy about it erupted. THEN was the brainchild of Alan Arkatov, a TV Producer and political media consultant who enjoyed very close ties to the entertainment industry and higher Democratic political circles. As vice president of the political media consulting firm Doak, Shrum, and Associates, Arkatov had worked on myriad Democratic mayoral, gubernatorial, and senatorial campaigns and, in 1992, served as senior advisor to Mickey Kantor, chairman of the Clinton presidential campaign. In establishing his company, therefore, Arkatov was able to draw upon what Lapiner admiringly referred to as his "connections".

One of the early important associates of THEN, for example, was Charles Manatt, whom Arkatov described as a "lifelong friend". Manatt was the former chairman of the Democratic National Committee, head of the Southern California Democratic Party and co-chair of the Clinton-Gore campaign. He was also a member of the Board of Governors of the UCLA Foundation. From the start, THEN was represented by Manatt's law firm, Manatt and Phelps, a major player in the entertainment industry. Another key participant was Arkatov's "friend" Ralph Ochoa, an influential attorney, political lobbyist, and deal broker who had been a member of the University of California Board of Regents in his capacity as head of the University of California Alumni Association. Like Manatt, Ochoa also sat on the Board of Governors of the UCLA Foundation and was, in addition, a member of UCLA's Board of Trustees and Board of Visitors. Ochoa enjoyed considerable influence in the office of the UCLA Chancellor.

From the outset, the association with UCLA was the sine qua non for the new company. Arkatov sought to build his private firm upon the taxpayer-created foundation of UCLA's brand name and curriculum; the initial focus was UCLA Extension, the nation's largest university extension progam, but Arkatov envisioned an expanded relationship with all of UCLA, and, eventually, with the entire University of California system. His plans took shape in January 1993 - the same month he filed the incorporation papers for the new firm - in discussions with Lapiner, to whom he was introduced through Ochoa. Thus, the initiation of the relationship with UCLA and the establishment of THEN took place more or less at the same time.

Arkatov proposed to UCLA that he would develop the means of distributing UNEX courses electronically beyond the classroom, via video (and later online), in exchange for exclusive electronic rights to all UNEX courses. His success was due as much to his connections with the UCLA administration as to the intrinsic virtues of his proposal. At the heart of the effort, as he well understood, was the securing of exclusive rights to the intellectual property embodied in course material, for commercial exploitation. The title of his company prospectus made clear the nature of the enterprise: "UCLA Extension via Multimedia: Education as a Business".

On the UCLA side, enthusiasm for the proposal stemmed from the expectation of enormous financial returns which Arkatov had kindled, a growing emphasis upon entrepreneurial efforts within the university at a time of fiscal restraint, and an awe of the real-world power and glamour of the entertainment industry. University officials wanted to be seen as players in this high-stakes world, to be taken seriously, to show that they too had the vision and the guts to make it big. Accordingly, UCLA granted Arkatov the exclusive rights he sought (see Digital Diploma Mills Part II for details of the contract) and adopted the posture of a venture capital operation, expending public funds andoffering THEN the use of its public resources in anticipation of a windfall. UCLA appears to have afforded Arkatov privileged use of the UCLA brand name, access to its marketing and publication facilities and staff, and even mailing lists, to the point that its own personnel began to complain. In making the deal with THEN, UCLA waived its legal remedies of preliminary and permanent injunction, agreed to secrecy about the deal through a confidentiality clause in the contract, and apparently seriously entertained no other bids for these services. UCLA also appears to have circumvented the review and oversight of the Academic Senate, including the standing committee on extension, and risked allegations of conflict of interest. John Kobara, vice-chancellor of UCLA for marketing and public relations, became the president of THEN. There was at least one instance of preferential hiring when Arkatov's brother-in-law was given a job at UNEX, over the strenuous objections of the associate dean. Moreover, it appears that UCLA sidestepped Regental review of the contract in the final hours before it was signed; the University of California Board of Regents, in whose name the contract was signed, never even saw much less approved the unprecedented arrangement. Finally, in claiming rights to the intellectual property embodied in course materials authored by instructors, without ever having obtained an assignment of these rights, the parties appear to have violated copyright law and proceeded without any legal foundation.

Late in the summer of 1993, Lapiner and Ralph Ochoa, who was representing Arkatov, met with Chancellor Charles Young to discuss the proposed project. Afterward Lapiner wrote Young that the meeting had been of great value and predicted that "the time we spent with Ralph Ochoa will prove as profitable (in all senses of the word) for UCLA and UCLA Extension". Lapiner and his colleagues had great expectations. They noted that the financial opportunities "appear strongly to outweigh the risks ... The estimated revenue projections, based on the market research to date, would seem to provide resources greatly in excess of costs". While UNEX would bear initial costs, "the magnitude of the financial returns thereafter should provide Extension with the assurance that its 'venture capital' will have been well invested". They projected a gross distribution to UCLA by the second year of between three and four million dollars, which would "grow exponentially" thereafter, to an estimated thirty-one million in year four - "an amount comparable to our total annual revenue for all programs over the last few years". Thus, there was, in their view, a "compelling economic argument". "The persuasive reason to move forward ... is that the spread between expenses and potential revenue is of such magnitude that even a significantly smaller profit [than projected] is still likely to be sizable".

As negotiations continued, the projections became more sober, as indicated in the evolving terms for termination of the agreement. At first UCLA had the right to terminate if there were no revenues after two years or less than fifty million after five years or one hundred million after seven years. This was later reduced drastically to less than three million after five years; when the contract was signed the figure was reduced further to two million after five years. Three years later, in the face of practical operational realities, the figure was finally dropped down to $400,000, more than a hundred-fold reduction from the original estimate of fifty million. And as the five-year deadline approached in 1999, the company, facing considerable losses and pleading poverty, was barely able to meet even that condition.

The original expectations of financial returns produced an eagerness on the part of UCLA that caused them to throw caution to the wind. This is clear in their agreement to waive legal safeguards of the public interest. In its proposed agreement, THEN, following the example of the entertainment industry, included a requirement that both UNEX and all participating instructors had to waive their legal rights to preliminary and injunctive relief in the event of any dispute. THEN would be willing to settle for monetary compensation but did not want to risk the interruption of its operations or the rescission of UNEX's assignment of rights to THEN, which an injunction would entail. Thus they insisted that "under no circumstances shall the instructor [or UNEX] be entitled to injunctive relief".

The university's counsel viewed this request as out of the question. "For obvious reasons", Ruth Simon wrote to Arkatov's attorney, "we cannot agree to include this paragraph, or any part of it, in our contract with the instructor or THEN ... any mention of limitation of remedies, whether by Instructor or by UNEX, will inflame the Regents ... We simply cannot agree to any limitation of our remedies". On the eve of the signing THEN continued to insist that the waiving of injunctive relief was "standard practice in the film, TV, publishing, and recording industry where producers/distributors are making huge investment in product". "No one", THEN insisted, "would want to give the right to injunctive relief to several hundred instructors". The Office of General Counsel and Chancellor Young both still maintained that such a limitation of their remedies was "unacceptable".

Aside from sound legal practice, there was a particular reason why UCLA was especially sensitive to THEN's request regarding limitation of remedies, which was indicated by Simon's warning that it would "inflame the Regents". At the very time the agreement with THEN was being negotiated a public scandal erupted regarding an earlier episode involving the junk-bond felon Michael Milken. Without the Regents' knowledge, UCLA, under the auspices of Young and Simon, had contracted with Milken for the delivery of some lectures and had agreed to grant Milken exclusive rights to the recordings. In addition, UCLA agreed to waive its right to injunctive relief. When the Regents belatedly found out about this contract, they were furious. Aside from their anger at having heard about it only after the fact, they were particularly upset about the assignment of exclusive rights and the limitation of remedies.

Regent Frank W. Clark, a prominent attorney, bemoaned the fact that "UCLA officials waived the university's right to rescind the agreement or even file an injunction against [Milken]". "There are serious legal problems with this document", he declared. Regent Ward Connerly went so far as to suggest that the Regents should take back the powers it delegates to university administrators to make deals. At the same time, two state senators harshly criticised UCLA for "waiving virtually all their legal rights" and suggested that UCLA officials "were seduced" by Milken's prior multi-million dollar donations to the university.

Now confronted by THEN's request for a similar waiver of remedies, UCLA officials were understandably hesitant - until the final hour. In the end, after getting THEN to agree to particular conditions for termination - which included the establishment of a financial benchmark (two million by the fifth year), and the granting to UNEX of the specific rights to specify classes, update courses, and give final approval of course content - UCLA capitulated. Once again UCLA agreed (and without their knowledge or consent committed its instructors to agree) to waive its right to preliminary and permanent injunctive relief. UCLA agreed that there could be no termination of exploitation rights to the course recordings, just of production rights. (In the event of a termination of the production of new courses, THEN would continue to be able to market already existing recordings). Three days before the signing of the deal, Simon informed THEN's lawyer of her conversation with Jim Holtz, general counsel of the University of California, who, she reported, was "comfortable with the way we negotiated the question of injunctive relief".

In the wake of the Milken imbroglio, the Board of Regents were most disturbed that they had only learned about the agreement belatedly, after it was too late to rescind or revise. For this reason, among others, UCLA officials were sensitive to the need to have the Regents sign off on the THEN deal. From the start, therefore, they insisted upon Regental approval. "The project being proposed by THEN is unique in its scope", UCLA general counsel Ruth Simon wrote to Arkatov's attorney in December, 1993. "It is the sheer magnitude that raises complex questions. We will also need to be assured that the Regents is consulted about the use of its name in all forms of marketing and presentation in the videotapes".

UCLA's insistence upon securing the necessary high-level support and authorization from the Chancellor and the Regents slowed down the negotiating process, to Arkatov's mounting dismay. Intent upon attracting investors and getting his show on the road, and habituated to the fast and loose deal-making of the entertainment industry, Arkatov grew increasingly impatient and tried to pressure UCLA into moving more quickly. UCLA nevertheless maintained its position on the necessity of Regental approval. In February Lapiner's associate dean Michael Bley wrote to him that "Alan's [Arkatov] concern has increased about the university's ability to move with any speed, relative to normal industry standards, particularly with the specter looming of the necessity of Regental approval. Ralph [Ochoa] spoke with me as well as Alan noting that any activity without such a step, given the high visibility of the project, could possibly be quite detrimental". (Arkatov later recalled that Ochoa "made sure that we follow the necessary steps to secure approval from the Chancellor and Regents"). Bley went on to report that they "also discussed the possibility of effecting an interim compromise and 'conciliatory' measure of good faith on the part of the university, which would meet Alan's needs, by issuing a signed contract (with the Chancellor's approval) subject to Regental clearance. Ralph felt comfortable pursuing this possibility [with Chancellor Young]". "However", Bley cautioned, "conversations today with Ruth [Simon] indicated that such actions have not been well-received in the past".

The spectre of Michael Milken clearly haunted the negotiations, in contradictory ways. On the one hand, the Regents' reaction to having heard about the Milken deal after the fact made UCLA officials sensitive to the need for prior Regental approval. On the other hand, the Regents' critical response to the granting of exclusive rights to Milken and the waiving of legal remedies made the officials extremely wary of having the Regents review a new deal which contained the very same provisions. In February, 1994, Simon wrote a memorandum to her file about discussions with Lapiner and Arkatov, noting that "Robert presented the issues to Alan as political issues that needed to be resolved in order to get the deal through the Regents". A month later, after the Milken scandal hit the press, Arkatov expressed concern about the key issues of copyright assignment and the waiving of remedies. In response, Simon unsuccessfully proposed a new clause for the contract: "Approvals. THEN acknowledges that no agreement between the parties shall be effective unless and until approval by the UCOP [University of California Office of the President] and by the Regents at a meeting regularly noticed and held". Arkatov's attorney replied in a phone conversation that "approvals be changed to disapprovals", i.e. that the agreement would stand unless UCOP and the Regents disapproved within sixty days of the signing. By this novel construction the Regents, the supreme legal authority of the University of California, would be relegated to a mere rubber-stamp function, after the fact and within a limited time. Neither version of this clause survived the day. The controversy they reflected, however, persisted until the eleventh hour before the agreement was signed.

At the end of May, a month before the signing, Ruth Simon was still assuming that Regental approval was on the agenda. She wrote to an official at San Francisco State University for a copy of a contract between that institution and the Wadsworth Publishing Company, which Arkatov suggested might strengthen their case before the Regents. "My interest in this", Simon explained, "is that we are in the midst of negotiating a distance learning contract which will go before the Regents; our thought is that the SFSU agreement may be helpful as a point of comparison for the Regents". Two weeks later, however, after another meeting between Lapiner, Ralph Ochoa and Chancellor Young, she appears to have moved markedly in Arkatov's direction. Reporting on arrangements for a meeting between the UCLA Chancellor and several vice presidents and the general counsel of the University of California Office of the President, Simon reminded Arkatov that "as you know, UCOP approval is critical to an item being placed on the Regents' agenda". She added without reservations, however, "Chancellor Young intends to raise with the vice presidents whether Robert [Lapiner] can sign the agreement before it is presented to the Regents, subject, of course to the Regents' right to disapprove". Simon had now clearly endorsed Arkatov's position.

In the end the Regents were not even afforded the right of after-the-fact disapproval. According to Ann Shaw, the Secretary of the Regents, the Regents never saw the agreement either before or after it was signed. Chancellor Young, after meeting with Ochoa and Lapiner and the University of California vice presidents and general counsel, unilaterally gave Lapiner permission to sign the deal. Arkatov acknowledged Young's role in a thank-you letter a few weeks after the signing. "I want to thank you for providing THEN the opportunity to create with UCLA Extension a new vision of distance learning for continuing education". Lapiner was more explicit. In a letter to Arkatov a year later he referred to "Chancellor Young's involvement in my intra-campus negotiations that allowed us to sign our contract". Thus, the Regents did not know about this new Milken-like undertaking, with its assignment of exclusive copyright to a private firm and its waiver of legal remedies. When Regent Ward Connerly was finally informed about the deal in 1999, by UCLA English Professor Edward Condren, he expressed complete surprise. In all probability, had the Regents rightfully been given the opportunity to review the agreement between UCLA and THEN, as was anxiously anticipated throughout the negotiations, the deal would never have been approved.

If UCLA officials bent the rules of established procedure by doing an end-run around the Regents, it appears they went even further in granting THEN exclusive electronic rights to all UNEX courses without the approval of the instructors: they broke the law. According to the U.S. Copyright Act an author is automatically endowed with all rights (including electronic distribution rights) to his or her work - in this case the course material - unless some or all of those rights have been assigned in writing to another party (as a condition of employment or on a contract basis). It is abundantly clear from the documentary record that both UCLA and THEN were fully aware of this requirement from the start, namely, that they had to secure a written assignment from the instructors as a precondition of doing business, and that they chose ultimately to ignore it.

In the prospectus for his new company Arkatov had emphasized that "the owners of intellectual properties ... will be the leaders and winner in the field" and in his "letter of intent" to Lapiner he made it explicit that he understood that the intellectual property in question belonged in part or entirely to the instructors. "Extension [UNEX] is in the business of employing individuals ('teachers') to prepare and provide the classes", he wrote to Lapiner. "Network [THEN] is desirous of acquiring the exclusive right to produce and exploit Programs based upon the classes" and would like to negotiate an agreement in which "Extension shall grant to Network the sole and exclusive right to exhibit and otherwise exploit such programs by all means and media now known or hereafter devised ... throughout the world". In return for this grant of rights, UNEX would receive a proportion of the net profits and "Extension shall divide such net profit participation between Extension and the teachers". Although the teachers were not party to the negotiations, their compensated contribution was clearly seen as being essential to the enterprise.

From the earliest discussions about the proposed agreement within UNEX, questions were raised about the legal rights of the instructors and the legality of UNEX granting THEN, on the instructors' behalf, rights to their course materials. One of Lapiner's staff, Inju Sturgeon, noted that "since many courses and course materials are 'authored' by our instructors who receive a fairly modest salary in the context of our nonprofit status, I would anticipate some legal objections to our just 'selling' their work and course materials to a profit-making business enterprise ... ". Fred Churchill, another UNEX staff member, also raised the "copyright issue of who owns the material - UNEX or the instructor". In the light of these concerns, Lapiner sought the advice of UCLA's experts on such matters.

In November, 1993, Lapiner received a report from Connie Little of UCLA's Budget and Planning Office about her discussion of the matter with Carli Rodgers, UCLA's Copyright Officer. "During my discussion with Carli it became apparent that we must see the copyright wording in the contract with THEN due to several issues. The most important issue is even if we re-work the course material and have the course reapproved, all we own is the course material; the presentation is that of the instructor and is copyrightable to him/her". In essence, UCLA might perhaps own the physical course materials but not the copyright to the content, which belonged to the author/instructor. A few days after receiving this clarification, Lapiner reviewed a letter from Arkatov's attorney which maintained that THEN would own the copyright to the recordings of UNEX courses and he noted in the margin "we need permission of each instructor".

Arkatov's attorney clearly understood this as well and had already begun to draft an "instructor's contract" which would provide the legally-required written assignment of rights.

"Instructors and guest lecturers will enter into agreements directly with Extension", he wrote. "Each such agreement shall provide that THEN is an intended third party beneficiary and that the rights of the Instructors and guest lecturers in and to such courses are being assigned by Extension to THEN." "As between Extension and THEN", he added, "Extension shall be the sole party responsible for compensating such Instructors and guest lecturers for their services and for any rights they convey with respect to Extension courses being videotaped for THEN". Again, both parties to the proposed agreement understood fully that they had to secure a written assignment of rights from the Instructors as a legal precondition for their joint enterprise. The following month UCLA's general counsel wrote to Arkatov's attorney, "while Extension is willing to agree to exclusivity, we must together face the difficulty of getting the Instructors to agree".

In January, 1994, Simon received confirmation of this understanding regarding "copyright ownership in lectures" and conveyed it to Arkatov's counsel. "I have consulted with the Office of the General Counsel [of the University of California] in Oakland about interpretation of the UC Policy on Copyright Ownership. I have been informed that it is most likely that the rights in a lecture would be determined under Section IV.A. of that policy, as 'scholarly/aesthetic work'. A lecture read from an outline or a prepared text would have a different status from one given extemporaneously, but under Section IV.A. the copyright to the outline or text would belong to the faculty member". "It seems, therefore", she once again concluded, "that in every case there will have to be an assignment of copyright to the Regents". Before UNEX, acting on behalf of the Regents, could making any grant of rights to THEN, it would itself first have to secure an assignment of those rights from the Instructors.

The mechanism envisioned for this transfer of rights from the instructors to UNEX was the "instructor's agreement", initially a part of the text of the UNEX-THEN agreement and later appended as an expanded "Exhibit A", at Simon's suggestion. "We think that the body of the Agreement should simply refer to UNEX's understanding to use its best efforts to have Instructors sign an agreement in the form of Exhibit A attached to the Agreement", she wrote to Arkatov's attorney. "We therefore suggest that the paragraph read simply: UNEX shall exert its reasonable best efforts to cause the Instructors to enter into agreements concerning the production and exploitation of the Recordings". Eager to embark upon what they imagined was a golden opportunity, UCLA officials had thus decided to contractually assume the burden of getting the instructors to sign on to the project by surrendering their copyright.

As Simon had anticipated, however, the task would prove "difficult". THEN's formulation of the "instructor agreement" declared "instructor shall warrant, represent, and covenant that instructor: has the full right, power, and authority to enter into and perform the agreement and to grant to and vest in UNEX, for assignment to THEN, all rights therein set forth [see Digital Diploma Mills, Part II for a detailed description], free and clear of all claims, rights, and obligations whatsoever". Upon first reading this language, Simon confided to Arkatov's attorney, "we do not think any Instructor would agree to this". Indeed, a preliminary survey of instructors about the proposed deal had already indicated precisely that. In June, just weeks before the agreement was signed, a summary report of a meeting of the parties (excluding the instructors) indicated that they all understood that instructor cooperation would not be forthcoming. The view of the UC Office of General Counsel was summarized: "Must cut back on rights. Unlikely that Instructors will sign" and that of

UNEX: “Concerned that low-paid UNEX Instructors will not find compensation attractive enough to sign away rights”.

The summary of THEN’s position is startling: “THEN believes it needs to have all included rights. Willing to take risk that Instructors will not sign”. Fully aware that instructors would more than likely not sign the instructors agreement, the acknowledged legal sine qua non for the deal, THEN decided to proceed anyway, and so too did UCLA. When asked by this author five years later why he signed the agreement in the knowledge that it lacked a secure legal foundation, Arkatov answered - sidestepping the question but not denying the truth of the allegation - “it was an exciting opportunity to play a significant role in helping to expand UNEX’s outreach to the world via distance education”.

For four years after the signing of the agreement, and after the effort shifted its focus from videotape reproductions to online delivery, UNEX again and again sought in vain to secure a written assignment of rights from the instructors, without which it had no legal basis for its grant of rights to THEN. In the meantime, the partners earnestly embarked upon the profit-making business of delivering UNEX courses electronically anyway, with THEN (later renamed Onlinelearning.net) declaring to the world that it held “exclusive electronic rights” to all UNEX courses.

Throughout 1995, with the shift to online delivery, significant tensions emerged between the partners regarding the suitability of the existing agreement to the new situation. Lapiner argued in vain that they needed to negotiate a significantly amended contract while Arkatov maintained that all of the existing provisions applied equally to online delivery. One of the central questions that arose was whether or not the instructors were being offered incentives adequate enough to cause them to surrender their copyright. At the same time, some UCLA officials, including Lapiner, began to entertain the wishful thinking that the Regents might automatically own the copyright in the online medium and that there would therefore be no need for an instructor assignment of rights to the university. Nevertheless, as obligated by the agreement, UNEX undertook to get the instructors to sign the instructor agreement [for details of this agreement, see Digital Diploma Mills, Part II]. The effort was overseen by Kathleen McGuire who at the beginning of 1996 began to receive very clear signals from her staff about “instructor reticence”, a resistance which had, if anything, increased with the shift to online delivery.

In February McGuire and Lapiner received a memo about the situation from staff member Linda Venis. “We are currently plannng our on-line curriculum”, wrote Venis, “but do not want to enter these courses in the [catalogue] - commit to them for Summer - until we can determine whether the instructors will sign the contract ... . We need to know now if we can count on our instructors”. Venis was not optimistic. “It is important to stress that the response to signing the contract thus far, based on individual discussions and our own meeting with on-line instructors, is ’No’. I know that, Kathy, you reiterated that instructors are ’only’ signing away recording rights - fair enough in the context of video and audio, as those are akin to performances which can be recreated. However - and it is a huge ’however’ - ’recording rights’ in the on-line context are quite different, as the lessons transmitted would be owned in perpetuity by THEN and could be used in any electronic format”. “Electronic publishing is a huge issue with our instructors” Venis stressed, and she recommended sending copies of the instructor contract to all instructors as soon as possible to get a good reading. She suggested that UNEX hire an in-house legal consultant who could advise instructors about the contract, indicating that she and her staff were "very uncomfortable" interpreting it. In the end, and in no uncertain terms, she warned her superiors that "we anticipate that most, if not all, on-line instructors will not sign away the right to their materials" and emphasized that "a timeline and some real consideration about what happens if the instructors refuse to sign the on-line contract is critical".

The following week Lapiner wrote to Arkatov about "our instructors' refusal", again insisting on the inadequacy of the existing agreement in the online context. (A week later Lapiner was, according to his own account, compelled by Chancellor Young to sign an amendment which simply declared that the original agreement would apply to online delivery). Especially in the new online environment, Lapiner reported, "no faculty member will surrender rights". With regard to "intellectual property rights", he noted, "most UNEX instructors and all UCLA faculty queried will not agree to assigning these to THEN in perpetuity, or probably at all ... ". Echoing Venis, he stressed the fact that "this has become the critical impediment to realizing the agreement".

In March, 1996, despite the fact that all parties acknowledged that there were as yet "no instructor contracts", the decision was made to begin online delivery of UNEX courses by THEN on a pilot basis during the Spring term. As UNEX's new associate dean David Menninger rather matter-of-factly and cryptically reported that fateful step to Arkatov, "it was agreed that execution of instructor agreements would not be a requirement for courses to be offered in Spring 1996 on a pilot basis". He also indicated that UNEX was already preparing for a full online program with THEN for the summer. In anticipation of the summer program, UNEX redoubled its efforts to get the instructors to sign their contracts. "It was agreed that development and selection of courses for Summer is a priority, as is finalization of terms for a revised instructor's agreement", Menninger summarized a senior staff meeting. McGuire noted in her notes of the meeting that "the model for the instructor contract needs to move fast, if [supervisors] are to contact instructors for summer courses". A week later Arkatov informed Menninger that "Dean Lapiner has asked us to focus on the instructor agreement as a top priority (a new draft has been sent to Kathy McGuire)".

Lapiner was intent upon making the partnership with THEN a success; reminding them of "the Chancellor's expectations", he urged his staff to do their "best to make this project a visibly important and successful enterprise". Likewise, Menninger, the associate dean, exhorted the staff: "I am encouraging you to participate heartily in this venture by proposing more online courses". But all the while the instructor agreements were not forthcoming, either for the Summer or even the Fall terms. In the middle of the summer, McGuire informed course supervisors that "the status of the instructor contract is still liquid" and that, even given THEN's willingness to redraft the terms, "a final contract will probably not be available until August 26". By mid-August Menninger was now referring to "the infamous instructor contract" and internal UNEX communications took note of the "unresolved instructor contractual issues". Despite this difficulty, UNEX issued a press release announcing the pathbreaking collaborative venture with THEN, the success of the pilot courses, and robust plans for the Fall. The agreement, UNEX explained, gives THEN "exclusive rights to electronic recordings of UNEX courses" in return for a percentage of revenues; moreover, UNEX attested, "the agreement ... ensures that all intellectual property rights ... are appropriately protected".

Within the university, apparently, not everyone was so sure, especially in the absence of any agreement with the instructors. At the end of December, 1996, Lapiner wrote to UCLA vice-chancellor John Kobara, due to become THEN's president in January. "As you probably know, in some noisy quarters within UCLA and UNEX itself, the contract was and continues to be attacked as 'selling' UCLA property, and out of synch with UC policy on ownership of intellectual property". Again, Lapiner urged THEN to provide UNEX with a revised instructor agreement suitable for online course delivery and acceptable to instructors. Internally, UNEX had already adopted a policy of giving instructors a one-time "honorarium" of five hundred dollars for course development, as an incentive to instructors and tacit compensation for the surrender of their intellectual property rights. At the same time, UNEX officials moved further in their wishful thinking that the university somehow already automatically owned these rights in the online context. Accordingly, Menninger began to contest THEN's public claims that it owned "exclusive electronic rights to UNEX courses" and suggested that THEN adopt more precise language which would convey the fact that it held the rights to online "distribution" of the courses but not to the "content" which, Menninger believed, were retained by the Regents.

By this time, early 1997, tension between UNEX and THEN was reaching the breaking point, as each party blamed the other for the slow start up of operations; THEN accused UNEX of dragging its feet in the development of new online courses and disputing the nature and extent of THEN's acquired rights, while UNEX complained about THEN's failure to produce promised market research, cost reimbursements and royalties, and a "feasible instructor contract for online production". BY mid-April, Arkatov's lawyer accused Lapiner, UNEX, UCLA, and Regents of "material breach" and threatened to file suit. A week later, Menninger inquired of McGuire, "Kathy, just to confirm: we never settled the instructor's agreement, did we?" "No", McGuire replied, "it's just sort of sitting there ... they [THEN] may have abandoned the idea".

A few weeks later - now nearly three years after the UNEX-THEN deal was signed - Menninger once again brought the matter of the instructor agreement up with THEN. "This brings back into focus the instructor agreement that has not yet been finalized", he wrote Kobara. "Ideally the agreement will have terms sufficient to cover any activity between UNEX and THEN, be it online or taped recording. If THEN has determined the terms that it believes need to be included in a satisfactory instructor agreement/release, please forward them to me and I will work to get the process moving again toward mutual agreement". "Yes", Kobara replied, "we need to address the overall instructor agreement issue. It seems to me that we should start anew. What do you suggest as the next logical step in this process? Should we draft something? I need your advice on how to proceed to avoid whatever problems we encountered in the last go-around". The next day Menninger explained the situation to Kobara. "Regarding the instructor agreement; with the switch in emphasis to online a year ago, the draft agreement attached to the UNEX/THEN contract became problematic. (There had already been indications in any case of instructor resistance to the terms of the agreement anyway). THEN agreed to the need to revise the agreement to make it more acceptable and relevant to online, and was to have provided UNEX with a starting position to negotiate into a final agreement that UNEX would then present to instructors for execution. That's still where we need to pick things up. So, yes, a draft of your preferred terms are the place to start".

Plainly, at least up to this point officials of UNEX and UCLA were still insistent upon the need for a written assignment of rights from the instructors, even with the shift to online course delivery and even while some of them had begun to imagine that the university could automatically claim these rights without it. In her response to the breach of contract charge levelled by THEN's attorney, UCLA general counsel Simon blamed THEN for the "uneven progress" in the on-line area, the lack of revenues to "UNEX and its instructors" and, in particular, for "the absence of an instructor's agreement". "THEN has not followed through on this with a clear statement of its expectations for such an agreement and a prompt negotiation of final terms". "A workable instructor contract that spells out to instructors what their rights are", Simon emphasized, "is the foundation of a solid working relationship with UNEX instructors and UCLA faculty".

In January, 1998, the public controversy erupted over the UNEX/THEN deal, in the wake of the publication of the first installment of "Digital Diploma Mills" and subsequent press coverage. By this time UNEX officials had somehow firmly convinced themselves that an instructors agreement was no longer necessary and that the Regents could claim rights to course material absent any such assignment. In response to public questions raised about intellectual property rights, Lapiner wrote to the new UCLA Chancellor Albert Carnesale and Julie Gordon of the UC Office of the President that "all intellectual property rights to materials and curricula belong to the instructor and the Regents". In his disarmingly simple assertion Lapiner of course begged the crucial question as to the distinction between, and the legal relationship between, the instructor and the Regents: how can the Regents claim author rights without author assignment? In response to this author's request for a copy of the UNEX/THEN contract, including the instructor's agreement, Menninger took the next step, explaining that "since the focus of the Extension/THEN relationship has shifted to Extension online courses, for which the Regents of the UC retain ownership, no such instructor agreement has ever been used, nor is any further need anticipated". Like magic, through the devices of determined self-delusion and rhetorical legerdemain, the heretofore acknowledged legal foundation of the entire deal had been rendered irrelevant.

Of course it was not at all irrelevant, as other universities which had begun parallel online effors well understood. Thus even UNEX's major rival within the University of California system, the extension program of UC Berkeley (which had its own deal with America Online) required its online instructors to sign an instructor agreement, assigning copyright to the Regents, as a condition of employment. UCLA, however, had chosen to fly without wings. In May, 1998, Jeff Gerdes, a UCLA economics instructor, inquired about the UNEX program and requested clarification of its intellectual property policy. Kathy McGuire responded with an extended explanation based upon an amended agreement not made public until July, 1999. According to this amended contract, she assured Gerdes, the rights granted to THEN (recently renamed Onlinelearning.net) were "limited to marketing and distribution during the term of the contract" and copyright ownership was retained by the author. "Extension policy on ownership of course materials conforms to standard university policy", she explained. "Faculty and instructors own materials they develop, whatever the medium of instruction". The concern over copyright was thus dismissed as a non-issue. "It's not an issue, period", UNEX associate dean declared to the San Francisco Chronicle. "Nobody has pointed to anybody who's ever had to sign over their rights."

But that was precisely the issue. There never was any assignment of rights by the author. As McGuire maintained, the faculty and instructors retained ownership of the copyright to the materials they developed. How, then, did THEN (Onlinelearning.net) obtain the now "limited" commercial rights of marketing and distribution of the materials? Ownership of copyright entails the ownership of all rights to the author's creation, including the commercially crucial ones of marketing and distribution. According to the Copyright Act, in the absence of a written assignment of those specified rights by the author directly to THEN or indirectly to THEN, via assignment to the Regents, the company would have no rights whatsoever with which to conduct business.

The second Amendment to the UNEX/THEN agreement, signed by Lapiner and Kobara on July 8, 1999 but effective January 1, 1998, indelibly enshrined the slippery and self-contradictory thinking of the parties. It asserted that the instructors and the Regents retained ownership of the copyright while failing either to clarify the precise nature of the relationship between instructors and the Regents or to account for the possession of rights by the Regents (and, hence, the granting of rights by the Regents to Onlinelearning.net) in the absence of any assignment by the author-instructor, as required by law. Whereas in her explanation of the copyright policy to Gerdes, presumably based upon this amendment, McGuire had forthrightly stated that the faculty and instructors owned the materials they developed, in the actual amendment the matter was fudged. In the critical clauses the amendment alternately coupled the instructors with the Regents and UNEX when spelling out the ownership of rights. "As between OLN, on the one hand, and the Regents and the Instructors, on the other hand, the Regents or the Instructors, as appropriate, shall be the owner of all right, title and interest, including without limitation, the copyright, in and to all content, class material and curricula (collectively the 'Course Materials") of UNEX Classes produced by or for OLN hereunder, and, for purposes of Title 17 of the U.S. Code also known as the Copyright Act of 1976, as amended (the 'Copyright Act') UNEX and the Instructors shall be deemed the author of the Course Materials". There is no provision for any assignment from the instructor to UNEX or the Regents, merely the simple assertion of authorship and ownership by UNEX and the Regents.

Moreover, according to the amendment, all of these rights presumably held by the Instructors, the Regents, and UNEX were now restricted, "subject to the exclusive right to distribute UNEX's Classes by On-Line Means conveyed to OLN herein". Since the amendment was signed by Lapiner, on behalf of UNEX and the Regents, and the instructors were neither party to the negotiations nor signatories of the amendment, it is clear that the exclusive distribution rights granted OLN were being conveyed by UNEX and the Regents without any instructor assignment to UNEX, the Regents, or OLN. Again, if the instructor was the author and owner of "all right", as the amendment declares, how did OLN obtain its right of distribution absent instructor assignment. If, as the parties claim, OLN was granted its rights by the Regents and UNEX, how did the Regents and UNEX obtain them in the first place, absent the instructor assignment which both signatories to the amendment had long known (and presumably still knew) was legally required. (In November, 1998, this author had an opportunity to discuss the matter with both Lapiner and Kobara at a joint UNEX-OLN event. Lapiner insisted that the amendment solved the copyright problem and pointed out that, as indicated in the amendment, instructors would be given "full knowledge" of the UNEX-OLN arrangement and their attendant responsibilities. I maintained that any agreement between the two signatories, whatever the specific language regarding instructors, was insufficient without a written assignment from the instructors themselves.

Kobara nodded, turned to Lapiner and said “he’s right”.) For all the inventiveness and effort of the parties, the collaboration between UNEX and OLN, it appears, remained illegal.

One person who has most forcefully questioned the legality of the arrangement is Edward Condren, a long-time UCLA English professor and Chaucer scholar who for many years has moonlighted as a copyright expert in legal cases involving the entertainment industry. He sat on one of the Academic Senate committees that had been circumvented by the UNEX/THEN entrepreneurs in their rush to cement the deal and later had an opportunity to question Lapiner during a belated committee inquiry. He does not see how the instructors can own the copyright, on the one hand, and OLN can have exclusive distribution rights, on the other; both cannot be true without some written assignment from the instructor to OLN. In Condren’s informed view, what the amendment “practically means is that I may own the house, but you have the right to rent it to somebody and get revenue from it. In other words, it is absurd. Federal law makes it abundantly clear that the ownership of copyright means the right to market, distribute, and so forth”. Condren’s legal opinion appears sound in light of the law but it is no substitute for the opinion of a court, which alone could declare the arrangement illegal.

Condren believes that, if not challenged (or corrected voluntarily), the arrangement could set a dangerous precedent for faculty. Over time the arrangement could some day be sanctioned by a court as accepted or established practice and faculty would forfeit copyright to the university by default. And the loss of their intellectual property rights to their course materials, he argues, would invariably lead to the loss of their academic freedom as well, in that “it would undermine the legal protection that enables faculty to freely express their views without fear of censorship or appropriation of their ideas”. But where might such a challenge come from? What financially-strapped non-unionized online instructor who must depend upon the good graces of administrators for the next job and paycheck would be willing to file an infringement suit? And what member of the California population would be so motivated to file fraud charges against OLN, especially given the financial and legal resources at its disposal. In the summer of 1994, on the eve of the signing of the UNEX-THEN agreement, THEN indicated its willingness to take the risk of proceeding with its proposed project knowing that instructors might not sign over their rights. So far it appears to have been a risk worth taking.

As a cautionary tale in the commoditization of higher education, this account of an early episode in the evolution of online distance education should give us pause. For, as the tale demonstrates, the glitter of gold drives men if not mad at least dangerously incautious. In an exchange with a UCLA vice chancellor, Ed Condren asked him what he thought might be done about the controversial arrangement and the administrator replied, “Ed, we are learning”. So, in this spirit, let us learn from this example.

In large measure, the ethical and legal lapses evident in this enterprise resulted from a woeful lack of disclosure, debate, and democratic decision-making. The existence of the arrangement, much less the details, was not even known by people at UCLA until the contract was made public by a visiting scholar from Canada four years after it was launched. And once it became known, and controversial, faculty were reluctant to talk about it for fear of administration reprisal. Silence, after all, is the unspoken but well understood rule on campus, where collegial conformity and resigned cynicism passes for sophistication.

Meanwhile, administrators had anxieties of their own. Condren recalled that when his

Academic Senate committee expressed an interest in participating in the negotiation of the second amendment, Lapiner exclaimed “Arkatov will sue us!” (A not unreasonable expectation given the fact that Arkatov had twice threatened litigation against UNEX.) The entire enterprise, then, remains hermetically-sealed from serious scrutiny: those outside the select circle of decision-makers know little or nothing about what is happening, while those in the know are not talking. (Indeed, they are signing contracts which specifically prohibit them from talking.) Fuelled by technological and financial fantasies and given to entrepreneurial excess in imitation of their “real-world” role models, they are accountable to no one. Entrusted as they are with the stewardship of public institutions, their failings have dire consequences not only for themselves and their institutions but, more importantly, for the public which supports and relies upon the integrity of these institutions.

It is inconceivable that these administrative misjudgements would have prevailed had there been wider knowledge and discussion of the Arkatov initiative from the outset. Thus, one modest proposal would be an insistance upon full and timely disclosure and a required transparency of all transactions involving public goods and the public interest. All contracts above a specified dollar amount should as a matter of course be posted on the university website. And through the medium of open debate, wherein significant proposals are made subject to sober and dispassionate analysis, administrators should be encouraged to temper their enthusiasms and extravagant fantasies by bearing the burden of defending their decisions before they are taken. Above all, a new fashion must somehow be fostered of ongoing vigilance against such untoward and heretofore unchecked tendencies as have been described.

Finally, lest it be said that this episode is a particularly egregious example, the exception rather than the rule from which little can be generalized, it must be pointed out that, in retrospect, there is something almost quaint about the UCLA experience; if anything, things have gotten worse. At least UCLA administrators still sought revenues through the generation of fees paid for courses by students, and thus were required to develop courses, secure enrollments, and attend to the details of educational administration. The latest fashion among university administrators is dispense with such drudgery and instead seek imagined fortunes through outright Wall Street speculation in the education industry. One university after another is either setting up its own for-profit online subsidiary or otherwise working with Street-wise collaborators to trade on its brand name in soliciting investors, enlarging its portfolio of stock options, and closing in on the IPO (initial public offering) jackpot. [For details, see the conclusion of Digital Diploma Mills, Part IV]. In the continuing Gold Rush of distance education, then, the aspirants from UCLA were, if anything, just beginners.

And now, in the year 2001, these latest academic entrepreneurs of distance education have begun to encounter the same sobering reality earlier confronted by UCLA and THEN, namely, that all that glitters is not gold. Columbia University’s high-profile, for-profit venture Fathom is reported to be “having difficulty attracting both customers and outside investors” compelling the institution to put up an additional $10 million - on top of its original investment of $18.7 million - just to keep the thing afloat. According to Sarah Carr’s report in the Chronical of Higher Education, Columbia’s administrators remain behind the venture whether or not it makes money.

Howevermuch it might enable administrators to restructure the institutions of higher education to their advantage vis a vis the professoriate, the investment in online education is no guarantee of increased revenues. “Reality is setting in among many distance education administrators”, Carr reports. “They are realizing that putting programs online doesn’t necessarily bring riches”. Ironically, among those now preaching this new-found wisdom is none other than John Kobara, the UCLA vice chancellor who left the university to run Arkatov’s company, which was founded upon the expectation of such riches. “The expectations were that online courses would be a new revenue source and something that colleges had to look into”, Kobara remembered. “Today”, he told Carr, [chancellors and presidents] are going back and asking some important and tough questions, such as: ’Are we making any money off of it?’ ’Can we even pay for it?’ ’Have we estimated the full costs?’” Barely eight years after Lapiner and his UCLA colleagues first caught the fool’s gold fever, Kobara mused aloud, “I don’t think anybody has wild notions that it is going to be the most important revenue source”.

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