

Why Copyright?

Educators have always utilized outside resources to enhance the learning experience for their students. These resources can range from a newspaper clipping to a book to a movie. All of these items, and many other resources, are copyrighted materials.

The Copyright Law of 1976 established the rights of the copyright holder as well as providing for the use of copyrighted materials, especially in educational settings. In order to comply with the law in the area of copyright and proper use of copyrighted materials, educators must be aware of the law and the parameters that govern proper or "fair use" of copyrighted publications (Dalziel, 1995).

There are both civil and criminal penalties for infringement of copyright law. Civil awards generally include a monetary award of up to \$1,000,000 (Mason, 1996), attorney fees, an injunction against the violator, and confiscation of the materials that used the copyrighted works (17 USC sections 502-505).

Distance educators have a unique dilemma when dealing with copyright law. Due to the time that the law was passed and the rapid advancement of technology for distance education, the provisions for education in the copyright law are often unclear for the distance education classroom.

What is Copyright?

A copyright grants the holder the sole right to reproduce or grant permission to others to reproduce the copyrighted works. The copyright holder is defined as the person who owns the exclusive rights to a work. The protection is limited to original works, whether or not they have been published. However, it is the *expression of the idea* that is copyrighted, not the *idea* in and of itself (Brinson and Radcliffe, 1994).

Copyright may be held on a variety of original works which include: literary works, musical works, dramatic works, graphical works, motion pictures, sound recordings, and architectural works (17 USC section 102, and Brinson and Radcliffe, 1994).

For works created prior to 1978, copyright protection lasts 75 years from the date of first publication or 100 years from the date of creation of the work, contingent upon which date allows the copyright to expire first. For works created after 1978, protection begins at the creation of the work and lasts 50 years after the death of the author (17 USC section 104A).

What is the Law?

The Copyright Law of 1976 defined the right of the copyright holder, items that may be copyrighted, fair use guidelines, etc. The right to a work may be used, sold, or given away as the copyright holder deems appropriate. The exclusive rights provided for in the Act (17 USC section 106) include:

- to reproduce the copyrighted work in any format;
- to prepare derivative works;
- to distribute copies of the copyrighted work to the public by sale, rent, lease, or gift;
- to perform the copyrighted work publicly (in the case of plays, musical recordings, movies, etc.); and
- to display the copyrighted work publicly (in the case of literary, musical, pictorial, graphic works, etc.)

What is "Fair Use"?

The concept of "fair use" was established in the Copyright Law of 1976. It specifies situations in which copyrighted materials may be used without express permission of the copyright holder (17 USC section 107). However, with the technology available today, it is very easy to abuse the "fair use" provision. The US House of Representatives suggested that the three major considerations in determining fair use should be: brevity of the selection, spontaneity of the decision, and the cumulative effect of the use of the selection (HR 1476, 1976).

Section 107 of the Copyright Law lists four factors that define "fair use" (17 USC section 107):

- The purpose and character of the use must be educational or non profit in nature.
- The nature of the copyrighted work.
- Copied material must be an excerpt or a portion of the original work without being a critical portion.
- The teacher may not impair the marketability of the work. *This is the most difficult condition to determine and is the most controversial* (Dalziel, 1995).

Publishers and educators agreed to more specific guidelines which purport to provide a list of safe parameters in which colleges may operate. However, if a college exceeds the guidelines, it will open itself to a lawsuit to challenge the use as fair. Congress never agreed to these guidelines, but since they were established by a diverse group of educators and copyright holders, courts tend to recognize their validity (Dalziel, 1995).

These guidelines indicated that copying is allowed when the instructor decides to use a work spontaneously for educational purposes (NACS and AAP, 1991) and also outline the length of works that may be copied:

- A complete article or story less than 2,500 words;
- 1,000 words or 10% (whichever is shorter) of a prose work that is excerpted;
- One illustration, chart, diagram, or picture per book or periodical issue; and
- A short poem of less than 250 words, or an excerpt of a longer poem of not more than 250 words.

The guidelines also require that the copying be for only one course, and no more than one short poem, article, or story or two excerpts can be copied from the works of any one author. Lastly, all copied materials MUST show the original copyright notice from the work.

There are also several prohibitions related to fair use.

These are guidelines, and are not the law (NACS and AAP, 1991):

- Unauthorized copying may not be used to replace an anthology or compilation.
- Unauthorized copies may not be made of consumable works such as workbooks or standardized tests.
- Unauthorized copying may not substitute for the purchase of books, authorized reprints, or periodicals.
- Unauthorized copying may not be directed by a higher authority, such as a department head or dean.
- The same instructor may not copy the same item without permission from term to term.
- Students cannot be charged beyond the actual cost of photocopying.

How Can Copyright Permission be Obtained?

Copyright permission must be obtained from the copyright holder of the work in which you are interested. However, copyright notice is optional for works published on or after March 1, 1989, so tracking down the copyright holder may be difficult (NACS and AAP, 1991).

When requesting copyright permission, include all of the following information (NACS and AAP, 1991):

- Full name(s) of the author, editor, and/or translator;
- Title, edition, and volume number of the work;
- Copyright date of the work;
- ISBN for books or ISSN for magazines;
- Exact pages, figures, and illustrations you wish to use;
- The number of copies to be made;
- If the material will be used alone or in combination with other works;
- Name of the college or university;
- Date when the material will be used; and
- Instructor's full name, address, and telephone number.

Copyright in Multimedia Productions

When preparing multi-media presentations, keep in mind some basic principles (Brinson and Radcliffe, 1994):

- Check the copyright status of existing material before including it in new productions.
- Original multimedia works are copyrighted.

In 1995, the Consortium of College and University Media Centers established a working group of educators and copyright holders to establish a group of mutually agreed upon guidelines for multimedia fair use (Dalziel, 1995). Although no conclusions have been reached, those involved tend to agree with the following statements (Dalziel, 1995):

- Educators may use their own multimedia presentations for educational use.
- Educators may use unreleased materials over a closed circuit, and access to material must be limited to class members.
- Commercial reproduction or distribution must have copyright permission.

Suggestions for Distance Education

There are several precautionary steps that may be taken in order to avoid copyright infringement. This is not a complete list, but rather highlights that will assist in avoiding illegal copying of materials (Bruwelheide, 1994):

- Utilize the copyright policy adopted by your governing agency.
- Provide instructor and staff training in current copyright law and institutional policy.
- Do not hesitate to request permission. When in doubt, ask.
- If you are copying to avoid purchase of a text, you are probably in violation of the law.
- Give proper copyright credit, but this is not a substitute for permission to use.
- Label equipment that may be used for unauthorized copying with a restriction.

Conclusion

A basic knowledge of copyright law is essential for any educator. Instructors in a distance education classroom are subject to additional concerns due to the nature of the educational environment. This issue concerns the instructor, the students, the administration, and the institution with which they are all involved, and it is not an issue that can be taken lightly.

Note

Copyright law and intellectual property rights are extremely complex issues. If you have questions regarding a specific circumstance, please contact your university counsel's office and the additional references used to create this publication.

References

- Brinson, J. D. and Radcliffe, M. F. (1994). *Intellectual property law primer for multimedia developers*. <http://www.eff.org/pub/CAF/law/ip-primer>.
- Bruwelheide, J. H. (1994) In *Distance Education: Strategies and Tools*. Willis, B. (Ed.) Educational Technology Publications: Englewood Cliffs, NJ.
- Dalziel, C. (1995). Copyright and You: Fair Use Guidelines for Distance Education. *Techtrends*, October, 6-8.
- House Report (HR) No. 1476. (1976). 94th Congress, 2nd Session.
- Mason, A. (1996). *Copyright and trademark law*. <http://www.usalaw.com/cpytrd.html>.
- National Association of College Stores (NACS), Inc. and Association of American Publishers (AAP). (1991). *Questions and Answers on Copyright for the Campus Community*. National Association of College Stores, Inc., Oberlin, OH.
- 17 United States Code (USC). U. S. Copyright Act, As Amended.

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