
Faculty, Copyright Law and Online Course Materials

Phyllis C. Sweeney, PhD
Southeastern Louisiana University

Abstract

Copyright and fair use laws that regulate educational materials seem to be fairly well understood by the U.S. courts and educators for use in face-to-face (f2f) classrooms (Post and Trempus, 1998). Ever-changing revisions to these laws blur the distinction between tangible and intangible materials shared with students in f2f, online and hybrid courses and must be decided on a case by case basis. As a result, educators face legal and ethical challenges as they take advantage of easy copy and paste tools in the digital medium, particularly if they want to use content from web pages they did not create. Since copying and distribution of digital content is easy, how well can we apply our understanding of these laws, or do we just infringe and ignore the law? This study determined how faculty members at a Research 1 (Carnegie) institute applied their knowledge of copyright/fair use laws to digital course content, and if they were deterred from infringement in the design of their online materials.

Background

Conventional 1976 U.S. copyright law (17 U.S.C. § 101 through 122) was written to regulate copying, distribution and other uses of *tangible* materials such as books, journals, plays, artworks, sheet and recorded music, etc. The established portion of the copyright law known as “fair use” applies to handouts and printed materials reproduced for students in face-to-face classrooms. Internet technology offers an *intangible* medium for sharing information with students that is also covered by copyright laws. Ever-evolving revisions and additions to existing law (Crews, 2002 and 2001) such as the Digital Millennium Copyright Act (DMCA 1998) and the Technology, Education and Copyright Harmonization Act (TEACH Act 2002) were developed to protect digital content and to refine fair use policies.

In this study the researcher examined university faculty members' decisions regarding fair use: to use/not use copied text, images, sounds, animations and video from someone else's web page with or without obtaining copyright permission, to pay/not pay copyright fees, or to ask/not ask for advice from the institution's copyright and fair use specialists. The researcher gathered data via online survey and focus groups. Specific research questions researched were: 1) Did misinterpretation of copyright and fair use law vary across post-secondary educators with regard to department, academic rank, gender, tenure or length of service? and 2) Were post-secondary educators deterred from infringing copyright and fair use policies in developing their online course materials? If so, what was their decision-making process ?

Legal Behavior

Compliance with any law, including copyright / fair use standards, is based on processes by

which human beings and institutions develop the capacity and inclination to behave in a manner that respects the rights of others and society. Capacity and inclination to behave in a responsible manner is shown by J.R. Rest (1994 and 1986) and others as an overall framework for making responsible decisions and engaging in responsible behavior. Rest depicts his framework as a four-component model of ethics that includes:

- Moral sensitivity – interpreting the situation
- Moral judgment – judging which action is morally right/wrong
- Moral motivation – prioritizing moral values relative to other values
- Moral character – having courage and persistence, overcoming distractions, and implementing skills

In deterrence theory, the key concept is that people will engage in criminal activities if they have no fear of apprehension and punishment (Berejikian, 2002, Keel, 1997). Criminal justice researchers find that the threat of punishment – financial, social or physical – is central to contemporary criminal justice policy and carries over into milder forms of law violations such as infringing copyright law.

What Do Faculty Know?

Research methodology for this study was in two forms: 1) a self-administered online survey to gather faculty members' demographic data and copyright/fair use knowledge, and 2) online focus group discussions to gather an understanding of the reasons for copyright compliance or deterrence through natural dialog. To determine the level of copyright/fair use knowledge, the researcher, with the help of a copyright policy specialist, developed a score for the survey questions (highest possible score for correct responses was 77 points) and used QSR NVivo© to assist with analysis of the focus group dialog.

The study university's spring 2003 catalog indicated that all courses were provided with a Blackboard® (online) component for online, hybrid and face-to-face courses. It was not possible to determine how many courses also used non-Blackboard® web page content. Nearly 2,250 faculty members were invited to participate in the study. Survey and focus group respondents varied in gender, tenure, academic rank, and length of service. Of those who responded to the survey (total N = 64), the respondents were 51.5 percent male (n=33) and 48.5 percent female (n=31). Three focus groups, each designed for 6 to 10 members (N = 17), and (N = 7) individual interviews used Blackboard's Virtual Classroom, an asynchronous chat feature, in which to conduct the discussions.

Overall survey scores (highest = 35 of a possible 77 points) for all variables indicated that the majority of faculty members were only partially able to apply correct copyright / fair use to knowledge questions on the survey. Based on the data, the researcher concluded that:

- Female faculty members had a slightly higher misperception rate than males for applying copyright and fair use knowledge to their online course materials.
- Of 12 colleges at this university, the College of Business Administration achieved the highest

level copyright/fair use knowledge by scoring the greatest number of points (score = 21.25 of 77 points), while the Medical College scored the lowest number of points (score = 13.77 of 77 points); however, there was no statistically significant difference among all colleges ($p < 0.85$).

- No statistical significance was indicated among scores for academic ranks, tenure or non-tenure earning positions, the number of online sections taught, or service time.
- Data indicated no statistical significance among scores of those faculty members who reported that they participated in formal web design or copyright/fair training given by this institution. For those who had any form of web or copyright training, there was a slight significant difference in the variables of copying and pasting others' text into online course content ($p < 0.0300$), instructing students how to use audio in their own web pages ($p < 0.0375$), and self-reported awareness levels of copyright/fair use ($p < 0.0016$).

Quantitative data reported in this study showed that aside from a small percentage of faculty members who have had web design training or copyright training, very few were aware of this institution's specific copyright and fair use policies based on the overall low copyright and fair use knowledge scores.

Through focus group discussions, the researcher found the following themes emerge:

- Faculty members expressed a lack of specific training and were receptive to learning about copyright / fair use through workshops,
- Faculty members were unclear about locating and interpreting the University's copyright/fair use policies,
- Faculty members were concerned about their online course materials and wanted easier accessibility to copyright / fair use information online, and
- Faculty members with limited time for preparation of online content tended to re-use classroom materials without spending additional time in checking for copyright permission.

Most ($N = 15$) of the focus group participants acknowledged serious consequences for infringement and expressed interest in “moral behavior” for obtaining information about their online materials to avoid infringement consequences, pointing to the role of deterrence theory in their decision-making. All participants were able to define some form of punishment such as risk of disciplinary action, fines and dismissal as a result of infringement. Most participants ($N = 14$) correctly identified the appropriate person or department to ask for guidance. Discussions pointed to faculty members' desire to comply despite urgency in designing online course materials in time for the start of a new semester as major decision-making factors in whether to comply or infringe and that the university needed to make compliance information more readily available.

Summary

In summary, in a “mad rush” to develop online courses, virtual universities, portals and courseware, educators are copying, digitizing, uploading, transmitting and many other web-based uses of materials. Use of Internet tools provide some of the challenges that must be addressed by copyright courts. When information is stored in electronic form, it is subject to legal and ethical

standards for which faculty must develop an understanding. Noncompliance can be costly: infringement of a valid copyright is the threshold requirement for both criminal and civil copyright infringement cases and could adversely affect an institution or individual faculty member financially or through negative publicity and liability. Results of this study indicate that institutions must make compliance information more accessible perhaps by providing a service to assist faculty in obtaining required permissions, and that faculty should make themselves more knowledgeable about copyright and fair use regulations.

References

Berejikian, Jeffrey D. (2002). A cognitive theory of deterrence. *Journal of Peace Research* , 39.2, 165-183.

Crews, Kenneth D. (2002) *New copyright law for distance education: the meaning and importance of the TEACH Act* . Prepared for the American Library Association. 1-12.

Crews, Kenneth D. (2001). *The law of fair use and the illusion of fair-use guidelines* . 62 Ohio St. L.J. 599. Ohio State Law Journal.

Harper, Georgia (2002). *Copyright crash course* . Retrieved Mar. 25, 2002 , at <http://www.utsystem.edu/ogc/intellectualproperty/cprtindx.htm#top>.

Keel, Robert O. (June 25, 1997). *The evolution of classical theory: Rational choice, deterrence, incapacitation and just dessert* . Retrieved Mar. 25, 2002 , at <http://www.umsl.edu/~rkeel/200/ratchoc.html>.

Post, David G. and Thomas R. Trempus. (1998). *An introduction to copyright law* . Retrieved Mar. 25, 2002 , at <http://www.temple.edu/lawschool/dpost/copyrit.htm>

Rest, J.R. (1994 and 1986), *Moral Development Advances in Research and Theory*, Praeger, New York, N.Y. United States Military Academy (1950), *Bugle Notes*, West Point, N.Y.

U.S. Senate. *TEACH Act, S. 487, to amend chapter 1 of title 17, United States Code*. Retrieved March 28, 2002 from U.S. Senate at <http://www.ala.org/washoff/teach.pdf>.

Online Journal of Distance Learning Administration, Volume IX, Number I, Spring 2006
University of West Georgia, Distance Education Center
[Back to the Online Journal of Distance Learning Administration Content](#)