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Copyright issues for the technological classroom : what is permissible under current copyright law and guidelines for educators in the design and use of multimedia, distance learning, and other recent technological advances?

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Copyright issues for the technological classroom : what is permissible under current copyright law and guidelines for educators in the design and use of multimedia, distance learning, and other recent technological advances?

Abstract

Technologies, such as computers, Internet, electronic mail etc., offer educational institutions limitless opportunities for learning and teaching. While technological advancements encourage academia to boldly go where no one has gone before, there are legitimate copyright and intellectual property concerns that need to be addressed. The current copyright law passed in 1976, although it legally established the Fair Use principle, is inadequate given the age we live in.

To encourage dialogue, this review of the literature will explore the applicability of copyright law to educators in the electronic environment. Current law, established guidelines, and recent court decisions will be discussed in relationship to their role in determining what is acceptable and unacceptable Fair Use.

Copyright Issues for the Technological Classroom:
What is permissible under current copyright law and guidelines for
educators in the design and use of multimedia, distance learning, and
other recent technological advances?

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Submitted to the
Division of Educational Technology
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by
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Titled: Copyright Issues for the Technological Classroom: What is permissible under current copyright law and guidelines for educators in the design and use of multimedia, distance learning, and other recent technological advances?

has been approved as meeting the research requirement for the Degree of Master of Arts in Education

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Chapter One

Introduction

Technologies, such as computers, Internet, electronic mail etc., offer educational institutions limitless opportunities for learning and teaching. In a matter of minutes, people can communicate with each other around the world, mechanical and mathematical operations that took hours or days to perform now take minutes or seconds, and places that seemed far away now seem next door through the Internet, video conferencing, and CU-see me. All of these technologies have applications in the education community provided we use them responsibly.

The Information Superhighway and the development of new technologies, provide instructors with access to more information than ever before and can, through multimedia, create lessons and projects encompassing a wide array of mediums. In addition, the Information Age allows learning institutions to reach the masses, opens another avenue for engaging the learner, and fosters innovative teaching methods. While technological advancements encourage academia to boldly go where no one has gone before, there are legitimate copyright and intellectual property concerns that need to be addressed.

Brinson and Radcliffe (1996) suggest some copyright myths that need to be examined:

1. Educators and libraries are exempt from the copyright law.

2. Any Educational Use is Fair Use.
3. Copyright Owners never sue educators
4. Copyright law doesn't apply to nonprofit organizations. (p. 299)

The current copyright law passed in 1976, although it legally established the Fair Use principle, is inadequate given the age we live in (Dalziel, 1996; Lyman, 1995; Simpson, 1997) . Based on court cases, guidelines developed by not for profit organizations, and interpretations and extensions of the current law, teachers and administrators have been given some direction as to what limitations exist. To encourage dialogue, this review of the literature will explore the applicability of copyright law to educators in the electronic environment. Current law, established guidelines, and recent court decisions will be discussed in relationship to their role in determining what is acceptable and unacceptable Fair Use.

Within the review, definitions for copyright, fair use, other terms will be given and the terms debated concerning distance learning, electronic reserves, multimedia, electronic networks, the Internet, and electronic mail. In addition, the objective of the research paper is to answer the basic question below.

Research question

What is permissible under current copyright law and guidelines for educators in the design and use of multimedia, distance learning, and other recent technological advances?

Methodology

The research for this paper was conducted through the University of Northern Iowa library, Education Resource Information Center (ERIC), and copyright and fair use web sites. Information collected was checked against court decisions, the Copyright Act of 1976, and articles and books authored by renowned individuals in intellectual property. Given developments in technology, the investigation of copyright and fair use involved material written within the last five years with the exception of the Copyright Act of 1976.

Chapter 2

Review of the Literature

History of copyright. The creation of the first copyright law in the world resulted from advances in technology (Bielefield & Cheeseman 1997; Saltrick, 1995). Before the invention of the printing press by Gutenberg in the 1400's, books and other written works were copied manually by monks in a monastery and only the wealthy had access to these literary works. Furthermore, in the fifteenth century commercial and professional copyists appeared and established a lucrative field. However, during this time period, it was understood by monks and other professionals authors had to grant permission for duplication of their work and should receive a royalty. In addition, the works copied were selected and controlled by European monarchs and governments. Controlling the duplication process allowed authorities to decide what people could read.

The printing press changed the dynamic of the power of the monarch and what people could read. Because of the availability of mass production, no longer was the written word limited to the few and governments realized a need to develop copyright law due in part to individuals reproducing an authors work without permission.

The first national copyright law was the Statue of Queen Anne passed in England in 1710. The statement of purpose of the act (cited

in Bielefield & Cheeseman 1997) read:

Whereas Printers, Booksellers, and other Persons have of late frequently taken the Liberty of printing, reprinting, and publishing or causing to be printed, reprinted, and published books, and other Writings, without Consent of the Authors or Proprietors of such Books and writings, to their great Detriment, and too often to the Ruin of them and their Families: preventing therefore such Practices for the future, and for the Encouragement of learned men to compose and write useful Books, may it please Your Majesty, that is may be enacted.....

(page 11)

Since the passage of this act in 1710, copyright legislation in most countries is based on this statute. For the first time under the Statute of Queen Anne, the author's sole right to publish and reproduce his work for a given period of time were stated.

The passage of the first national copyright legislation due to the printing press signaled the impact technology would have on intellectual property law. Because of the impact of the printing press, the need for new legal concepts concerning technology, the effort of making Parliament aware of the impact of the printing press on the national economy, and the desire to bring all interested parties together, Bielefield and Cheeseman (1997) noted it took 255 years after the printing press was developed to create a law. The same issues delaying the first

copyright act also have hampered the progression of present day copyright legislation (Saltrick, 1995).

Copyright doctrine. The three doctrines of first sale, ideas and facts, and fair use are basic principles guiding the development of copyright law through the ages (Bielefield and Cheeseman, 1997). The author's exclusive right to distribute only pertains to the initial sale of the copy is established in the doctrine of first sale. When an individual legally acquires an item, one can without the author's permission sell, lease, rent, give away, or dispose of the copied item as they wish. However, the right to distribute has been limited based on the impact of reproducing the item, such as computer software, on the economy or market. The doctrine of ideas and facts states the author's concepts and information can not be copyrighted. The only protection under law extends to the manner or medium in which the work is expressed. Lastly, the principle of fair use will be discussed in detail later. All three of these tenets provide a good foundation for copyright law and direction for future changes in law due to technology.

U.S. copyright law. U.S. Copyright law has its basis in article 1, section 8, clause 8 of the U.S. Constitution; "The Congress shall have power...to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their writings and discoveries." This section of U.S. Constitution is similar to the Statute of Queen Anne (Bielefield and Cheeseman, 1997). By

providing legal protection of an individual's work from duplication and privacy, an incentive is provided for one to produce and share their craft (Gillen, 1995).

The Copyright Act of 1976 and the Berne Convention of 1886 are the principle laws governing intellectual property (Sinofsky, 1997). Copyright law protects, "original works of authorship fixed in any tangible medium of expression, now known or later developed." The definition of a copyrighted work envisions the development of new mediums where authors could develop and show their work (Bielefield and Cheeseman, 1997). Forms of work could include poetry, novels, movies, songs, computer software, movies, and architecture (U.S. Copyright Office, 1997). However, copyright law does not protect facts, short phrases, ideas, systems, or methods of operations although it may protect the medium in which they are expressed. Under current law, a work is protected during the life of the author plus fifty years. Work published before 1978 is covered for 75 years.

The Copyright Act passed in 1976 took effect on January 1, 1978. Since that time, the Act has been amended twenty-eight times (Sinofsky, 1997). Section 101 of the 1976 Copyright Act provides clear definitions for different forms of work ranging from audiovisual to collective works (Sinofsky, 1997). Section 103 clarifies compilations and derivative works. Section 106 of the Copyright Act defines the rights of the copyright owner: the exclusive right to the reproduction, distribution,

public performance, and public display of copyrighted work as well as the preparation of derivative works. Fair use is discussed in section 107.

This area will be discussed in detail later on. Other important sections deal with the duration of copyright and legal remedies available to the author. Currently, the awards to the copyright owner can be as follows:

1. \$500 to \$20,000 per work infringed upon with an increase to \$100,000 for willful infringement.
 2. If the infringement was unintentional, the award could be reduced to \$200 per work infringed
 3. For nonprofit educational institutions, damages can be remitted.
- (Bruwelheide, 1995b, p.9)

Public domain is defined in section 105: public domain includes works no longer under copyright law due to time expiration and works produced by the federal government excluding postage stamps and material created by independent federal government contractors (Bruwelheide, 1995b; Sinofsky, 1997). On the issue of public domain, Wertz (1997) emphasized any work published 75 years before January 1 of the current year is in the public domain. Public domain material can be used with out fear of infringement. However, Wertz (1997) warned the lack of a copyright notice doesn't necessarily mean the work is in the public domain. More importantly, with the growth the and accessibility of the Internet, Brinson and Radcliffe (1996) stated, "Putting a document on the net is not a wavier of copyright or a dedication of the document to the

public domain” (p. 281). Research through the U.S. Copyright Office or the Copyright Clearance Center (CCC) must be conducted to determine a works’ status. Images in the public domain for downloading and copying are available at www.pdimages.com (Wertz, 1997).

Berne convention. The Berne Convention is the convention for the Protection of Literary and Artistic Works signed at Berne, Switzerland on September 9, 1886. The 1886 convention is the oldest copyright treaty in an existence (Sinofsky, 1997). In March 1, 1989, the United States became the eighteen signatory to the convention. Ratifying this international treaty had two important impacts for U.S. copyright owners. The first is one’s work is protected in any country participating in the convention (Bruwelheide, 1995b). In essence, the creator’s work is respected as though he/she were a citizen of that country. The second concerns the notice of copyright. Under the treaty, any work published after March 1, 1989 in the United States does not require a copyright notice since most members of the Berne Convention do not require it. As Gillen (1995) noted, this change in law had the effect of protecting, “original and creative works at the moment they became fixed in a tangible medium of expression” (p.1). However, it is recommended authors still register their work for legal purposes and affix the copyright notice (Bruwelheide, 1995b). In order to sue for an infringement, a work registered with the U.S. Copyright Office establishes a claim, enables recovery of damages, and avoids any infringers claiming innocence.

Materials published between January 1, 1978 and February 28, 1989 required a copyright notice and must be registered. An additional level of copyright protection is extended to authors through trade agreements such as the General Agreement on Tariffs and Trades (GATT) (Bielefield & Cheeseman, 1997). As the United States becomes apart of the global economy, provisions are added to trade agreements protecting intellectually property to further encourage the exchange of ideas.

New bills: not laws. Given technological advances, bills have been introduced in Congress dealing with copyright issues concerning the Internet. Nevertheless, groups with competing economical and political interests have stalled any action or passage of proposed laws (Gillen, 1995; Wertz, 1997). One bill entitled the "NII Copyright Protection Act of 1995" was designed with the express purpose of adopting copyright law to the digital and networked environment (S. 1284, 1995). It was advanced by the National Information Infrastructure (NII) task force created by President Bill Clinton to promote and provide a vision for the information infrastructure (Lehman, 1997). An important part of the act defines transmission of copies: "to transmit a reproduction is to distribute it by any device or process whereby a copy or phonorecord of the work is fixed beyond the place from which it was sent" (S. 1284, S b2, 1995). Bruwelheide (1995a) and Lyman (1995) believed this new definition, if made into law, would make all network communication subject to copyright law and thus discourage further interaction and collaboration

on the Internet. Academics and Internet providers believed the bill would over rule Feist Publication v. Rural Telephone Service, Inc. (1994) where the court determined Feist Publication compiling telephone directory information from RTS's whites pages was not an infringement since the information was not original. The act would also allow the reproduction of material for the visually impaired.

Under the bill, a new section would deal with copyright protection systems and management information which is defined as "the name and other identifying information of the author of a work, the name and other identifying information of the copyright owner, terms and conditions for uses of the work, and such other formation as the register of copyrights may prescribe by regulation" (S. 1146, 1997). Simply put, the bill would make illegal the development of methods and devices countering anti-copying technology. A working group of the NII proposed this section envisioning the production of software prohibiting copying from the Internet, thus protecting Internet copyright holders (Brinson & Radcliffe, 1996).

Furthermore, the bill would make it illegal to knowingly provide and publicly distribute false copyright information. The proposed legislation provides for civil remedies such as filing a civil suit and the awarding of damages. The NII working group also proposed changing the criminal penalty making it illegal to reproduce or distribute copies with a retail value of over \$5,000 (Brinson & Radcliffe, 1996).

The other act was introduced by Senator John Ashcroft of Missouri. Entitled the "Digital Copyright Clarification and Technology Education Act of 1997", the bill would clarify copyright law in the electronic environment, advocate the development of the Internet as a tool of communication and commerce, protect copyright owners in this digital age, define the liability for electronic communications of another person through network services and facilities, state Internet and on line services are not responsible for third party violations except when a reasonable opportunity is given to limit third party infringement, and establish rewards for eliminating infringing material on electronic networks (S. 1146, 1997). This bill would address some of the concerns associated with the Internet and copyright law (Brinson & Radcliffe, 1996; Connally, 1995; Lyman, 1995).

Fair use. In the Copyright Act of 1976, provisions for the appropriate access and use of material are made through the fair use doctrine. Before discussing these standards, Gillen (1995) defined fair use, "as a complex exception to the monopoly power invested in authors by the copyright law and is intended to protect the right of reasonable public access to copyrighted expressions for limited purposes" (p. 2). Section 107 of the Act under the fair use principle allows for the reproduction of work with the intent of criticism, comment, news reporting, teaching, and scholarship. In determining fair use on a case by case basis, four criteria are used. The standards include the purpose of and

character of the use, the nature of the copyrighted work, the relative amount of the work included, and the effect upon the potential market.

The first factor, purpose and character of use, examines whether the material is used for commercial or educational purposes, the degree of transformation, and determines if the purpose fits the category of criticism, comment, news reporting, teaching, and scholarship (Fair Use Test, 1997). Nature of the copyrighted work judges the worthiness of the work in its particular field. In terms of relative amount, the portion of the copyrighted material used is determined in relation to the whole work and purpose of the copying. With this standard, the concept, "no more than is necessary" is appropriate. The last factor, effect upon the potential market, determines the impact or harm to the market or potential market of the original and derivative works. These four factors are the criteria by which the courts, on a case by case basis, determine whether the fair use principle applies.

Conference on fair use (CONFU). With the fair use doctrine in mind, several guidelines were developed to provide direction to educational institutions and practitioners (Gillen, 1995). As a part of the National Information Infrastructure (NII) Working group on Intellectual Property Rights, the Conference on Fair Use (CONFU) was created in 1994 to develop new guidelines to address technological changes in education (Dalziel, 1996). The CONFU group was divided into several areas pertinent to fair use issues for education: multimedia, distance

learning, electronic reserves, and digital images. Instead of changing the Copyright Act of 1996 which would have been time consuming, guidelines were developed, circulated among committee members and affected professional organizations, and inserted into the Congressional record. All of the guidelines grew out of census between professionals in education and industry (Brinson & Radcliffe, 1996; Roberts, 1996). The agreement for "Guidelines for Classroom Copying" in not-for-profit educational institutions with respect to books and periodicals was published in 1976; "Educational Uses of Music" was produced in 1976; and the "Guidelines for Off-air recording" of broadcast programming for educational purposes was produced in 1979. These guidelines do not have the force of law but do provide a road map for following fair use doctrine (Gillen, 1995).

Court cases and fair use. Several court cases have dealt with fair use issues as it relates to technology and education. Again, as stated before, the courts have determined fair use on a case by case basis. The cases discussed below provide some interpretation of copyright law.

In Playboy Enterprises Inc. v. Frena (1993), a digitized photo owned by Playboy was uploaded to a electronic board by a subscriber and down loaded by another subscriber. The court determined these acts as affecting the copyright's owner right to distribute. In a similar case, Sega v. Mapphia (1994), the court found the systems operator knowingly encouraged and facilitated the uploading and down loading of

Sega's video games by its subscribers and thus cited Mapphia for direct and contributory infringement (Brinson & Radcliffe, 1996). With the Religious Technology Center v. Netcom Online Communication Services (1995) case (commonly called the Netcom decision), an individual uploaded copyrighted church material to a Usenet group. The church members asked the individual to stop, he refused, and then the members approached the Internet service provider who refused to deny access to the individual. In this decision, the court decided the individual was the primary infringer with the service provider being the contributing infringer. When down loading or up loading images or material to and from the Internet, we need to consider these cases given the fact you could be violating someone's copyright (Brinson & Radcliffe, 1996; Bruwelheide, 1995b). As Wertz (1995) noted, just because a document, photograph, or program is posted on the Internet doesn't necessarily mean the material is in the public domain or the author (copyright owner) of the material posted it or waived their copyright privilege.

Campbell v. Acuff-Rose Music, Inc (1994) is a case where the Supreme Court ruled that although Luther Campbell gained financially from a parody of the song "Oh Pretty Woman" by Roy Orbison , it was permissible under the Fair use principle because a parody "can provide social benefit, by shedding light on an earlier work, and in the process, creating a new one" (Brinson & Radcliffe, 1996). This ruling has educational implications, by allowing student generated projects including parodies of songs and movies.

In the Kinko ruling, (*Basic Books Incorporated v. Kinko's Graphics Corp*, 1991) the court determined the defendant violated the copyright of eight publishing companies by including without permission copies of materials from their copyrighted books in course packets and then selling them for a price. The court found Kinko's could not claim fair use or apply the classroom guidelines to the packet. This case had the effect of ensuring educators seek permission before including copyrighted material, such as articles and book chapters, in their course packets.

In *Columbia Pictures Industries v. Aveco, Inc.* (1986) and *Columbia Pictures Industries v. Redd Horne, Incorporated* (1984), the court decided both Aveco Inc. and Redd Horne Incorporated were in violation of public performance rights because one (Aveco) charged for a rented tape and then charged patrons to see it in a semi-private room while the other (Redd Horne) charged for rented tape and allowed patrons to view the tape for free in a semi-private room. Both cases have practical applications in education given distance learning, especially with the Iowa Communication Network, and the number of instructional videotaped programs available. The basic question involves the transmission of material over the network. This issue will be discussed later.

Multi-Media and fair use. The introduction of new technologies, such as videotapes, software, CD-rom, laser discs, digital cameras, and the Internet, has stretched the limits of the fair use principle (Roberts,

1996). Beginning in 1994, the Consortium of College and University Media Centers gathered representatives of teachers, publishers, librarians, and others affected by fair use to develop guidelines for educational multimedia. The guidelines were adopted in the form of a non legislative report and read into the Congressional record on September 27, 1996 by the U.S. House of Representative Subcommittee on Courts and Intellectual Property (Talab, 1998). Again, these are not laws but guidelines developed to provide direction to educators. They apply to use without permission, of proportions, of lawfully acquired copyrighted material, educational multimedia projects, works created by educators or students, as a part of a systematic learning activity, and nonprofit educational institutions (Diamonds, 1997).

The first section of the guidelines deals with the basic definitions of educational multimedia, educational institutions, educators, educational purposes, and lawfully acquired copyrighted materials (Fair Use Guidelines for Educational Multi-Media, 1997). Two important definitions are educational purposes and educational multimedia. Educational multimedia is defined as:

Projects incorporating students' or educators' original materials, such as course notes or commentary, together with various copyrighted media formats including but not limited to, motion media, music, text material, graphics, illustrations, photographs, and digital software which are combined into an integrated

presentation. (Fair Use Guidelines for Educational Multi-Media, 1997, p.6)

As for educational purposes, this includes multimedia projects integrating copyrighted material developed for the express purpose of learning and teaching activities in a nonprofit educational institution. This definition is consistent with guidelines discussed later on.

From the student perspective, learners may use portions of copyrighted material for a specific course project, perform or display the work in the course, keep the work in a professional portfolio, and integrate portions of the copyrighted work for teaching needs (Diamonds, 1997). The only limitation to students is multimedia projects can only be used for the course in which the project was developed and for a professional portfolio as evidence of academic work.

Educators may use multimedia projects for face-to-face instruction, directed self study, remote instruction with limitations, professional portfolios, and professional presentations and workshops (Diamonds, 1997). Remote instruction with limitation applies to distance learning. Multimedia projects can be used in distance learning courses when access is limited to those students enrolled in the course (through a password or pin number) and duplication is prevented. If a secured environment is impossible, the instructor and learner may use the material on otherwise secure network for 15 days after its assignment or following remote instruction (Fair Use Guidelines for Educational Multi-

Media, 1997). After that time period, material may be put on reserve in a library or resource center with the understanding students can not duplicate it. An important limitation for educators is two years after the first instruction, they must seek permission for any copyrighted material integrated into a multimedia work.

Several limitations are important in developing educational multimedia projects using copyrighted material. They are as follows:

1. Up to 10% or 3 minutes of motion media may be used.
2. Up to 10% or 1,000 words of text material may reproduced or incorporated.
3. Up to 10% but no more than 30 seconds of music or a lyric may be reproduced or incorporated.
4. No more than 5 images or photographs from individual photographer may be reproduced or incorporated.
5. Up to 10% or 2500 fields or cell entries from a numerical data set or data base may be reproduced or incorporated. (Diamonds, 1997, p.4)

The guidelines also address some other important issues.

Section six of the directive deals with downloading material from the Internet, giving attribution, and providing notice of use restriction.

Section six also states these guidelines do not overrule licenses and contracts already entered into (Simpson, 1997).

Distance learning. One of the great advantages of technology is it

allows educational institutions to reach the masses (Switzer & Switzer, 1994). With distance learning through the Internet, satellites, communication networks, and correspondence courses, copyright and fair use issues become very apparent. Switzer and Switzer (1994) argued copyright law should be revised given new technologies and the dilemma copyright law places on distance learning institutions. Currently, the exemptions in copyright law for distance learning only apply to face to face teaching in educational institution (Bielefield & Cheeseman, 1997). However, in distance education over the Internet, there is no face to face environment and the transmission of copyrighted materials becomes a major issue. Dalziel (1995) acknowledged many distant learners are frustrated with the outdated law since it does not address new technological developments, such as the Internet. At present, institutions participating in distance education have to seek permission for certain copyrighted materials; limiting and in some cases delaying what distance education instructors can teach. Bruwelheide (1995b) stated the problem with distance learning revolves around the transmission of material over networks. Another factor is the fair use principle doesn't apply to for profit institutions, which many distance learning agencies are (Brinson & Radcliffe, 1996). Many distance education instructors, forgoing permission, knowingly use copyrighted material in violation of the fair use principle and copyright law (Bruwelheide, 1995b). Dalziel (1996) indicated, "Distance educators

argue that the course material they transmit is educational in nature and falls in the scope of Fair Use, regardless of how the material is technologically distributed or where the students are located” (p. 24).

Distance learning and fair use. In October 1996, the Conference on Fair Use produced guidelines for Distant Education allowing the transmission of copyrighted material to students enrolled in a distance course at a nonprofit educational settings (cited in Bielefield and Cheeseman, 1997). These distance learning guidelines apply only to live interactive classrooms or recorded classes for later one-time transmission by the originating institution. Below are some stipulations in the guidelines:

1. These guidelines apply to only nonprofit educational institutions at all levels supporting research and the activities of educators and students.
2. Only students officially enrolled in the course at an eligible institution may view the transmission.
3. Works performed must be a integrated into the curriculum, relate to the course, and not be used as entertainment.
4. The transmission of copyrighted material must be over a secure network with a required pin number, password, or smartcard for students enrolled in the course.
5. The receiving point of the transmission must be in a classroom, similar place devoted to instruction, or site where reception can be

controlled by the eligible institution.

6. Limitations

- a. The performance of an entire or majority of a copyrighted work may be transmitted once for a distant learning course before permission is required from copyright owners.
- b. The receiving institution may retain a copy of the transmitted material for student viewing as long as the material is held in a controlled environment for no longer than 15 consecutive days. For longer periods of time, permission must be sought from the copyright owners.
- c. The same rights in section 6B apply to the transmitting institution.

7. Commercially produced multimedia may be transmitted according to these guidelines provided the multimedia work was not obtained pursuant to a license. If a license exists, it prevails.

8. Permission is required for the following:

- a. Commercial uses
- b. Dissemination of recorded courses
- c. Uncontrolled access to classes
- d. Use beyond the 15-day limitation

(Fair Use Guidelines for Distance Learning, cited in Bielefield and Cheeseman, 1997, p.139-144)

Electronic environment. One of the great debates surrounding

copyright revolves around the information superhighway. The First Amendment vs. Copyright and Copyright law vs technology have been traditional conflicts between access and author's rights (Bielefield & Cheeseman, 1997; Driscoll, 1995; Lyman, 1995). However, the debate has been exacerbated by the information age. As it stands, anyone can copy or post someone's work without permission and, through technology, modify or revamp someone's music, video or movie.

Bielefield and Cheeseman (1997) argued this debate is rooted in two of sections of the U.S. Constitution with one advocating free speech and the other encouraging author's rights. These authors suggested these clauses should not be taken at their absolute sense. These two sections are inherently contradictory because copyright law is designed to encourage creativity but can limit it by its restrictions and the first amendment supports free speech confined by copyright law. In several court cases based on free speech overriding copyright law, the courts found the defendants in violation based on copyright law (cited in Bielefield and Cheeseman, 1997). As stated before, the debate over technology and copyright law deals with the law has not caught up with technology. In fact, Lyman (1995) argued copyright law has impeded technology.

Believing consensus is possible, Driscoll (1995) insisted it is important for publishers, copyright owners, and libraries, given the Internet, to develop new models that will insure quality, encourage

individuals to continue to produce and create, and provide greater access. A compromise is important since many publishers fear the Internet may replace them as distributors (Dalziel, 1996). On the other hand, Peters (1995) suggested two points of views concerning networked intellectual property exists. One view is the networked environment is an insecure setting for intellectual property concerns since appropriate and inappropriate material can be copied and distributed. The lay man's view is an item can be secured given the desire and the technology available. Both of these perspectives pinpoint the need for everyone involved to come together to reach an agreement. With that in mind, issues related to electronic reserves and digital images will be discussed.

Electronic or digital reserves. Able to scan and digitize materials in order to preserve and provide greater access with the technology available, many libraries and educational institutions are exploring the various options available given current copyright law (Dalziel, 1996). However, Section 108 of the Copyright Act of 1976 permits facsimiles but prohibits digital formatting. Talab (1998) stated, "A copy is when work is saved to ROM or RAM for more than a very brief period" (p. 9). In an electronic situation, the issue becomes the transmission or copying of the material. According to Talab (1998), the digital author has a right to the reproduction, distribution, performance, public display, and derivative work of his material.

Electronic reserve systems and fair use. Under the Fair Use Guidelines for Electronic Reserve Systems (cited in Bielefield and Cheeseman, 1997) produced in March 1996, college, university, and school libraries are given guidance to including copyrighted material on electronic networks. However, Lehman (1997) emphasized these guidelines were not supported by all members of the working group in the Conference on Fair Use (CONFU) and thus were not formally adopted by the CONFU. The scope of the guidelines state:

- a. At the request of instructors, electronic reserve systems may include copyrighted materials.
- b. Electronic reserve systems may include short or long items such as poems, book chapters, conference proceedings, etc.
- c. Electronic reserve system may not include material unless the professor, library or institution has a lawfully acquired copy.
- d. The total amount of the material on an electronic reserve system should be a small portion of the total assigned reading for a course. (Bielefield & Cheeseman, 1997, p. 195)

The guidelines also provide a warning prohibiting further digital copying and distribution of material on a electronic reserve system. In addition, appropriate citations and attributions must be given. Access and use is limited to the students enrolled in the course and instructors and others responsible for the course on the reserve system. Under section C, material on an electronic network may be limited by individual

passwords, class or course password, access through workstations for enrolled students only, or the work maybe retrieved by course number or instructor name but not by author or title. Also, students should not be charged specifically or directly for access to electronic reserve system. For storage and reuse, permission is required for use in subsequent semesters after the initial use.

Digital images and fair use. Fair Use Guidelines for Digital Images (cited in Bielefield and Cheeseman, 1997) were developed by a working group on the Conference on Fair Use. The guidelines were formulated by individuals related to the field but not endorsed by all members of the committee. Because of disagreement, some institutions are implementing the guidelines for a year (starting May 1997) to see if they are workable and what changes need to be made.

These guidelines apply to the production of digital images for educational purposes and cover preexisting analog image collections and newly acquired analog visual images. Digital image is defined as “a visual work stored in binary code (bits and bytes)” (Fair Use Guidelines for Digital Images, 1996, p. 2). Further in section one, definitions are provided for an analog image collection, thumbnail images and other terms associated with the digital age. Section two, for educational purposes, allows lawfully acquired analog visual images to be digitized, cataloged on-line, and displayed for access to essential personnel (student and instructor) on a secure electronic network with a password

or pin number required. In addition, after the first semester, permission is required for subsequent semesters and the guidelines do not override contracts and licenses. Educators under section three may display digital images for education purposes and place them on a secure electronic network. The digital images can be used for Peer conferences but not for scholarly publications where permission must be sought. Students can use digital images for a academic course, public display at a nonprofit education institution, and personal portfolios for graduate school and employment. Section five advocates seeking permission for using or creating digital images to ensure integrity and lawful use. Section six allows, with certain restrictions, the digitizing of preexisting analog material.

Other CONFU guidelines are under development for Inter library Loan and Document delivery and new guidelines for Computer Software was found unnecessary.

Chapter Three

Conclusion

The research question, "What is permissible under current copyright law and guidelines for educators in the design and use of multimedia, distance learning, and other recent technological advances?" has been answered. Although the information superhighway and technology offers great opportunities for learning and access, copyright concerns become apparent. Whether it is including a clip of a well known movie in a multimedia project or posting another person's poem on the Internet, copyright is a serious issue. In the beginning, several statements concerning copyright were listed.

1. Educators and libraries are exempt from the copyright law.
2. Any Educational Use is Fair Use.
3. Copyright Owners never sue educators
4. Copyright law doesn't apply to nonprofit organizations. (Brinson & Radcliffe, 1996, p. 299)

Through a discussion of guidelines developed by CONFU and the Copyright Act of 1976, the statements above have been proven false. The falsehoods stated go to the heart of the misconception about fair use, copyright law, and the Internet. In the ever changing technological world we live in, it is important for educators and copyright law to adjust with the times. As teachers of future generations, it is important to use every tool available within established guidelines and the law.

As for legislation, Congress should step up to the plate and provide some guidance to practitioners and the courts in this information age. Although it is difficult to pass laws given competing political and economic interests, it is up to lawmakers through consensus to craft and pass a bill that is flexible and appropriate given the technological age we live in.

Furthermore, educational institutions under the principle of fair use must follow prescribed copyright policies in order to avoid legal problems and infringements. An exerted effort must be taken to educate instructors, administration, and librarians about current guidelines and law. All of us play an important role in ensuring the technology available is used appropriately and continues to provide access to information.

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